



Reply Comments of the Intellectual Property Constituency (IPC)
Rights Protection Mechanism (RPM) Requirements
September 18, 2013

The GNSO Intellectual Property Constituency is pleased to provide Reply Comments on the Rights Protection Mechanism (RPM) Requirements.

IPC's Previous Comments

At the outset, the IPC notes that many commenters have mischaracterized (presumably inadvertently) its position on the Trademark Clearinghouse Rights Protection Mechanism Requirements and the Proposed Revisions to Rights Protection Mechanism Requirements. The IPC provided comments on the documents posted for public comment. To the extent that some gTLD applicants seek proposed revisions that were not specifically set forth in the documents posted by ICANN for public comment, the IPC did not comment on those undocumented, non-posted proposals.

Potential Exemption for Pre-Sunrise Allocation For Geographic Name gTLD Strings

As indicated above, the IPC is aware that some applicants for self-identified geographic name gTLD strings have stated a desire to allocate -- before Sunrise -- domains to the government or public authority that provided the documentation of support or non-objection required pursuant to Section 2.2.1.4.2 of the Applicant Guidebook. The IPC could support a narrowly tailored exemption that would allow pre-Sunrise allocation of certain domains to the government or public authority under certain circumstances. The IPC is prepared to put forward IPC members who are willing to work with ICANN and the applicants that would request the exemption to develop mutually acceptable language for such an exemption that could then be posted for a short public comment.

Registration Eligibility Criteria

The IPC supports the requirement that registration eligibility criteria imposed by a Registry Operator apply to all registration periods unless certain exceptions apply (Section 2.3.5 of Trademark Clearinghouse Rights Protection Mechanism Requirements). Accordingly, the IPC opposes the position of the GeoTLDs interest group, for example, that certain eligibility requirements may be limited only to the Sunrise period.¹

¹ See Comments of "GeoTLD" interest group at: <http://forum.icann.org/lists/comments-rpm-requirements-06aug13/msg00010.html>

IPC Opposes VeriSign's Proposal to Duplicate the .COM Registry in IDNs gTLDs

The IPC opposes VeriSign's (Registry Operator for .COM/.NET) proposal as submitted to ICANN on September 6, 2013 as "Reply Comments" on the Rights Protection Mechanism requirements implementation document.² Of concern, VeriSign is proposing "registration policies that provide for domain names in the new gTLD to be allocated or designated to an existing registrant with an exact match second level in another TLD operated by the registry operator."

VeriSign's proposal circumvents the established Rights Protection Mechanisms, such as the Sunrise Period, which provide priority to trademark owners in the registration of domain names that are identical to trademark records in the Trademark Clearinghouse (TMCH). These mechanisms were designed to ensure consumer protection and reduce end-user confusion in the introduction of new gTLD. For these reasons, the IPC opposes the VeriSign proposal as currently proposed in public comment.

VeriSign's proposal states: "Accordingly, we recommend the following language be added to the end of Section 2.2.4: "except the Registry Operator can allocate (i.e. assign, designate or otherwise earmark) a domain name in the TLD to a registrant ***that is not a Sunrise-Eligible Rights Holder with a valid SMD if the registrant has registered the exact match second-level domain name in another TLD operated by the same registry operator and/or its subsidiary.***" (emphasis added).

If ICANN adopts VeriSign's proposed language, ICANN would effectively authorize registrants that are not Sunrise-Eligible rights holders to obtain a domain name registration ahead of sunrise registrants simply because they have an exact match second-level domain name in another TLD operated by the same registry operator and/or its subsidiary. Such allocation of domain names, as proposed by VeriSign, raises substantial competition and consumer protection policy concerns that have not been considered by ICANN, or the community.

While the IPC recognizes that VeriSign's proposal will benefit some trademark owners, we believe that the potential risks overshadow that benefit. VeriSign's proposal to allocate all second-level domains in IDN versions of .COM to *existing registrants* - fails to take into account prior rights, or whether such existing registrants have obtained their existing domain name through abusive registration, or are otherwise using their domain name to infringe on intellectual property rights or in furtherance of other online fraud and abuse.

Moreover, VeriSign's proposal fails to acknowledge -- let alone address -- the extensive domain registration abuse in the .COM registry, which would be duplicated across various IDN versions of .COM under the VeriSign proposal.

The IPC has considered VeriSign's proposal, and believes it may be subject to implementation on the established Sunrise Period, ONLY if the following conditions are met:

² VeriSign's Reply Comments are available at: <http://forum.icann.org/lists/comments-rpm-requirements-06aug13/msg00037.html>

- (i) the registrant has registered the exact match second-level domain name in another TLD operated by the same registry operator and/or its subsidiary;
- (ii) *the registrant is a Sunrise-Eligible Rights Holder with a valid SMD*; and
- (iii) there is no competing Sunrise application / contention for the SLD;

ICM Registry Comments

The IPC supports the following elements of the ICM Registry Grandfathering Clause, which states: “For names that are already .XXX registry-reserved names, there is nothing more that any entity needs to do. We will keep .XXX registry-reserved names reserved in the gTLDs as well. We will do this at no cost and for as long as we are authorized to operate the gTLD.”³

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Thank you for considering our views on these important issues. The IPC remains available to consult with ICANN and its Registry Operators on ensuring a safe and stable introduction of new gTLDs.

Respectfully submitted,

Intellectual Property Constituency (IPC)

³ See ICM Grandfather Clause at: <http://www.icmregistry.com/grandfathering/>