Project Overview for the Rights Protection Mechanisms Survey Request for Proposal

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1.0   Introduction

1.1   About This Document

The Internet Corporation for Assigned Names and Numbers organization ("ICANN") is soliciting proposals to identify one or more suppliers qualified to develop and conduct survey(s) to assess the use and effectiveness of Sunrise and Trademark Claims Rights Protection Mechanisms (RPMs) for trademark owners currently being offered through ICANN's Trademark Clearinghouse. This document provides an overview of the Request for Proposal ("RFP"). It aims to provide background and pertinent information regarding the requirements for responding to the RFP. The RFP itself comprises this overview as well as other documents that are hosted in the ICANN Sourcing (SciQuest) tool. Indications of interest are to be received by emailing RPMs.Survey-rfp@icann.org by 12 February 2018.

Complete proposals must be electronically submitted by 23:59 UTC on 09 March 2018 using the ICANN organization sourcing tool (SciQuest), access to which will be granted after receipt of an indication of interest to the email address above.

1.2   Overview of the Internet Corporation for Assigned Names and Numbers (ICANN)

The ICANN organization is a non-profit public benefit corporation dedicated to preserving the operational security and stability of the Internet; to promoting competition; to achieving broad representation of global Internet communities; and to developing policy appropriate to its mission through bottom-up, consensus-based processes.   More specifically, the ICANN organization:

1) Coordinates the allocation and assignment of the four sets of unique identifiers for the Internet, which are
    a. Domain names (forming a system referred to as the domain names system, or DNS);
    b. Internet Protocol ("IP") addresses;
    c. Autonomous System ("AS") numbers; and
    d. Protocol port and parameter numbers.
2) Coordinates the operation and evolution of the DNS root name server system.
3) Coordinates policy development reasonably and appropriately related to these technical functions.

See www.icann.org for more information.

2.0   Scope

2.1 Project Background

The Rights Protection Mechanisms ("RPMs") refer to those policies and processes developed to provide workable mechanisms for trademark owners to either prevent or remedy certain unauthorized uses of their trademarks at the second level of generic topic-level domains ("gTLDs"). As part of the 2012 New gTLD Program, additional RPMs were developed to supplement the longstanding Uniform Dispute Resolution Policy ("UDRP"). These additional RPMs are: 1) the Trademark Clearinghouse ("TMCH") and the associated Sunrise and Trademark Claims services that are offered through it, 2) the Uniform Rapid Suspension procedure ("URS"), and 3) the Trademark Post-Delegation Dispute Resolution Procedure ("TM-PDDRP"). Specifically, the Sunrise service provides priority access to rights

holders to request domain names associated with their trademark(s). The Trademark Claims service provides notification to: (a) a potential domain name registrant attempting to register a domain name that matches a trademark record entered into the TMCH, and (b) a rights holder after registration of a matching domain name, allowing for immediate action by the rights holder if the domain registered is infringing.

The RPMs developed for the 2012 New gTLD Program are new mechanisms that have now been in use for five years. Community feedback on those RPMs indicated a need to review their application and scope, especially if there is to be a further expansion of the gTLD space.

In February 2015, ICANN staff published a draft Rights Protection Mechanisms Review report intended to assess the effectiveness of the RPMs established as safeguards in the New gTLD Program. However, this report was not a comprehensive review; rather, it was based primarily on community feedback and a small set of sources, including specific topic studies, obligatory reports from Contracted Parties or contractors hired for specific projects, and community comments.

In 2016, following the recommendations from the Governmental Advisory Committee ("GAC"), ICANN commissioned an independent review of the TMCH, which was conducted by Analysis Group, a third-party consulting firm. The firm examined whether domains that relate to, but do not exactly match, trademarks should be considered for use in the Claims period of a new gTLD's lifecycle. The review also explored whether extending the number of days of the Claims service would be of value, as well as measured how frequently trademark holders use the Sunrise period, among other topics. Through this review, additional related topics have been identified to support a more detailed analysis and to be addressed in the policy development work.

In March 2016, the Generic Names Supporting Organization ("GNSO") Council chartered a Working Group ("WG") to conduct a Policy Development Process ("PDP") to review the effectiveness of all existing RPMs. This is the first time that the RPMs will have been subject to a policy review by the ICANN community.

