
ATTACHMENT 1



The Internet Corporation for Assigned Names and Numbers

The Honorable Pat Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Lamar Smith
Chairman
Committee on the Judiciary
House of Representatives
Washington, DC 20515

The Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary
House of Representatives
Washington, DC 20515

Dear Chairman Leahy, Ranking Member Grassley, Chairman Smith and Ranking Member Conyers:

Thank you for your letter dated August 7, 2012 requesting information about ICANN's New gTLD Program. As you may know, ICANN received approximately 1,930 applications that are currently being processed according to the procedures specified in the Applicant Guidebook. As described in ICANN's response to your letter of December 27, 2011, the Applicant Guidebook incorporates significant protections to address the concerns raised by trademark owners, law enforcement, consumers and others during the seven-year development of the New gTLD Program.

ICANN agrees that the ongoing review of applications represents a critical phase of the program. We are pleased to provide the information requested. We provide you with some relevant background information, and then set out the specific questions identified in your letter.

Availability of Objection Processes and Community Inputs

In line with its commitments, ICANN provides several avenues by which stakeholders can raise concerns with applications received in the New gTLD Program, designed to protect against the types of confusion and abuses raised in your letter.

First, the objection period is open for the filing of formal objections on the grounds of String Confusion, Legal Rights, Limited Public Interest and Community. The three dispute resolution service providers identified to hear these four types of objections are staffed to handle and make determinations on the objections filed. Information on each of the objection processes, as well as procedural information for each of the providers is available at

<http://newgtlds.icann.org/en/program-status/objection-dispute-resolution>. Easy access to this information is a key factor in encouraging participation by any person or entity with valid grounds for objection. In addition, the Independent Objector has been identified, and his office is functional and

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working towards the consideration of filing formal objections in the public interest as deemed necessary or appropriate (<http://www.icann.org/en/news/announcements/announcement-14may12-en.htm>).

Another important component of the protections is available to the governments through ICANN's Governmental Advisory Committee (GAC), made up of representatives of 118 member governments and 25 observers. The Early Warning procedure enables governments (and those they represent) to signal to applicants that they have concerns with requested top-level domains that are controversial or sensitive. In addition, the GAC may provide advice directly to the ICANN Board of Directors on any individual application, including that the application should be rejected as not being consistent with the public interest.

ICANN Extended the Community Comment Period

In your letter, you ask: *Will ICANN confirm that it will keep open the New gTLD public comment forum so that the broader public can comment on applications, and the Independent Objector can receive their views? If not, then what is the justification for refusing to accept and consider such material comments from the public?*

ICANN Response: The application comment period was launched on June 13 2012 and it will remain open for the life of the new gTLD evaluation process. The 60-day period you describe was originally specified through community discussion, i.e., that ICANN planned to send all comments received during the first 60 days of publication of the applications directly to the evaluation panels for their review. In response to community comments – similar to those raised in your letter – ICANN announced on August 10, 2012 that the comment period would be extended for an additional 45 days, ending on 26 September 2012 (<http://www.icann.org/en/news/announcements/announcement-2-10aug12-en.htm>). As of today, ICANN has received over 6700 comments on applications through this comment period, all publicly viewable at <https://gtldcomment.icann.org/comments-feedback/applicationcomment/viewcomments;jsessionid=F9755AD774A4E70742C25405580DCE51>. The extension is consistent with ICANN's commitment to act as a responsible steward of this program.

Raising Public Awareness Has Been a Key Focus

Another specific question raised in your letter is: *What steps has ICANN taken to inform members of the public outside the ICANN community about the New gTLD public comment process, and to ensure the public's maximum and meaningful consideration and participation?*

ICANN Response: ICANN's communications team has worked hard to publicize the availability of the objection processes, as well as the extension of the comment period. Communications activities are designed to reach people outside of the ICANN community to provide them with information on the New

gTLD Program, and to make the information accessible and relevant. This encourages both maximum and meaningful participation in ICANN's processes.

ICANN representatives have been featured in news stories from major news outlets, including Reuters, CNN, BNA and the Wall Street Journal, and additional efforts to raise awareness are ongoing. As a result of ICANN outreach leading up to the opening of the application window, more than 10,000 articles about it have appeared around the world, with about 2,500 of these articles appearing in developing economies. These numbers account for only established media outlets and do not take into account blogs written about the program. Many more articles have appeared since the opening of the window.

ICANN representatives including Directors, staff, community members and others spoke at 59 live events, reaching about 14,500 people across all five geographic regions.

ICANN also conducted a social media campaign through Facebook and Twitter updates. We tweet 5-8 times a day and the number of followers increased from 7,000 to 45,000 (over 500%) within a few months. A Google ad campaign ran for seven weeks in 145 countries, including the 35 countries that the World Bank defines as lowest income. There were six ads in the series, targeted geographically by IP address. ICANN ran a banner ad campaign targeting Chief Marketing Officers in developing economies. Together, the CMO-targeted campaign and the Google Ad campaign sent nearly 22,000 visitors from 136 countries to the new gTLD website and delivered more than 5,500,000 impressions.

Currently, ICANN is making full use of social media tools to publicize the availability of the objection processes and the comment period, and links to the comment pages and objection information are prominently featured on ICANN's New gTLD Program microsite (newglds.icann.org).

The Role of the Independent Objector

On the Independent Objector, you inquire: ICANN has appointed an Independent Objector to review gTLD applications, but ICANN's Guidebook states that he may only raise objections that have been previously voiced by the public. Given this restriction, what steps is the Independent Objector taking to encourage and maximize public input? What role will the Independent Objector play in articulating and representing public concerns about specific gTLD applications?

ICANN Response: The Independent Objector's mandate is to act solely in the best interest of public users of the global Internet and not to act on behalf of any particular individuals or entities. The Applicant Guidebook states, "in light of the public interest goal noted above, the [Independent Objector] IO shall not object to an application unless at least one comment in opposition to the application is made in the public sphere." This relatively minor limitation was inserted through Internet community discussion. That working group balanced the need for the Independent Objector safeguards and for limiting restrictions on expression.

To determine whether to pursue an objection, the Independent Objector evaluates all submitted comments and can also review any other materials, e.g., blogs, articles, surveys, and other relevant application information. He does not solicit comments nor does he pursue objections that were not first raised in the public comments.

Rights Protection Mechanisms

The Trademark Clearinghouse is a tool that will be available across gTLD launches to support rights protection mechanisms. The required startup mechanisms that are supported by the Trademark Clearinghouse are the sunrise period, i.e., the period before the opening of general registration where rights holders registered in the Trademark Clearinghouse can register names within the TLD, and the trademark claims service, a notice to those attempting to register trademarked names. These are *minimum* requirements that were agreed on by the ICANN community, balancing the interests of rights holders with those of registrants, registries, and others.

Scope of the Trademark Clearinghouse and Required Notices

In your letter, you ask: *Is there anything that prevents ICANN from requiring registries to make the Trademark Clearinghouse available as a permanent service, extending it beyond the first 60-day period? Have Clearinghouse operators analyzed the feasibility of providing more meaningful and comprehensive trademark notifications, instead of only providing notice when users register identical terms?*

ICANN Response: There is nothing precluding registries from electing to continue to offer the trademark claims service beyond the required 60-day period; indeed, the Applicant Guidebook incentivizes registries to provide rights protections that exceed minimum requirements. In implementation of the claims process to be used with the Trademark Clearinghouse, the possibility for registries to offer an extended trademark claims period has been a key factor in the design, and care is being taken to avoid a technical implementation that would make it impractical for registries to offer extended claims periods. For the first round of new gTLDs, ICANN is not in a position to unilaterally require today an extension of the 60-day minimum length of the trademark claims service. The 60-day period was reached through a multi-year, extensive process with the ICANN community. One reason for this is that there are existing IP Watch services that address this needs. Those community members that designed the Trademark Claims process were cognizant of existing protections and sought to fill gaps, not replace existing services and business models.

