

27 August 2013

**ARI Registry Services Public Comment — Rights Protection Mechanism (RPM) Requirements**

ARI Registry Services welcomes the opportunity to provide the following comments on the 6 August 2013 version of the Rights Protection Mechanism (RPM) Requirements.

ARI Registry Services supports the proposals contained in the Memorandum on Revisions to RPM Requirements and the Letter from geoTLDs posted for public comment. ARI Registry Services would like to highlight the following key additional points. All references to headings and section numbers are to those in the RPM Requirements document while cited text is italicized.

**Section 1.5 – Credentials and Testing**

*“Registry Operator MUST NOT accept a Sunrise Registration (as defined in Section 2 below) or Claims Registration (as defined in Section 3 below) from any registrar that has not completed Integration Testing. ICANN and the TMCH Sunrise and Claims Operator will maintain a list of registrars that have completed Integration Testing and make such list available to Registry Operator either through ICANN’s website or the Trademark Clearinghouse’s website. Such list will be updated by ICANN on a daily basis.”*

**Comments**

ARI Registry Services notes that a registrar is not required to interact with the TMCH during the process whereby a Sunrise Registration is created. Registrars only require interaction with the TMCH when the domain name is subject to a claim. This limited interaction is supported by the nature of the tests that must be performed by registrars to complete Integration Testing; registrars are required to download a Trademark Notice and validate it against a sample Trademark Notice – functionality only required for a Claims Registration.

As such, prohibiting a registry operator from accepting a Sunrise Registration from a registrar that has not completed Integration Testing is unnecessary and restricts the registry operator’s distribution channel, especially considering that several registry operators will be ready to commence sunrise processes prior to the completion of the TMCH implementation and testing processes. ARI Registry Services strongly recommends that section 1.5 be amended as follows:

*“Registry Operator MUST NOT accept a Claims Registration (as defined in Section 3 below) from any registrar that has not completed Integration Testing...”*

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**Section 2.4.4 – Registration Mechanisms**

*“Registry Operator may not allocate or register any domain names related to a Limited Registration Period, until Registry Operator has completed all allocations and registrations related to the Sunrise Period.”*

**Comments**

ARI Registry Services recognizes that this provision is intended to ensure that any Limited Registration Period does not circumvent the priority granted to rights holders by the Sunrise Period. However, the manner in which this intention is expressed in section 2.4.4 serves to limit the flexibility of registry operators during the launch of a TLD. ARI Registry Services recommends that section 2.4.4 be amended as follows:

*“Registry Operator may not allocate or register any given domain name related to a Limited Registration Period, until Registry Operator has completed all allocations and registrations with respect to that domain name in the Sunrise Period.”*

**Verification of Marks Other than through the TMCH**

The TMCH Sunrise and Claims Operator has, through its own admission, failed to conduct sufficient outreach in non-ASCII communities. As a result, the ability of the ICANN designated TMCH to facilitate the protection of verified legal rights in non-ASCII communities is compromised.

Registry operators should be granted the option to accept Sunrise applications (through ICANN accredited registrars) from registrants not utilizing the ICANN-designated Trademark Clearinghouse, provided that;

- proper validation of such applications and their claimed rights are conducted;
- results are publicly posted, and confirmed to meet the requirements of the “Trademark Clearinghouse Requirements”; and
- appropriate Sunrise Challenge processes are in place should any dispute or contention arise from the acceptance of such applications by the Registry.

This includes allowing only the same kind of rights allowed in the ICANN-designated Trademark Clearinghouse (registered trademarks, court-validated trademarks, marks protected by statute or treaty). This also includes using the same mapping criteria between marks and DNS Labels as the TMCH. These applications should have no more or less priority than those based on TMCH verified marks.

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