

Report of Public Comments

Title:		Qualified Launch Program for New gTLD Registries																					
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Prepared By:	ICANN staff																						
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Section I: General Overview and Next Steps																							
<p>On 13 February 2014 the Qualified Launch Program Addendum was posted for public comment. The draft Qualified Launch Program Addendum reflected ICANN's review and analysis regarding the feasibility of and implementation mechanics for a Qualified Launch Program, as well as its potential impact on intellectual property rights. The draft was posted for comment to allow stakeholders to review and comment on the Qualified Launch Program Addendum.</p> <p>Section 4.5.1 of the RPM Requirements provides that:</p> <p style="padding-left: 40px;">Subject to further review and analysis regarding feasibility, implementation and protection of intellectual property rights, if a process for permitting registry operators to Allocate or register some or all of such one hundred (100) domain names (plus their IDN variants, where applicable)(each a "Launch Name") to third parties prior to or during the Sunrise Period for the purposes of promoting the TLD (a "Qualified Launch Program") is approved by ICANN, ICANN will prepare an addendum to these TMCH Requirements providing for the implementation of such Qualified Launch Program, which will be automatically incorporated into these TMCH Requirements without any further action of ICANN or any registry operator.</p> <p>As described above, the Qualified Launch Program Addendum may be automatically incorporated into the TMCH Requirements without any further action of ICANN or any Registry Operator. All Registry Operators will thereafter be permitted to have a Qualified Launch Program in accordance with the terms of the approved Qualified Launch Program Addendum, and will not need to seek ICANN's approval to implement a Qualified Launch Program.</p> <p>Based on feedback in the public comment forum, ICANN has incorporated some suggested changes to the draft.</p>																							
Section II: Contributors																							

At the time this report was prepared, a total of ten (10) substantive community submissions had been posted to the Forum. The contributors 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
ARI Registry Services	Yasmin Omer	ARI
London & Partners	Alex Kinchin-Smith	LP
American Insurance Association	Angela Gleason	AIA
Google	Sarah Falvey	GOOG
Atgron, Inc.	Adrienne McAdory	AT
The Scottish Government	Peter Irving	SG
Big Room, Inc.	Jacob Malthouse	BR
Intellectual Property Constituency	Claudio DiGangi	IPC
FairWinds Partners	Stephanie Duchesneau	FWP
European Cultural and Linguistic Internet Domains Network	Nacho Amadoz	ECLID

Individuals:

Name	Affiliation (if provided)	Initials
None	-	-

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 following themes of comment were received, and each of these areas is explained in more depth below.

- Public Authority criteria
- Comments relating to timing and technical implementations
- Reserved names
- Additional proposed mechanisms
- Allocation by registry/registrar

Public Authority criteria.

Three public comments suggested that Section 2.2 of the Qualified Launch Program Addendum be

expanded from only applying to TLDs that were designated by ICANN as geographic names during the application evaluation process, to include a broader number of registries.

“There are ‘Geographically-oriented’ applicants for a clearly defined geographic area who have the appropriate approval from governmental authorities who would not be eligible under clause 2.2 (i.e. .swiss; .ruhr). We request that ICANN amend this clause. If it is deemed difficult to clearly define these ‘Geographically-oriented’ applicants then we would suggest that Geographic applications in terms of the guidebook are automatically able to take advantage of this clause, whereas other ‘Geographically-oriented’ applicants might check with ICANN individually.” (LP)

“Although the applications represented here by ECLID (.bzh, .eus .gal and .scot) can not be regarded as geographical by ICANN definition, they are community applications that are composed of or have received the support of many of the relevant entities that embody the communities represented. Furthermore, these applications have received a clear and decided endorsement from the relevant Public Authorities in the areas where these communities have a strong presence. This endorsement is a reflection of the interest and approval of the relevant Public Authorities of the projects developed by these applicants in the application phase, including the specifically tailored launch plans described above.” (ECLID)

“We therefore believe that the provisions set forth in Clause 2.2 should be applicable to those community applications that have received this support. The extension of Clause 2.2 applicability to these applications would only be in consonance with the rationale behind this clause. It would allow these applicants to develop part of the plans declared in the application phase (approved by ICANN) and endorsed by the relevant Public Authorities, taking into account the geographical remit that this endorsement bears, which we believe is the ultimate criterion behind the rationale of Clause 2.2.” (ECLID)

“We also support the comments provided by the Geographic Name Applicants Group, submitted on Feb. 28th, 2014, and the comments submitted by the Government of Scotland on March 13th, 2014, both expressing similar concerns about Clause 2.2.” (ECLID)

“The Scottish Government wishes to add its support to the call in paragraph two of this submission for the amendment of clause 2.2. of the Qualified Launch Programme Addendum so that it would allow gTLD operators that have received the formal backing of governments during the new gTLD application process - whether or not their application was designated by ICANN as a geographic name - to ensure that the Qualified Launch Programme is suitable for their TLD community.” (SG)

Two public comments requested that registrants for the Public Authority names in Section 2.2 of the Qualified Launch Program Addendum should include entities that serve the public interest, but may not necessarily be public authorities.