Regarding the scope of the notices provided in the trademark claims process, a notice is provided to rights holders based a definition of “match” that was agreed upon in the community discussions. This definition includes the following:

“Identical Match” means that the domain name consists of the complete and identical textual elements of the mark. In this regard: (a) spaces contained within a mark that are either replaced by hyphens (and vice versa) or omitted; (b) only certain special characters contained within a trademark are spelled out with appropriate words describing it (@ and &); (c) punctuation or special characters contained within a mark that are unable to be used in a second-level domain name may either be (i) omitted or (ii) replaced by spaces, hyphens or underscores and still be considered identical matches; and (d) no plural and no “marks contained” would qualify for inclusion.

It is important to note that the Trademark Clearinghouse is intended to be a repository for existing legal rights, and not an adjudicator of such rights or creator of new rights. Extending the protections offered through the Trademark Clearinghouse to any form of name (such as the mark + generic term suggested in your letter) would potentially expand rights beyond those granted under trademark law and put the Clearinghouse in the role of making determinations as to the scope of particular rights. The principle that rights protections “should protect the existing rights of trademark owners, but neither expand those rights nor create additional legal rights by trademark law” was key to work of the Implementation Recommendation Team, a group of experts in the ICANN community who initiated intense work to recommend rights protection mechanisms in new gTLDs. See <http://archive.icann.org/en/topics/new-gtlds/irt-final-report-trademark-protection-29may09-en.pdf>. Though ICANN cannot mandate that the Trademark Clearinghouse provide notices beyond those required in accordance with the Registry Agreement, there is nothing to prevent the Trademark Clearinghouse or others from offering additional services that would, for example, give notice regarding various forms of a trademark. This was one of the further services that has been raised and contemplated in community discussions.

Trademark Clearinghouse is Expected to be Cost-Effective for Participants

On cost-related issues, you ask: A further rights protection mechanism ICANN highlights is the availability of a “sunrise period when certain trademark holders may reserve names in a new gTLD before it opens. Some are concerned that registries may use strategic pricing to take advantage of businesses and individuals who feel compelled to defensively register their names. What policies, if any, does ICANN have in place to discourage this activity and allay these concerns?

ICANN Response: ICANN has also heard the concerns that the rights protection mechanisms included within the New gTLD Program may be seen as too costly for some trademark holders. In development of the Trademark Clearinghouse, one of the foundational objectives is to make its services cost effective for participants. This can be seen, for example in the RFI issued for vendors to operate the Trademark Clearinghouse. See <http://archive.icann.org/en/topics/new-gtlds/trademark-clearinghouse-rfi-03oct11-en.pdf>. ICANN cannot,

however, set prices at which registries offer services to registrants and rights holders. As seen above, community discussion has already demonstrated that offering expanded rights protection services may be an area of competition and differentiation among new gTLD registries.

Work is Underway to Plan for Reviews

Another question raised in your letter is: *In the response to our December 2011 letter, ICANN suggested that the Government Advisory Committee agreed to the current Clearinghouse policies based on ICANN's commitment to review those policies "post-launch." When does ICANN intend to conduct this review? Is ICANN committed to making changes in response to specific suggestions and comments received as part of the "post-launch" review? In what ways might ICANN enhance its Clearinghouse policies after the new gTLDs launch?*

ICANN Response: ICANN continues to commit to the review and implementing improvements based on its findings. The process for review of the effectiveness of all new rights protection mechanisms has certain, definite triggers. ICANN has committed to other reviews, such as a review of the effect of new TLDs on the root zone, a post-delegation economic study, as well as the review called for the Affirmation of Commitments, discussed in our letter of 2 February 2012. In fact, ICANN has already begun planning for how to do the specific reviews on rights protection mechanisms, as seen in our June 2012 planning session to prepare for the next round of new gTLDs.

When gTLDs "go live" and the Clearinghouse processes become operational, reporting both from the Clearinghouse and registries is being designed to identify issues where more work may be required, and will provide important information regarding modifications to be considered by the community. It is premature for ICANN to predict what enhancements to rights protection mechanisms (or other parts of the Applicant Guidebook) may result from the completion of the identified reviews. ICANN does commit to operating these reviews in a timely and transparent fashion, and to listening carefully to the community views on these topics.

Continued Enhancement to ICANN's Contractual Compliance Department

On the topic of ICANN's Contractual Compliance Department, you note: *We understand that ICANN is currently working to expand its compliance capabilities to monitor and investigate cases of abuse. We are encouraged by this news, but are interested in receiving further details, including whether ICANN will dedicate a portion of the nearly \$350 million in gTLD application fees it has received to this initiative.*

ICANN Response: ICANN's Contractual Compliance department continues to grow, with the addition of three full time staff members since the Prague meeting. ICANN now has 15 full-time employees with language skills to communicate in Arabic, English, French, German, Hindi, Japanese, Korean, Mandarin, Spanish and Urdu in order to address abuses globally. The Contractual Compliance team is executing on a phased plan to enhance its systems and capabilities in advance of the entry of new gTLDs into the domain

name system. For example, the Contractual Compliance department is designing proactive audit programs for contracted registries and registrars, with full time staff dedicated to audit activities. The Contractual Compliance department has released detailed information on its processes and approach, see <http://www.icann.org/en/resources/compliance/approach-processes>, and will continue to provide information to the community on its improvements.

The evaluation fees are intended to be revenue neutral. That is, all of the fees will go to the evaluation and program development effort. The application fees were set to cover the costs of performing the required evaluations, not to contribute generally to ICANN's operations. Because of the cost recovery nature of the New gTLD application fee, ICANN is not able to commit that portions of the fees received will be allocated to the Contractual Compliance department. However, building on Contractual Compliance is a priority in the FY13 budget that was approved in June 2012 (see <http://www.icann.org/en/about/financials/adopted-opplan-budget-fy13-24jun12-en.pdf>), and the amount budgeted (US\$6.09 million) for Contractual Compliance activities in FY13 is over US\$2.2 million higher than the amount forecast in FY12. Though ICANN cannot use the New gTLD Program fees to increase its investments in Contractual Compliance activities, ICANN is already demonstrating its commitment to invest additional operating funds to the Contractual Compliance function. ICANN will continue to deliver on that commitment.

There is the possibility that excess funds will remain after ICANN completes the processing of new gTLD applications. ICANN has already committed that it will publicly report the accounting of the fees generated by the new gTLD application process, and if excess funds remain, there will be a transparent process for the determination of how those funds are spent. This will be a community discussion, and the ICANN community will provide input to ICANN on what the best use of those funds may be. Ultimately, the community may determine that some funds are appropriately used to strengthen the Contractual Compliance department, but that is not a commitment that ICANN is able to make at this time.

Registrar Accreditation Agreement Amendments

Finally, you requested an update on the ongoing work on amendments to the Registrar Accreditation Agreement: *We are also interested in receiving details about ICANN's ongoing negotiations to renew the Registrar Accreditation Agreement, including what additional security and anti-fraud measures the new agreement may contain.*

ICANN Response: Since February 2012, when ICANN last provided information to you on the status of the negotiations, negotiations have continued to progress to reach amendments to the Registrar Accreditation Agreement (RAA) with ICANN-Accredited Registrars. ICANN and the registrars have reached agreement in principle on many issues that were recommended by representatives of law enforcement authorities, including the creation of a point of contact to handle claims of registration abuse,



requirements for public disclosure of certain new points of information about registrars, and the creation of a privacy/proxy accreditation agreement. ICANN and the registrars also appear to be in agreement in principle on including heightened compliance tools in the new RAA, including new grounds for termination and a commitment for registrars to self-report compliance with the agreement.