The RPMs policy review is being conducted in two phases. Phase One focuses on the review of all RPMs that have been developed for the 2012 New gTLD Program. Phase Two addresses the review of the UDRP. By the conclusion of both phases of this PDP, the WG is expected to have considered the overarching issue as to whether all the RPMs collectively fulfill the purposes for which they were created, or whether additional policy recommendations are needed. The outcomes of this PDP are also intended to create a consistent and uniform mechanism for future reviews of all RPMs.

During the WG's Phase One work, it completed reviewing the TM-PDDRP in late 2016. The WG has also largely completed an initial review of the structure and scope of the TMCH, and has begun its review of the Sunrise and Trademark Claims services that are offered through the TMCH.

As Sunrise and Trademark Claims RPMs have not been subject to policy review to date, no comprehensive, publicly available data currently exists that measures their effectiveness. Furthermore, ICANN's Competition, Consumer Protection & Consumer Trust Review Team ("CCT-RT") also noted the lack of data in its Preliminary Report (published March 2017). It states that due to a lack of relevant and pertinent data, a robust analysis of whether the RPMs have helped mitigate the issues around the protection of trademark rights following the 2012 New gTLD Program round is not currently possible.

As a side note, ICANN's CCT-RT conducts regular reviews of the new gTLD program, monitoring and assessing issues of competition, consumer protection, security, stability, malicious abuse, and rights protection for the new gTLDs. As part of its review, the CCT-RT examined the impact of new gTLDs on brand owners, specifically the cost and effort required to protect and police trademarks. In order to provide the CCT-RT with relevant empirical data, the International Trademark Association ("INTA"), a global organization of trademark owners and professionals, conducted an online survey related to the costs of enforcing trademark rights under ICANN's new gTLD program. Nielsen Consumer Insights carried out the survey, and the CCT-RT provided input on the survey questions and design. The survey was sent to 1,096 INTA regular members, including large corporate, small and emerging companies, and nonprofit organizations. Only 33 respondents completed the survey due to various challenges. In spite of this limitation, the study provides some helpful information on the efficacy of RPMs, and it has been reviewed and discussed by the RPMs PDP WG.

To perform its review of Sunrise and Trademark Claims in any meaningful way, both quantitatively and qualitatively, the WG therefore needed to collect more specific data and input from a number of sources and respondent groups. These include ICANN Contracted Parties (i.e., Registry Operators of gTLDs and ICANN-accredited Registrars), domain name registrants, potential registrants, trademark and brand owners, and other sources identified by the WG.

The WG will need to rely on professional assistance (e.g., professional survey designers) to:
● create survey questions that are clear and targeted appropriately, so as to generate as many useful responses as possible;
● identify and reach the targeted pool of respondents;
● collect, organize, and summarize the data received.

In September 2017, the GNSO Council approved the request from the WG to seek resources to assist with the Sunrise and Trademark Claims survey design, implementation, and report of result. The Council also instructed the WG to structure the survey in such a way as to maximize the value and relevance of the data collected.

The WG has developed a list of questions to frame its data collection effort, based on and refined from the set of questions originally contained in its Charter scoping its work. It also identified specific data sources and proposed the survey methodology for obtaining the data required. Within the WG, a Data Sub Team has been formed to provide additional guidance to the survey provider to be selected via this RFP. The Sub Team is preparing draft survey questions and other notes for this purpose (please see Appendix A).

2.2 Objectives

The objective of this RFP is to identify a qualified provider or providers to **develop and conduct survey(s) to assess the use and effectiveness of the Sunrise and Trademark Claims RPMs.** By surveying the specific respondent groups identified by the WG as most affected by Sunrise and Trademark Claims RPMs, ICANN aims to assist the WG to evaluate the efficacy of the Sunrise and Trademark Claims RPMs, as well as bolster ICANN's data collection efforts related to the RPMs.

Through the issuance of this RFP, the ICANN organization's Policy Development Support Department solicits proposals from qualified suppliers for the provision of the services.

2.3 Scope of Work

ICANN has not previously conducted surveys to collect primary data on the use and efficacy of Sunrise and Trademark Claims services. As this is a new activity, ICANN is open to creative proposals in order to capture the requisite data.

The selected provider(s) will be expected to closely consult and collaborate with the RPMs PDP WG, its Data Sub Team, and the ICANN support staff throughout the duration of the project, including participation in various working sessions via remote participation.