“a. in some instances the appropriate registrant may not be a governmental authority. Monuments, parks, buildings, airports, famous squares or streets can often be operated by other entities under the control, oversight or with endorsement from the relevant public authority. We request that the clause be amended with wording along the lines of ‘...municipal governmental authority or other appropriate entity’.” (LP)

“A. the extension of the categories of the names covered under Clause 2.2, to include registrants that may not be a Public Authority, but an entity under Public oversight serving the public interest.” (ECLID)

Two comments requested that public authorities be allowed to register names that may not be identical to the Public Authority name or acronym but that nonetheless are beneficial to the public interest.

“b. in some instances appropriate QLP names might not match identically the name or acronym of the Public Authority. For example the term ‘cityhall.london’ or ‘city.paris’ should be able to be used. We request the clause include a phrase such as ‘identical to the name, acronym or other term in common use to describe...’” (LP)

“B. the inclusion of a phrase that may allow registrations of QLP names that may not be identical but may be a common term to refer to the name of the Public Authority or entity or landmark.” (ECLID)

Three comments suggested expanding the criteria for Public Authority names to include names of “public services” offered by the Public Authority.

“c. we request that the clause be amended to include ‘public services’. This will enable applicants to include key terms which governmental authorities wish to use to demonstrate their support at launch.” (LP)

“C. The inclusion of “Public Services” (ECLID)

“We also believe that names that are relevant for the most representative entities of a community should be also considered part of the exception provided by Clause 2.2, given the community TLDs’ specific mandate to enhance and promote the represented community on the Internet, and the role some community entities play in this regard. In the applications herein represented by ECLID, their linguistic and/or cultural scope should be taken into account within the Clause 2.2 scope, in order to accommodate entities as relevant to these applications as, i.e., Universities, Language Regulators, publicly sanctioned Cultural entities, etc. that may not have any trademark for their names, given the lack of necessity due to their distinctiveness, or the impossibility, in some cases, due to the entity’s nature and name.” (ECLID)

“We encourage ICANN to more broadly consider allowing preregistrations 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 DomainName 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 PostDelegation 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.” (GOOG)

Additionally, two comments suggested expanding to the definition of Public Authority names to include names of geographical subdivisions.

“d. we request that the clause be amended to include ‘subdivisions of that geographic area’. This would allow regions, counties, cities, districts, neighbourhoods, boroughs, streets to be used.” (LP)

“D. The inclusion of geographical subdivisions.” (ECLID)

Two comments requested that translations of names of Public Authorities in TLD-relevant languages or scripts be permitted under Section 2.2:

“We request that it be recognised explicitly that all names listed in the clause 2.2. are allowed to be translated into the TLD-relevant language(s)/scripts. There will often be the need to translate/transliterate/transcribe the official name so it is meaningful for the intended users in the specific TLD, and often more than one linguistic version will be necessary. As an example, Quebec authorities should be able to register” (LP)

“We also request that all names included in 2.2 may be allowed to be translated into the TLD relevant language or script.” (ECLID)

Comments relating to timing and technical implementations.

Two comments sought clarification on the timing and technical implementation of the Qualified Launch Program, in particular, on the terminology used for QLP name registration, and on the technical feasibility of the Qualified Launch Program in regard to the Sunrise List.

“In section 1 the term ‘allocate or register’ is used. Subsequently the term ‘register’ or ‘time of

registration’ is used. From a practical perspective it should be recognised there could be a time difference between a list of QLP names being finalised and their actual registration. Applicants will need to communicate to third parties that they will be part of the QLP. Therefore we request that that term ‘allocate or register’ be used throughout (in clauses 2, 3 and 4) to allow applicants to check names against the Sunrise list and ‘allocate’ them to third parties. And then to subsequently register them without a requirement to recheck against a new Sunrise list.” (LP)

