

To the ICANN Board:

We, the members of the New gTLD Applicant Group (NTAG), having taken the time to read and review the public comments on the Revisions to Rights Protection Mechanism (RPM) Requirements, respectfully submit the following response:

We are supportive of the option to offer a 60-day Sunrise period, which does not distinguish between notice and Sunrise periods and would allow registries additional flexibility in their rollouts to better serve their registrants. A combined 60-day Sunrise/notice period would also be beneficial to brand owners, who would be granted additional time to plan and budget their registration strategy prior to the delegation of domains to the general public. Several commenters indicated that a 60-day Sunrise/notice period may somehow disadvantage certain trademark holders by allowing allocations after 30 days. Although the proposal included in the [Memorandum on Revisions to RPM Requirements](#) (Memorandum) would not disadvantage any trademark holders versus the currently required 30 day notice and 30 day Sunrise<sup>1</sup>, applicants would be willing to accept a limitation that in order to offer a longer Sunrise in lieu of a 30 day notice period, all allocation decisions must be made at the end of the Sunrise period.

Similarly, the NTAG supports the ability to run parallel Sunrise periods, landrush and/or limited registration periods, with the actual delegation and registration of domains remaining subject to Sunrise requirements. Thus, prospective landrush registrants would be permitted to request domain names immediately upon launch, but such requests would be subordinate to any competing Sunrise claim by a Trademark Clearinghouse entry owner, and would not result in delegation until after all Sunrise registrations had been allocated.

The NTAG believes that further improvements must still be made with respect to providing for an adequate founders' or pioneer program. 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 permitted to conduct a pioneer program that allows prominent figures in the respective markets to register and promote domain names in the new gTLD upon launch. These programs should significantly enhance the effectiveness of the rights protection provided during Sunrise periods by raising awareness of the TLD and the Sunrise period, but only if these names are active prior to or during Sunrise. In reviewing the submitted comments, the NTAG is cognizant that any pre-Sunrise pioneer program must be designed in a manner which respects intellectual property rights; accordingly, we envision that the total number of such registrations would be limited to the 100 reserved names as set forth in Spec. 5, Section 3.2. of the Applicant Guidebook. Additionally, any names allocated under a pioneer program would still be subject to the Trademark Claims service.<sup>2</sup>

The NTAG further supports a slight modification of the proposed language for Section 2.2.5 in order to clarify that "Registry Operator MAY register any or all of such domain names in the TLD prior to or during the Sunrise Period to third parties **or to itself** in connection with a

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<sup>1</sup> <http://forum.icann.org/lists/comments-rpm-requirements-06aug13/msg00030.html>

<sup>2</sup> United TLD describes a process for supporting the claims service as part of a founders program at <http://forum.icann.org/lists/comments-rpm-requirements-06aug13/msg00018.html>

registry launch and promotion program for the TLD...” Any pre-Sunrise domains used by a registry pursuant to Spec. 5, Section 3.2 for promotional purposes should also be subject to the criteria set forth for the pioneer program; namely, that such domains should be related to the promotion of the TLD, and that such names should still be subject to the Trademark Claims service.

NTAG continues to believe that the principal purpose of Sunrise and the startup process should be to prevent consumer confusion<sup>3</sup> and infringement of legal rights. In order to minimize the possibility of consumer confusion, in some situations rights other than those represented by trademark holders in the TMCH must also be considered during the Sunrise and startup periods. Reviewing comments from a variety of participants in the process, the following general categories of rights have been identified as important to helping consumers reach the sites that they will expect when using new top level domain names:

- For TLDs associated with a particular geographical region, place names and services provided by public authorities<sup>4</sup> (e.g., mayor.nyc or montreal.quebec), or Sunrise periods that specify a geographic nexus requirement.<sup>5</sup>
- For community TLDs, names associated with the purpose of the community<sup>6</sup> (e.g. fencing.sport)
- Where registry operators seek to provide consistency across a number of TLD names, names that are exact matches to those registered by the same registrant in another TLD.<sup>7</sup>

Each of these propositions has significant support in the public comments submitted to ICANN, so we strongly encourage ICANN to alter the RPM Requirements to allow registry operators to protect these rights during the startup and Sunrise process.

