

27 August 2013

Internet Corporation for Assigned Names and Numbers (ICANN)
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

Dear Sirs

ZA Central Registry (“ZACR”) Comments on Proposed Rights Protection Mechanism (RPM) Requirements dated 6 August 2013

ZA Central Registry NPC (previously known as UniForum SA NPC) thanks ICANN for the opportunity to comment on the proposed Rights Protection Mechanism (RPM) Requirements document dated 6 August 2013.

ZACR has applied for four new gTLDs: .africa, .durban, .joburg and .capetown, all of which are Geographical TLDs.

Overview

We believe that in order to launch our TLDs in a way that best meets the needs of the geographic areas and communities concerned, it is important for us to include steps that are not catered for under the proposed Rights Protection Mechanism (RPM) Requirements document:

- A “pioneer program” which will allow us to register domain names for a select group of leading entities within the geographic areas represented by our TLDs before any Sunrise period. This will allow us to increase exposure for the TLD and will greatly assist us in getting “buy in” to the TLDs. We note that this aspect is addressed in the memorandum accompanying the proposed document (the “memo”).
- Reservation prior to the Sunrise period of names which are of significance to governmental authorities and communities in the geographical area represented by a TLD. This is dealt with in the memo, but we have issues with its implementation as described below.
- We should to give holders of locally registered trade marks priority over holders of trade marks registered outside the relevant geographical area during the Sunrise period, without having to apply this restriction to all registrations after Sunrise.

- Given the fact that many potential Sunrise participants will only participate in our TLDs' Sunrise periods, we would like to run an alternative rights validation system in parallel to the TMCH. Again this is dealt with in the memo and we discuss our concerns below.
- We wish to recognise rights which cannot be validated via the TMCH, such as company names. We intend to validate them using the alternative mechanism described above and allow their registration during Sunrise, but at a lower priority to "TMCH" marks. This is also discussed below.

Exception Mechanism

We note that the proposed section 5 set out in the memorandum to the RPM Document proposes a broadly stated exemption process for applicants wishing to implement Qualified Registry Launch Programs or which wish to make use of alternative rights verification mechanisms.

We suggest that the exemption process as set out is too vague to be of much assistance to either ICANN or the applicants. The section as currently drafted will inevitably lead to unnecessarily protracted negotiations for applicants wishing to avail themselves of these exceptions.

The proposed section as currently drafted also introduces an element of uncertainty which will make it difficult for applicants, and especially Geo TLD applicants such as us, to adequately plan our launch strategies.

We would have to wait until the conclusion of contract negotiations before we had any certainty as to whether governmental authorities will be able to reserve names of geographical or other significance, or whether we will be able to make use of an alternative rights verification mechanism.

As a result we strongly suggest a process that defines the parameters within which the exemptions will be granted, and also if possible a list of "pre-approved" scenarios in which the exemptions would be allowed.

We do not represent the geoTLD group, and accordingly we will not propose a comprehensive set of such scenarios to you; nonetheless, we have set out our proposed launch strategy below, and hope that it will assist you in developing such a set of scenarios.

Reserved Names Program

While we have applied for delegation of four geographic names, we will use ".africa" as the best example of how we wish to implement a reserved names program.

In applying for delegation of the .africa TLD we obtained the support of a majority of African Governments, as well as the support of the African Union. As a consequence of this support we are bound to administer the .africa TLD in a manner that benefits Africa and its people. Government stakeholders expect us to provide a mechanism whereby they can ensure that names that are important to particular African governments and communities are not registered by inappropriate entities, and that names that are widely considered offensive are not registered at all.

