

To the ICANN Board:

Minds + Machines respectfully submits the following with regard to the recently published draft of registry Rights Protection Mechanism (RPM) requirements:

First, we are pleased to note some helpful changes. Notably, the appropriate and rational changes that ICANN has made, particularly in striking 4.4 (Payment) and 4.5 (Changes), reflect a more reasoned position. The option to extend the Claims Period and Trademark Sunrise (2.2.3) is also a welcome change, allowing registries additional flexibility in their roll-outs to better serve registrants.

Despite extensive conversations with ICANN staff by concerned NTAG members, however, during which no significant arguments were advanced for a contrary position, several important changes requested by applicants in order to serve their communities better are still missing. These changes are urgently sought by city governments, communities, and others who require reasonable flexibility in allocating names.

NTAG members have met constructively on these issues with members of the intellectual property community at ICANN and as a result of those conversations we believe that, if properly constructed and administered, these requested changes would not diminish effective intellectual property protection.

The major changes needed are as follows:

- The ability to run an effective Founders' Program
- The ability to restrict trademarks geographically
- The ability to validate trademarks outside of the Trademark Clearinghouse (TMCH)
- The ability to run Limited Registration Periods (LRPs) with different eligibility requirements than generally pertain in the TLD

We are extremely disappointed that the RPM document still does not allow an adequate Founders' Program (paragraph 2.4.4). In order to have a successful new gTLD launch—that benefits the global Internet community as well as the markets to which each specific new gTLD is designed to serve—registries *must* be allowed to conduct a Founders' Program that allows prominent figures in the respective markets to registrar and promote domain names in the new gTLD. The requirements of 2.4.4, combined with the inadequate date restrictions of 2.3.1.4 effectively hobble any attempt to launch a new gTLD that will “foster diversity, encourage competition, and enhance the utility of the DNS,”¹ the stated purpose of the new gTLD program.

While the ability to restrict marks eligible for the Trademark Sunrise to a class of goods related to the new gTLD in question is good, the inability to restrict marks geographically (unless the entire new gTLD is so restricted) is unacceptable. This allows .auto and .fishing to restrict marks to those that serve the automobile and sport fishing industries (even if those new gTLDs are not closed or restricted), respectively, but does *not* allow Moscow or New York to limit their Trademark Sunrises to marks that serve their respective populations. This is unfairly detrimental to geographic new gTLDs.

The new RPM document is missing any allowance for trademark validation that uses an alternative to the ICANN-designated TMCH, even when the validation criteria are identical to those used by the TMCH. We note that very few marks have been deposited with the TMCH so far, possibly because the system is unduly burdensome, particularly for trademark holders who may be interested in only one new gTLD, as will often be the case for smaller trademark holders who may be interested in city or other geographical gTLDs. This, combined with the lack of service-level agreement disclosures from the ICANN-designated TMCH providers, is highly worrisome. NTAG has been in ongoing discussions with ICANN staff about the need for

¹ *gTLD Applicant Guidebook*, Version 2012-01-11, Preamble.

such an alternative trademark validation procedure and we are extremely disappointed by its notable absence from this document. The lack of an alternative trademark validation procedure is highly damaging to the ability of geographical gTLDs to engage with their local, smaller trademark holders, and should be rectified without delay.

Particularly for geographical gTLDs, LRPs that have different eligibility requirements than will pertain during general availability are crucial. Certain names must be allocated to government functions, even ahead of trademarks. For instance, police.london should go to the police department in London, not to the music group of the same name—we have heard no disagreement on this point. Geographic gTLDs in particular have responsibilities to the public, and the ICANN RPM system must allow governments to exercise them. The ability to have LRPs that are more restrictive than general availability eligibility—for instance, to allocate to government entities their exact names or widely-known nicknames—is a crucial step in making the new gTLDs credible and functional. To refuse to address this point—as ICANN has done so far – is unconscionable.

Happily, it is not too late to provide for rules that allow carve-outs for gTLD RPMs to reflect the reality of how the new gTLDs will be used. The NTAG negotiating team has brought eminently reasonable proposals to the attention of ICANN staff, and we were very disappointed not to see them reflected in the latest RPM draft. We urge ICANN to adopt these proposals, some of which are outlined in this letter, to give new gTLDs the best chance to serve all of the public interests that are affected by new gTLDs.

Sincerely,

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