ICANN and the registrars engaged in intense conversation with the ICANN community at ICANN's public meeting in Prague in June 2012 to help address some of the remaining areas of focus for the negotiations, such as the verification of registrant data and the requirements for retention of points of data as identified by the law enforcement authorities. ICANN has also identified security-related obligations, such as supporting DNSSEC, as part of its negotiating position. These negotiations have continued and it appears that new areas of agreement are emerging. To further the negotiations, ICANN and the registrars will be meeting with representatives of the GAC and law enforcement this week. We expect the progress to continue.

Conclusion

ICANN remains committed to a preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet, seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.

Sincerely,

A handwritten signature in black ink, appearing to read "Fadi Chéhade", written over a horizontal line.

Fadi Chéhade
President & CEO

cc:

Steve Crocker, Chairman, ICANN Board of Directors
The Honorable Rebecca M. Blank, Acting U.S. Secretary of Commerce
The Honorable Lawrence E. Strickling, Assistant Secretary for Communications and Information, National Telecommunications and Information Administration, U.S. Department of Commerce
The Honorable Victoria A. Espinel, U.S. Intellectual Property Enforcement Coordinator
The Honorable Jon Leibowitz, Chairman, U.S. Federal Trade Commission

ATTACHMENT 2

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Internet Corporation for Assigned Names and Numbers

Trademark Clearinghouse Update

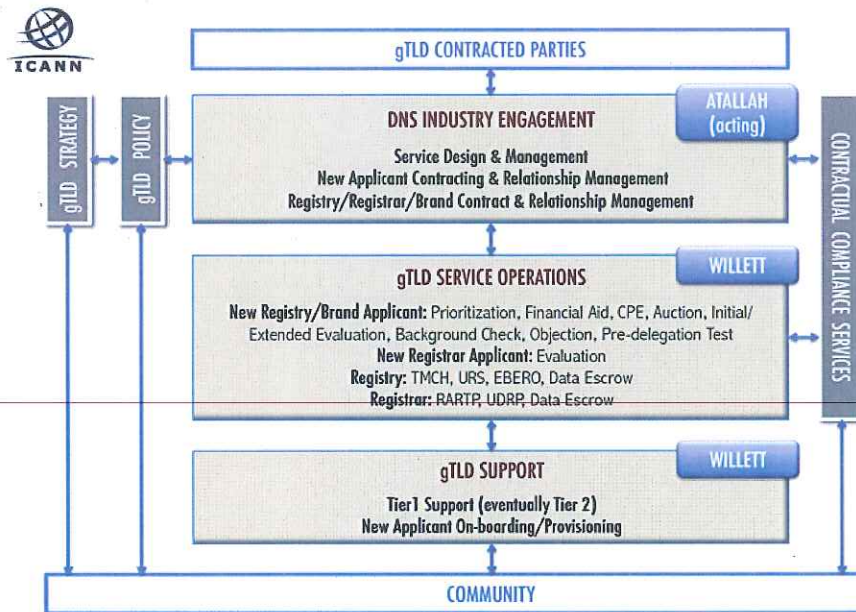
by Fadi Chehadé on November 16, 2012

This week, I met with a group of stakeholder representatives to work with ICANN staff to complete implementation discussions on the Trademark Clearinghouse and its associated rights protection mechanisms. As I wrote in my [previous post from Brussels](#), these implementation meetings addressed the following topics:

- The recent IPC/BC proposal for [Improvements and Enhancements to the RPMs for new gTLDs](#) [PDF, 68 KB], strictly focusing on implementation versus policy issues.
- The business and contractual framework for the Clearinghouse.
- Implementation architecture for Sunrise and Trademark Claims.

Representatives from the Business, Intellectual Property, and ISP constituencies, the Noncommercial, Registrars, and Registries stakeholder groups, and the At Large Advisory Committee joined these discussions in the spirit of reaching implementation solutions. They focused strictly on finding common ground and to advance the discussion on implementation solutions; they were not policy-making meetings.

To kick off the discussion, I introduced an overview of the gTLD Services department ICANN is building, to include staff resources working on DNS industry engagement, gTLD service operations, and gTLD support.



Until the first new gTLD is delegated, Akram Attalah and I will personally oversee the whole New gTLD Program.

BC/IPC Proposals

The group listened and considered the rationale behind the following eight proposals made recently by the BC/IPC:

1. Extend Sunrise Launch Period from 30 to 60 days with a standardized process.
2. Extend the TMCH and Claims Notices for an indefinite period; ensure the process is easy to use, secure, and stable.
3. Complete the URS as a low cost alternative and improve its usefulness – if necessary, ICANN could underwrite for an initial period.
4. Implement a mechanism for trademark owners to prevent second-level registration of their marks (exact matches, plus character strings previously determined to have been abusively registered or used) across all registries, upon payment of a reasonable fee, with appropriate safeguards for registrants with a legitimate right or interest.
5. Validate contact information for registrants in WHOIS.
6. All registrars active in new gTLD registrations must adhere to an amended RAA for all gTLD registrations they sponsor.
7. Enforce compliance of all registry commitments for Standard applications.
8. Expand TM Claims service to cover at least strings previously found to have been abusively registered or used.

The group determined that items 5, 6, and 7 above were already under consideration on other tracks and those were deferred for this discussion.

The group discussed a possible decision tree as a tool for considering whether proposed changes were appropriate for policy or implementation processes. ICANN's policy team will continue to advance this decision tree with the community in a formal way, to create and document these decision-making mechanisms.

For this meeting, the group decided to focus primarily on finding the right solutions, and then later to

address how the solutions should be considered, adopted, or implemented. In addition, we acknowledged the need to address separately how elements of these solutions might apply to legacy gTLDs, but did not make this a pre-requisite for developing the strawman solution.

Strawman Model

For the remaining five proposed items, the key points identified were:

- Duration of the Sunrise and Claims services
- Scope of the trademarks to be included in Trademark Claims
- Establishment of a second-level blocking mechanism with safeguards for registrants

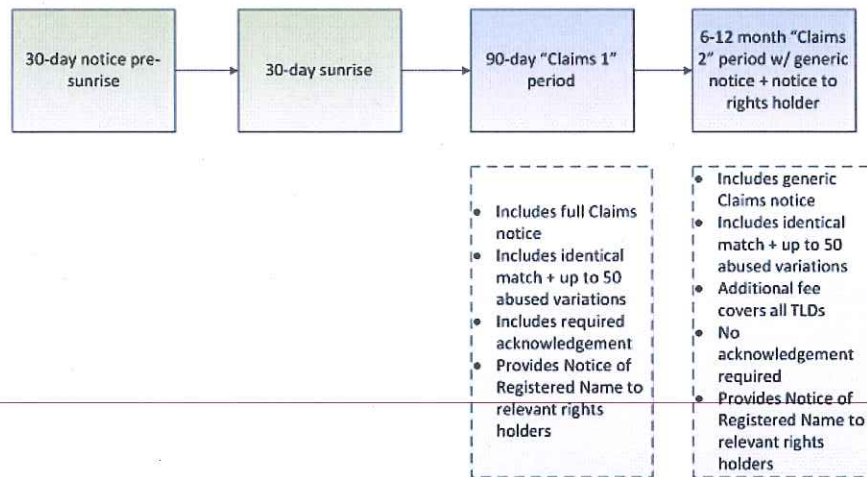
The group discussed/collaborated on a possible strawman solution addressing a number of these elements.

| Feature | Current Applicant Guidebook | Strawman Solution |
|---------------------------|-----------------------------|--|
| Sunrise period | 30 days | 30-day sunrise + 30-day advance notification |
| Trademark Claims period | 60 days | 90 days + option of additional "Claims 2" period for 6-12 months |
| Scope of Trademark Claims | Identical Match | Identical Match + up to 50 abused variations of trademark |

