

Google Registry

February 28, 2014

Via Electronic Mail to:
comments-qlp-addendum-13feb14@icann.org

Re: Public Comment of Google Inc. on the Qualified Launch Program Addendum

Google Registry is supportive of ICANN's proposal to add a Qualified Launch Program (QLP) Addendum to the Rights Protection Mechanism Requirements in order for Registry Operators to register a limited number of names to third parties prior to the Sunrise period, and we appreciate the opportunity to comment on the matter. While we believe that the draft is sufficient to address third-party registrants that are governmental authorities, the proposed Addendum presently excludes other categories of deserving launch partners.

Registrations that are Beneficial to the Public Interest

For instance, we encourage ICANN to more broadly consider allowing pre-registrations under Section 2.2 of the QLP Addendum for registrants and domains that are beneficial to the public interest. This can include domains comprised of governmental agencies or services such as <police.madrid> and <subway.berlin> (to the extent those are not considered "governmental authorities") as well as domains dedicated to the provision of public information such as <earthquake.osaka> or <911.nyc>. Any such exceptions should be narrowly tailored to avoid abuse, and should be subject to the Trademark Claims Service, the Uniform Rapid Suspension (URS), and the Uniform Domain-Name Dispute-Resolution Policy (UDRP) in order to ensure that the websites retain their public interest function. In addition, the registry operator will be subject to the Post-Delegation Dispute Resolution Procedure (PDDRP), prohibiting it from engaging in any abusive activity under the guise of a QLP. With such protections in place, we believe that a narrow public interest exception will not interfere with trademark law's primary purpose of preventing consumer confusion nor its parallel function of allowing brands to protect their reputation.

Registrations that Facilitate the Purpose of the TLD

Further, we note that the stated aim of the QLP is to "provide a mechanism for Registry Operators to register a limited number of names to third parties to promote their TLDs prior to

the Sunrise period.”¹ (Section 3.2 of Specification 5 echoes this language, stating that Registry Operators may activate in the DNS up to 100 names “necessary for the [] promotion of the TLD.”) In order to fulfill this aim, and to advance one of the primary goals of the new gTLD program, which is to “foster diversity, encourage competition, and enhance the utility of the DNS,”² we propose that ICANN incorporate into Section 2 of the QLP Addendum an additional exception (under a new Section 2.3) for a limited number of trusted and qualified launch partners whose participation is crucial to meet the purpose of a gTLD. This exception is especially relevant for the many new gTLD registries that will be focused on specific industries, geographic locations, or demographics, where a QLP that allows prominent entities in those respective markets to pre-register and promote domain names will help encourage greater adoption and innovation. Namely, by publicizing quality websites to consumers at an early stage and indicating the type of specialized content they will find there, the registry operator will be able to guide interested registrants to the opportunities afforded by second level domains in that space. In addition, by launching and promoting select domain names, the registry operator will raise awareness of the Sunrise program and allow trademark holders who may have otherwise not been able to avail themselves of the opportunity to protect their brands during Sunrise to do so.

Proposed Criteria

In order to maintain adequate safeguards against intellectual property infringement and minimize the chance of consumer confusion, we propose the following limitations to the TLD-promotion QLP. First, any third-party launch partners must create unique customized websites which directly facilitate the purpose of the TLD, as expressly set forth in the written TLD application and registry policies. Compliance with this criteria may be periodically verified, and the domains at issue will be subject to cancellation for non-compliance.

Second, launch program second-level domains should be strictly limited to an individual’s name, a company’s brand or business name, or key generic terms related to their field. While we propose that brands or business names participating in the QLP should match a label registered in the Trademark Clearinghouse (TMCH) per Section 2.1, this requirement is inapplicable to generic terms, which must fall under our proposed Section 2.3 exception. We acknowledge that some generic terms may also serve as trademarks for specific unrelated contexts; for example, Google owns trademarks for GLASS, CHROME and NEST. However, should the QLP use objectively verifiable means to ensure that the domain is comprised of a widely recognized generic term in the industry targeted by the TLD (e.g., through sample evidence of search results or industry websites demonstrating use of the term in a generic sense), this should alleviate the risk of consumer confusion, the core principle of trademark protection. Thus, the above-referenced Google trademarks could be part of theoretical third-party QLPs for glass.ware, chrome.wheels, or nest.egg, so long as they were subject to the criteria set forth herein. Further protecting rights holders would be periodic audits for compliance, the Trademark

¹ Qualified Launch Program Addendum Announcement, Section 1: Description, Explanation, and Purpose

² gTLD Applicant Guidebook, Version 2012-01-11, Preamble.

