

Report of Public Comments

Title:	Implementing Rights Protection Mechanisms in the Name Collision Mitigation Framework																						
Publication Date:	7 November 2014																						
Prepared By:	ICANN staff																						
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="2" style="background-color: #e0e0e0;">Comment Period:</th> </tr> <tr> <td style="width: 30%;">Comment Open Date:</td> <td>25 August 2014</td> </tr> <tr> <td>Comment Close Date:</td> <td>15 September 2014</td> </tr> <tr> <td>Reply Close Date:</td> <td>7 October 2014</td> </tr> <tr> <td>Time (UTC):</td> <td>23:59 UTC</td> </tr> </table>		Comment Period:		Comment Open Date:	25 August 2014	Comment Close Date:	15 September 2014	Reply Close Date:	7 October 2014	Time (UTC):	23:59 UTC	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="2" style="background-color: #e0e0e0; text-align: center;">Important Information Links</th> </tr> <tr> <td colspan="2" style="text-align: center;">Announcement</td> </tr> <tr> <td colspan="2" style="text-align: center;">Public Comment Box</td> </tr> <tr> <td colspan="2" style="text-align: center;">View Comments Submitted</td> </tr> <tr> <td colspan="2" style="text-align: center;">Report of Public Comments</td> </tr> </table>		Important Information Links		Announcement		Public Comment Box		View Comments Submitted		Report of Public Comments	
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Section I: General Overview and Next Steps																							
<p>Consistent with the Name Collision Occurrence Management Framework [PDF, 926 KB] approved on 30 July 2014, the Board New gTLD Program Committee directed staff to provide each registry operator a Name Collision Occurrence Assessment ("Name Collision Assessment"), issued on 4 August 2014.</p> <p>Per the Name Collision Occurrence Assessment, for names included on the SLD Block List of the registry's Alternate Path to Delegation Report and recorded in the Trademark Clearinghouse that the registry withheld from allocation during its Sunrise Period or Claims Period, the registry must continue to withhold these names from allocation while ICANN consults with the community.</p> <p>ICANN posted for public comment a paper [PDF, 114 KB] discussing various alternatives to providing Rights Protection Mechanisms for second level domain names once they are released for allocation. Currently, names released from the SLD Block List after a TLD's Sunrise period has occurred are subject to the Trademark Claims service on release. Based on discussion to date in the community regarding appropriate Rights Protection Mechanisms for names in the SLD Block list, various stakeholder groups have suggested as an Exclusive Registration period, similar to Secondary Sunrise, incorporating some elements of the Sunrise process.</p> <p>Based on the feedback received ICANN will develop and publish requirements on the appropriate Rights Protection Mechanisms for releasing these names. The registry will be provided an updated Name Collision Occurrence Assessment (if applicable) with details about how to activate these names.</p>																							
Section II: Contributors																							
<p><i>At the time this report was prepared, a total of ten (10) community submissions had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.</i></p>																							
Organizations and Groups:																							
Name	Submitted by	Initials																					

International Trademark Association Internet Committee	Kathryne E. Badura	INTA
Demys	Gordon Dick	D
FairWinds Partners	Michelle Sara King	FWP
ARI Registry Services	Yasmin Omer	ARI
Business Constituency, Intellectual Property Constituency, Registry Stakeholder Group	Kristina Rosette	BC, IPC, RYSG
Google	Andy Abrams	GOOG
Marques	Caroline Perriard	M
Valideus	Susan Payne	V

Individuals:

Name	Affiliation (if provided)	Initials

Section III: Summary of Comments

General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

The majority of comments received were focused on a joint proposal (The “Exclusive Registration Period Proposal”) by the Registry Stakeholder Group (RySG), the Business Constituency (BC), and the Intellectual Property Constituency (IPC). Seven comments were received in favor of the Exclusive Registration Period. One comment was received in support of retaining the existing approach rather than adopting the Exclusive Registration Period Proposal; however, it was later followed by a reply comment stating non-opposition to the requirements proposed by the various stakeholder groups.

Based on the questions posed in the [paper](#) [PDF, 114 KB] posted for public comment, the following themes of comments were received from the various community submissions:

1. Notice and Duration Requirements for Exclusive Registration Period.
2. Mechanism for Notification of Registered Names.
3. Reporting and Compliance for Exclusive Registration Period.
4. Dispute Resolution Process.
5. Comment relating to implementation concerns.