The scope of work is expected to include the following:
● Examine documentation, reports, and records relevant to gathering the required data on Sunrise and Trademark Claims, including the: 1) Final Report: Rights Protection Mechanisms Review, 2) Revised Report of the Independent Review of the Trademark Clearinghouse, and 3) INTA New gTLD Cost Impact Survey.
● Provide a detailed project management plan, including timeline indicating the estimated survey launch dates, and how long each phase of survey design, implementation, and report of result will take;
● Design survey parameters, including definition and respondent selection criteria;
● Identify methods for reaching, and if required provide assistance for contacting, the specific respondent groups identified by the WG, especially for target groups that include potential respondents not familiar with ICANN or the WG;
● Develop either a master survey, which can be appropriately customized (e.g. additions, modifications, or deletions of suggested draft questions) for each respondent group or multiple surveys, each targeting a different respondent group. Whichever method is used, questions must be clear and targeted appropriately to cover the Charter questions for which the data is being sought; survey(s) should be in English, unless otherwise specifically stated in the RFP requirements.
● Develop survey questions based on the Data Sub Team's guidance, input, and suggested draft questions, so as to generate as many useful responses as possible;
● Propose suitable methodology and tools to execute the survey(s);
● Administer survey(s) in accordance with industry best practices;
● Administer the survey(s) in accordance with proposed timeline and methods;
● Provide updates periodically to keep the WG and ICANN staff informed of progress; and
● Present to the RPMs PDP WG the detailed findings and report of data.

The selected provider(s) should devise methods to effectively reach and generate useful responses from the respondent groups / data sources identified by the RPMs PDP WG, which are:
● New gTLD Registry Operators
● Registrars selling domain name registered in the new gTLDs
● Trademark and Brand Owners
● Domain Name Registrants
● Potential Domain Name Registrants
● Public Interest Groups and Trade Associations

The survey(s) should consist of clear, targeted questions that can generate data critical to fulfill the Charter questions, further to the guidance provided in the draft suggested survey questions corresponding to the Charter questions and other input from the Data Sub Team.

The provider will likely need to design either a master survey that can be customized for each respondent group or multiple surveys, each targeting a different respondent group.

Appendix A of this RFP project overview document is the table containing the applicable refined Charter questions for which the survey(s) are intended to collect relevant anecdotal

and quantitative data. The table also contains corresponding data sources and suggested draft survey questions from the Data Sub Team, as well as a glossary table and reference links. Appendix A should be considered as the framework for scoping this RFP.

Please note that Appendix A is still in draft form. In particular, the suggested draft survey questions are under discussion within the Data Sub Team. The Data Sub Team continues working toward the completion of the table by finalizing the draft survey questions. The goal is to provide the final agreed Appendix A document to responding providers by the deadline when "ICANN responds to participant questions", as detailed in Section 5.0 RFP Timeline. We do not foresee dramatic changes to the table that would affect the objectives, scope, requirements, and timeline of the project.

2.4 Examples

The following three examples are included in this Project Overview document to provide relevant background information to facilitate the development and implementation of the required Sunrise and Trademark Claims survey(s). The provider is expected to review the data gathered in these efforts to develop the survey(s), in consultation with the RPMs PDP WG and its Data Sub Team:

1. ICANN staff undertook a RPMs Review intended to assess the effectiveness of the RPMs established as safeguards in the New gTLD Program, including the TMCH and the associated Sunrise and Trademark Claims services. The report is available for download via: http://newgtlds.icann.org/en/reviews/rpm/draft-rpm-review-02feb15-en.pdf.

2. ICANN commissioned the Analysis Group to conduct an independent review of the TMCH. It examined topics such as whether non-exact match domains should be considered for use in the Claims period, the impact of extension of days of the Claims service, and the frequency that trademark holders use the Sunrise period. The revised report is available for download via: https://newgtlds.icann.org/en/reviews/tmch/revised-services-review-22feb17-en.pdf.

3. INTA conducted an online survey to gather empirical data related to the costs of enforcing trademark rights under ICANN's New gTLD Program. Nielsen Consumer Insights carried out the survey, with input from ICANN's CCT-RT. The survey analysis report, published in April 2017, is available for download via: https://goo.gl/8swPj9. A presentation on the study can be found via: https://goo.gl/4tNPgy.

4. ICANN's CCT-RT conducts regular reviews of the new gTLD program, monitoring and assessing issues of competition, consumer protection, security, stability, malicious abuse, and rights protection for the new gTLDs. Its draft report can be found via: https://www.icann.org/en/system/files/files/cct-rt-draft-report-07mar17-en.pdf. The sections related to Trademark / RPMs are from page 55-57, 60-62, and 95-104.

