

## Report of Public Comments

<b>Title:</b>		<b>.PARIS - Introduction of Approved Launch Program</b>																					
<b>Publication Date:</b>		15 September 2014																					
<b>Prepared By:</b>		ICANN staff																					
<table border="1"> <tr> <td colspan="2"><b>Comment Period:</b></td> </tr> <tr> <td>Comment Open Date:</td> <td>12 June 2014</td> </tr> <tr> <td>Comment Close Date:</td> <td>10 July 2014</td> </tr> <tr> <td>Reply Close Date:</td> <td>1 August 2014</td> </tr> <tr> <td>Time (UTC):</td> <td>23:59 UTC</td> </tr> </table>		<b>Comment Period:</b>		Comment Open Date:	12 June 2014	Comment Close Date:	10 July 2014	Reply Close Date:	1 August 2014	Time (UTC):	23:59 UTC	<table border="1"> <tr> <td colspan="2" style="text-align: center;"><b>Important Information Links</b></td> </tr> <tr> <td colspan="2" style="text-align: center;"><a href="#">Announcement</a></td> </tr> <tr> <td colspan="2" style="text-align: center;"><a href="#">Public Comment Box</a></td> </tr> <tr> <td colspan="2" style="text-align: center;"><a href="#">View Comments Submitted</a></td> </tr> <tr> <td colspan="2" style="text-align: center;">Report of Public Comments</td> </tr> </table>		<b>Important Information Links</b>		<a href="#">Announcement</a>		<a href="#">Public Comment Box</a>		<a href="#">View Comments Submitted</a>		Report of Public Comments	
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<b>Section I: General Overview and Next Steps</b>																							
<p>On 12 June 2014, the Launch Application submitted by the City of Paris pursuant to Section 4.5.2 of the Trademark Clearinghouse Rights Protection Mechanism Requirements for the .PARIS TLD was posted for public comment. The intention of the applied for program is allow public administrations in the Paris area to register their own names, names of public services, geographical names and names of local landmarks under their control, according to local law. The Launch Program would allocate eligible names with priority over Sunrise and any Limited Registration Periods, last 60 days, and run parallel with the other .PARIS launch phases.</p> <p>Section 4.5.2 of the TMCH Requirements provides that a Registry Operator may, prior to the start date of its Sunrise Period, apply to ICANN to conduct an "Approved Launch Program". If approved by ICANN, an Approved Launch Program allows a Registry Operator to register certain domain names prior to the completion of the Sunrise Period for the TLD. Once a Launch Application is submitted to ICANN, ICANN reviews and analyzes the application pursuant to the Approved Launch Program Application Review Guidelines (the "Guidelines"). The Guidelines set forth ten factors ICANN takes into consideration during its analysis and review prior to reaching a final decision.</p> <p>To assist ICANN with evaluating a Launch Application against the Guidelines, ICANN may submit the Launch Application for public comment. Specifically, with respect to the Launch Application for the City of Paris, ICANN sought public comment regarding several factors, including: how the launch program could affect consumer confusion; the potential impact of the launch program on intellectual property rights; the risks, if any, of there not being a specified number of domain names that could be registered under the launch program; whether other means of achieving the stated objectives of the launch program exist, such as through a Limited Registration Period; and whether the applied for launch program is necessary to achieve the stated objectives in light of the fact that the Registry Operator is also planning on implementing the Qualified Launch Program.</p> <p>Following the conclusion of the public comment period, the City of Paris withdrew its Launch Application.</p>																							

## Section II: Contributors

*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.*

### Organizations and Groups:

Name	Submitted by	Initials
Marques	Alan Ramsay	M
International Trademark Association Internet Committee	Kathryne E. Badura	INTA
Dot London	Helena Real	DL
IP Twins	Sylvain Hirsch	IPT
punkt.wien GmbH	Ronald Schwaerzler	PWG
Foundation for Assistance for Internet Technologies and Infrastructure Development	Maxim Alzoba	FAITID
Intellectual Property Constituency	Kristina Rosette	IPC

### 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).*

Three comments were received in support of the Launch Application for the City of Paris. The following themes of comments were received from the seven comments that were opposed to the Launch Application:

- Public Authority eligibility criteria.
- Trademark Clearinghouse compliance.
- Proposed alternatives.
- Additional periods.

### **Comments relating to the Public Authority eligibility criteria.**

Two public comments suggested that the Launch Applications' unclear definition of "Public Authority"

eligibility criteria could lead to abuse by those who would seek to circumvent the RPM Requirements. Furthermore, such a wide definition for Public Authorities could contribute to consumer confusion and infringement of intellectual property rights.

