

Background

On July 17, the BC, IPC and RySG sent a [joint letter](#) to the New gTLD Program Committee of the ICANN board (NGPC) stating that the proposed application of rights protection mechanisms (RPMs) to second level domains (SLDs) to be released from name collision blocklists was inadequate, and recommending an alternative path forward. In particular, the letter noted that treating SLDs on name collision blocklists as registry-reserved names posed operational challenges for registry operators, who would be required to operate a 90-day Trademark Claims period for each of these names prior to releasing them. This approach would also undermine the Sunrise process these names would otherwise be required to undergo in registries where the registry operator had elected not to make the names available for allocation as part of their initial Sunrise periods.

To address these concerns, the joint letter suggested that names on the blocklist be made exclusively available to SMD holders for at least 30 days prior to being made generally available for registration¹; the requirement for a follow-on 90-day Claims period would not be applied to these names.

On July 30, while adopting the rest of the [Name Collision Occurrence Management Framework](#), the NGPC instructed the staff to confer with the community over the course of 90 days to determine how to apply RPMs to SLDs on name collision blocklists. On August 25, ICANN staff published a [paper examining the topic](#). This paper outlined a number of options, including the approach suggested by the joint letter and raised a number of questions about how to best implement certain aspects of that proposal.

This comment reiterates support for the approach suggested in the July 17 joint letter to the NGPC, and answers the implementation questions raised in the staff paper.

Ongoing Support for Proposed Approach

The Intellectual Property Constituency, the Business Constituency and the Registry Stakeholder Group, reiterate their support for the approach proposed in the July 17 letter to applying RPMs to SLDs on the name collision blocklists. Instead of treating SLDs on name collision blocklists as registry-reserved names, our proposed approach better addresses operational concerns of registries and provides more desirable protections for trademark owners.

As in the original letter, we note that this solution is unique to the circumstances of the Alternative Path to Delegation, and is not intended to alter the RPM Requirements (including the application of RPMs to names reserved at the discretion of the registry²) or to otherwise serve as precedent for future discussion of RPMs.

¹ As in the Joint Letter, we note that many registries have already satisfied this requirement by making names on the blocklist available during their original Sunrise periods.

² Names reserved by the registry remain subject to Section 2.4.3 of the RPM Requirements.

Responses to Questions Raised in ICANN Staff Paper

The ICANN staff paper raises five sets of questions about implementing the proposed approach. In most cases, we believe that applying the same general rules and frameworks already in place for Sunrise registrations will work well for registries' exclusive registration periods (sometimes referred to in the staff paper as "secondary Sunrise periods"³), but in recognition of the unique nature of this follow-on release of names, we propose an alternative approach regarding advance notification of the start of the exclusive registration periods. Specific responses to questions are provided below.

a. What is the appropriate notification to be sent to the trademark holders for registrations during a secondary sunrise? As per the current Sunrise requirements, the new gTLD registry notifies the TMCH of registration of the domain names during the Sunrise Period, so that matching rights holders in the TMCH also receive notification. Should this mechanism be present during a secondary Sunrise?

Yes, as with normal Sunrise periods, we believe it is appropriate for registry operators to notify the TMCH of the registration of domain names during exclusive registration periods so that matching rights holders in the TMCH can receive notifications.

b. Should there be a minimum/maximum duration of the secondary Sunrise period? What time period requirements would be appropriate?

c. What type of notice should registries be required to provide in advance of a secondary Sunrise? Should there be a requirement for date and registration requirements to be published in a similar manner as the original Sunrise period?

We address the questions in (b) and (c) together. Although in general we agree that it would be reasonable for registry operators to use the same notice and duration requirements for their exclusive registration periods as for Sunrise⁴, there are also unique opportunities with the release of these names that allow for an alternative approach to timing and notifications.

In the case of names being released from blocklists, because the set of potentially affected trademark holders can be determined by comparing names on registries' blocklists with trademarks in the TMCH, it should be possible to provide the relevant trademark holders with

³ As in the original Joint Letter, we distinguish between normal Sunrise periods and these exclusive registration periods in that registries would not be required to use EPP and may instead opt for manual handling of registration submissions.

⁴ For normal Sunrise periods, registry operators have one of two options. They can either provide a minimum of 30 day's notice followed by a 30 day Sunrise registration period (known as a "start-date Sunrise"), or they can provide a 60 day Sunrise registration period, provided that no names are allocated until the end of the registration period and that names are not allocated on a first-come-first-served basis ("end-date Sunrise").

proactive notifications prior to the start of exclusive registration periods. In addition, because all of the TLDs affected by blocklists have already been delegated, in many cases it will be possible to coordinate the timing of exclusive registration periods, reducing operational burdens on registrars, trademark holders, and agents, as well as for ICANN and the TMCH related to tracking the periods.

We therefore propose that **registry operators should be allowed to choose one of two paths** for announcing and conducting their exclusive registration periods.

In the first path, requirements would mirror those of Sunrise: registry operators could elect to either provide a minimum of 30 days of notice followed by at least 30 days of exclusive registration or, alternatively, provide a 60-day exclusive registration period provided that first-come-first-served is not used as the allocation mechanism in the case where multiple trademark holders with eligible marks seek to register the same SLD.

In the second path, registry operators could join one of two batched waves of start dates for exclusive registration periods, one in October and one in November. All registries opting into one of the two waves would operate 30-day exclusive registration periods beginning on the specific date selected for that wave. **Registries opting for this path would only need to provide 10 days' advance notice** of their intent to join a wave.

Regardless of the path that individual registries elect, the TMCH should provide notice to affected trademark holders that their marks will be included in specific upcoming exclusive registration periods.

d. Should the registry be required to report its secondary Sunrise to ICANN? How does ICANN confirm that registries are complying with the requirements?

Yes, the registry should be required to report its exclusive registration period to ICANN, by providing the same content that is required when submitting initial Sunrise dates and policy information. As indicated in our initial proposal, the exclusive access period should not impose registration policies that are more restrictive than those implemented during any previous Sunrise Period. Because registries that have already made blocklist SLDs available in their original Sunrise periods are not affected by these requirements, ICANN may need to rely on reports by the community to identify registries that do not make blocklist names available either in Sunrise or as part of an exclusive registration period.

e. What type of dispute resolution processes should be in place for a secondary Sunrise?

Registries should extend their existing Sunrise dispute resolution procedures to their exclusive registration periods.

Conclusion

We continue to support the joint proposal, as set forth in the letter dated July 17. We believe that this broad community-driven approach provides adequate trademark rights protections for trademark owners while reducing operational burden on registry operators, and can be implemented in a straightforward manner.

We strongly urge ICANN to adopt these guidelines.

Sincerely,

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