“Section 2 of the QLP document makes reference to a ‘Sunrise List’ provided to the Registry Operator by the TMCH Sunrise and Claims Provider containing the labels attributable to Sunrise-Eligible Rights Holders. To mitigate the risk of confusion, ARI would like to ensure that there is a common understanding amongst stakeholders that the Domain Name Label (DNL) List in its current format does not serve the purposes of the abovementioned Sunrise List;

- The DNL List only contains labels for which the Trademark Claims Service option (a TMCH user setting) is enabled;
- The DNL List contains labels for which a SMD File has not been allocated; and
- Labels for which SMD Files have been allocated may not appear on the DNL List where the user has not elected to enable the Trademark Claims Service. In order to facilitate the Registry Operator’s review of the Sunrise List as contemplated by section 4 of the QLP document, ARI supports the creation of a new Sunrise List that specifies which labels are attributable to Sunrise-Eligible Rights Holders.” (ARI)

Reserved names.

Two comments requested expanding the Qualified Launch Program Addendum to address issues related to Section 3.3 of Specification 5 in the Registry Agreement.

“AIA also urges ICANN to modify the QLP Addendum to further clarify that the provisions of Section 3.3 of Specification 5 addressing “reserve list” domain names cannot be invoked to sidestep the mandatory sunrise registration rules and the limited exemption from such rules provided by the QLP Addendum. Section 2.4.3 of the Rights Protection Mechanism Requirements addresses Registry Operators’ ability to reserve domain names pursuant to Section 2.6 of the Registry Agreement and Specification 5 of the Registry Agreement. Without an appropriate clarification in the QLP Addendum, Section 2.4.3 of the Rights Protection Mechanism Requirements could be interpreted as allowing for placement of an unlimited number of domain names on a Registry Operator’s reserve list for the sole purpose of making the domain names available for allocation after the conclusion of the sunrise registration period. In this circumstance, Section 2.4.3 of the Rights Protection Mechanism Requirements would appear to only require the Claims Services—not a sunrise registration period.” (AIA)

“Paragraph 3.3 of Specification 5 addresses “reserve list” domain names and, unlike the limitation in Paragraph 3.2 of Specification 5 at 100 domain names, Paragraph 3.3 allows ROs to place an unlimited number of domains on the registry’s reserve list. Without an appropriate

clarification in the QLP Addendum, Section 2.4.3 of the RPM Requirements could be interpreted as allowing for placement of an unlimited number of domain names on a RO's reserve list for the sole purpose of making the domain names available for allocation after the conclusion of the sunrise registration period. In this circumstance, Section 2.4.3 of the RPM Requirements would appear to require only the Claims Services—not a sunrise registration period.” (IPC)

“The potential for harm from this practice is exacerbated by some Registry Operators apparent willingness to sell “option contracts” to reserve list domain names despite the prohibition in Section 2.2.4 of the Rights Protection Mechanism Requirements on allocation of domain names to non-Sunrise-Eligible Rights Holders prior to the allocation or registration of all Sunrise Registrations. Unfortunately, the welcome and appropriate clarifications in the QLP Addendum addressing allocation of domain names pursuant to Section 3.2 of Specification 5 could be rendered moot if Registry Operators are permitted to reserve an unlimited number of domain names pursuant to Section 3.3 of Specification 5, sell “option contracts” to such domain names, and then subsequently allocate such domain names after the conclusion of the mandatory sunrise registration period.” (AIA)

“The potential harm to rights holders from this practice is exacerbated by some ROs' willingness to sell, pre-Sunrise, reserve list domain names via “option contracts,” despite the prohibition in Section 2.2.4 of the RPM Requirements on allocation of domain names to non-Sunrise-Eligible Rights Holders prior to the allocation or registration of all Sunrise Registrations. Thus, the provisions of the QLP Addendum addressing allocation of domain names pursuant to Paragraph 3.2 of Specification 5 could be rendered moot, and the value of mandatory sunrise registration periods significantly undermined, if ROs are permitted to reserve an unlimited number of domain names pursuant to Paragraph 3.3 of Specification 5, sell “option contracts” to such domain names, and then subsequently allocate such domain names after the conclusion of the mandatory sunrise registration period.” (IPC)

“AIA believes that such a potential circumvention of the sunrise registration rules was not intended by ICANN. Therefore, the QLP Addendum should be modified to clarify that domain names that are initially reserved and then allocated pursuant to Section 3.3 of Specification 5 are also subject to the procedures set forth in Paragraphs 2-4 of the QLP Addendum dictating that such domain names may only be allocated to non-Sunrise-Eligible Rights Holders if they do not match a label contained in the Trademark Clearinghouse. Alternatively, Section 2.4.3 of the Rights Protection Mechanism Requirements could be revised to clarify that any and all domain names that will be allocated by a Registry Operator must be subject to all rights protection mechanisms including the sunrise registration rules—not just the Claims Services. The aforementioned clarifications would ensure that all domain names are provided uniform treatment whether allocated pursuant to Section 3.2 or 3.3 of Specification 5.” (AIA)