1. Notice and Duration Requirements for Exclusive Registration Period.

Six public comments were received regarding the duration of the exclusive registration period, what period requirements would be appropriate, and what type of notice registries should be required to provide in advance of the exclusive registration period.

“Although in general we agree that it would be reasonable for registry operators to use the same notice and duration requirements for their exclusive registration periods as for Sunrise, there are also unique opportunities with the release of these names that allow for an alternative approach to timing and notifications. In the case of names being released from blocklists, because the set of potentially affected trademark holders can be determined by comparing names on registries’ blocklists with trademarks in the TMCH, it should be possible to provide the relevant trademark holders with proactive notifications prior to the start of exclusive registration periods. In addition, because all of the TLDs affected by blocklists have already been delegated, in many cases it will be possible to coordinate the timing of exclusive registration periods, reducing operational burdens on registrars, trademark holders, and agents, as well as for ICANN and the TMCH related to tracking the periods.” (BC, IPC, RYSG)

“We therefore propose that registry operators should be allowed to choose one of two Paths for announcing and conducting their exclusive registration periods. In the first path requirements would mirror those of Sunrise: registry operators could elect to either provide a minimum of 30 days of notice followed by at least 30 days of exclusive registration or, alternatively, provide a 60day exclusive registration period provided that first come first served is not used as the allocation mechanism in the case where multiple trademark holders with eligible marks seek to register the same SLD. In the second path registry operators could join one of two batched waves of start dates for exclusive registration periods, one in October and one in November. All registries opting into one of the two waves would operate 30dayexclusive registration periods beginning on the specific date selected for that wave. Registries opting for this path would only need to provide 10 days’ advance notice of their intent to join a wave. Regardless of the path that individual registries elect the TMCH should provide notice to affected trademark holders that their marks will be included in specific upcoming exclusive Registration periods.” (BC, IPC, RYSG)

“These notice periods and durations should be in line with the required primary sunrise periods (whether chosen as start or end date). As per the primary sunrise periods these should be agreed by and published by ICANN on their web site in order to provide notice to registrars that are supporting the rights holders.” (D)

“In order to address the foregoing issues Goggle requests that ICANN require the SLDs on the name collision block lists be subject to at lest a 30 day period during which they are made exclusively available to trademark owners prior to being made generally available. Registries that made names on block lists available during their initial Sunrise period have already satisfied this requirement. With regard to specific implementation details, we are in full with all of the Joint Comment’s responses to the questions raised by the ICANN Staff paper.” (GOOG)

“Namely, we support the Joint Comment’s proposal that registry operators should choose one of two paths for announcing and conducting their exclusive registration periods. In the first path, registry operators could elect to either provide a minimum of 30 days of notice followed

by at least 30 days of exclusive registration or, alternatively, provide a 60-day exclusive registration period (provided that first-come-first-served is not used as the allocation mechanism in the case of completing eligible SLD applications).

In the second path, registry operators could join one of two batched waves of start dates for exclusive registration period. All registries opting into one of the two waves would operate 30-day exclusive registration periods beginning on the specific date selected for that wave. Registries opting for this path would provide 10 days' advance notice of their intent to join a wave." (GOOG)

"In order to ensure equal treatment of all trade mark holders and not to undermine the existing RPMs, terms in the Block Lists must be made available exclusively to SMD holders for at least 30 days prior to being made generally available for registration. In terms of procedural requirements such as duration, notice periods, reporting and dispute resolution processes the rules that apply to the Sunrise Period should also apply when the terms in the Block Lists are released. The release by registries in "two batched waves" as suggested by the BC, IPC and RySG as an additional mechanism in their public comment is also acceptable if it is seen as a practical solution for all parties. We note that under this proposal the suggestion is that advance notice could be limited to 10 days. Provided that there is sufficient advance notice of the dates for the batched waves, having only 10 days' notice of the actual registries electing to go in each wave may be adequate. We would suggest that there should be at least 21 days' notice of the dates for the batches to allow trademark owners to adequately prepare." (M)

