

Dear Paul, Kurt, Members of the IRT,
and ICANN staff.

First of all, we would like to thank all the IRT the members for the hard work. All the proposals are of great value and show us that we can find the way to have a new gTLDs process that has all the necessary mechanisms to protect IP.

In general we support all the IRT recommendations but as potential participants for the upcoming round we have some questions and concerns.

1. IP Clearinghouse
2. Post-Launch Second-Level Rights Protection Mechanisms
3. Rapid Suspension System
4. Thick Whois
5. String Confusion

1. IP Clearinghouse

If this is going to be implemented for the first round, it shouldn't impose more delays on the timeline. The decision upon the implementation of this mechanism must be taken as soon as possible.

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About the pre-registration phase of new gTLDs, we agree on that all IP and TM related matters could benefit from the IP Clearing House. Nevertheless we think that all unregistered rights, more specifically local unregistered rights related cases could be handled directly by the registry, as there could be some policy and requirements related with the nature of the TLD. It'll be more cost-effective if the registry takes care of those cases as it should have all necessary tools and information to verify registrant's eligibility. The use of the IP Clearing House for local unregistered rights related cases should be optional.

Please clarify that although the IP Clearing House will take care of the IP and TM verification for the sunrise period, the IP or TM owner would still be required to pay the regular domain registration fee.

More concerns on the IP Clearinghouse

- On information management
 - The IP Clearinghouse must be very concerned with information and data security and confidentiality, as this would become a very valuable information repository. We must be very careful with use given to that information.
 - It'll need very strong policy defining what can be done with the information and also strong requirements for security and integrity of the data.

- On costs for the IP and TM holders
 - What happens if a company only wants to participate in the sunrise period of 1 TLD only? It'll be obliged to pay the IP Clearinghouse fee that could be higher than the registry sunrise fee. Maybe it'll scale for big companies but for individuals or small companies on the gTLD target market, especially in emerging economies, it would result in more bureaucracy and higher costs.

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About reconsideration of proposals

We support that all applicants that fail Initial Evaluation based on a finding of string confusion should have the opportunity to request reconsideration for a reasonable fee if any, even with the opportunity to use an alternate string. This string could be included in the proposal or not, even it could be suggested by the evaluation panel.

2. Post-Launch Second-Level Rights Protection Mechanisms

Watch service. Although we think is OK for the first level; for the second level, we think that it needs a lot more work specially about making it operational. We think it would require further resource investment for the registry operator or registrars (depending on the scheme of operation). It **MUST** be automated via EPP. The IP Clearing House or the registry, or both, should run an EPP server with an extension for the watch service. This could increase the costs for the registry as the watch service will be creating more transactional load and increased cost of operation. This would require a revision on authorized fees and price caps.

In consequence this could be seen as non equitable to non-trademark registrants as they would be paying more for services conceived solely for the trademark holders. Furthermore, post-Launch mechanisms should be applied to all existing TLDs for an equitable treatment.

Brand watch is a service currently offered by some registry operators. If ICANN is taking away their business IP Clearing House services should be made available to registry operators at a minimum or no cost. Please clarify the operating scheme, especially in relation to fees.

This must be a very robust system. It would potentially receive information for each and all domain name registrations in all existent registries. ICANN must have great concern on information use and security, as it would become a very valuable asset.

3. Uniform Rapid Suspension System (URS).

We think that this requires more work and involvement of a wider range of participants, just like WIPO Process 1. The first time that the domain name industry tried to do something about trademark infringement all they could do was the UDRP, with all its known limitations. If ICANN is trying to extend de UDRP then it should launch a similar effort to work on a solution for cybersquatting.

Once stated that, we think that in the case that this proposal should be implemented, please notice that ICANN has made much emphasis to avoid web content issues. We don't think this should be an exception (the Complaint Form considers sending proof of the content of the web site).

4. Thick Whois.

The same concerns we have with the IP Clearinghouse and Watch Service apply to Thick Whois. It would need strong security measures and could increase operation costs.

5. String Confusion.

We think that if we add aural similarity to the string confusion evaluation process we would be exceeding the usual trademark verification practices thus affecting the rights of other participants as there's the possibility that legitimate proposals would be in trouble if the right criteria are not defined. The expert panel should consider many aspects and must use common sense. Aural impression would be very difficult to consider as it involves different languages and accents from different regions that could make the analysis very complex.

Thank you.

Roger Castillo

NIC Mexico - dotLAT initiative