We have established a Government Reserved Names List Policy (or RNL Policy), which allows governments to reserve names in one of four categories:¹

¹ See http://www.africainonespace.org/rnl_policy.php

- Geographic Names, which are names of recognised geographic areas and features that are of substantial significance to governments (e.g. countries, provinces, major cities and towns, major rivers, mountains and lakes, UNESCO World Heritage Sites etc).
- Religious, Cultural and Linguistic Names, which are of substantial significance and uniquely linked to particular countries.
- Economic and Public Interest Names, which are names that are of substantial economic or public interest significance and uniquely linked to particular countries.
- Offensive Names, which will be considered offensive if the name itself would inherently have the effect of advocating prejudice or hate on the basis of race, ethnicity, political association, gender, sexuality, religion, conscience, or culture; or have the effect of inciting violence or the causing of harm to any person or class of persons, whether on any of the aforementioned grounds or otherwise.

Offensive names blocked from registration indefinitely; the other categories can be “redeemed” by the relevant governments for a period of 12 months after Sunrise.

We propose to implement similar programmes during the launch of “.durban”, “.joburg” and “.capetown”.

The proposed section 5.2 is problematic in this context for two reasons:

- It does not provide certainty that we would be able to obtain an exception to allow us to run the above program.
- It is not clear that such a program could be run before Sunrise, and allow for names to be reserved from registration during sunrise notwithstanding the existence of a corresponding TMCH validated name mark.

Alternative Rights Verification Mechanism

As a Geographical TLD applicant, we do not believe that it is feasible to expect local rights holders to spend USD 150 to validate marks using the TMCH when they only wish to participate in one Sunrise period. In the case of .africa we would be failing in our duty to our supporting governments and communities if we were to allow such a restriction to stand.

We note that proposed section 5.2 allows for applicants to request an exemption which would allow them to make use of an alternative rights verification mechanism. We have several concerns with the section as drafted:

- Applicants should be able to make use of such a mechanism if ICANN is satisfied that the mechanism meets certain standards, without applying for an exemption to do so. Use of such a mechanism should in other words be dependent on the validation standards met, not the discretion of ICANN.
- The section is not clear as to whether it refers to the rights that can be validated or the standards that the alternative mechanism must meet in validating them. For example it is not possible to validate a company name in the TMCH (unless the name has been validated by a court). The section as drafted can be read to mean that a company name can be validated as long as it is validated

using the same validation standards used by the TMCH. We would welcome such a position, but are not clear if this is the intention.

- It should be made clear that registered trade marks, court-validated marks and marks protected by treaty which are validated using the alternative mechanism, to the same standard as the TMCH, will have equal priority with TMCH-validated marks during the Sunrise period. For marks validated to a lower standard, see below.

Legal Rights not Verified under the TMCH

Numbered paragraph 3 on page 1 of the memorandum refers to “...verification of additional legal rights to be protected in the registry’s Sunrise period.” The proposed section 5.2, however, appears to deal only with alternative means of validation, not the validation of additional rights.

We propose to allow rights holders to validate rights such as company names and trading names (which have not been registered or court-validated) using the alternative rights verification mechanism prior to our Sunrise phases. However the current proposed clause 5.2 does not make it clear how such rights could be dealt with in the launch period of our TLDs. To be specific:

- Would rights holders be able to validate such rights before Sunrise using the alternative rights verification mechanism in the same way as trade mark holders would validate marks using the TMCH, or would such validation amount to the mark being “earmarked” as described in section 2.2.4 of the draft RPM Requirements document?
- Would such rights holders be able to register validated marks during Sunrise, subject to their rights having a lower priority than registered trade marks, court-validated marks and marks protected by treaty validated to a “TMCH standard” via the TMCH or the alternative mechanism?

Contract Architecture

Any exception to the RPM requirements granted to an applicant should ideally be contained in the Registry Agreement, probably as an amendment to Specification 7. The RPM Requirements document can contain the exception mechanism, but the exception would be recorded in the Registry Agreement.

Miscellaneous

Section 2.2.4 states that a domain name may not be registered to a registrant which is not a “...Sunrise-Eligible Rights Holder with a valid SMD...” before the end of the Sunrise period.

Section 3.2.4 states that “The Sunrise Period and a Limited Registration Period MAY overlap.”

The two sections appear to be contradictory. Allowing domain name registrations during the LRP would necessarily involve allowing registration in contravention of section 2.2.4 were the two periods to overlap.

Yours faithfully

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