"ARI Registry Services is not opposed to a set mandatory duration of 30 days for the 'secondary Sunrise period' irrespective of whether this is a 'Start Date' or 'End Date' Sunrise period. ARI Registry Services is not opposed to the provision of 10 days advance notice by registry operators regarding a 'secondary Sunrise period'. However, ARI Registry Services is opposed to any requirement that restricts registry operators to commencing the 'secondary Sunrise period' at a specific point in time e.g. in batches." (ARI)

"On the questions asked by ICANN Staff as to implementation, as stated above, we support the Joint Proposal recommendations. With regard to the specific suggestion that registry operators may be able to elect to join one of two "batched waves" and that, if so, registries need only give 10 days' advance notice of joining a wave, we do have some concerns as to whether this is sufficient notice for trade mark owners and their registrars. However, provided that the actual dates of the two waves are announced with sufficient advance notice to allow for planning, and given the suggestion that relevant trade mark owners could be given proactive notifications, then having only 10 days' notice of which registries intend to release their Block List names within a particular wave may be adequate." (V)

2. Mechanism for Notification of Registered Names.

Four comments were received regarding the appropriate mechanism for notification of registered names to be sent to trademark holders by new gTLD registries during the exclusive registration

period. These comments supported carrying over the Notice of Registered Name (NORN) element that provides notification to rights holders with matching marks in the Trademark Clearinghouse when a name is registered, i.e., the processes that are followed to generate these notices in a Sunrise period should also be followed in an Exclusive Registration Period

“Yes, as with normal Sunrise periods, we believe it is appropriate for registry operators to notify the TMCH of the registration of domain names during exclusive registration periods so that matching rights holders in the TMCH can receive notifications.” (BC, IPC, RYSG)

“As this is a secondary sunrise and not in line with the original launch of the domain it would be preferable if the existence of a secondary sunrise should be notified at least 30 days in advance of sunrise opening, to all affected TMCH registered rights holders and their agents. (i.e. rights holders in the TMCH whose marks are on the secondary sunrise list for that domain.) It should be required that rights holders obtain the same notifications during a secondary sunrise as if it were the original sunrise.” (D)

“Regardless of the path that individual registries select, SLDs released from the name collision blocklist would not be treated as reserved names and would not be subject to the requirements of an additional 90-day Claims period. However, the TMCH should provide notice to affected trademark holders that their marks will be included in specific upcoming exclusive registration periods. The TMCH notification service should also notify trademark holders of matching SLD registration in the new TLDs on an ongoing basis, which should obviate the need for the 90-day period. (We also note that the Google Registry intends to voluntarily extend its Claims notification service for trademark holders indefinitely.)” (GOOG)

“ARI Registry Services is not opposed to the use of the abovementioned mechanism (LORDN) by registry operators to notify the TMCH of registration of domain names during the Sunrise Period. However, ARI Registry Services is opposed to any requirement that imposes the same technical implementation mechanisms that must be applied during the initial Sunrise period for the following reasons: Registry operators and registrars may find it simpler to accept registrations via manual handling rather than through EPP; Such a requirement will introduce significant effort for all parties involved and these efforts will undoubtedly result in costs that will ultimately be borne by the registrants; The low number of Sunrise Registrations to date simply does not justify the imposition of this requirement. Furthermore, references to ‘secondary sunrise periods’ in the ICANN staff paper are misleading in that they imply that the implementation of such will mirror that of the initial Sunrise period.” (ARI)

3. Reporting and Compliance for Exclusive Registration Period.

Three comments were received relating to how ICANN ensures registry compliance with the requirements and whether registries should be required to report the exclusive registration period to ICANN.

“Yes, the registry should be required to report its exclusive registration period to ICANN, by providing the same content that is required when submitting initial Sunrise dates and policy information. As indicated in our initial proposal, the exclusive access period should not impose registration policies that are more restrictive than those implemented during any previous Sunrise Period. Because registries that have already made blocklist SLDs available in their original Sunrise periods are not affected by these requirements, ICANN may need to rely on reports by the community to identify registries that do not make blocklist names available either in Sunrise or as part of an exclusive registration period.” (BC, IPC, RYSG)

“ICANN already deals with contractual compliance and should look to cater for a proactive education and a reactive remedy mechanism where the process has not been complied with.” (D)

“ARI Registry Services is not opposed to a requirement mandating that registry operators provide ICANN with notification of the start and end date of any ‘secondary Sunrise period’.” (ARI)

4. Dispute Resolution Process.

Three comments were received in response to what type of dispute resolution process should be in place for the exclusive registration period.

