FAIRWINDSPARTNERS

Re: Mitigating the Risk of DNS Namespace Collision

Date: Monday, March 31

FairWinds Partners appreciates the opportunity to comment on the Name Collision Occurrence Mitigation Framework developed by JAS Global Advisors and published by ICANN. We write to express our support for the proposal, insofar as it allows Registry Operators to fully use their gTLDs, as well as to request that, in implementation of the Name Collision Occurrence Mitigation Framework, ICANN ensure that Registry Operators have implemented all required Rights Protection Mechanisms for names that were previously included on name collision second-level domain block lists ("SLD block lists").

As a representative for a number of gTLD applicants, FairWinds welcomes that, in eliminating the SLD block list, the Name Collision Occurrence Mitigation Framework proposes a solution that will allow prospective Registry Operators to more fully leverage their new gTLDs. Additionally, FairWinds appreciates that Recommendation 7 of the Name Collision Occurrence Mitigation Framework provides a process whereby Registry Operators that have chosen to proceed by way of the Alternate Path to Delegation may release names and enjoy full use of their gTLDs.

FairWinds values the efforts undertaken to date to account for Intellectual Property Rights in addressing Name Collision. We note that in commitments made during the ICANN 48 Public Meeting in Buenos Aires, as well as in written statements by ICANN[1], it was made explicit that all names on a Registry Operator's SLD block list would be subject to both the Sunrise Period and the Claims Period requirements.

The requirement to include names on a Registry Operator's SLD block list in the Sunrise Period is imperative to preserving the Sunrise Period's effectiveness in protecting trademark holders' rights. In aggregate, the SLD block lists include tens of thousands of trademarked terms. FairWinds undertook a review of our clients' trademarks and found that <u>every</u> corporate client had the second-level domain corresponding to their principal brand blocked in at least one gTLD. Moreover, twelve of FairWinds' clients had their principal brand blocked in over one hundred gTLDs and twenty-three clients had their principal brand blocked in fifty or more gTLDs.

While most Registry Operators have abided by the guidelines put forward by ICANN, wherein SLD block list names are included in the Sunrise Period with a condition that they cannot be activated until such a time that ICANN approved their release from the block list or an alternative mitigation framework was adopted, we note that some registries have not allowed these block list names to be allocated during the initial Sunrise Period. Further, these registries have suggested that they do not intend to offer a comparable mechanism prior to or upon

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[1] The Domain Name Collision: Frequently Asked Question page states: "Names in the SLD block list for a TLD must be included in the Sunrise and Claims, subject to the registry's usual policies, but cannot be activated until the mitigation measures have been implemented. If a registry operator allocates names from the SLD block list during Sunrise or Claims period, it must inform the registrant that the name cannot be activated and may never be activated subject to the TLD's Name Collision Occurrence Assessment."

release of these names into the DNS to give brand owners the first right of registration for domains corresponding to their trademarks. These contraventions of policy significantly increase the cost associated with intellectual property protection and enforcement in new gTLDs and undermine the commitments made by ICANN to trademark holders. Furthermore, the absence of a clear requirement for Registry Operators to implement the RPM's on all SLD Blocked names leaves trademark owners with little recourse when this requirement is circumvented.

To these ends, FairWinds requests that Recommendation 7 be revised to include the requirement that all names that are on the SLD block list must have passed through the Sunrise Period before they can be released for registration, as well as the requirement that such names pass through the Claims Period during the first ninety days that they become available to the general public, as well as during any Limited Registration Period they are included in. Additionally, we ask that ICANN's compliance team monitors all registries to ensure they have conducted a Sunrise Period for all names on the SLD block list before such names may be released and that a Claims Period is enacted for the first ninety days that such names are available for registration.

We thank ICANN for considering these requests, which are essential to maintaining the efficacy of the intellectual property protections put forward in its Rights Protection Mechanism requirement document.