In the strawman model:

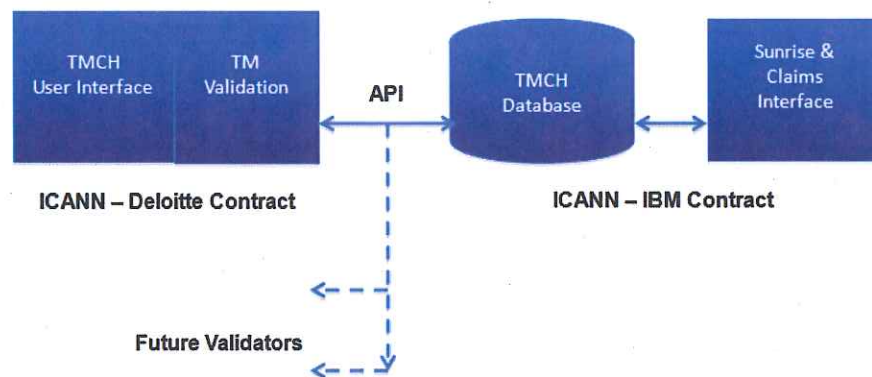
- All new gTLD operators will publish the dates and requirements of their sunrise periods at least 30 days in advance. When combined with the existing (30-day) sunrise period, this supports the goal of enabling rights holders to anticipate and prepare for upcoming launches.
- A Trademark Claims period, as described in the Applicant Guidebook, will take place for 90 days. During this "Claims 1" period, a person attempting to register a domain name matching a Clearinghouse record will be displayed a Claims notice (as included in the Applicant Guidebook) showing the relevant mark information, and must acknowledge the notice to proceed. If the domain name is registered, the relevant rightsholders will receive notice of the registration.
- Rights holders will have the option to pay an additional fee for inclusion of a Clearinghouse record in a "Claims 2" service where, for an additional 6-12 months, anyone attempting to register a domain name matching the record would be shown a Claims notice indicating that the name matches a record in the Clearinghouse (but not necessarily displaying the actual Claims data). This notice will also provide a description of the rights and responsibilities of the registrant and will incorporate a form of educational add-on to help propagate information on the role of trademarks and develop more informed consumers in the registration process.
- Where there are domain labels that have been found to be the subject of previous abusive registrations (e.g., as a result of a UDRP or court proceeding), a limited number (up to 50) of these may be added to a Clearinghouse record (i.e., these names would be mapped to an existing record for which the trademark has already been verified by the Clearinghouse). Attempts to register these as domain names will generate the Claims notices as well as the notices to the rights holder.
- Possible blocking mechanisms were discussed, but were not included in the strawman model.

These phases are outlined here:



Contractual Framework

I provided an update on the expected contractual framework for operation of the Clearinghouse. As announced earlier this year, ICANN staff is working with Deloitte, IBM, and CHIP to deploy the Clearinghouse. The structure was re-designed to give ICANN maximum flexibility and the ability to provide the best possible stewardship of the database.



Technical Session

The group reviewed and discussed a set of questions related to the functional specifications of the interface between the Clearinghouse and registries and registrars. We made significant progress and will publish the results of the discussion on the [tmch-tech mailing list](#). We plan to continue consultations with the community on the remaining questions.

Next Steps

We will have follow-up informational calls in November with the group to do three things. (1) Review any additional feedback from the stakeholder groups, (2) Convey staff's view on a path forward on some or all elements of the strawman solution, and (3) Convey additional details on the Trademark Clearinghouse contracts.

We are now firmly focused on moving forward with Trademark Clearinghouse implementation to ensure that the New gTLD Program is launched in accordance with our targets.

Next, I will focus on URS and RAA.

Thank you to all the stakeholder groups for the many hours of hard work!

Sincerely,

Fadi

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Werner Staub [11.18.12 at 5:06 am](#)

If the foundations are bad, it does not help to build nicer features on the top of them.

Don't get me wrong. The hand-picked "stakeholder representatives" identified some good ideas. I like the ideas numbered 1 to 8 in Fadi's posting. That does not mean they are sufficient. The TMCH is still fundamentally on the wrong footing.

The "benevolent monarch" approach to setting up the TMCH should stop here. I was good Fadi refused to blindly sign the proposed (and secret) TMCH contracts. But there is no point in replacing a murky process with an equally opaque one.

ICANN still wants to give Deloitte a world-wide monopoly. The new proposal simply creates two monopolies (one for Deloitte and one for IBM). That is even worse than before, requiring tripartite ICANN-Deloitte-IBM negotiations even for tiny improvements.

As a monopoly, the TMCH will not only be expensive and dysfunctional, it will do more harm than good.

A monopolistic TMCH is also completely unjustified, even on the grounds of "urgency". No offense to Deloitte and IBM, ICANN staff, the hand-picked "representatives" and Fadi: all have seem to have lost sight of the cause. The purpose is to build infrastructure. Handing out rents and fiefdoms can be a way to get a job done, but the privileges should never be the objective. If handouts are used, keep them small, reversible and subject to competition.

It is easy to build a distributed system with competitive TMCH providers. Actually, it is easier than the monopolistic approach. ICANN managed to do this for the UDRP dispute resolution service providers. Why is it unable to do the same for TMCH providers?

If there are concerns with timelines, we can start with one TMCH provider and add more of them within months. The essence is to have competition and diversity between them. In the medium term, there should be at least 10 TMCH providers instead of just Deloitte. But the system must be built from the start to allow multiple TMCH providers.

Another concern is the strange silence on data ownership. Why? Has ICANN already sold out to Deloitte? I hope not. All TMCH databases must be ICANN's property. Providers must be required to deposit it with an escrow agent. Each TMCH provider can of course be escrow agent for other TMCH providers.

Next is data “confidentiality”. By definition, trademarks are not confidential. In certain cases, a new trademark registration needs to remain non-discoverable for some time, lest bad actors misuse its discovery to register it in other jurisdictions. But the TMCH providers should only flag a record as non-discoverable for a limited period, such as 2 years after registration of the underlying mark, and only upon express request by the trademark holder.

Finally, the technical approach. First and foremost, it must support the distributed competitive model. That can easily be done if the TMCH uses the DNS.

The only thing needed is a central zone file, containing NAPTR pointers to each of the TMCH providers holding data regarding a given character string. The TMCH providers themselves can distribute the data with several methods, such as DNS NAPTR records, web services or file distribution. I insist: not using the DNS for the TMCH would be as if a forklift manufacturer used ox carts inside its factories.



[Maria Farrell](#) 11.19.12 at 4:26 am

Thank you for the update, Fadi.

As this was a closed, invitation-only meeting in an organisation whose DNA is openness and transparency, I would like to request that the names and affiliations of the individuals participating in the meeting be published.

I am concerned that simply listing the interests represented gives an inaccurate picture of the people present and wrongly suggests that this was a balanced meeting. Specifically, there was a single non-commercial representative present for only part of the meeting, and another dialing in whilst multiple (a dozen?) IP and business constituency representatives attended.

Given that the individuals representing the partisan IPC/BC proposal greatly out numbered other groups, it is only fair for the community at large to have the necessary information to make up its own mind about the numerical imbalance of invited participants.



[Veseveus](#) 11.29.12 at 3:59 pm

Im seeing on the other boards that the ipclearinghouse doesnt own ipclearinghouse.com. Is that a good idea?