“In light of the foregoing, the QLP Addendum should be modified to clarify that domain names that are initially reserved and then allocated pursuant to Paragraph 3.3 of Specification 5 are

also subject to the procedures set forth in Paragraphs 2-4 of the QLP Addendum dictating that such domain names may only be allocated to non-Sunrise-Eligible Rights Holders if they do not match a label contained in the Trademark Clearinghouse. Alternatively, Section 2.4.3 of the RPM Requirements could be revised to clarify that any and all domain names that will be allocated by a RO must be subject to all Rights Protection Mechanisms including Sunrise—not just the Claims Services. The aforementioned clarifications would ensure that all domain names are treated uniformly whether allocated pursuant to Paragraph 3.2 or 3.3 of Specification 5.” (IPC)

Additional proposed mechanisms.

One comment requested the creation of a new Section 2.3 of the Qualified Launch Program Addendum that would allow a limited number of trusted and qualified launch partners to be able to register domain names that match labels on the Sunrise List.

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.” (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,” 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 preregister 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.” (GOOG)

One comment supported the provisions of Section 2.2 of the Qualified Launch Program Addendum but opposed the additional category proposed via the comments:

“Paragraphs 2-4 of the QLP Addendum appropriately clarify that domain names can only be allocated to non-Sunrise-Eligible Rights Holders prior to allocation and registration of all Sunrise Registrations if such domain names do not match a label contained in the Trademark Clearinghouse or if such domain names are being allocated to an appropriate Public Authority and the TLD has been designated by ICANN as a geographic name. These clarifications are

appropriate to ensure that the provisions of Paragraph 3.2 of Specification 5 are not used to circumvent the rights of intellectual property rights holders.” (IPC)

“The IPC believes that the provisions of Paragraph 2.2 of the QLP Addendum are appropriately limited to allow for pre-Sunrise registrations to Public Authorities and the IPC opposes broadening this exemption to allow more general pre-Sunrise “public interest” registrations as advocated by a public comment.” (IPC)

One comment suggested the creation of a new list of labels for all Trademark Clearinghouse registered marks, as well as labels protected through the “TMCH +50.”

“As advocated in the comments by ARI Registry Services, FairWinds supports the creation of a new list of labels to be barred from inclusion in a QLP, except under the conditions set forth in QLP Addendum 2.1 and 2.2. However, FairWinds believes that this list should contain the corresponding labels for all Trademark Clearinghouse-registered marks, as well as labels protected through the “TMCH +50” service. Given how their marks are rendered within logos and other advertising or marketing materials, some prominent trademarks may not be eligible for Sunrise Services.” (FWP)

Allocation by registry/registrar.

One comment requested that Registry Operators be allowed to register QLP Names at the registry level without involving a registrar.

“It would be preferred if the Qualified Launch Program names could be registered at the Registry level as well as through Registrars depending upon the needs of the Registry. Our organization intends to provide complimentary registrations for a limited period of time to qualified Registrants. We would prefer not to ask Registrars to provide free registration services and we would prefer not to have to choose winning and losing Registrars to maintain these registrations. We would prefer to allow the Registrant to choose their preferred Registrar at the end of the complimentary period and we will transfer the registration to their Registrar of choice.” (AT)

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 draft Qualified Launch Program Addendum. The Qualified Launch Program Addendum is intended to provide a mechanism for Registry Operators to register a limited number of names to third parties to promote their TLDs prior to their Sunrise Periods, while maintaining safeguards against intellectual

property infringement.

As noted in the summary section above, the comments covered a range of topics and the analysis is organized according to the following areas of comment:

- Public Authority criteria
- Comments relating to timing and technical implementations
- Reserved names
- Additional proposed mechanisms
- Allocation by a registry/registrars

Public Authority Criteria

Based on the feedback received, there is concern that allowing for registrations by Public Authorities pursuant to Section 2.2 to only “geographic name” TLDs would result in a rule that may exclude appropriate TLDs. These comments requested that ICANN amend Section 2.2 of the Qualified Launch Program Addendum to expand the provision to cover additional types of TLDs. ICANN has reviewed these comments and has updated Section 2.2 to allow Public Authorities to register QLP Names in any TLD.