“Public services are proposed to cover at least: (i) public order and public security; (ii) public affairs and institutional relations; (iii) public health; (iv) taxation, economic development and promotion; (v) public utilities; (vi) transportation; (vii) urban planning and environmental protection; (viii) culture and education; (ix) citizen participation; (x) tourism. This is an extremely wide definition of public services, which is very likely to conflict with terms to which strong trademark rights attach. Furthermore, the number of domains which are proposed to be allocated under this Public Administrators Program appears to be unlimited.” (INTA)

“Given the wide definition of public services referred to above, there is a clear risk that this Public Administrators Program could contribute to infringement of intellectual property rights and/or consumer confusion and thus, in accordance with paragraph 4.5.2 of the TMCH RPM Requirements, the ALP should not be approved.” (INTA)

“The proposed .PARIS ALP consists of a Public Administrators Program during which only relevant Public Authorities in the Greater area of Paris will be allowed to register names prior to the Sunrise Period. Under the RPM Requirements, which every registry operator is obliged to follow, a registry must not allocate any names before the Sunrise Period (reserved for TMCH registered trademarks) comes to an end.” (M)

“In order to accommodate geographic TLD operators’ launch plans, a Qualified Launch Program (QLP) Addendum was negotiated, put out to public comment and has subsequently been adopted as an exception to this rule. We note that .PARIS intends to register 98 names in advance of the Sunrise Period by utilising the QLP Addendum, and a number of these names have already gone live. As the proposed ALP falls outside of the RPM Requirements and goes beyond the exception allowed by the QLP Addendum, it should be subject to close review to avoid weakening the existing policy framework.” (M)

“Under the Public Administrators Program, Public Authorities are defined as “international, national, regional, local and municipal authorities and other governmental departments; as well as other public institutions or appropriate entities under French law (like agencies, consortiums, commissions, and other administrative divisions) of the Greater area of Paris, or having competences over it.” (M)

“Public Authorities will be able to register: (i) their names (including any clear variations and abbreviations); (ii) names of public services; (iii) geographical names for any subdivision of the Greater area of Paris (e.g. departments, districts, neighbourhoods, cantons, streets...), local landmarks and other locally-relevant and iconic names over which the Public Authorities are the relevant authority according to local law.” (M)

“Public services are proposed to cover at least: (i) public order and public security; (ii) public

affairs and institutional relations; (iii) public health; (iv) taxation, economic development and promotion; (v) public utilities; (vi) transportation; (vii) urban planning and environmental protection; (viii) culture and education; (ix) citizen participation; (x) tourism.” (M)

“As such, the proposed ALP appears to be an extremely wide program under which an unlimited number of names could be registered by a wide range of parties which may easily correspond to an existing trademark and have the potential to confuse the public. The rules of the ALP contain a number of terms which have not been clearly defined. For example, Public Authorities could cover “appropriate entities under French law... of the Greater area of Paris, or having competences over it”, the terms they can register include “any clear variations” of their names, “iconic names” and “public services” which are proposed to cover unlimited range of services including in areas such as culture and tourism. As these terms have not been defined sufficiently clearly, they are open to different interpretations by the entities who would like to use them. Thus, whilst this may not be the intention of the .PARIS registry operator, the proposed ALP may be open to abuse by those who would seek to circumvent the RPM Requirements.” (M)

“Under the RPM Requirements, if approved, an ALP will set a precedent for subsequent ALPs applied under similar circumstances. Considering the far-reaching impact of an approved ALP, we request the rejection of the ALP as currently proposed by .PARIS registry. Any approved ALP should be subject to clearly defined eligibility criteria and additional rules that ensure transparency and limit the impact. For example, the use of the names should be limited to a particular purpose approved under the ALP, transfer of a domain to an unqualified third party should be prohibited and privacy/proxy registrations should not be allowed.” (M)

#### **Comments relating to Trademark Clearinghouse compliance.**

Three public comments stated that giving first priority to Public Authorities over TMCH rights holders would circumvent the Sunrise Period set aside for TMCH rights holders.