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- [DNS](#) (52)
 - [DNSSEC](#) (12)
 - [L-Root](#) (14)
- [Finance](#) (8)
- [Global Partnerships](#) (55)
 - [Asia-Pacific](#) (8)
 - [Europe](#) (3)
 - [Latin America](#) (9)
 - [Russia and CIS](#) (21)
- [IANA](#) (43)
 - [Announcement](#) (6)
 - [Commentary](#) (21)
- [ICANN](#) (551)
 - [ALAC](#) (14)
- [IDNs](#) (56)
- [Issues](#) (127)
 - [Fast Track](#) (20)
 - [gTLDs](#) (76)
 - [IPv6](#) (31)
 - [Whois](#) (1)
- [Languages](#) (717)
 - [Deutsch](#) (2)
 - [English](#) (439)
 - [Español](#) (63)
 - [Français](#) (66)
 - [Italiano](#) (2)
 - [Português](#) (3)
 - [Русский](#) (57)
 - [العربية](#) (56)
 - [中文](#) (48)
 - [日本語](#) (2)
 - [한국어](#) (3)
- [Meeting](#) (126)
- [NomCom](#) (6)
- [Participation](#) (186)
 - [photographs](#) (3)
 - [Remote](#) (2)
 - [video](#) (5)
 - [website](#) (16)
- [Podcasts](#) (6)
- [Policy](#) (43)
- [Registrars](#) (25)
- [Registries](#) (42)
- [Technical](#) (27)

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ATTACHMENT 3

Trademark Clearinghouse: Strawman Solution

29 November 2012

(updated 3 December 2012 for clarification and list of meeting participants)

Summary

ICANN has recently convened a series of meetings with a group of stakeholder representatives to work to complete implementation discussions on the Trademark Clearinghouse and its associated rights protection mechanisms. Members of multiple GNSO constituencies participated in these discussions. The group collaborated on a possible “strawman solution” addressing a number of the elements in a [set of recommendations](#) by the Intellectual Property and Business Constituencies of the GNSO. The discussions on this model included significant compromise and accommodation by the participants.

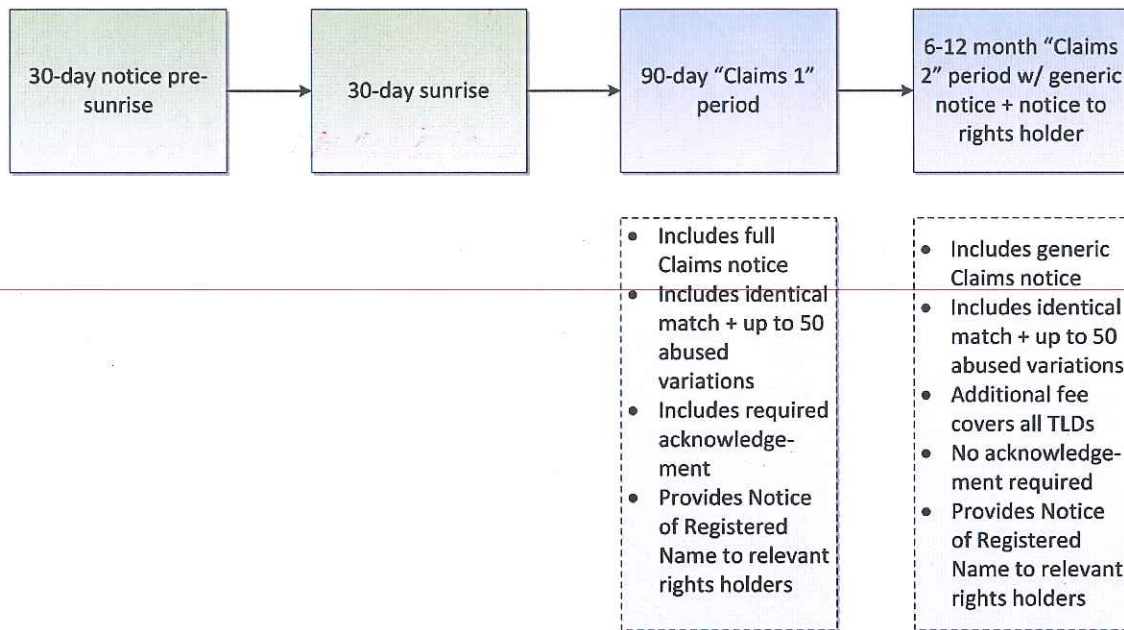
The strawman solution includes a proposed implementation of Sunrise and Trademark Claims services that balances and addresses the concerns of the various parties. These services affect a variety of stakeholders: registries, registrars, trademark holders, domain name registrants, and others. Accordingly, the interests of these parties were all considered to devise an optimal implementation. This strawman solution is now being posted for public comment.

In the strawman solution:

The [Sunrise Period](#) features a 30-day notice period in advance, to facilitate awareness and enable effective participation. The required 30-day sunrise period remains as included in the Applicant Guidebook.

The [Trademark Claims](#) period as described in the Applicant Guidebook is extended to 90 days (i.e., the first 90 days of general registration in the TLD). There is an additional period during which rights holders may elect to participate in a “Claims 2” service for an additional fee. The “Claims 2” process is a lighter-weight version of Trademark Claims, which includes a generic notice and does not require an acknowledgement of the notice from a domain name registrant. For purposes of both Claims services, rights holders are able to submit documentation for domain name strings previously determined to have been abusively registered or used, which can be associated to a verified trademark record in the Clearinghouse. These names would also be subject to Trademark Claims.

These stages are depicted below:



Under this model, trademark holders have an expanded set of tools from which to choose.

The Strawman Model

The model includes the following elements:

1. All new gTLD operators will publish the dates and requirements of their sunrise periods at least 30 days in advance. When combined with the existing (30-day) sunrise period, this supports the goal of enabling rights holders to anticipate and prepare for upcoming launches.
2. A Trademark Claims period, as described in the Applicant Guidebook, will take place for 90 days. During this "Claims 1" period, anyone attempting to register a domain name matching a Clearinghouse record will be displayed a Claims notice (as included in the Applicant Guidebook) showing the relevant mark information, and must acknowledge the notice to proceed. If the domain name is registered, the relevant rights holders in the Clearinghouse will receive notice of the registration.

Example: The trademark "EXAMPLE" is submitted to the Clearinghouse and the record is verified. An individual attempts to register the domain name "EXAMPLE.TLD" and is shown a Claims Notice (as included in the Applicant Guidebook) including the mark information. The prospective domain name registrant must acknowledge the Claims Notice before proceeding with the registration. If the registrant chooses to proceed, the rights holder will receive a notice that "EXAMPLE.TLD" has been registered.

3. Rights holders will have the option to pay an additional fee for inclusion of a Clearinghouse record in a "Claims 2" service where, for an additional 6-12 months, anyone attempting to register a

domain name matching the Clearinghouse record would be shown a Claims notice indicating that the name matches a record in the Clearinghouse (but not necessarily displaying the actual Claims data). This notice will also provide a description of the rights and responsibilities of the registrant and will incorporate a form of educational add-on to help propagate information on the role of trademarks and develop more informed consumers in the registration process.

Example: The trademark "EXAMPLE" is submitted to the Clearinghouse and the record is verified. An individual attempts to register the domain name "EXAMPLE.TLD" and receives a Claims notice with information about the rights and responsibilities of the registrant with regard to trademarks and domain names. If the name is registered, the rights holder will receive a notice that "EXAMPLE.TLD" has been registered.

4. Where there are domain labels that have previously determined to have been abusively registered or used (e.g., as a result of a UDRP or court proceeding), a limited number (up to 50) of these may be added to a Clearinghouse record (i.e., these names may be mapped to an existing record for which the trademark has already been verified by the Clearinghouse). Attempts to register these as domain names will generate the Claims notices as well as the notices to the relevant rights holders (for both Claims 1 and 2).

