New gTLD Registry Code of Conduct (Specification 9) FAQs

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Q1: What is the Registry Operator Code of Conduct?
A1: The Registry Operator Code of Conduct is a set of guidelines for the Registry Operator relating to the operations of a registry. All Registry Operators are subjected to the Code of Conduct unless an exemption is granted to the Registry Operator by ICANN.

Q2: Where can I view the Registry Operator Code of Conduct guidelines?
A2: The Registry Operator Code of Conduct guidelines are in Specification 9 of the Registry Agreement and can be viewed at http://newgtlds.icann.org/en/applicants/agb/base-agreement-contracting.

Q3: Why does ICANN allow exemptions to the Code of Conduct for certain Registry Operators?
A3: The purpose of the Registry Operator Code of Conduct is to protect a TLD's registrants. If a Registry Operator registers all domain names in the TLD exclusively for and to be used only by itself or its Affiliates, and the Registry Operator would like to waive the protection for itself and its Affiliates, ICANN may grant the Registry Operator an exemption to the Code of Conduct, provided the TLD is not a generic string and the Registry Operator can satisfy all three (3) exemption criteria:

  i. All domain name registrations in the TLD are registered to, and maintained by, Registry Operator for the exclusive use of Registry Operator or its Affiliates;
  ii. Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator; and
  iii. Application of the Code of Conduct to the TLD is not necessary to protect the public interest.

Q4: What is the process to submit a request for exemption to the Registry Operator Code of Conduct?
A4: The process to submit a request for exemption to the Registry Operator Code of Conduct varies depending on where your application is within the New gTLD Program.

If you have not yet been invited to the Contracting process, you should wait until you are invited to submit the request. The Contracting invitation will include a link to an online Contracting Information Request ("CIR") Form that you will need to complete to start the Contracting process. This Form will have a place for you to request an exemption to the Code of Conduct.

If you have been invited to Contracting and received a CIR, you can request a Code of Conduct exemption by checking the appropriate box in Section 3 of the CIR Form. Once you

check this box, you will be required to complete an Exemption Request Form and provide a complete registration policy for the TLD.

If you have already signed the Registry Agreement, you can request a Code of Conduct exemption by contacting Customer Service at newgtld@icann.org. The request should come from the Registry Operator point of contact. Please be sure to include the Exemption Request Form and the complete registration policy for the TLD when submitting the request. You can find a template for the Exemption Request Form at http://newgtlds.icann.org/en/applicants/agb/ro-code-of-conduct-exemption-28oct13-en.pdf.

Q4: What is ICANN's process for reviewing the Code of Conduct exemption request?
A4: Upon receipt of the complete exemption request, ICANN will post the request at http://newgtlds.icann.org/en/applicants/agb/base-agreement-contracting/ccer for comments from the community. Comments submitted within 30 days of the posting of the request will be reviewed and considered by ICANN.

The determination of whether ICANN will grant an exemption to the Code of Conduct will include ICANN's review of the assertions in the exemption request and the provided TLD registration policy to ascertain if the Registry Operator satisfies all three (3) of the exemption criteria:

   i. All domain name registrations in the TLD are registered to, and maintained by, Registry Operator for the exclusive use of Registry Operator or its affiliates;
   ii. Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an affiliate of Registry Operator; and
   iii. Application of the Code of Conduct to the TLD is not necessary to protect the public interest.

Additionally, to ensure that approval of an exemption to the Registry Operator Code of Conduct will not conflict with Specification 11 of the Registry Agreement, which prohibits generic TLDs from being operated on an exclusive basis, ICANN will perform a review of the string itself to determine whether it is a generic string as defined in Section 3d of Specification 11 of the Registry Agreement:

"Generic string" means a string consisting of a word or term that denominates or describes a general class of goods, services, groups, organizations or things, as opposed to distinguishing a specific brand of goods, services, groups, organizations or things from those of others."

If ICANN has reason to believe that the string falls within this definition of a "Generic String", the applicant will be contacted and provided an opportunity to clarify why it believes the string does not meet this definition.

