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New gTLD Program Committee  
Internet Corporation for Assigned Names and Numbers  
12025 Waterfront Drive, Suite 300  
Los Angeles, California 90094  
USA

Dear gTLD Program Committee:

.Club Domains thanks the New gTLD Program Committee for considering the comments of the contracted and non-contracted stakeholders. In addition, we thank JAS Advisors for the exceptional report that they produced. Club Domains agrees with the conclusions and analysis of JAS Advisors' report, except the length of the interruption period in Recommendation 7.

1. **According to JAS Advisors' report, Recommendation 7's 120 day interruption period goes beyond conservative; it is "exceedingly conservative".<sup>1</sup> The New gTLD Program Committee should implement a merely conservative interruption period of 60 days for Top Level Domains that have already been delegated.**

The comments of the NTAG, Donuts, Rightside/United TLD, and Ari Registry Services have thoroughly and competently explained why the 120 day interruption period of Recommendation 7 is excessively conservative. A merely conservative interruption period of 60 days is more than adequate for registries that have already been delegated, because the detrimental effects on public interest must be balanced against the security interest of a longer interruption period. A lengthened interruption period is significantly detrimental to the public interest because it would cause confusion for commercial registrants.

A longer interruption period for Top Level Domains that have already been delegated would confuse commercial registrants who wish to register a BRAND.TLD, but cannot because the name is blocked. When a commercial registrant tries to register their BRAND.club, and cannot get the name, the registrant will receive a message that the name is not available. Most registrars do not inform registrants that a domain is on the Alternative Path Block List; the longer the interruption period, the longer the situation will persist where registrants will have failed registrations for domains on the Alternative Path Block List. Thus, a longer interruption period will increase the amount of commercial registrants that attempt to register domain names that fail for reasons unknown to the registrant. Because there is no effective way to communicate to the registrant why the domain registration are failing, the probability of the registrant returning at a later date to register the domain name is slim.

Small and medium sized businesses that do not have the resources to track the progress of the release of the Alternative Path Block List may not be able to register the domain name associated with their businesses.

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<sup>1</sup> JAS Advisors, pg.12. <http://www.icann.org/en/about/staff/security/ssr/name-collision-mitigation-26feb14-en.pdf>.

As a case in point, one of the comments submitted in this very comment period is a commercial user trying to understand why her BRAND.berlin is not available for use. The potential commercial registrant, European School of Management and Technology, stated:

“We found out that the domain esmt.berlin is on the ICANN Collisions List and we don't understand why. Our institution is called ESMT European School of Management and Technology (located in Berlin) and our current domain is esmt.org. The ombudsman believes the source of the conflict may be our ownership of the esmt.org domain name.”<sup>2</sup>

In this case, a commercial registrant was sophisticated and knowledgeable enough about the ICANN process to contact the ombudsman and make this public comment. However, in the vast majority of cases, the small or medium sized commercial registrants will find that the domains are not available and will simply assume that someone else has already registered the domain. ICANN has a responsibility to minimize commercial and consumer confusion, and the 120 interruption period is well beyond the point of doing more harm than good.

2. **.CLUB Domains Opposes Fairwind Partners' and Google's Recommendation that Alternative Path Block List Names must be subject to a second Sunrise because implementation of a second Sunrise is not practical and ICANN may lack the contractual authority to impose that condition on TLDs that have already signed Registry Agreements.**

a. **ICANN should not Mandate a Second Sunrise because Implementation would be Impractical.**

.Club Domains opposes the Fairwind Partners' request that the Alternative Path Block List domains be subject to a second Sunrise for the same reason that ICANN staff rejected the idea in analysis of the Final Rights Protection Mechanism Comments:

“**The desire to subject any previously reserved domain name that is later released from reservation to the Sunrise Services is understandable, but it is not practical to implement** (Emphasis added). If a Registry Operator releases a previously reserved domain name prior to the start date of the Claims period, the released domain name will be treated subject to the requirements of any applicable registration period under the TMCH Requirements. If, however, a Registry Operator releases a previously reserved domain name after the start date of the Claims Period, the released domain name must be subject to an individualized 90 day Claims Period from the date of release (so long as the Trademark Clearinghouse is operational).”<sup>3</sup>

Implementing a second sunrise would require significant engineering and development costs for registries. The TMCH Requirements provide that reserved names should not be subject to a second sunrise, but should be subject to a 90 day claims period. It would be anomalous to require that the Alternative Path Block List be given different treatment from a registry's reserve list.

b. **ICANN may Lack the Contractual Authority to Mandate a Second Sunrise for Existing Top Level Domains.**

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<sup>2</sup> Claudia Höhne, Web Content & Social Media Manager, ESMT European School of Management and Technology. <http://forum.icann.org/lists/comments-name-collision-26feb14/msg00019.html>.

<sup>3</sup> ICANN Staff Analysis of RPM Requirements Comments, pg. 18. <http://www.icann.org/en/news/public-comment/report-comments-rpm-requirements-30sep13-en.pdf>.

It is not clear that ICANN has the contractual authority to impose the requirements of a second Sunrise period on those registries that have registry agreements that are governed by the September 30, 2013 TMCH Requirements. The authority to impose the first Sunrise period lies in the following clause:

“Registry Operator shall implement in accordance with requirements set forth therein each of the mandatory RPMs set forth in the Trademark Clearinghouse as of the date hereof, as posted at [...] (the “Trademark Clearinghouse Requirements”), which may be revised in immaterial respects by ICANN from time to time. “<sup>4</sup>

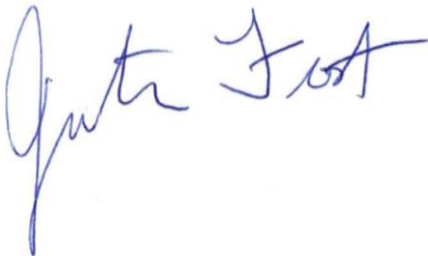
Mandating a second Sunrise period would be amending the Trademark Clearinghouse Requirements in a material respect, and therefore could not be done under this provision. We are not aware of any other provision in our Registry Agreement that would permit the NGPC to mandate a second Sunrise without amending the Registry Agreement or implementing a consensus policy, and we urge the NGPC to consult its legal advisors before implementing a solution that could cause ICANN to be in breach of its agreements with the registries.

Therefore, because implementing a second Sunrise is impractical and questionable from a contractual point of view, the NGPC should not mandate a second Sunrise.

### **3. .Club Domains Opposes Verisign’s Request for Further Delay.**

We join the NTAG in opposing Verisign’s suggestion that an additional comment period is necessary before implementing JAS Advisors’ findings; doing so would be an extremely inefficient use of resources and inconsistent with the NGPC Resolution of October 7, 2013.<sup>5</sup>

Respectfully submitted,



Jonathan Frost  
.Club Domains, LLC

Enclosures (0)

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<sup>4</sup> .Club Domains, LLC Registry Agreement for .CLUB, pg. 75.  
<http://www.icann.org/sites/default/files/tlds/club/club-agmt-docx-08nov13-en.docx>.

<sup>5</sup> NGPC Resolution October 7, 2013. <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-07oct13-en.pdf>.