“The proposed ALP departs from the RPM Requirements by giving priority to the Public Administrators Program over the trademark Sunrise Period. Under the proposed ALP, Public Authorities will be able to register their names (including any clear variations and abbreviations), names of public services, geographical names for any subdivision of the greater area of Paris (e.g. departments, districts, neighborhoods, cantons, streets...), local landmarks, and other locally relevant and iconic names over which the Public Authorities are the relevant authority according to local law.” (INTA)

“ Giving first priority to public administrations in Paris over TMCH rights holders effectively expands the Public Authority exception well beyond the 100 pre-Sunrise domain names already being allocated under the QLP Addendum. As a result, the ALP would circumvent the Sunrise Period at the expense of TMCH rights holders in a manner that was previously

proposed and rejected by ICANN. New gTLDs are mandated to provide a Sunrise Period for TMCH rights holders to register domain names corresponding to their trademarks in advance of the general public. Allowing any registrations beyond those limited number allowed under the QLP Addendum would circumvent the advance registration Sunrise Period set aside for TMCH rights holders. “ (INTA)

“However, our main concern is linked to the Dot PARIS Launch program. Indeed, it seems that the Sunrise Period plans a priority system within the Sunrise period like other Registries have already done (cf. Dot London Registry). But, if we understand correctly, the specificity of this Sunrise will be to give priority to (French) non-TMCH trademarks over TMCH trademarks. To the best of our knowledge, such a priority has never been applied by another registry yet and we would like to express reservations about this draft. Even if we can easily understand that it is a logical way to advantage the trademark owners with a stronger relationship with France and Paris, we are afraid that this particularity will be taken as a retroactive change of an ICANN policy, not to say as a breach of ICANN rules as the TMCH would be thus be bypassed. In other words, we are that much fans of .PARIS that we fear that such a measure would taint its reputation and future success. Since the launch of the new gTLDs and even before, IP TWINS like the other registrars, is working hard to warn and teach Trademark owners about the advantages and also the possible dangers of the launch of hundreds of new extensions. The TMCH was easily perceived as a mean of protection. Therefore, we consider that this change will be very hard to understand for the majority of Trademark owners. Since this proposition undermines a fundamental principle of right protection mechanisms (required by Trademark owners), we believe that it should not be accepted by ICANN. To conclude, may we draw your attention to the fact that the acceptance of such a change, in setting a precedent, may weaken the TrademarkClearingHouse in its role of mechanism of Trademark owner protection and may also create legal uncertainty.” (IPT)

“Further to our review of the .PARIS Launch Policy, we note that the proposed Sunrise Period is not in compliance with the RPM Requirements. Under the .PARIS Launch Policy, during the Sunrise Period trademarks in the TMCH, non TMCH-validated trademarks with effect in France and geographical indications recognized by International treaties, EU regulations or French legislation will be accepted and priority will be given to local trademarks “whether registered at the TMCH or not”. According to the RPM Requirements, during the Sunrise Period only trademarks registered in the TMCH with a valid Signed Mark Data (SMD) file may be registered. A TMCH registration is available both for local French trademarks and geographical indications recognized by International treaties, EU regulations or French legislation.” (M)

One comment emphasized the significance of the Sunrise Period and the risks associated with giving priority to non-TMCH marks.

“ In addition to the proposed ALP, we note that under the .PARIS Launch Program, non-TMCH-validated trademarks with effect in France and geographical indications recognized by international treaties, EU regulations or French legislation are proposed to be considered during the Sunrise Period at the same time as trademarks which are recorded in the TMCH.

While the intentions behind this may be good, this circumvents the Sunrise Period at the expense of TMCH rights holders. The Sunrise Period is set aside for those trademark holders that have registered rights within the TMCH and submitted evidence that the marks are in use.” (INTA)

“Qualification 7 of the Applicant Guidebook allows the registry operator to implement additional rights protection mechanisms, such as allowing French trademark owners priority over the general public. However, such rights protection mechanisms must also be compliant with, and subservient to, the TMCH. Paragraph 2.4.1 of the TMCH RPM Requirements makes it clear that a Registry Operator MUST NOT allocate or register domain names during or in connection with the Sunrise Period except to holders of a validated trademark recorded in the TMCH. The proposal to allocate and register domain names to local trademark holders who are not registered in the TMCH at the same time is a clear breach of this provision.” (INTA)

“More concerning still, it would appear from the “.PARIS Launch Policy” that where there are two applicants for the same domain name, it is intended that priority will be given to the owner of the mark with local effect “whether registered at the TMCH or not” over other TMCH registrations. This is again a breach of the registry operator’s obligation to honor marks which have been recorded and validated in the TMCH before allocating domains to the owners of non- TMCH marks.” (INTA)

**Comments relating to proposed alternatives.**

One comment suggested that the City of Paris could achieve its aims in other ways, such as:

“Furthermore, under the section 2.3.1.1 of the RPM Requirements, if it wishes, .PARIS registry can restrict the Sunrise Period eligibility to TMCH-validated marks with effect in France, and additionally, run a Limited Registration Period for the trademark holders that are not registered in the TMCH. As a result, we do not consider that it is necessary for the .PARIS registry to circumvent the existing RPM Requirements in order to achieve its objectives. Therefore, we urge ICANN to reject the currently proposed .PARIS Sunrise Period, since the .PARIS registry may achieve its aims whilst still honouring the terms of the RPM Requirements.” (M)

Another comment suggested that if the Launch Application for the City of Paris was allowed, it should be conditioned on certain modifications being implemented so as to minimize infringement of intellectual property rights and consumer confusion.

“ If a .PARIS launch program is allowed by ICANN that provides priority for certain .PARIS domain name registrants over holders of a validated trademark recorded in the TMCH, then those .PARIS domain name registrations must be subject to transparency and other requirements. First, such ALP early domain name registration cannot be hidden behind privacy

registrations so that potentially aggrieved parties can determine whether the registrant met the .PARIS launch programs' priority registration parameters. Second, such domain names must be used by Public Authorities in connection with the public services that domain name represents. For example, POLICE.PARIS should be used by the City of Paris Police Department for public safety purposes and not for a website promoting a rock band. Lastly, any domain name registered during the priority period by a Public Authority or other qualifying rights holder cannot be transferred to a third-party except (i) to another qualifying Public Authority or (ii) in the event of a sale of all or substantially all of the assets of the registrant." (INTA)

#### **Comments relating to Additional Periods.**

One public comment was concerned about the Launch Program's "Mandates Program Early Activation Segment" and requested clarification from the City of Paris in order to allow for a more accurate evaluation.

"Finally, the Launch Program seeks to allow the activation of certain domain names prior to the Sunrise Period during the Mandates Program Early Activation Segment. It is unclear whether this period will allow for additional pre-Sunrise domain registrations included within, or in addition to, the 98 contemplated under the Pioneer Name program. To the extent that it limits all pre-Sunrise registrations to 100 and respects the TMCH and Public Authority exception, it would appear to be compliant with the QLP Addendum. If this is not the case and there is, in fact, no limit to pre-Sunrise registrations, the Mandates Program would also amount to a breach of the Registry Agreement and the Rights Protection mechanisms that explicitly limit to 100 the number of domain names that may be allocated before conclusion of the Sunrise Period. INTA requests that the City of Paris clarify this ambiguity to allow for a more accurate assessment." (INTA)

#### **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 the Launch Application for the City of Paris. The intention of the applied for program is allow public administrations in the Paris area to register their own names, names of public services, geographical names and names of local landmarks under their control, according to local law. The Launch Program would allocate eligible names with priority over Sunrise and any Limited Registration Periods, last 60 days, and run parallel with the other .PARIS launch phases.

Comments were received in support of the Approved Launch Program for the City of Paris; however, a number of commentators expressed that the application as currently proposed, should not be

approved. Several comments suggested that the Launch Applications' unclear definition of "Public Authority" eligibility criteria could lead to abuse by those who would seek to circumvent the RPM Requirements. Furthermore, the broad nature of the program could permit an unlimited number of registrations by a wide range of parties, which could potentially lead to consumer confusion and infringement of intellectual property rights.

Commentators were also concerned that giving first priority to Public Authorities in Paris over TMCH rights holders would circumvent the Sunrise Period set aside for TMCH rights holders. While the program's approach is a way for the City of Paris to achieve its goal of giving precedence to registrants that may have a stronger relationship with a .PARIS domain, the aforementioned broad nature of the program does not effectively tailor the program to that goal.

One commentator suggested that the City of Paris could achieve its objectives in other ways while being in compliance with the RPM requirements, such as by running a Limited Registration Period for the trademark holders that are not registered in the TMCH. Furthermore, another commentator suggested that certain modifications should take place in order to minimize infringement of intellectual property rights and consumer confusion. Finally, a comment was submitted noting that approving the City of Paris' Launch Application would set a precedent for similar Launch Applications where the aforementioned concerns could also be present.

### ***Conclusion***

As previously noted, ICANN appreciates the time spent by community members to provide their input on the Launch Application for the City of Paris. As detailed in the analysis of the comments, ICANN staff found common themes among many of the public comments, most of which expressed concerns regarding the scope of the program. Following the conclusion of the public comment period, the City of Paris withdrew its Launch Application.