

Verisign submits the following comments in response to the ICANN staff's proposed revisions to the Trademark Clearinghouse Rights Protection Mechanism Requirements ("TMCH RPMs") and the separate Revisions to Rights Protection Mechanism (RPM) Requirements, both dated August 6, 2013.

COMMENTS TO ICANN'S PROPOSED REVISIONS TO THE TMCH RPMs

Section 1.1 (Credentials and Testing)

- We recommend that language be added to clarify the length of time Integration Testing will take place.
- The language also states that the dates a registry operator will be assigned for integration testing will be determined, in part, "in conformance with ICANN-specified procedures." These additional procedures must be provided and included as part of the RPM document. (Identical language contained in Section 1.4 with regard to testing by registrars should also be revised accordingly.)

Section 2.1 (Sunrise Period-Notice of Registration Periods)

Section 2.1.1.2

- The language states that the Registry Operator must provide ICANN with "confirmation that the TMCH Sunrise and Claims Operator has accepted" the "start date and duration" of Registry Operator's sunrise. We recommend that ICANN specify in the RPMs: (i) the criteria and process steps involved in the TMCH Sunrise and Claims Operator's acceptance of the start date and duration of a Registry Operator's sunrise; and (ii) what documents and/or information the Registry Operators must provide to ICANN and the TMCH Sunrise and Claims Operator to sufficiently evidence this confirmation.

Section 2.1.1.3

- We note that Section 2.1.1.3 requires the submission of "[t]he complete Sunrise registration policies for the TLD," however, there is no provision for the submission of "general registration policies," which would also apply to sunrise. Accordingly, we recommend that general registration policies be included under Section 2.1.1 in the list of TLD Startup Information required.

Section 2.2 (Duration and Timing of Sunrise Period)

Section 2.2.4

- ICANN's revised language in this section provides that a "Registry Operator MUST NOT allow a domain name to be allocated (i.e. assigned, designated or otherwise earmarked) or registered in the TLD to a registrant that is not a Sunrise-Eligible Rights Holder with a valid SMD (as provided in 2.4.1 below) prior to the conclusion of the Sunrise Period."

- We recommend that the language be revised to allow for certain registration policies that provide for domain names in the new gTLD to be allocated or designated to an existing registrant with an exact match second level in another TLD operated by the registry operator. Registration policies, such as these, that have been enacted to avoid end-user confusion and costs to consumers and businesses from purely defensive registrations, are important mechanisms for consumer protection.
 - Accordingly, we recommend the following language be added to the end of Section 2.2.4: “except the Registry Operator can allocate (i.e. assign, designate or otherwise earmark) a domain name in the TLD to a registrant that is not a Sunrise-Eligible Rights Holder with a valid SMD if the registrant has registered the exact match second-level domain name in another TLD operated by the same registry operator and/or its subsidiary.”

Section 2.3.1.2

- The revisions to this section provide that a “[r]egistry Operator MAY specify requirements that are not related to the scope of mark rights, provided that such requirements are imposed consistently in the Sunrise Period, any Limited Registration Period and during General Registration (e.g., if the TLD is restricted by Registry Operator to allow registrations only to members of a particular industry or community, then Registry Operator MAY also impose such registration restriction on Sunrise Registrations).”
- While we fully agree that any special registration requirements should be imposed consistently throughout the registration periods, we recommend that the parenthetical example be expanded to allow for other registration requirements designed to provide consumer protection (such as those described in our comments under Section 2.2.4 above) where such registration policies may not be dependent solely upon whether or not the registrant is a member of a particular industry or community.
- The parenthetical should be modified as follows: “(e.g., if the TLD is restricted by Registry Operator to allow registrations only to members of a particular industry or community or to registrants with an exact second level domain name in a TLD operated by the Registry Operator and/or its subsidiaries, then Registry Operator MAY also impose such registration restriction on Sunrise Registrations).”

Section 2.4.3

- Section 2.4.3 references the Registry Operator’s ability to reserve certain domain names from registration. We recommend ICANN provide language clarifying that this Section does not conflict with Section 2.2.4 with regard to the prohibitions on registry operator’s ability to allocate certain domain names during sunrise.

