



## **COMMENTS OF THE INTELLECTUAL PROPERTY CONSTITUENCY (IPC)**

### **Release for Registration one .COM Domain Name with a Single-Character Label: O.COM**

**June 20, 2018**

The Intellectual Property Constituency (IPC) of the Generic Names Supporting Organization (GNSO) appreciates the opportunity to comment on the request to Release for Registration one .COM Domain Name with a Single-Character Label: O.COM.

#### **Executive Summary**

In general, the IPC does not oppose the release of single-character labels at the second-level. However, in line with historical IPC positions, any such releases must be subject to: (1) applicable rights protection mechanisms (RPMs) developed for the new gTLD program, including Sunrise and Trademark Claims, which must be applied to the release of any reserved names including single-character or other short or otherwise premium domain names; and (2) the same RPMs should apply to similar releases of otherwise reserved names in legacy TLDs, including .COM. Accordingly, any release of O.COM or any other similarly-situated domain names must be subject to a Sunrise period (either Start-Date or End-Date, per the registry operator's preference), and a mandatory minimum 90-day Trademark Claims service following the Sunrise Period.

#### **Comments**

1. **All Registry-Reserved Domain Names Must Be Subject to Applicable New gTLD Program RPMs Upon Release**

Historically, the IPC has insisted that all second-level domain names (SLDs) launched as part of the new gTLD program be subject to the mandatory minimum Rights Protection Mechanisms (RPMs) developed for the program, including the Sunrise and Trademark Claims services supported by the Trademark Clearinghouse (TMCH) system.<sup>1</sup> In particular, the IPC has also consistently stated that any SLDs initially reserved from registration by the registry operator, as

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<sup>1</sup> See generally, e.g., ICANN Intellectual Property Constituency, [IPC Comments on Trademark Clearinghouse Rights Protection Mechanism Requirements \(Aug. 6, 2013\)](#) and [Revisions to Rights Protection Mechanism \(RPM\) Requirements \(Aug. 27, 2013\)](#).

permitted under the Registry Agreement (RA),<sup>2</sup> must be subject to the same RPMs as SLDs that are not initially reserved and are made available upon the launch of any given TLD, including an appropriate Sunrise Period and subsequent Trademark Claims period.<sup>3</sup> ICANN ultimately has required all new gTLD registry operators to implement Sunrise and Claims services in connection with any registry-reserved names it later releases.<sup>4</sup>

Similarly, in a joint letter filed by the IPC, Business Constituency (BC), and Registry Stakeholder Group (RySG), these parties made similar arguments concerning the proposed release of SLDs on name collision blocklists – specifically, that all such names should be subject to Sunrise (it did not argue for subsequent Trademark Claims periods, so long as the Sunrise period was implemented for these names).<sup>5</sup> These parties reiterated this proposed approach in a further joint public comment submitted to ICANN following its release of several possible options concerning the treatment of released names from name collision blocklists.<sup>6</sup> ICANN also ultimately adopted this approach as part of its Name Collision Mitigation Framework for all new gTLDs.<sup>7</sup>

The same rationale that applies in the context of post-launch releases of registry reserved names and the release of names on name collision blocklists applies to the release of single-character SLDs, or any other SLDs, that have to date been reserved by the registry operator (even if pursuant to ICANN requirements).

## 2. New gTLD Program RPMs Should Apply to Legacy gTLD Operators Seeking to Release Registry-Reserved Domain Names

Although the Sunrise and Trademark Claims mechanisms were developed and implemented specifically in connection with new gTLDs from the 2012 new gTLD program, the rationale

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<sup>2</sup> See ICANN, [Base New gTLD Registry Agreement](#) (July 31, 2017).

