

20th February 2014

Maguy Serad
Vice President, Contractual Compliance
ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

Dear Ms. Serad

The Registrar Stakeholder Group (RrSG) would like to draw your attention to the “Priority Reservation” program currently being offered by Minds+Machines, the gTLD Registry for .BEST, .CASA, .CEO, .COOKING, and .HORSE.¹ Based upon our understanding of the program, as described on the Minds+Machines website and from discussions with the Registry, we believe this program may be in violation of the ICANN Registry Agreement (RA) and the 2013 Registrar Accreditation Agreement (RAA).

The “Priority Reservation” program allows end users to reserve their desired second-level domain name registration directly with the Registry. Once the TLD launches, reservations will presumably be converted into domain registrations and activated in the DNS. The Registry has implied, verbally and through its website, that reservations will be fulfilled exclusively by its affiliated Registrar.

The Registry announced this program during the recent ICANN meeting in Buenos Aires, Argentina, in advance of making its Registry/Registrar Agreement (RRA) available to other ICANN-Accredited Registrars. Many registrars had expressed an interest in executing an RRA for these gTLDs prior to and since Buenos Aires, but have been unsuccessful in joining the program. Even if the Registry allows unaffiliated registrars to participate in the near future, Minds+Machines has, in effect, been operating an exclusive early-access period for its own affiliated registrar since November 2013.

We are asking ICANN to review the details of this program with Minds+Machines, and publish your findings with respect to:

- Section 2.9(a) of the New gTLD Registry Agreement: *“(a)...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. Registry Operator must use a uniform non-discriminatory agreement with all registrars authorized to register names in the TLD (the “Registry-Registrar Agreement”)...”*

¹ <https://www.mindsandmachines.com/>

- Section 1(a) of Specification 9 of the New gTLD Registry Agreement (“Registry Operator Code of Conduct”): “...*directly or indirectly show any preference or provide any special consideration to any registrar with respect to operational access to registry systems and related registry services, unless comparable opportunities to qualify for such preferences or considerations are made available to all registrars on substantially similar terms and subject to substantially similar conditions;*”

Additionally, the ICANN-Accredited Registrar operated by the Registry may be in violation of the 2013 RAA, specifically:

- Section 3.7.3: “*3.7.3 Registrar shall not represent to any actual or potential Registered Name Holder that Registrar enjoys access to a registry for which Registrar is Accredited that is superior to that of any other registrar Accredited for that registry.*”

This is based on Minds+Machines’ assertion that “Priority Reservations” are superior to early registrations offered by other ICANN-Accredited Registrars, because the former is offered by the “authoritative source” of names in the TLD. However, it is not clear from the website which entity (the Registry or affiliated Registrar) is making this claim, and therefore would only constitute a violation if made on behalf of the affiliated Registrar.

While the opportunity involved in the “Priority Reservation” program may ultimately be relatively insignificant, we are concerned about the potential precedent this practice could set for gTLD launches in this and future application rounds, as well as the long-term implications for the competitive Registrar model.

We are asking ICANN to investigate the “Priority Reservation” program and address whether it is compliant with the agreement provisions cited above. If the program is determined to be non-compliant, we ask ICANN to implement remedial actions, which could include:

- required modifications to the program, such that “Priority Reservations” are distributed (for example, via redemption code) amongst ICANN-Accredited Registrars who enter into an RRA with the Registry;
- termination of the “Priority Reservation” program, and refund of any fees collected;
- issuance of a Compliance Advisory reiterating the definition of “non-discriminatory access,” including guidelines on making RRAs available in an equitable and timely manner.

We look forward to your response to these concerns, and are available to discuss in the event that you have additional questions or need further information.

This letter reflects the position of the Registrar Stakeholder Group (RrSG), adopted in accordance with its bylaws. The positions of Individual Registrar members may differ.

Sincerely,

Michele Neylon, RrSG Chair on behalf of the SG

cc: Minds+Machines
Akram Atallah
Cyrus Namazi
Tim Cole
Mike Zupke
Krista Papac