Section 4.3 (Terms of Service)

- This section requires Registry Operators and Registrars to accept yet to be provided terms of service developed by ICANN and the TMCH Sunrise and Claims Operator.
- The community cannot be expected to fully comment upon and accept a document that links to unknown terms. In accordance with the multi-stakeholder model, we call on ICANN to post the terms of service for a public comment period in a manner that minimizes any delays. At the same time, to the extent the additional terms of service affect the RPMs, the affected portions of the RPMs should be reopened for public comment.
- This provision also provides that the terms of service may be revised from time to time. This language should be revised to, at a minimum, provide that any revisions must be immaterial in nature.

Section 4.4 (Service Levels)

- This section requires ICANN to “use commercially reasonable efforts to ensure that the TMCH Sunrise and Claims Operator provide the Services in accordance with its contractual commitments to ICANN.”
- A copy of the ICANN/IBM master agreement governing IBM’s provision of TMCH database platform services and sunrise and claims services has not been provided to the stakeholder community. As a result, the stakeholder community does not know the full scope of IBM’s “contractual commitments” to ICANN and cannot evaluate whether ICANN’s obligation to “use commercially reasonable efforts” pursuant to this section is sufficient.
- Given that ICANN is requiring participating registries and registrars to rely upon the proper operation of the TMCH, we believe that ICANN should provide the stakeholder community with a copy of the ICANN/IBM master agreement along with sufficient time for the community to review the agreement, understand its potential impact upon the RPMs, and propose any necessary additional revisions to this section as a result. At the very least, this section should be supplemented to require ICANN to use commercially reasonable efforts to enforce against IBM all of ICANN’s available rights and remedies under the master agreement (including those that become available to ICANN upon IBM’s breach of the master agreement).

COMMENTS TO ICANN’S PROPOSED REVISIONS TO RIGHTS PROTECTION MECHANISM (RPM) REQUIREMENTS

General Comments

- This separate document outlines several proposed revisions or exceptions to the TMCH RPMs, including a “proposal for exemption procedure” outlined in Section 3 of the document. While the Verisign agrees that certain exceptions should be made to the TMCH RPMs, we recommend that in those instances where the exceptions can be

clearly defined, they should be built into the RPMs at the outset. For example, requiring a registry operator to seek an exemption for registration policies that were designed to meet the needs of their intended customer base would cause unnecessary delays and create the need for, yet another, process to define the criteria by which such exemption would be reviewed and granted. Such processes introduce unpredictability into the planned customer offerings and go against the ICANN goal of encouraging innovation.

ADDITIONAL RPM REQUIREMENTS FOR EXISTING REGISTRANT APPROACH

Provided below we have set out more detailed criteria that could be included in the TMCH RPMs to allow for registration policies that provide for domain names in the new gTLD to be allocated or designated to an existing registrant with an exact match second level in another TLD operated by the registry operator.

1. Eligibility

Registrants who have a registered second -level domain name in a TLD that is (i) owned/operated by the same registry operator and/or its subsidiaries, and ii) the operation of such TLD is intended in whole or in part to mitigate potential user confusion among TLDs operated by such registry operator, then such registrants may have the sole right to register the direct match second level domain name in the new gTLD(s) owned/operated by that same registry operator and/or its subsidiaries. The registrant is not required to register domain names in the new gTLD(s), but, in the event the registrant elects to register a domain name in the new gTLD, they have the sole right to do so.

2. Name Selection

The persons and entities above will only be eligible to register their directly matching second level domain names that are currently registered in a TLD that is owned/operated by the same registry operator and/or its subsidiaries. All other second level names that are not directly matching are subject to TMCH-only-first Sunrise period.

CONCLUSION

Verisign believes that the changes suggested above will allow applicants to better serve the interests of their targeted customer base by reducing registrant and user confusion while still fairly and consistently protecting others' rights. We are happy to discuss this further at your convenience.