

## Comments on the Rights Protection Mechanism (RPM) Requirements

As applicant for the .BERLIN top-level domain and party affected by the proposed Rights Protection Mechanism (RPM) Requirements dated 6 August 2013 we have discussed the issues coming along with this proposal with stakeholders concerned by it.

As member of the [GeoTLDs] interest group we have signed a joint letter of applicants for geographic gTLDs to ICANN dated 12 July 2013.

Some of the issues we raised have been resolved but some remain.

### CityTLDs are responsible to their City Community

Top-level domains for cities (CityTLDs) have special responsibilities to the city communities they serve, as articulated by the relevant governmental authorities and agreed upon in the agreements for the required Letters of Support or Non-Objection. Many functions of government, including emergency services, e-government initiatives, transport, economic development, tourism, administration and other core areas of “welfare provisions” of a city are impacted by a gTLD identified with the city.

In order to accommodate these important and legitimate needs, we believe ICANN should allow flexibility in the proposed Rights Protection Mechanism (RPM) Requirements. Since these proposed RPM rules had not been part of the original Applicant Guidebook; applicants would have written their applications different if these requirements had been there at the time of application. The same is true with regard to the contractual agreements applicants had to engage in with their respective authorities.

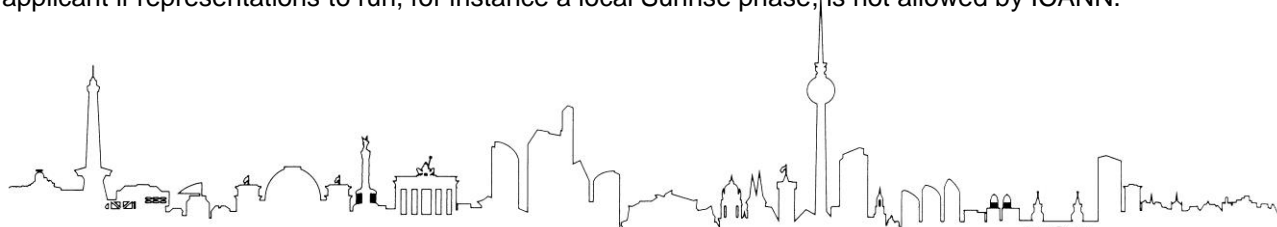
Therefore flexibility is needed and we do not expect that it will raise any objections from other stakeholders. We request to make it possible for the .BERLIN CityTLD to properly serve our city community, as set forth below.

### Government(s) may revoke Support Letters

As part of the new gTLD application process, we were required to obtain documented government support of the City of Berlin to be submitted together with our application. Obtaining such supporting documentation required us to make representations as to rules for allocation of domain names to relevant community groups and stakeholders.

We want to continue with our original plans to make sure that they can (i) prioritize and allocate names to appropriate organizations and individuals in a manner that promotes our CityTLD while protecting the rights of locals and meeting commitments mandated by the supporting government, and (ii) launch our CityTLD in a way that best promotes its adoption and ensures its success.

ICANN should be aware that the relevant government(s) may revoke their support letter for the applicant if representations to run, for instance a local Sunrise phase, is not allowed by ICANN.



## **.BERLIN proposal for a Local Community Sunrise**

As one of our core objectives is to promote and build a digital community for the City of Berlin we think that the .BERLIN Registry must have the ability to implement an approach that gives priority to organizations and individuals with a nexus to the City of Berlin.

Allowing only TMCH trademark holders be given priority would defeat this objective, would weaken the integrity of .BERLIN, and would cause a public relations problem for many supporting organizations and the city government, potentially resulting in low adoption of .BERLIN. This is clearly undesirable.

Especially SMEs and craftsmen will not have any need to deposit their mark in the TMCH except to obtain a .BERLIN registration. If they are interested just in the .BERLIN gTLD they are faced by a US\$150 fee to validate their trademark for a single domain. Much worse, SMEs and craftsmen often even do not have a trademark but a company name that is protected at the same level as a trademark by German trademark law. This will effectively turn intended registrants away from .BERLIN, and could undermine the success of .BERLIN.

Our proposal provides that our Registry seeks an exemption from the RPM requirements to offer a .BERLIN gTLD-specific start-up plan which includes a local priority period before the TMCH Sunrise period. This phase will have mechanisms in addition to the Trademark Clearinghouse for verification of additional legal rights to be protected in the local priority period.

Both the local priority period as well as the mechanisms have been already outlined in our original application which successfully passed Initial Evaluation. We do not intend to introduce any new proposals. By this we do not ask ICANN for any exemptions on the original Applicant Guidebook but on the new Rights Protection Mechanism (RPM) Requirements without delaying the contracting process.

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We do not believe that ICANN wishes to impose restrictions that have a detrimental effect on the success of .BERLIN. Unfortunately however, if the above topic is not adequately addressed, .BERLIN will most likely be negatively impacted and our government will not receive the benefits intended when it chose to support our application for .BERLIN.

We are happy to meet with ICANN Staff to discuss a mutually agreeable solution of the concerns raised, and the solution proposed herein. We are keen to resolve these issues as soon as possible so that the contracting process continues smoothly and in a timely fashion.

Thank you for considering our views and concerns. We are very pleased to be part of ICANN's New gTLD Program and the innovation and opportunities that will emerge over the coming years.

Yours sincerely,



Dirk Krischenowski, CEO dotBERLIN GmbH & Co. KG (.BERLIN)