3.0 High-Level Selection Criteria

The decision to select a provider as an outcome of this RFP will be based on, but not limited to, the following selection criteria:

1) Demonstrated understanding of the assignment
2) Knowledge and expertise
   a. International recognition as a survey provider.
   b. Demonstrated strong experience in conducting survey projects to gather data with broad sweep and complicated scope.
   c. Demonstrated ability to reach and survey various data sources / respondent groups with a statistically significant sample.
   d. Knowledge of the ICANN organization's functions, the RPMs, the TMCH and associated Sunrise and Trademark Claims services, and the domain name registration process.
   e. Knowledge of trademark law and issues related to trademark law in a global context.
   f. Suitability of proposed CVs.
3) Proposed methodology
   a. Design approach
      i. Clearly articulated rationale for proposed methodology.
      ii. Proposed instrument best meets survey(s)' objectives.
   b. Survey administration
      i. The outreach plan identifies potential respondents beyond those already familiar with ICANN and the PDP (especially actual and potential domain name registrants and trademark/brand owners who do not already participate in ICANN policy processes).
      ii. The distribution plan ensures that a statistically significant sample will respond to the survey(s).
      iii. Data collection, organization, and presentation tools are appropriate and accessible to ICANN staff, the WG and the general public.
   c. Implementation approach
      i. Suitable project management plan, including proposed timeline.
      ii. Engagement model providing appropriate levels of coordination with the ICANN organization and openness to input coming from the RPMs PDP WG and its Data Sub Team.
      iii. Collaboration in working sessions via remote participation.
      iv. Level of responsibility for designated key staff.
4) Flexible approach, allowing for shifting definitions and incorporating community input. including but not limited to
   a. Working efficiently and effectively under pressure and with short lead time
   b. Meeting the proposed project timeline by launching survey(s) no later than mid-June 2018 and compiling results no later than mid-July 2018,
   c. Meeting other requirements of the project
5) Commitment to working with the ICANN organization's multi-stakeholder model, including a demonstrated understanding of and commitment to the ICANN organization's requirements for transparency and accountability.
6) Financial value.
7) Reference checks.
8) Conflict of interest and independence.

4.0   Business Requirements

In order to be considered, providers must demonstrate their ability to meet the following business requirements:

1) Ability to provide a complete response based on the ICANN organization's specifications by the designated due date (see below).
2) Availability to participate in finalist presentations via conference call / remote participation (see below).
3) Ability to negotiate a professional services agreement using the ICANN organization's Contractor Consulting Agreement (see attached).
4) Ability to begin work and complete all project work deliverables as per the timeline described (see below).
5) Ability to conduct periodic status update calls during survey(s), frequency to be determined.
6) Ability to develop work methods, data-gathering mechanisms, and evaluation/assessment approaches as appropriate for the activity.
7) Ability to maintain confidentiality around sensitive data.
8) Ability to conduct work in a collaborative manner using remote tools.
9) Ability to work efficiently and effectively under pressure and stringent timeline.
10) Ability to meet the following project activity and deliverable milestones (Note: the ICANN organization reserves the right to modify the timeline at any time as necessary):

Activity/Deliverable	Estimated Dates
1. Project kickoff	10 May 2018
2. Working session via remote participation with the ICANN organization project team, RPMs PDP WG, and its Data Sub Team to discuss work plan, timeline, methodology, and survey targets, design, and questions	11 May 2018 - 20 May 2018
3. **Deliverable 1: Delivery of draft inception report**, which should include project work plan, detailed methodology, survey targets, outreach plan, and proposed survey design and questions, etc.	21 May 2018
4. Working session via remote participation with the ICANN organization project team, RPMs PDP WG, and its Data Sub Team to discuss the draft inception report and finalize survey(s) for launch	22 May 2018 - 13 June 2018
5. **Deliverable 2: Launch Sunrise / Claims survey(s)**	14 June 2018
6. Working session via remote participation with ICANN organization project team and RPMs PDP WG in ICANN62 to discuss the preliminary findings of the Sunrise / Claims survey(s); self-funded in-person participation in ICANN62 is also welcomed	25 June 2018 - 28 June 2018
7. Close Sunrise / Claims survey(s)	15 July 2018
8. Working session via remote participation with the ICANN organization project team and RPMs PDP WG to discuss the draft report for Sunrise / Claims survey findings	18 July 2018
9. **Deliverable 3: Delivery of final report for Sunrise / Claims survey findings**	23 July 2018
10. Working session via remote participation with the ICANN organization project team and RPMs PDP WG to discuss the final report for Sunrise / Claims survey findings	25 July 2018
11. Finalization of all deliverables – target date:	By July end 2018

5.0 RFP Timeline

The following dates have been established as milestones for this RFP. The ICANN organization reserves the right to modify or change this timeline at any time as necessary.