Example: The trademark "EXAMPLE" is submitted to the Clearinghouse and the record is verified. The rights holder also submits evidence of a UDRP case where registration of the string "EXAAMPLE" in a domain name was found to meet the three-part test for a successful UDRP complaint based on the trademark "EXAMPLE." This domain string "EXAAMPLE" is now associated with the Clearinghouse record for the "EXAMPLE" trademark for purposes of Trademark Claims. During the Trademark Claims period, anyone attempting to register "EXAMPLE.TLD," as well as anyone attempting to register "EXAAMPLE.TLD," will receive a Claims Notice requiring acknowledgement. If the rights holder chooses, he may pay an additional fee for an extended "Claims 2" service, which will provide a notice but not require acknowledgement. In both cases, if "EXAAMPLE.TLD" is registered, the rights holder will receive a notice that "EXAAMPLE.TLD" has been registered.

Proposal for Limited Preventative Registration Mechanism

During the stakeholder meetings on Clearinghouse implementation, there was discussion of a possible preventative mechanism that would be available for rights holders in new gTLDs. This mechanism was not included in the strawman, but remains a high priority item for the IPC/BC. There was not support among non-IPC/BC participants for solutions to the issue of second level defensive registrations. After hearing concerns on this issue, members of the IPC/BC have provided a description of a preventative mechanism, the "Limited Preventative Registration," which is being published for public comment.

The Limited Preventative Registration would be a mechanism for trademark owners to prevent second-level registration of their marks (exact matches, plus character strings previously determined to have been abusively registered or used) across all gTLD registries, upon payment of a reasonable fee, with appropriate safeguards for registrants with a legitimate right or interest.

Process Note

Discussions during the stakeholder meetings focused strictly on finding common ground on implementation solutions; they were not policy-making meetings. The participants focused primarily on finding the right solutions, allowing for later steps to address how the solutions should be considered, adopted, or implemented.

ICANN has reviewed each of the elements of the strawman solution to identify a way forward, paying special attention to determining whether each properly belongs in a policy or implementation process. We did not find that any element of the strawman was inconsistent with the policy advice from GNSO recommendation 3: *Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law*. However, the analysis of the various elements yielded different recommended steps for consideration, as described below.

Sunrise Notice Requirement. Our analysis is that the addition of the required 30-day notice period for Sunrise falls clearly into the realm of implementation. The policy advice did not recommend specific time periods, and this is a reasonable means to help address the communications concerns of rights holders, especially in light of the high volume of gTLD applications.

Trademark Claims. The extension of Trademark Claims from 60 to 90 days can also be considered implementation, as it is a matter of continuing a service that is already required. The addition of a “Claims 2” process could also fall into the category of implementation given that it is an optional, fee-based service for rights holders, and is more lightweight than what registries and registrars will have implemented in the Trademark Claims 1 period. This service is envisioned to benefit both consumers and trademark holders, and is consistent with the objectives of the Trademark Claims service developed by the community. To the extent that there are additional costs incurred by registries and registrars, it is anticipated that these fees can be offset when the process is implemented.

Scope of Trademark Claims. The inclusion of strings previously found to be abusively registered in the Clearinghouse for purposes of Trademark Claims can be considered a policy matter. This proposal provides a path for associating a limited number of additional domain names with a trademark record, on the basis of a decision rendered under the UDRP or a court proceeding. Given the previous intensive discussions on the scope of protections associated with a Clearinghouse record, involving the IRT/STI, we believe this needs guidance from the GNSO Council.¹

¹ The originally posted document stated that: “The inclusion of strings previously found to be abusively registered in the Clearinghouse for purposes of Trademark Claims can be considered implementation, as it provides a path for associating a limited number of additional domain names with a trademark record. This is consistent with the policy advice that trademark rights should be protected, and, given that the inclusion of such names would be only on the basis of a decision rendered under the UDRP or a court proceeding, the process would merely take into account names for which the issues have already been balanced and considered. However, given the previous intensive discussions on the scope of protections associated with a Clearinghouse record, involving the IRT/STI, we believe this needs guidance from the GNSO Council.” This language appeared to create ambiguity as to the nature of the analysis, and has been updated as above.

The strawman model and proposal for Limited Preventative Registrations are being provided to the GNSO Council so that it may provide guidance on these items.

Comments are requested on the feasibility and benefits of the model, as well as suggestions for modification to help achieve the objectives of an effective set of rights protection mechanisms in the New gTLD Program.

As noted above, the strawman model was discussed by participants selected by the respective stakeholder groups. Those individuals designated by the groups were:

(ALAC): Alan Greenberg, Evan Leibovitch

(BC): Marilyn Cade, Bryce Coughlin, Steve Del Bianco, Gerald DePardo

(IPC): J. Scott Evans, Kathryn Park, Kristina Rosette, Fabricio Vayra

(ISPCP): Sarah Deutsch, Tony Harris, Tony Holmes, Mike O'Connor

(NCSG): Robin Gross, Kathy Kleiman, Konstantinos Komaitis, Wendy Seltzer

(Registrar SG): Ben Anderson, James Bladel, Jeff Eckhaus, Matt Serlin

(RySG): Bret Fausett (NTAG), Jeff Neuman, Jon Nevett (NTAG), Antony Van Couvering (NTAG)

Also in attendance were: Martin Sutton (brand TLDs/single registrant TLDs), Vicky Folens and John Hudson (Deloitte), Wim Fabri and Joris Goiris (IBM), and ICANN staff (Francisco Arias, Akram Atallah, Fadi Chehadé, John Jeffrey, Karen Lentz, Gustavo Lozano, Margie Milam, David Olive, Christine Willett).

ATTACHMENT 4

From: Fadi Chehade [<mailto:fadi.chehade@icann.org>]
Sent: 04 December 2012 22:47
To: Jonathan Robinson
Cc: Margie Milam; David Olive
Subject: TMCH

Dear Jonathan,

As reported in my recent blog on the Trademark Clearinghouse (see: <http://blog.icann.org/2012/11/a-follow-up-to-our-trademark-clearinghouse-meetings/>), the recent implementation TMCH related discussions led to the development of a strawman model to address some of the proposed improvements requested by the BC/IPC. I am very pleased with the efforts shown by the participants in these discussions, as they reflect a willingness to explore improvements to the TMCH and the rights protection mechanisms available in new GTLDs.

I am seeking policy guidance from the GNSO Council on two items as part of the next steps for the implementation of the TMCH, namely, the Strawman Proposal and the IPC/BC proposal for limited defensive registrations. Each of these documents are posted for public comment (see: <http://www.icann.org/en/news/public-comment/tmch-strawman-30nov12-en.htm>) to allow the ICANN community the opportunity to comment on these proposals. Specifically, policy guidance is sought on the portion that pertains to the expansion of the scope of the trademark claims, although comments on any aspect of the Strawman Model is welcome in the event the Council is interested in broadening its response. The specific proposal is that:

Where there are domain labels that have been found to be the subject of previous abusive registrations (e.g., as a result of a UDRP or court proceeding), a limited number (up to 50) of these may be added to a Clearinghouse record (i.e., these names would be mapped to an existing record for which the trademark has already been verified by the Clearinghouse). Attempts to register these as domain names will generate the Claims notices as well as the notices to the rights holder.

Not included in the Strawman Model is the IPC/BC proposal for a limited preventative registrations. In general, there was not support among non-IPC/BC participants for solutions to the issue of second level defensive registrations among the participants in the TMCH meetings. After hearing concerns regarding this issue, members of the IPC/BC provided a description of a preventative mechanism, the "Limited Preventative Registration," which has also been published for public comment. As this issue is relevant to a request from the New GTLD Program Committee's April resolution where it requested "the GNSO to consider whether additional work on defensive registrations at the second level should be undertaken"(2012.04.10.NG2), I am seeking GNSO Council feedback on this IPC/BC proposal as well.