<sup>3</sup> See *id.*, at 2 (“Specification 5 of the Registry Agreement ... contemplate[s] that a [Registry Operator (RO)] may ‘reserve’ names prior to the Sunrise Period (by allocating them to the RO under Section 3.2 or by allocating them to the RO or withholding them from registration under Section 3.3). Both Sections contemplate that these names can later be released to any party or entity for registration. The IPC is very concerned that these release provisions could be used to game the system and circumvent Sunrise Periods, by holding names back until after Sunrise and then doling them out without regard to trademark rights. We are certain that was not the intention.... In regard to TLD-specific startup plans, the IPC does not support granting exemptions for any proposal which would circumvent Sunrise Periods (as discussed above).”). See also generally ICANN IPC, [Reply Comments of the Intellectual Property Constituency \(IPC\) Rights Protection Mechanism \(RPM\) Requirements](#) (Sept. 18, 2013).

<sup>4</sup> See ICANN, Base New gTLD Registry Agreement, Specification 5 §§ 3.2 – 3.3; Specification 7.

<sup>5</sup> See ICANN IPC, BC, and RySG, [Letter from Elisa Cooper, Keith Drazek, and Kristina Rosette to Cherine Chalaby and the New gTLD Program Committee Re: Application of Rights Protection Mechanisms to Name Collision Blocklists](#) (July 17, 2014).

<sup>6</sup> See ICANN IPC, BC, and RySG, [Joint Comment of the IPC, BC, and RySG on “Implementing Rights Protection Mechanisms in the Name Collision Mitigation Framework”](#) (Sept. 15, 2014).

<sup>7</sup> See ICANN, [Addendum to Name Collision Mitigation Framework Re: Requirements for Implementing Rights Protection Mechanisms for Activation of Names on Second-Level Domain Block Lists](#) (Nov. 14, 2014).

applies equally where a legacy gTLD operator is seeking to release an SLD which has previously been reserved. The IPC has also consistently supported the application of new gTLD registry requirements to legacy TLDs.<sup>8</sup> Accordingly, we believe that where a legacy gTLD operator is seeking to release a previously reserved SLD, including single-character or other short or “premium” domain names, the release must be subject to either a Start-Date or End-Date Sunrise within the meaning of the Base New gTLD Registry Agreement,<sup>9</sup> and subject to a Trademark Claims period of at least 90 days (unless the SLD is acquired by a legitimate trademark holder during the Sunrise Period).

3. Any Release of the O.COM Domain Name Should Be Subject to Sunrise and Trademark Claims Services

Thus, in the case of the requested release of the O.COM domain name, the IPC strongly urges ICANN to require that the domain name be subject to Sunrise and Trademark Claims services as described above, should it determine to permit the release of this domain name by the registry operator. However, if and only if the O.COM domain name is acquired by a trademark holder subject to the eligibility requirements of the TMCH (including delivery of a valid Signed Mark Data file) during the Sunrise Period, the Registry Operator should not be required to also provide a subsequent Trademark Claims Period.

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Thank you for the opportunity to comment on this important topic.

Respectfully submitted,

**Intellectual Property Constituency**

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<sup>8</sup> See, e.g., ICANN IPC, [Comment on Renewal of the .COM Registry Agreement](#) (Apr. 26, 2012). See also, e.g., ICANN IPC, [Comments on the Proposed Renewal of the .TRAVEL Sponsored TLD Registry Agreement](#) (June 17, 2015) (“The IPC applauds legacy Registry Operators that implement the RPMs contained in the New gTLD Registry Agreement.”); ICANN IPC, [Comments on the Proposed Renewal of the .PRO Unsponsored TLD Registry Agreement](#) (July 7, 2015) (same); ICANN IPC, [Comments on the Proposed Renewal of the .CAT Sponsored TLD Registry Agreement](#) (July 7, 2015) (same); ICANN IPC, [Comments on the Proposed Renewal of the .MOBI Registry Agreement](#) (Feb. 1, 2017) (same); ICANN IPC, [Comments on the Proposed Renewal of the .NET Registry Agreement](#) (May 30, 2017) (same); ICANN IPC, [Comments on the Proposed Renewal of the .MUSEUM Registry Agreement](#) (Oct. 3, 2017) (same).

<sup>9</sup> ICANN, [Trademark Clearinghouse Rights Protection Mechanism Requirements](#) (May 14, 2014) (defining “Start-Date Sunrise” and “End-Date Sunrise”).