If ICANN determines that the request satisfies all three (3) exemption criteria and the TLD is not a "Generic String," the request will ordinarily be approved.

ICANN reserves the right to seek additional comments prior to making a final determination in all cases.

Q5: What is a "Generic String"?
A5: A "Generic String" means a string consisting of a word or term that denominates or describes a general class of goods, services, groups, organizations or things, as opposed to distinguishing a specific brand of goods, services, groups, organizations or things from those of others (as defined in Specification 11, 3(d) of the Registry Agreement).

When a word or term is used as the common dictionary name for the goods or services it describes, the word is generic. If the word "sushi" is used to identify the Japanese food sushi (i.e., vinegared rice with raw fish), the term is used generically. However, if a business uses the term SUSHI as a brand to identify goods or services unrelated to the food sushi, that would not be a generic use of the term. So a SUSHI brand line of clothing, or a SUSHI brand automobile, or a SUSHI brand photocopying service, would not be a generic use of the term sushi.

If an applicant applies for the TLD string "sushi" and it is in the business of operating restaurants that serve sushi, that would be a Generic String that describes the general class of goods or things comprising sushi. However, if an applicant applies for the TLD string "sushi," and the applicant's business is marketing and selling SUSHI brand clothing or a SUSHI brand automobile or a SUSHI brand photocopying service, that would not be a Generic String. In those cases, SUSHI would not be used to denominate the class of food known as sushi, but would instead be used to distinguish SUSHI brand clothing or SUSHI brand automobiles or SUSHI brand photocopying services from other brands of clothing or automobiles or photocopying services.

Q6: What are the implications if a string is determined to be a "Generic String"?
A6: Under Section 3(d) of Specification 11, a Registry Operator of a "Generic String" TLD may not impose eligibility criteria for registering names in the TLD that limit registrations exclusively to a single person or entity and/or that person's or entity's "Affiliates" (as defined in Section 2.9(c) of the Registry Agreement). As an example, if Acme Sushi, Inc. is in the business of operating sushi restaurants, it could not limit registrations only to Acme Sushi, Inc. and its Affiliates. Provided Acme Sushi, Inc. does not limit registrations exclusively to Acme Sushi, Inc. and its Affiliates, it could impose registration policies and criteria that limit registrations in other ways.

Q7: Can a Registry Operator of a "Generic String" qualify for a Code of Conduct exemption?
A7: One of the criteria for qualification for a Code of Conduct exemption is all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for the exclusive use of Registry Operator or its Affiliates. Accordingly, if a TLD were a Generic String, it would be ineligible for a Code of Conduct exemption. By definition, a Code of

Conduct exemption requires that domain name registrations be limited to the Registry Operator and its Affiliates, and that is not consistent with the requirement that registrations for Generic Strings cannot be limited to a single person or entity and/or that person's or entity's Affiliates.

Q8: Can a Registry Operator that intends to operate the TLD in an exclusive manner submit an exemption request?
A8: Yes, a Registry Operator of a TLD that will be operated in an exclusive manner may submit an exemption request. If ICANN determines that the Registry Operator meets all of the exemption criteria, and the TLD is not a generic string, the Registry Operator will be granted an exemption to the Code of Conduct. An exemption request by a "Generic String" would be denied because of the requirements of Specification 11, which prohibit generic TLDs from operating in an exclusive manner.

Q9: Can a Registry Operator that intends to operate the TLD in a non-exclusive manner submit an exemption request?
A9: Because the exemption criteria require that all domain names in the TLD be registered to the Registry Operator for its and its Affiliates' exclusive use, a non-exclusive TLD cannot satisfy the exemption criteria.

Q10: How does an exemption to the Code of Conduct impact the public interest?
A10: In most instances, satisfaction of criteria (i) and (ii) will indicate a lack of public interest concerns. In determining whether there is a public interest concern to any specific exemption request, ICANN will be guided by its Mission and Core Values as specified in its Bylaws. If there is public interest concern, ICANN may elect to post the applicant's exemption request for public comment so that it may make an informed determination as to whether adherence to the Registry Operator Code of Conduct is necessary for the protection of the public interest. If it is determined that adherence to the Registry Operator Code of Conduct is necessary for the protection of the public interest, the exemption request will be denied.