Many applicants’ startup plans allow for these very protections in their original applications, which were posted for public scrutiny for several months prior to the initial evaluation process. In [almost] all cases, no objections were raised during that process. We urge ICANN to allow applicants to incorporate start-up procedures included in applications or otherwise announced unless, upon review, ICANN determines that the procedures would contribute to consumer confusion or the infringement of legal rights. Where extensive public review of the application has already taken place, though, the presumption should be that these startup mechanisms should be allowed.<sup>8</sup>

If ICANN finds it necessary to use an “exceptions process”, as proposed in the Memorandum rather than simply building these procedures into the RPM Requirements document, the procedure should be efficient, speedy and predictable. In particular, we propose that ICANN offer a simple online form as part of the CIR process with a drop-down menu or checkboxes for selecting predetermined Sunrise exception categories, as described above. A non-exhaustive example of such a form may be accessed at this [link](#). So long as a

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<sup>3</sup> <http://forum.icann.org/lists/comments-rpm-requirements-06aug13/msg00026.html>

<sup>4</sup> <http://forum.icann.org/lists/comments-rpm-requirements-06aug13/msg00032.html>

<sup>5</sup> <http://forum.icann.org/lists/comments-rpm-requirements-06aug13/msg00002.html>

<sup>6</sup> <http://forum.icann.org/lists/comments-rpm-requirements-06aug13/msg00053.html>

<sup>7</sup> <http://forum.icann.org/lists/comments-rpm-requirements-06aug13/msg00037.html>

<sup>8</sup> <http://forum.icann.org/lists/comments-rpm-requirements-06aug13/msg00012.html>

registry selects one of the set categories, there should be a presumption of approval from ICANN. The entire approval process should be limited to 15-days unless the registry proposes an exception, which is not included in one of the predetermined categories or in its gTLD application, in which case the proposal may be submitted for public comment and more extensive review. In addition, once a new class of exemption is made through the review process, it should be offered to future applicants who are similarly situated.

Although a number of public comments argue against allowing non-TMCH rights, as proposed in the Memorandum (e.g., the IPC's argument that "The priority of Sunrise Registration over all other forms of third party registration must be respected and maintained."),<sup>9</sup> none of these arguments provide any rationale for why strictly prioritizing trademark rights against all other interests in a particular string make sense. On the other hand, public comments have made it clear that trademark absolutism has the potential to result in a number of confusing and unexpected outcomes.<sup>10</sup> Similarly, commenters have observed that some trademarks have been used abusively to gain unfair advantage in previous TLD Sunrise periods<sup>11</sup> and raised concerns over the use of trademarks to potentially preclude the use of generic terms in a generic or descriptive manner.<sup>12</sup> New gTLD applicants support trademark rights and are committed to providing meaningful rights protection throughout Sunrise and startup periods, but continue to believe that it is critical to recognize other rights under specific situations in order to avoid substantial confusion with the launch of the new gTLD program.

Sincerely,  
the NTAG

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<sup>9</sup> <http://forum.icann.org/lists/comments-rpm-requirements-06aug13/msg00022.html>

<sup>10</sup> See, for example <http://forum.icann.org/lists/comments-rpm-requirements-06aug13/msg00032.html> (on the conflict between trademarked names and city names in .quebec); <http://forum.icann.org/lists/comments-rpm-requirements-06aug13/msg00028.html> (conflicts with neighborhood names in .nyc, or the Mayor's office)

<sup>11</sup> <http://forum.icann.org/lists/comments-rpm-requirements-06aug13/msg00051.html> (trademarks "gamed as done in the .EU launch and other instances")

<sup>12</sup> <http://forum.icann.org/lists/comments-rpm-requirements-06aug13/msg00052.html>