Two comments suggested that Section 2.2 should be amended to include “public services” and appropriate QLP Names that do not match identically the name or acronym of the Public Authority. Two other comments requested the expansion of names under Clause 2.2 of the Qualified Launch Program Addendum to include geographical subdivisions.

Section 2.2 of the Qualified Launch Program Addendum provides that QLP Names can either be identical to the name or the acronym of such Public Authority or the name of a building, park, monument or other public place operated by such Public Authority. ICANN recognizes that there are circumstances where a Public Authority might be unable to register a QLP Name due to an inability to specifically fit into the draft criteria of Section 2.2, thus, the language has been amended to include geographic areas under the governance of such Public Authority, as well as recognized public services provided by such Public Authority. However, ICANN has not included names that might not identically match the name or acronym of the Public Authorities, as this goes beyond the intended scope of the Qualified Launch Program.

Two comments requests that it be specifically recognized that all names listed in Section 2.2 are allowed to be translated into the TLD-relevant language(s)/scripts. The Addendum has been updated to clarify that names may be translated or transcribed into any language; however, each such Allocation or registration of a translated or transcribed name will count as an individual Allocation or registration.

Timing and technical implementations

ICANN notes the comment regarding the terms “allocate or register” and “register” or “time of registration.” ICANN understands that the uniformity of the terms used will help facilitate communication to third parties that will be partaking in the Qualified Launch Program, and acknowledges that there could be a time difference between a list of Qualified Launch Program names being finalized and their actual registration. The QLP Addendum has been revised to specify that QLP Names should be promptly Allocated or registered following the Registry Operator’s check of the Sunrise List, but once a QLP Name has been Allocated, the Registry Operator does not need to recheck the Sunrise List at registration. No QLP Names may Allocated or registered prior to the Registry Operator obtaining the Sunrise List.

One comment mentioned the technical feasibility of the Qualified Launch Program process, specifically regarding the Sunrise List. The comment emphasized for understanding by the community that the Domain Name Label (DNL) List does not fulfill the role of a Sunrise List and that a new mechanism is needed to specify which labels belong to Sunrise-Eligible Rights Holders. This is correct and ICANN is working on developing a mechanism to ensure the Sunrise List will be available once the Qualified Launch Program Addendum is approved.

Reserved Names.

Comments were received requesting that the TMCH Requirements be revised to specify that domain names that are reserved or released by a Registry Operator must be subject to the Sunrise Services in addition to the Claims Services. The Qualified Launch Program is meant to provide a mechanism for Registry Operators to register a limited number of names to third parties to promote their TLDs prior to their Sunrise Periods, and as per the Qualified Launch Program, the Registry Operator must provide the Claims Services for each QLP Name registered to a third party pursuant to Section 2 of the Addendum. Apart from this, the Qualified Launch Program Addendum is not intended to address this matter, thus new requirements on reserved names have not been added to the Addendum.

Additional proposed mechanisms.

One comment suggested creating an additional exception under a new Section 2.3 to allow a limited number of trusted and qualified launch partners to pre-register domain names. The Qualified Launch Program Addendum is intended 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, while maintaining safeguards against intellectual property infringement. ICANN has carefully evaluated this proposal in light of this objective. While the proposed category is limited in scope, providing for up to 50 names that are determined by the registry to meet specified criteria, it does create a new broad “launch partner” category for which names can be given out to registrants other than the sunrise-eligible rights holders with trademarks verified by the Trademark Clearinghouse. As the QLP already provides a limited exception for up to 100 names to be allocated in advance of the Sunrise period, the additional proposed section 2.3 category has not been incorporated into the Addendum at this time.

Another comment was received regarding using the Domain Name Label (DNL) list rather than a Sunrise List, basing the registry review required in section 4 of the addendum on a list containing all Trademark Clearinghouse registered marks, as well as labels protected through the “TMCH +50” service. ICANN has reviewed this suggestion and has decided to not expand the Sunrise List given that the implementation of the +50 UDRP labels was explicitly limited to purposes of the Claims Services only, not Sunrise.

Allocation by registry/registrar.

One comment requested that ICANN consider allowing the registration of domain names at the registry level without involving a registrar. However, as per Section 3.2 of Specification 5 of the Agreement, Registry Operators must use an ICANN-accredited registrar to register such one hundred (100) domain names.

Conclusion

As noted previously, ICANN appreciates the time spent by community members to provide their input on the Qualified Launch Program Addendum. As detailed in the analysis of the comments, ICANN will make several important but relatively minor modifications to finalize the document put for public comment, which may then be automatically incorporated into the Trademark Clearinghouse Requirements.