



May 1, 2015

GoDaddy would like to thank ICANN and its staff for work in connection with the Rights Protection Mechanisms Review Draft Report. GoDaddy is happy to provide its feedback and experiences regarding the Rights Protection Mechanisms.

Our comments regarding specific sections of the draft report are set forth below. Additionally, we have provided responses to some of the discussion questions outlined in the draft report. Finally, these comments may not comprehensively represent GoDaddy's interests on these issues, and we reserve the right to modify them or issue new comments in the future.

### **Sunrise Period**

#### Monthly Sunrise Transactions

Figure 4-2, on page 32, illustrates the number of monthly Sunrise period registrations in 2014, with an average of 3,383 registrations occurring per month.

According to Figure 4-2, there were 33,003 transactions in 2014, which would be an average of 2,750 registrations per month, not 3,383 per month. Please explain this discrepancy.

#### General Feedback

In the second paragraph on page 34, the pricing of domains during Sunrise is discussed with one suggestion to mitigate this issue being a requirement for a registry to publish its list of premium names on its website.

While we feel this is a good suggestion, it would also be helpful to provide a definition for "premium names." By defining the criteria for premium names both registrars and consumers will have a better understanding of which names may be considered premium and why. Accordingly, we ask that the term "premium names" be defined, along with a clear process for declaring, promoting to, or demoting from, this "premium" status.

The second paragraph on page 35 further addresses Sunrise and requests community feedback regarding the effectiveness of the Sunrise period and whether it has achieved what it was intended to do.

We believe the Sunrise period has been effective, and achieved what it was intended to do, in part. While trademark owners are given the opportunity to protect themselves during

Sunrise, the cost of many of these “premium” domains can be exorbitant and therefore prohibitive. Since Sunrise can be very expensive, only those companies or individuals willing to “pay to play” truly benefit from this process. We would like to see Sunrise prices not elevated beyond standard General Availability pricing, with the exception of the Sunrise processing fees, in order to encourage use of Sunrise.

### Reserved Names

Community input has been requested on the considerations relating to reserved names (paragraph 3, page 40).

In response to this request, we ask for the following regarding Reserved Names:

- 1) An accurate daily list of current reserved names, including Fee for each name if it were to be made available published on a website.
- 2) Domain check commands return with a message that a domain is reserved.
- 3) A notice sent to registrars when names are added or deleted from the reserved list or a place to download the updated lists daily.
- 4) Require registries to have a set of reserved names defined and not updated before the TLD enters Sunrise?

### **Trademark Claims Service**

In the first paragraph under Trademark Claims Service on page 41 it reads as follows: The Trademark Claims period follows the Sunrise period and runs for at least the first 90 days of general registration. “General Registration” in a TLD deemed to occur on the first day following the Sunrise Period in which domain names are generally made available to all registries that are qualified to register domain names within the TLD.

This 90-day period appears to have been a source of confusion for many people. Each Registry has translated this 90-day requirement differently and we would like to see it better defined. For example, should Early Access have been included/allowed as part of the 90-day requirement? Please provide clarification and indicate which actions may or may not be included/allowed as part of the 90-day requirement.

### General Feedback

In the first paragraph on page 45 the report mentions that ICANN has heard concern expressed over the Claims notices being inappropriately worded, and suggestions that some registrars may be acknowledging notices without having displayed them to the registrants.

We would be interested in knowing if there have been any compliance/auditing efforts to confirm that this is occurring. Please advise if there is substantive evidence of this practice.

## Discussion Questions

Below are our responses to specific discussion questions outlined in the report. Absent questions indicate that we have no strong opinion on the topic under discussion

### Section 3: Trademark Clearinghouse

a. What were the challenges, if any, in terms of satisfying the requirements for trademark inclusion into the Clearinghouse?

Ensuring contact information for Registrant was exact across all trademarks to be included in the TMCH – fixing any variations in suite numbers, etc. Also having to resubmit evidence of current use – use requirements at times seemed more stringent than USPTO requirements.

e. What factors could be considered to make the process of updating Clearinghouse records more effective?