“Registries should extend their existing Sunrise dispute resolution procedures to their exclusive registration periods.” (BC, IPC, RYSG)

“The dispute mechanisms should be as per a primary sunrise, including claims notice periods.” (D)

“ARI Registry Services is not opposed to the extension of the existing SDRP to a ‘secondary Sunrise period’” (ARI)

5. Comment relating to implementation concerns.

One comment was received expressing concern over the operational requirements of implementing an exclusive registration period.

“The reservation of names on the SLD Block List does not present a significantly new set of circumstances incapable of being addressed by the current requirements. Any attempt to, once again, modify Rights Protection Mechanisms already agreed to by the community is not warranted particularly when many Registry Operators have already invested significant time and money implementing processes in accordance with the current requirements and there is yet to be presented any evidence of real, as opposed to perceived, negative consequences of

such. Further to the above, any changes this late in the process will introduce significant effort for all parties involved. These efforts will undoubtedly result in costs that will ultimately be borne by the registrants. For example, if we are forced to rework our systems to support a late stage sunrise, those names would be priced significantly higher than normal to ensure that we are able to recover the costs of such implementations – something we are sure rights holders have not taken into account. These efforts will also result in significant delays in releasing names that have already been tied up far longer than they should have been.” (ARI)

Section IV: Analysis of Comments

General Disclaimer: This section is intended to provide an analysis and evaluation of the comments received along with explanations regarding the basis for any recommendations provided within the analysis.

ICANN appreciates the time spent by community members to provide their input on developing the appropriate procedures to release second-level domains from the SLD Block List, including measures to protect rights holders. As noted in the summary above, the comments covered a range of topics and the analysis is organized as follows:

1. Notice and Duration Requirements for Exclusive Registration Period.
2. Mechanism for Notification of Registered Names.
3. Reporting and Compliance for Exclusive Registration Period.
4. Dispute Resolution Process.
5. Comment relating to implementation concerns.

1. Notice and Duration Requirements for Exclusive Registration Period.

Based on the overall feedback received, there is strong support for implementing an exclusive registration period whereby rights owners would be granted an opportunity to register domain names matching their registered trademark prior to the names being made available for registration to the general public. A requirement for an additional 90-day Claims period would not be applied to these names.

Namely, one comment requests that ICANN allow registry operators to choose from one of two paths for how they wish to conduct their exclusive registration period. In the first path, registry operators could elect to join one of two batched waves operating for a period of 30-days each beginning on the specific date selected for that wave. With this path, registries would need to provide 10 days’ advance notice of their intent to join a wave. However, several comments have expressed concern over whether this is enough notice for trademark holders and registrars. More specifically, one comment suggests that registries should instead be required to provide at least 21 days’ notice in order to allow trademark holders enough planning time.

In the second path, registries not opting into a wave would provide an exclusive registration period under the same requirements as the registry’s original Sunrise period. Registry operators would either

provide a minimum of 30-days of notice followed by at least 30-days of exclusive registration or a 60-day exclusive registration period. While one of the comments is not opposed to the 10 days advance notice and the requirements proposed in the second path, it does not support requiring registry operators to begin the exclusive registration period at a specific point in time.

ICANN acknowledges the feedback received regarding the implementation of an exclusive registration period as well as the comments addressing the appropriate period requirements and the type of notice to be provided by registries in advance of this exclusive period. ICANN understands that these proposed requirements are intended to lessen the operational burden for all parties involved, thus ICANN expects to build on these proposals in implementing the process.

In addition, regardless of the path chosen by registries, the comments are in favor of the Clearinghouse providing a notification to affected trademark holders that their marks will be included in one of two exclusive registration periods. The relevant trademark holders to receive this notification are those with names that are in the Clearinghouse as well as on the registries' SLD blocklist.

Additionally, in order to provide notice to the registrars, one comment suggests that ICANN publish the date and registration requirements on the New gTLD microsite in a similar manner as the original Sunrise period. ICANN acknowledges the importance of targeted communications to support these processes and the necessity of notifying affected trademark holders that their marks will be included in one of two exclusive registration periods, and ICANN expects to incorporate these suggestions into the final requirements.

