

Note: This document dated XX August 2013, is the initial working version of the Code of Conduct Exemption Process and is subject to change based on on-going feedback and changes including but not limited to GAC Advice

Code of Conduct Exemption Process

Exemptions from the Code of Conduct

Registry Operators that are able to demonstrate to ICANN that they meet certain criteria may qualify for an exemption from the requirements of the “Registry Operator Code of Conduct,” as set forth in Specification 9 of the Registry Agreement (“Code of Conduct”). Specifically, Section 6 of the Code of Conduct provides:

Registry Operator may request an exemption to this Code of Conduct, and such exemption may be granted by ICANN in ICANN’s reasonable discretion, if Registry Operator demonstrates to ICANN’s reasonable satisfaction that (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 this Code of Conduct to the TLD is not necessary to protect the public interest.

The exemption contemplated in Section 6 is intended only for TLDs in which a Registry Operator maintains all registrations for its own use or the use of its affiliates (as “affiliates” is defined in Section 2.9 [c] of the Registry Agreement). The rationale being, because the purpose of the Code of Conduct is to protect a TLD’s registrants, there is no need for such protection if all of the domain names in a TLD are registered exclusively to the Registry Operator or its affiliates.

Exemption Request Process

An exemption request from compliance with the Code of Conduct (an “Exemption Request”) may be submitted to ICANN at any time after the applicant has been invited by ICANN to begin the contracting process. The Exemption Request must (1) be submitted to ICANN in writing, (2) include a copy of the Registry Operator’s complete registration policy for the TLD and (3) should be in a form substantially similar to the sample Exemption Request attached hereto as Exhibit 1. The Registry Operator must explicitly commit to maintaining the conditions specified in its Exemption Request, and must notify ICANN immediately of any changes in circumstances that could affect the Registry Operator’s satisfaction of the stated exemption criteria, including changes to the Registry Operator’s registration policies.

If the Exemption Request is submitted to ICANN after the delegation of the TLD to nameservers designated by the Registry Operator into the root-zone (“Delegation”), the Registry Operator must warrant in the Exemption Request that all domain names registered in the TLD are registered to and maintained by Registry Operator or its affiliates for their own exclusive use. ICANN reserves the right to review the TLD zone files and registration data for the TLD to verify such statements.

ICANN's consideration of an Exemption Request may take place in parallel to any Registry Agreement negotiations the Registry Operator is conducting with ICANN, and is independent of the contracting process. Execution of a Registry Agreement need not be delayed to process an Exemption Request, as an Exemption Request can be approved either before or after execution of the Registry Agreement. However, if submitted after Delegation, the Registry Operator must adhere to the provisions of the Code of Conduct until such time as the Exemption Request is approved by ICANN.

Consideration of the Exemption Request

ICANN's approval of an Exemption Requests will be provided only upon Registry Operator's demonstration and satisfaction of **all three** of the following 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.*

All criteria will be assessed primarily on the Registry Operator's representations provided in its Exemption Request. However, ICANN may seek additional information from the Registry Operator and may investigate the validity of any statements provided in the Exemption Request.

In most instances, satisfaction of criteria (i) and (ii) will indicate the lack of a public interest concern because compliance with the Code of Conduct in such cases would only serve to protect the Registry Operator from itself. However, in determining whether there is a public interest concern, ICANN will be guided by its Mission and Core Values as specified in its Bylaws.

In such event, ICANN may elect to post the applicant's Exemption Request for public comment so that it may make an informed determination as to whether applying the Code of Conduct is necessary for the protection of the public interest.

Responding to the Exemption Request

ICANN will review and respond to Exemption Requests on a timely basis. If ICANN has questions or concerns or is otherwise not prepared to approve the Exemption Request, ICANN will respond with an explanation or request for additional information. Should the Exemption Request be approved, ICANN will issue a "Notice of Exemption" to the Registry Operator.

The Notice of Exemption shall at all times remain contingent upon the Registry Operator's strict compliance with the representations made in its Exemption Request and its satisfaction of the requirements of Section 6 of the Code of Conduct. Registry Operator must notify ICANN promptly in writing in the event of any change to its operation of the TLD that would

require compliance with the Code of Conduct, and acknowledges that in such event it shall immediately adhere to all requirements of the Code of Conduct, notwithstanding any previously provided Notice of Exemption.

Should the Exemption Request not be approved, ICANN will inform the Registry Operator as to the reason for the rejection and explain whether the Exemption Request is eligible for resubmission.

Exhibit 1

Code of Conduct Exemption Request Form

Internet Corporation for Assigned Names and Numbers ("ICANN")
12025 Waterfront Drive, Suite 300
Los Angeles, California 90094
Attention: New gTLD Program Staff

RE: Request for Exemption from Registry Operator Code of Conduct

[Example, Inc.] ("Registry Operator"), in connection with the execution of the Registry Agreement for the [.example] TLD (the "Registry Agreement"), hereby requests an exemption from the obligations of the Registry Operator Code of Conduct set forth in Specification 9 to the Registry Agreement (the "Code of Conduct"). Pursuant to such request, Registry Operator confirms that each of the following statements is true and correct (collectively, referred to as the "Statements"):

1. All domain name registrations in the TLD are registered to, and maintained by, Registry Operator for the exclusive use of Registry Operator or its Affiliate (as defined in the Registry Agreement);
2. 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
3. Application of the Code of Conduct to the TLD is not necessary to protect the public interest for the following reasons:
 - a. [Registry Operator to provide]

Registry Operator represents that the registration policies attached hereto as Schedule A are a true and correct copy of the Registry Operator's registration policies for the TLD. Registry Operator agrees to notify ICANN promptly in writing in the event any of the Statements has become untrue (whether before or after an exemption has been granted). Registry Operator further acknowledges and agrees that the Exemption will be void if at any time any of the Statements has become untrue.

Submitted by:

Position:

Date Noted:

Email:

Schedule A

Registry Operator hereby acknowledges that the following are the true and correct registration policies for the TLD:

[Registry Operator to attach registration policies for the TLD]