

Date: 7 June 2013

Internet Corporation for Assigned Names and Numbers (ICANN)

12025 Waterfront Drive, Suite 300

Los Angeles, CA 90094-2536

Dear Sirs

UniForum SA (NPC) (“UniForum”) Comments on Proposed Final New gTLD Registry Agreement dated 29 April 2013

1. UniForum has applied for four new gTLDs: .africa, .durban, .joburg and .capetown.
2. We would first note our apologies for lodging our comments after the closing date for comments submission of the 20th of May 2013: we misunderstood the comments process and were under the impression that the deadline was in fact the 11th of June. While we now understand that the period 21 May to 11 June is technically for the submission of replies to comments, we believe that consideration of our comments would be of assistance to ICANN in producing an optimal draft of the Registry Agreement. Accordingly we humbly request that you should consider the comments set out below.
3. We make the following comments in respect of specific clauses in the draft contract:

Clause	Issue	Description
6.5	Adjustments to fees	The clause only allows for increases equal to CPI – it should allow for increases less than or equal to CPI.
7.7	Negotiation Process	We note that arbitration is only applicable to a limited number of clause amendments BUT would suggest that arbitrators would need profound knowledge of DNS as well as (probably) the economics of the industry in order to make a ruling.
7.7	Negotiation Process	“2.1” appears twice in clause 7.7(e)(ii)

Spec 2 B.6	Escrow release	As the clause stands, ICANN notifies the escrow agent of the escrow release trigger, but in some cases there should be validation of the trigger event. This is true for clauses 6.1, 6.5, 6.6, 6.7 and 6.8. In these events, ICANN should provide supporting documentation to prove that the event has occurred.
Spec 7 cl1	Unclear which RPMs apply	The 1 April 2013 version referred to RPMs "that may be mandated from time to time by ICANN". This was changed to RPMs "specified in this Specification". But later the clause reads "Registry Operator will include all *ICANN mandated* and independently developed RPMs in the registry-registrar agreement". Should this not refer just to those RPMs "specified in this Specification" and those independently developed?
Spec 7 cl1	Unclear which RPMs apply	Spec 7 refers to the URS but not UDRP – in light of the above, does that mean UDRP will not apply to new gTLDs? If it will we suggest specifying this, as referring to application of RPMs "specified in this Specification" would seem to indicate otherwise.
Spec 7 cl1	Unclear whether RIR can use other TM validation services	<p>Clause reads: "Registry Operator shall not *mandate* that any owner of applicable intellectual property rights use any other trademark information aggregation, notification, or validation service in addition to or instead of the ICANN-designated Trademark Clearinghouse."</p> <p>Mandate can mean "allow" in certain contexts, but here probably means "require", so the clause says that the Registry Operator cannot require IP owners to make use of another service. We suggest clarifying the point.</p> <p>Clarity is moreover required as to whether such services can be used in addition to or as a voluntary alternative to the TMCH.</p>
Spec 7 cl2	Precedence	<p>Clause now reads: "If there is a conflict between the terms and conditions of this Agreement and the Trademark Clearinghouse Requirements, the terms and conditions of this Agreement shall control."</p> <p>However this clause is light on detail, with most of the applicable provisions contained in the TMCH Requirements document. Accordingly this sentence is of little assistance as there is little for the TMCH Requirements document to conflict with.</p>

		<p>For example it is not clear whether alternative TM validation services can be used, so if the TMCH Requirements say such providers can NOT be used, there will be no conflict and the TMCH Requirements document must be followed.</p> <p>We suggest the governing principles be clearly stated in the agreement, not the TMCH Requirements document.</p>
Spec 7	Generally	<p>While it is best practice to deal with the TMCH implementation requirements in a separate requirements document, it is important to retain the principles underlying rights protection in the main agreement. It is the Registry agreement that the parties sign, and not the requirement document. Accordingly Specification 7 should set out the principles governing RPMs for new gTLDs, while the requirements document should deal with the particulars of implementation and compliance with such RPMs.</p> <p>For example, it is implied in the requirements document (but not explicitly stated) that the TMCH will be the only provider of validation services. If this is the case then it should be stated in the main agreement and not in the requirements document. If only certain classes of rights in a name will be recognised in the sunrise period, this should also be specified in the main agreement.</p>

4. We also have the following general comments relating to RPMs:

- a. UniForum has applied for four geographic TLDs. As such it will be required by the relevant authorities to reserve during pre-sunrise and later allocate certain names which are significant in the geographic areas concerned. It will not be feasible to allow these names to be registered to members of the public during the Sunrise phase. Examples of such names are names of cities, government or municipal departments, communities, and places of cultural or historic significance. Accordingly there should be provision made for a Registry Operator to reserve such name prior to the Sunrise phase and to subsequently register them to the appropriate entity.
- b. UniForum intends to introduce its own dispute resolution policy for the gTLDs it has applied for which will differ from the URS and URDP in that it will afford protection to a wider range of rights to a name and will also deal with offensive registrations and abusive practices. Where the jurisdiction of this proposed DRP overlaps with that of the URDP and URS, UniForum requires certainty as to which will prevail so as to prevent "forum shopping". If a complainant is unsuccessful under the dotAfrica DRP we would like if possible to prevent a further action being brought under the UDRP. Ideally we would like UniForum's proposed DRP to have sole jurisdiction if that is possible. The agreement should either specify how

the different DRPs would relate, or have sufficient scope for the parties to negotiate these aspects during the contracting phase.

- c. UniForum will meet its obligations in respect of the TMCH, but also wishes to make use of an alternative, voluntary, mark validation service. This service will perform the same function and adhere to the minimum standards prescribed for the TMCH, but will be used for the four gTLDs that UniForum has applied for. Specification 7 is not clear on whether UniForum will be able to implement such a process.
- d. There is pressure on UniForum to give holders of African trademarks precedence during the .africa gTLD's Sunrise phase in the case of a contention. It is not clear from Specification 7 whether UniForum will be able to do this.
- e. UniForum wishes to allow holders of non-trade mark rights to register corresponding domain names during the Sunrise phase. Such rights would be registered company or trust (foundation) names. It is not clear from Specification 7 if this will be possible. We suggest that Specification 7 set out the IP rights that will be recognised during the Sunrise phase.
- f. In the light of the particular circumstances applicable to geographical gTLDs as set out above, we suggest that the Registry Agreement either cater for the above concerns or be flexible enough for the parties to negotiate provisions (or if needs be exceptions to "default" provisions) which address these concerns.

Yours sincerely,



Neil Duncan Dundas
Chief Executive Officer
ZA Central Registry (previously known as UniForum SA)