Claims Service, the URS and UDRP dispute resolution procedures, and the PDDRP mechanism for abusive registries. We believe that these rights protection mechanisms will provide adequate safeguards against abuse while ensuring that legitimate generic uses are encouraged for the promotion of specialized TLDs.

We also propose that only 50 domains be permitted to be allocated and registered to third parties in advance of Sunrise as part of a QLP. By limiting the scope of a QLP, registry operators can ensure that a QLP will not have a material impact on the total number of domains available during the other phases of domain registration. It will also allow registry operators to be selective in choosing trusted launch partners and public interest initiatives, which will help ensure that consumers will not be confused as to the source or association of a launch program website. Given the set limitation on the total of third-party domains permitted to participate in a QLP, we do not believe that this number should necessarily detract from the 100 domains that a registry operator may reserve for *itself* under Section 3.2 of Specification 5.

Finally, if the public interest and/or purpose of the TLD exceptions are incorporated into the QLP Addendum, we propose that any registry operator offering such a QLP be required to attest in writing that all of the domains allocated under its program fall within the established criteria. The registry operator should further acknowledge and agree that in the event that it receives notice from ICANN that any of the websites fail to meet such criteria, it will immediately cease accepting other registrations or allocations under the QLP, and should it fail to work with the partner to cure the defect after a reasonable period of time, the relevant domain may be subject to cancellation.

We respectfully believe that the foregoing proposals will strengthen the new gTLD program as well as the overall Internet landscape by providing incentives for high-quality websites that are in the public interest, while still minimizing the risk of consumer confusion. Thank you for considering our feedback, and please do not hesitate to contact us if you have further questions about this submission.

Very truly yours,



Sarah Falvey
Google Inc.

Annex 1 - Proposed Revisions to the Qualified Launch Program Addendum

Section 2.2

If the TLD application was designated by ICANN as a geographic name (according to the criteria in section 2.2.1.4.1 of the Applicant Guidebook), to a registrant who is an international, national, regional, local or municipal governmental authority **or agency** (“Public Authorities”) and such QLP Name is either (i) identical to the name or acronym of such Public Authority or (ii) the name of a building, park, monument or other public place operated by such Public Authority **or (iii) the name of a public service performed by such Public Authority**. Except as permitted by this Section 2.2 **or Section 2.3**, if a QLP Name matches a label contained on the Sunrise List, such QLP Name **MUST NOT** as part of the Qualified Launch Program be Allocated or registered to a registrant who is not a Sunrise-Eligible Rights Holder with a valid SMD file for a label that matches the QLP Name.

Section 2.3

To a registrant that is expressly designated by the Registry Operator to be part of a pre-launch or anchor tenant program intended for the promotion of a TLD, so long as the QLP Name meets the following criteria: (i) the total number of QLP Names registered under this Section 2.3 must not exceed fifty (50) in number; (ii) the QLP Name must match the individual registrant’s name, a corporate registrant’s brand or business name with a valid SMD file, or a widely recognized generic term related to the industry served by the TLD, as supported with documented evidence of the term’s common use in the industry; and (iii) each QLP Name registered under this Section must correspond to a unique customized website which directly facilitates the purpose of the TLD, as expressly set forth in the written TLD application and registry policies. The Registry Operator must attest in writing that all QLP Names registered under this Section fall within the established criteria, and must agree to periodic audits for compliance. The Registry Operator must further acknowledge and agree that in the event that it receives notice from ICANN that any of the QLP Names or websites fail to meet such criteria, it will immediately cease accepting other registrations or allocations under the QLP, and should it fail to work with the registrant to cure the defect after thirty (30) days, the relevant domain may be subject to cancellation. Additionally, the Registry Operator and all QLP Names are subject to the Trademark Claims Service and the URS, UDRP and PDDRP dispute resolution procedures.