It would be ideal if the GNSO Council could take up these issues at its December meeting.

Finally, addressing some of the criticisms on the process used by Staff in convening these meetings, I hope that you can appreciate that Staff is not circumventing the GNSO processes. The Strawman Model and my blog posting always clarified that this request to the GNSO Council was coming. One of my goals as CEO is to enhance collaboration in the ICANN community as it tackles difficult issues. I truly believe that the development of strawman

proposals on this and other issues can be a useful tool to inform policy and implementation discussions. I hope that you will consider this request in that light.

We look forward to the Council's reply to this request.

Best Personal Regards,

Fadi Chehade
President and CEO
ICANN

ATTACHMENT 5



28 February 2013

Mr Fadi Chehade
President and CEO, ICANN

Dear Fadi,

Thank you for your e-mail of 4 December 2012, in which you requested the policy guidance of the GNSO Council on the "Strawman Proposal" and the IPC/BC proposal for limited defensive registrations.

According to your request:

"I am seeking policy guidance from the GNSO Council on two items as part of the next steps for the implementation of the TMCH, namely, the Strawman Proposal and the IPC/BC proposal for limited defensive registrations ... Specifically, policy guidance is sought on the portion that pertains to the expansion of the scope of the trademark claims, although comments on any aspect of the Strawman Model is welcome in the event the Council is interested in broadening its response. The specific proposal is that:

Where there are domain labels that have been found to be the subject of previous abusive registrations (e.g., as a result of a UDRP or court proceeding), a limited number (up to 50) of these may be added to a Clearinghouse record (i.e., these names would be mapped to an existing record for which the trademark has already been verified by the Clearinghouse). Attempts to register these as domain names will generate the Claims notices as well as the notices to the rights holder.

Not included in the Strawman Model is the IPC/BC proposal for a limited preventative registrations. In general, there was not support among non-IPC/BC participants for solutions to the issue of second level defensive registrations among the participants in the TMCH meetings. After hearing concerns regarding this issue, members of the IPC/BC provided a description of a preventative mechanism, the "Limited Preventative Registration," which has also been published for public comment. As this issue is relevant to a request from the New GTLD Program Committee's April resolution where it requested "the GNSO to consider whether additional work on defensive registrations at the second level should be undertaken"(2012.04.10.NG2), I am seeking GNSO Council feedback on this IPC/BC proposal as well."

While our GNSO member constituencies and stakeholder groups have commented at their discretion regarding one or more elements of the Strawman Model, the Council here addresses the issues identified in your e-mail of 4 December 2012, and as you so invited, others in the Strawman. The content of this letter has been the subject of considerable Council attention is supported by the majority of GNSO stakeholder groups.

Before providing specific input, the Council respectfully notes that its primary role is to administer the policy work of the GNSO and to reflect the outcomes of that work in policy recommendations to the ICANN Board and community. The Council is not oriented toward policy guidance, although we do recognize a need to respond to you and others in forms other than the PDP,¹ and we will endeavour to do so in consultation with the stakeholders we represent.

As context for our input, councillors are of course aware of the community's current examination of "policy vs. implementation" and encourage further dialogue on this matter. For the purpose of this letter, however, most councillors applied a reasonable test to make distinctions between the two categories, by asking the following question: Does a proposal impose obligations on parties outside of those contracted with ICANN (who are predominantly responsible for implementation of the proposals)? If so, generally speaking, the issue is likely to be a matter of policy. If the matter is a step in the progression toward realization of the decided-upon policy, and unlikely to impact a wider audience, it is more likely "implementation."

Expansion of trademark scope in TLDs

First, the Council draws a distinction between the launch of new gTLDs, where policy has been set and agreed to, and a longer-term discussion about future amended or additional rights protection mechanisms (RPMs), which would apply to all gTLDs.

The majority view of the Council is that the proposals on changes to the TMCH implementation amount to an expansion of trademark scope. We believe that this, together with the potential impact of such proposals on the full community, make them a matter of policy, not implementation. The majority of the Council believes - consistent with what the Council unanimously agreed previously - that protection policies for new gTLDs are sufficient and need not be revisited now. If the community seeks to augment existing RPMs, they are appropriately the subjects of future Council managed GNSO policy activity.

Indeed, ICANN Chairman Steve Crocker and other Board members set an expectation in Toronto that new RPM proposals should have the Council's support to be considered now:

"Three more items. The rights protection in new gTLDs. The Intellectual Property Constituency and business constituency reached consensus on further mechanisms for new gTLD rights protection and agreed to socialize these to the rest of the GNSO and the Board looks forward to receiving input on these suggestions from the GNSO. So that is our plan, so to speak, which is we will continue to listen and wait for this to come up. "

<http://toronto45.icann.org/meetings/toronto2012/transcript-public-forum-18oct12-en.pdf>, at p.12.

The Council has carefully considered and reviewed these proposals and most do not have the support of the Council's majority.

¹ As we recently wrote (see <http://gns0.icann.org/mailling-lists/archives/council/msg14165.html>) to the GAC, providing policy advice or guidance is a new challenge for the Council, as we have no existing, standard mechanism to provide formal policy advice, except through a PDP.

In addition, in the context of ICANN's goal to advance competition and choice in the domain name industry, the Council finds that the RPM proposals, or other measures that could impact the operation of new gTLDs, deserve GNSO policy development to ensure applicability to all gTLDs, new and existing. This view is consistent with the NTIA's recent letter to ICANN, which states in part:

"We encourage ICANN to explore additional trademark protections across all TLDs, existing and new, through community dialogues and appropriate policy development processes in the coming year."

<http://www.icann.org/en/news/correspondence/strickling-to-crocker-04oct12-en.pdf>

On the Modification of Sunrise

The Strawman proposes that "All new gTLD operators will publish the dates and requirements of their sunrise periods at least 30 days in advance. When combined with the existing (30-day) sunrise period, this supports the goal of enabling rights holders to anticipate and prepare for upcoming launches."

The majority of the Council supports this update to the sunrise process as a matter of implementation.

On the Extension of Claims 1

The majority of the Council considers the community's standing agreement for a 60-day Claims 1 period to be settled.

The Council's rationale is that the Board previously approved the timing of trademark claims as "60 days from launch." It is important to note here that the presence of both sunrise and trademark claims in the new gTLD program already provides extended protection beyond previously agreed policy, as the Council previously voted unanimously to require either sunrise or claims, but not both.

However, given that Claims 1 is currently planned to be implemented for 60 days, the majority of the Council does not object to the view that the extension of Claims 1 from 60 to 90 days is a change to an existing implementation decision.

On Claims 2

The Claims 2 proposal is a longer-term RPM with potentially significant impacts and should correctly be subject the subject of a PDP, in order to explore the complex issues therein. This advice is based on the following:

1. Claims 2 is a new RPM, not implementation of an agreed-to RPM. It is fundamentally different from the 60- (or the proposed 90-) day claims service.
2. Beyond this important distinction, there are many unanswered questions about a potential Claims 2 process. Are potential registrants legitimately entitled to non-

infringing registrations and unfairly denied to them? How would payments be made and allocated? How do registries and registrars adapt their technical systems to accept the many more commands received over nine to ten additional months? Is the burden as currently proposed (registries and registrars assume the cost and risk to build these systems with no predictable method of cost recovery) fair to all parties? What should the claims notice say? (In this regard, the Council respectfully points out that Claims 2 should not be characterized as "more lightweight.") The purpose of the GNSO Council is to collaboratively manage the work to answer these types of questions before recommending policy.