2. Mechanism for Notification of Registered Names.

Several comments received state that, as per the regular Sunrise period, new gTLD registries should notify the Clearinghouse of registration of domain names during the exclusive registration period and matching rights holders should receive these notifications on an ongoing basis. According to the comments, this requirement eliminates the need for an additional 90-day Claims period for these names.

In terms of technical implementation mechanisms, the comments suggest that registry operators should notify the Clearinghouse of registration of domain names during the exclusive registration period by uploading a List of Registered Domain Names (LORDN) file. This file is maintained by each Registry and uploaded daily to the Trademark Database. ICANN has carefully evaluated the proposed suggestion and would expect to include mechanisms in the final requirements to support effective notification to the right holders.

One comment also recommends that unlike the normal Sunrise Period, registrations should occur via manual handling rather than EPP, as registries may not wish to return to a Sunrise mode. However, another comment states that while registry operators and registrars may find it easier to accept registrations via manual handling, the manual handling requirement will result in significant efforts and costs, particularly for the registrants.

ICANN has reviewed the suggestions on the mechanism for notification of registered names, and expects that for the specific case described in the Exclusive Registration Period proposal the manual handling of registrations can be incorporated by registries, as a suitable approach for exchanging information between registries and registrars without presenting increased operational complexities.

3. Reporting and Compliance for Exclusive Registration Period.

Several comments were received in response to how ICANN would ensure registry compliance with the requirements and whether registries should be required to report their exclusive registration period to ICANN. According to the feedback received, the monitoring of registry compliance should take place at ICANN discretion.

Furthermore, as suggested by another comment, ICANN already has a contractual compliance mechanism in place and should consider undertaking a more “proactive education” approach to minimize the risk of non-compliance. ICANN recognizes the importance for registries to fulfill the requirements set forth by ICANN, and will encourage collaboration and provide clear and consistent communications of the activities taking place to help support full compliance with the agreement.

As for the requirement mandating that registry operators provide ICANN with notification of the start and end date of the exclusive registration period, the comments are in agreement that the registry operators should indeed be required to do so by submitting the same content that is required for initial Sunrise dates and policy information. Indeed, as per the TLD Startup Information process, start and end dates for all periods are required fields that are published and updated on a regular basis as well as the minimum criteria as specified in the TMCH Requirements. In order to maintain consistency among processes, ICANN expects include this suggestion in developing requirements.

4. Dispute Resolution Process.

Several comments were received in response to the type of dispute resolution process that should be in place for the exclusive registration period. According to the feedback received, there is unanimous agreement that registries should apply their existing Sunrise dispute resolution procedures to their exclusive registration periods. Indeed, having a process in place to allow challenges to registrations occurring during the exclusive registration period is necessary. Based on this feedback, it appears advisable to extend the existing Sunrise dispute resolution policies provided by registries to an Exclusive Registration Period.

5. Comment relating to implementation concerns.

One comment received was in favor of the “Status Quo” for names that are released from the SLD Block List. In particular, these names should be subject to the Trademark Claims service on release if they had not been previously made available for allocation. The reason for this, as stated in this comment, is that updating the systems to support a new process will cause delays and the names will be priced considerably higher to recover the costs of this implementation.

This comment was followed by a reply comment that stated non-opposition to certain elements of the Exclusive Registration Period Proposal. As introducing a new process will require some operational efforts, the continued discussion on the Exclusive Registration Period Proposal has focused on reducing complexity and operational burden and appears to effectively balance these concerns.

Conclusion

ICANN appreciates the time spent by community members to provide their input on developing the appropriate procedures to release second-level domains from the SLD Block List, including measures to protect rights holders. Based on the feedback received, common themes were found in response to questions posed relating to notice and duration requirements, the mechanism for notification of registered names, reporting and compliance, and dispute resolution processes.

As detailed in the analysis of the comments, the Exclusive Registration Period seems to be the most widely supported and implementable means to address the concerns that were raised. ICANN will develop and publish the final requirements on the appropriate Rights Protection Mechanisms for releasing these names and will provide the registries with an updated Name Collision Occurrence Assessment with details about how to release these names.