



VIA EMAIL

August 27, 2013

Mr. Fadi Chehadé
President and CEO
ICANN
12025 Waterfront Drive
Suite 300
Los Angeles, CA 90094-2536

Re: Comments of Microsoft Corporation on Rights Protection
Mechanism (RPM) Requirements

Dear Mr. Chehadé:

Microsoft Corporation ("Microsoft") welcomes this opportunity to provide its comments to ICANN on the Rights Protection Mechanism ("RPM") Requirements.

Executive Summary. Microsoft is concerned by and opposes the community stakeholder¹ proposals set forth in the *Memorandum on Revisions to RPM Requirements* ("Memorandum"), all of which have the effect of weakening the very same rights protection mechanisms that ICANN itself has heralded as "unprecedented."² Microsoft provides below more detailed comments on the Memorandum. Microsoft's comments on the Revised RPM Requirements document are set forth in the attached chart, and should be read in conjunction with this letter.

* * *

Proposal on Notice of Sunrise Period. Microsoft supported a separate 30-day required notice period for Sunrise as having the potential to be very helpful to trademark owners in preparing for over 1400 Sunrise periods. Merging the notice period with the Sunrise registration period (as well as the period during which Sunrise registrations are allocated) undermines the value of this notice. In addition, allowing names to be allocated while Sunrise

¹ Most, if not all, of the stakeholders in the group that put forward the proposal are or represent new gTLD applicants. To suggest otherwise is misleading.

² "ICANN's Trademark Clearinghouse to Provide Unprecedented Protections in the Domain Name Space," Feb. 25, 2013, available at <http://www.icann.org/en/news/announcements/announcement-25feb13-en.htm>.

registration applications are still being submitted appears to be a scare tactic directed at influencing trademark owners to submit their Sunrise registration applications on the first day of the Sunrise period. Trademark owners that resist the scare tactic will be effectively excluded from Sunrise, notwithstanding their eligibility. Microsoft opposes this proposal and the proposed alternative 2.1.1 and 2.1.3.

Proposals for Allocation of 100 names. Microsoft opposes this proposal (and the proposed alternative 2.2.5) because it allows a Registry Operator to facilitate and induce third-party registrants to circumvent the Sunrise period, one of the most important new gTLD rights protection mechanisms. ICANN's acceptance of this proposal will condone such facilitation and inducement. All names reserved by the Registry Operator pursuant to Section 3.2 of Specification 5 must be (a) registered and used by the Registry Operator; (b) released to third parties for registration after Sunrise; or (c) released for registration before Sunrise *only* to those Trademark Holders of Trademark Records (as both terms are defined in the Revised RPM Requirements document) that meet the registry's Sunrise eligibility criteria.

As a broader matter, Microsoft questions whether names "necessary for the operation and promotion of the TLD" truly are necessary if the Registry Operator can release them to third parties without harming the operation of the TLD. Also, ICANN should publish for community review all Qualified Registry Launch Program proposals/requests.

Proposed Exemptions. Microsoft opposes both proposed exemptions.

Allowing Registry Operators to request additional exemptions to offer additional Qualified Launch Registry Programs merely increases the number of domains that are exempt from the RPMs, circumvents the rights protection mechanisms, and increases the likelihood of consumer confusion and cybersquatting. If ICANN nonetheless decides to assist Registry Operators in facilitating and inducing circumvention of the RPMs by allowing additional Qualified Launch Registry Programs, such programs must (a) be posted for public comment before ICANN approves them; and (b) reduce the number of domains available to the Registry Operator under Section 3 of Specification 5.

If the "single secondary verified legal rights protection mechanism" set forth in proposed 5.2 will also validate national and regional trademark registrations, Microsoft opposes the proposal because it undermines the utility of the Trademark Clearinghouse. Trademark owners that have already entered their trademark registrations into the Trademark Clearinghouse will be compelled to have this "single secondary" source verify its trademark rights while rights owners that choose to have this "single secondary" source verify their trademark rights will also have to enter the Trademark Clearinghouse to participate in other registry's Sunrise and Trademark Claims periods. If only 10% of new gTLD Registry Operators request (and ICANN grants) an exemption to implement such a "single secondary verified legal rights protection mechanisms, the result could be well more than 100 "single" separate Trademark Clearinghouse equivalents. If ICANN nonetheless permits the creation of these alternative Trademark

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Clearinghouses, each must operate under contract with ICANN to ensure accountability, neutrality, and transparency.

Thank you for your consideration. If you have any questions or wish to discuss any of the points raised herein, please feel free to contact me at russpang@microsoft.com.

Respectfully submitted,

Microsoft Corporation

A handwritten signature in black ink, appearing to read "Russell Pangborn". The signature is fluid and cursive, with the first name "Russell" being more prominent than the last name "Pangborn".

Russell Pangborn
Assistant General Counsel – Trademarks

Attachment