On addition of names to TMCH previously subject to UDRP or legal proceeding

The majority of the Council believes this suggestion deserves further examination, not only to protect the interests of rights holders, but also to ensure latitude for free speech through lawful and non-abusive registrations. Councillors respectfully observe that the existence of a domain name in the root system is not necessarily evidence of abuse, and that a subsequent registrant may have legitimate and non-infringing use in mind for a domain name corresponding exactly to a term that was the subject of previous action.

Accordingly, the majority of the council finds that this proposal is best addressed as a policy matter, where the interests of all stakeholders can be considered.

Scope of Trademark Claims

The majority of the Council believes your determination, as documented in your updated blog posting (<http://blog.icann.org/2012/11/trademark-clearinghouse-update/>), that an expansion of trademark claim scope (beyond exact match) is a matter of policy, is correct. It is also consistent with the following section of your letter to Congress:

"It is important to note that the Trademark Clearinghouse is intended to be a repository for existing legal rights, and not an adjudicator of such rights or creator of new rights. Extending the protections offered through the Trademark Clearinghouse to any form of name would potentially expand rights beyond those granted under trademark law and put the Clearinghouse in the role of making determination as to the scope of particular rights. The principle that rights protections 'should protect the existing rights of trademark owners, but neither expand those rights nor create additional rights by trademark law' was key to work of the Implementation Recommendation Team..."

Limited Preventive Registration

Consistent with the forgoing, the Limited Preventative Registration (LPR) proposal, or any other blocking mechanism, also represents a change in policy and therefore should be a matter of Council managed policy work if it is to be considered.

Staff activity and input

The Council appreciates your determination to focus on implementation; the Council expects however that implementation will be of agreed-to issues, and not new proposals, which have not been subject to adequate community review and input and therefore could, have potentially unforeseen consequences on competition and choice in the market.

Conclusion

The GNSO Council sincerely thanks you for your request for Council input. The Council takes very seriously the on-going need to guard against rights infringement within the gTLD landscape and recognizes such safeguards as one of the many elements that will advance consumer trust in new gTLDs.

I trust this information is helpful and invite you to contact me with any additional questions.

Yours sincerely,

Jonathan Robinson
Chair, ICANN GNSO Council

ATTACHMENT 6

Memorandum on the Trademark Clearinghouse “Strawman Solution” 20 March 2013

The Trademark Clearinghouse [Strawman Solution](#) was developed by community stakeholders in November 2012, and published for comment in December 2012. The discussion leading to the Strawman proposal was convened to address feedback and comments from several stakeholders in relation to the rights protection mechanisms in the New gTLD Program.

The intention in holding these discussions was to facilitate participation from each of the GNSO stakeholder groups while enabling a focused discussion, so that a proposal could be provided for community review. The “Strawman solution” was [posted for public comment](#) on 30 November 2012. The GNSO was [requested to provide guidance](#) on the proposals; this [was provided](#) on 28 February 2013.

There was significant interest in these proposals, and ICANN reviewed all feedback received to determine which elements of the Strawman, if any, should be implemented. An additional thread in the input received was whether each element should be considered a policy or an implementation matter. These views were also considered carefully, in light of the Strawman’s accordance with current policy guidance that existing legal rights should be protected, and the GNSO’s guidance on each of the elements.

Each element of the Strawman proposal was reviewed and considered in detail to balance the feedback received and determine the appropriate next steps, as described below.

30-Day Notice Requirement for Sunrise

The first element of the Strawman model was a proposed requirement that all new gTLD operators publish the dates and requirements of their sunrise periods at least 30 days in advance.

Feedback indicated that this is generally viewed as an implementation detail, and was supported as beneficial to rights holders to anticipate and prepare for upcoming TLD launches. Based on this analysis, ICANN intends to proceed with implementing this aspect of the proposal.

90-Day Trademark Claims Period

The second element of the Strawman model was an extension of the current Trademark Claims period, as described in the Applicant Guidebook, from 60 to 90 days.

During the Trademark Claims period, anyone attempting to register a domain name matching a Clearinghouse record will be displayed a Claims notice showing the relevant mark information, which must be acknowledged before the registration can proceed. If the domain name is registered, the rights holder then receives a notice of the registration.

In practice, providing for 30 additional days of an existing service seems to be a reasonable implementation matter, and the feedback generally viewed this as an implementation detail. Guidance provided from the GNSO Council noted that there would not be an objection to making this extension to the Claims period as an implementation decision.

The balancing of considerations inherent in the Claims service as agreed upon in the community discussions is unchanged, and the expected benefits of the Claims service as designed will still exist. The extension is a continuation of a service that is already required, and an extended period appears to be a reasonable response to the large number of TLDs expected to be entering the market.

Based on this analysis, ICANN intends to proceed with implementing this aspect of the proposal.

Additional “Claims 2” Period

The third element of the Strawman model was a proposal that rights holders have the option to pay an additional fee for inclusion of a Clearinghouse record in a “Claims 2” service for an additional 6-12 months. Anyone attempting to register a domain name matching the record would be shown a general Claims notice including a description of the rights and responsibilities of the registrant, to help propagate information on the role of trademarks and develop more informed consumers in the registration process.

The GNSO advised that this should be a policy discussion rather than an implementation decision. The feedback received via public comment generally indicated a lack of support for the Claims 2 period, either due to concerns about effectiveness or concerns about adopting the proposal without a policy discussion.

Based on this analysis, ICANN does not intend to proceed with implementing this aspect of the proposal at this time.

Trademark Claims Protection for Previously Abused Names

The fourth element of the Strawman model was a proposal that where there are domain labels that have been found to be the subject of abusive registrations (for example, as a result of a UDRP or court proceeding), a limited number (up to 50) of these could be added to a Clearinghouse record. These names would be mapped to an existing record where the trademark has already been verified by the Clearinghouse.

This element of the proposal was referred to the GNSO specifically, as the scope of protection derived from inclusion in the Trademark Clearinghouse was discussed previously. The GNSO advised that this should be a policy discussion rather than an implementation change. The GNSO Council communication also made reference to the stated principle that the Trademark

Clearinghouse is intended to be a repository for existing legal rights, and not an adjudicator of such rights or a creator of new rights.

Having reviewed and balanced all feedback, this proposal appears to be a reasonable add-on to an existing service, rather than a proposed new service. Given that domain names would only be accepted for association with an existing Clearinghouse record, and only on the basis of a determination made under the UDRP or national laws, the proposal would not require any adjudication by the Clearinghouse. Additionally, the provision of notifications concerning associated domain names would not provide sunrise or other priority registrations, nor have a blocking effect on registration of these names by any party.

It is difficult to justify omission of a readily available mechanism which would strengthen the trademark protection available through the Clearinghouse. Given that the proposal relies on determinations that have already been made independently through established processes, and that the scope of protection is bounded by this, concerns about undue expansion of rights do not seem necessary.

Based on this analysis, ICANN intends to proceed with implementing this aspect of the proposal.

Limited Preventive Registration

An additional proposal, the [Limited Preventive Registration \(LPR\) mechanism](#), was not part of the Strawman model but was also [posted for comment](#).

The GNSO Council was requested to provide input on the LPR proposal as it is relevant to a resolution from the New gTLD Program Committee requesting the GNSO to consider whether additional work on defensive registrations at the second level should be undertaken. Guidance received from the GNSO Council noted that the LPR represented a change in policy and therefore should be a matter of Council-managed policy work if it is to be considered.

Given that the LPR proposal does introduce requirements for a new process and is not building on existing mechanisms, it is agreed that introduction of an LPR mechanism would be a substantial change that should arise from broader policy discussions.

Based on this analysis, ICANN does not intend to proceed with implementing the LPR proposal at this time. However, ICANN will continue to encourage the GNSO to proceed with work in this area.

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The full summary and analysis of public comment is available at <http://www.icann.org/en/news/public-comment/tmch-strawman-30nov12-en.htm>.