Q11: What is the definition of Affiliate?
A11: The definition of Affiliate is provided in Section 2.9(c) of the Registry Agreement:

> *"Affiliate means a person or entity that, directly or indirectly, through one or more intermediaries, or in combination with one or more other persons or entities, controls, is controlled by, or is under common control with, the person or entity specified."*

Q12: What does "control" in the Affiliate definition mean?
A12: The definition of control is also provided in Section 2.9(c) of the Registry Agreement:

> *"Control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as an employee or a member*

of a board of directors ore equivalent governing body, by contract, by credit management or otherwise.

Q13: Will an entity under control by contract be considered an Affiliate?
A13: Generally, a third party that is under contract with respect to a specific matter (for example, a customary photocopier lease agreement) is not "controlled" by the other contracting party for purposes of determining "Affiliate" status. Whether a contract provides one party with "control" over the other party is a facts and circumstances analysis, and cannot be determined absent full knowledge of such facts and circumstances. Generally speaking, the contract must provide Party A with the power to direct the operations and policies of Party B in order to make Party B an "Affiliate" of Party A, and the degree and significance of such power is also a facts and circumstances analysis.

Q14: What are the obligations of the Registry Operator that received an exemption to the Code of Conduct?
A14: Registry Operators that received an exemption to the Code of Conduct must:

- Remain in strict compliance with representations made in the exemption request.
- Notify ICANN promptly of any change in circumstances that could affect Registry Operator's satisfaction of the exemption criteria.
- Conduct internal reviews at least once per year and submit officer certification of continued compliance to ICANN by email to newgtld@icann.org within 20 days following the end of each calendar year. ICANN may publicly post these documents.

The Registry Operator Code of Conduct Exemption will be deemed void if representations become untrue or the Registry Operator fails to continue to satisfy exemption criteria. ICANN may conduct investigations regarding continued compliance, including reviewing TLD zone files and registration data. Approval of an exemption request does not alter or otherwise waive any other obligations under the Registry Agreement.

Q15: What does it mean to receive an exemption to the Registry Operator Code of Conduct?
A15: If a Registry Operator receives an exemption to the Code of Conduct, it is not contractually obligated to comply with the covenants in Sections 1, 2, and 3 of Specification 9 of the Registry Agreement.

This means that a Registry Operator is not prohibited under the terms of Specification 9 from:

- Directly or indirectly showing any preference or provide any special consideration to any registrar with respect to operational access to registry systems and related registry services;
- Registering domain names in its own right;
- Registering names in the TLD or sub-domains of the TLD based upon proprietary access to information about searches or resolution requests by consumers for

domain names not yet registered (commonly known as, "front-running");

- Allowing any Affiliated registrar to disclose Personal Data about registrants to Registry Operator or any Registry Related Party; or
- Offering registrar or registrar-reseller services itself rather than through a separate entity.

An exemption also means that the Registry Operator is not contractually required by the terms of Specification 9 to conduct internal reviews at least one per calendar year to ensure compliance with the Code of Conduct.

An exemption to the Registry Operator Code of Conduct does not alter or otherwise waive any other obligation required of the Registry Operator under the Registry Agreement for the TLD, specifically including, but not limited to those set forth in Section 2.9, which requires (among other obligations) that "Registry Operator must provide non-discriminatory access to Registry Services to all ICANN accredited registrars that enter into and are in compliance with the registry-registrar agreement for the TLD; provided that Registry Operator may establish non-discriminatory criteria for qualification to register names in the TLD that are reasonably related to the proper functioning of the TLD."

Q16: Can I apply for both Specification 13 and an exemption to the Registry Operator Code of Conduct?
A16: If a Registry Operator qualifies for Specification 13, there is no need to apply for an exemption to the Registry Operator Code of Conduct separately, as Specification 13 would grant ".Brand TLDs" an automatic exemption from the Code of Conduct.