Activity	Estimated Dates
RFP published	29 January 2018
Participants to indicate interest in submitting RFP proposal	**12 February 2018 by 23:59 UTC**
Participants submit any questions via ICANN Sourcing tool	**19 February 2018 by 23:59 UTC**
ICANN responds to participant questions	26 February 2018
Participant proposals due by	**09 March 2018 by 23:59 UTC**
ICANN61 San Juan Meeting	12 March to 15 March 2018
Evaluation of responses	19 March to 09 April 2018
Final evaluations, contracting and award	10 April to 09 May 2018

6.0 Terms and Conditions

General Terms and Conditions

1. Submission of a proposal shall constitute Respondent's acknowledgment and acceptance of all the specifications, requirements and terms and conditions in this RFP.

2. All costs of preparing and submitting its proposal, responding to or providing any other assistance to ICANN in connection with this RFP will be borne by the Respondent.

3. All submitted proposals including any supporting materials or documentation will become the property of ICANN. If Respondent's proposal contains any proprietary information that should not be disclosed or used by the ICANN organization other than for the purposes of evaluating the proposal, that information should be marked with appropriate confidentiality markings.

Discrepancies, Omissions and Additional Information

1. Respondent is responsible for examining this RFP and all addenda. Failure to do so will be at the sole risk of Respondent. Should Respondent find discrepancies, omissions, unclear or ambiguous intent or meaning, or should any question arise concerning this RFP, Respondent must notify the ICANN organization of such findings immediately in writing via e-mail no later than three (3) days prior to the deadline for bid submissions. Should such matters remain unresolved by the ICANN organization, in writing, prior to Respondent's preparation of its proposal, such matters must be addressed in Respondent's proposal.

2. The ICANN organization is not responsible for oral statements made by its employees, agents, or representatives concerning this RFP. If Respondent requires additional information, Respondent must request that the issuer of this RFP furnish such information in writing.

3. A Respondent's proposal is presumed to represent its best efforts to respond to the RFP. Any significant inconsistency, if unexplained, raises a fundamental issue of the Respondent's understanding of the nature and scope of the work required and of its

ability to perform the contract as proposed and may be cause for rejection of the proposal. The burden of proof as to cost credibility rests with the Respondent.

4. If necessary, supplemental information to this RFP will be provided to all prospective Respondents receiving this RFP. All supplemental information issued by the ICANN organization will form part of this RFP. ICANN is not responsible for any failure by prospective Respondents to receive supplemental information.

Assessment and Award

1. The ICANN organization reserves the right, without penalty and at its discretion, to accept or reject any proposal, withdraw this RFP, make no award, to waive or permit the correction of any informality or irregularity and to disregard any non-conforming or conditional proposal.

2. The ICANN organization may request a Respondent to provide further information or documentation to support Respondent's proposal and its ability to provide the products and/or services contemplated by this RFP.

3. The ICANN organization is not obliged to accept the lowest priced proposal. Price is only one of the determining factors for the successful award.

4. The ICANN organization will assess proposals based on compliant responses to the requirements set out in this RFP, any further issued clarifications (if any) and consideration of any other issues or evidence relevant to the Respondent's ability to successfully provide and implement the products and/or services contemplated by this RFP and in the best interests of the ICANN organization.

5. The ICANN organization reserves the right to enter into contractual negotiations and if necessary, modify any terms and conditions of a final contract with the Respondent whose proposal offers the best value to the ICANN organization.

Appendix A: Tables for the RPM Sunrise and Trademark Claims Data Requests Approved by the GNSO Council

Please note that Appendix A is still in draft form at the launch of this RFP. In particular, the suggested draft survey questions are under discussion within the Data Sub Team. The Data Sub Team continues working toward the completion of the table by finalizing the draft survey questions. The goal is to provide the final agreed Appendix A document to responding providers by the deadline when "ICANN responds to participant questions", as detailed in Section 5.0 RFP Timeline in the Project Overview document. We do not foresee dramatic changes to the table that would affect the objectives, scope, requirements, and timeline of the project.

Link to Appendix A: https://www.icann.org/rfp-rpm-sunrise-tm-claims-appendix-a.pdf