Allow for marks to be assigned and/or moved from one account to another. In instances such as acquisitions/mergers when new marks are added to a company's portfolio, it is not possible to transfer records from one agent to another or from one holder to another. This needs to be fixed/addressed.

i. Was the proof of use requirement helpful in meeting the goals of a creating a standard that accommodates practices from multiple jurisdictions?

Proof of use seemed overly strict. Registrations recently renewed by the USPTO were not accepted by TMCH. The evidence of use, which was sufficient for renewal with USPTO, was not sufficient for the TMCH.

j. What were the challenges, if any, in terms of satisfying the proof of use requirement?

See above.

### Section 4: Sunrise Period

a. How effective is the Sunrise period for protecting intellectual property rights?

We believe the Sunrise period could be made to be more effective, given the premium price for many domains in Sunrise. Often times it is necessary to wait for GA before purchasing domain(s) to keep the process cost-effective. However, doing this can potentially result in losing the name to someone else. Rights Protection Mechanisms (RPMs) like UDRP or URS are viable options, however this forces rights holders to incur additional costs, which often times is why they didn't purchase the name during Sunrise initially.

b. Are the Start-Date Sunrise and End-Date Sunrise alternatives useful?

Yes.

c. What were the challenges, if any, in terms of registering a domain name during the Sunrise period?

In general registration during Sunrise has been a straightforward process as long as the SMD file is current (has not expired).

d. What factors can be addressed to make Sunrise processes more effective?

We would like to see Sunrise prices maintained at standard General Availability pricing, with the exception of the Sunrise processing fees, in order to encourage broader use of Sunrise.

f. Did the use of SMD files help streamline the process? Were there any technical issues encountered, if so, what were they?

SMD files sometimes fail and then have to be regenerated, which slows the overall registration process.

g. Is there an appropriate balance of registry discretion to reserve names from registration and the inclusion of names in the required RPMs? Should additional considerations be applied around registry allocation practices and their interaction with the required RPMs?

ICANN has limited the number of names that may be reserved by registries, but we question whether imposing a limit is the right answer. What is required is a change/notification process, for example publication of the reserved list 60 days prior to Sunrise, as well as a 60-day notification of the addition or removal of names from the list.

## **Section 5: Trademark Claims**

a. Is the Claims notice an effective form of communication?

While it is not always clear whether registrants understand the Claims notice, the fact that some registrations are subsequently abandoned seems to indicate that the notices are having the desired effect.

b. For those with registrant/customer interactions, what has been the customer response to Claims notices?

See (a), above.

c. Were any technical issues identified relating to the Claims service?

Yes, for pre-registration and claim key expiration. There was a misunderstanding that claims were at the TLD launch level and not the SLD level.

Additionally, having to repeatedly request claim acceptance even though the claim data had not changed since the initial claim acceptance is burden on the applicant and can lead to the applicant not being allocated the domain name.

d. Is there any other piece of information that should be included in the Claims notice?

Yes, it would be helpful if the Claims notice could reflect when the claim was last updated, indicating either new claims added or claims deleted, in order to remove the 48-hour claims acceptance window.

e. How helpful is it to have the Trademark Notice in English and in the language of the registrant's registration agreement? Should additional language considerations be applied?

Trademark Notice should be in the language of the DNRA, all other languages should be optional for the registrar.

k. How clear is the Notice of Registered Names to the trademark holder? Is there any other piece of information that should be included in the Notice of Registered Name?

It would be helpful if registrant/WHOIS information could be included with the notice.

l. Is the Notice of Registered Names received in a timely manner?

Define timely. Some notices are received same day, other notices are received 8-9 days after registration.

## **Section 6: URS**

d. How could communication processes be improved among URS providers, registry operators, registrars, and registrants?

According to section 4.2 of the URS document this notification is sent to the registrant only (and Registrar). However, it may be useful to send to Admin contact as well.