

# Report of Public Comments

<b>Title:</b>	<b>Rights Protection Mechanism (RPM) Requirements</b>	
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<b>Prepared By:</b>	ICANN staff	
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<b>Section I: General Overview and Next Steps</b>		
<p>The operational requirements for implementation of the Sunrise and Trademark Claims processes in new gTLDs are contained in the “Rights Protection Mechanism (RPM) Requirements,” and fulfill the reference in Specification 7 to the Registry Agreement.</p> <p>The initial draft set of Requirements was posted on 6 April 2013. This draft underwent several cycles of revision based on community consultation and feedback. A revised draft of the RPM Requirements, together with a set of community-proposed revisions, were posted for comment to give an opportunity for the community to review and provide feedback.</p> <p>The body of comment received has been analyzed and taken into account by ICANN as described below, resulting in a number of additional changes, as reflected in the RPM Requirements posted on 30 September 2013.</p>		
<b>Section II: Contributors</b>		
<p><i>At the time this report was prepared, a total of seventy (70) community submissions had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in reverse 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 name or initials.</i></p>		
<b>ORGANIZATIONS AND GROUPS:</b>		
<b>Name</b>	<b>Submitted by</b>	<b>Initials</b>
City of Paris	Fabien Betremieux on behalf of Valerie de Brem	FB & VdB
NTAG RPM Working Group (NTAG)	Tim Switzer	NTAG
.CLUB DOMAINS, LLC	Jonathan Frost	JF
Intellectual Property Constituency (IPC)	Claudio Di Gangi and Kristina Rosette	IPC
American Bible Society	Scott Wennermark	ABS
MarkMonitor	Kiran Malancharuvil	MM
dotgay LLC	Scott R. Seitz	SRS

Internet Commerce Association (ICA)	Philip S. Corwin	ICA
Blacknight Solutions	Michele Neylon	MN
Demand Media	Jeff Eckhaus	DM
SportAccord	Pierre Germeau	PG
ICANN Business Constituency (BC)	Steve DelBianco	BC
Monash University	Fiona Andrewartha	FA
ICANN At-Large Advisory Committee (ALAC)	Heidi Ullrich, Silvia Vivanco, Matt Ashtiani, Gisella Gruber, Nathalie Peregrine and Julia Charvolen	ALAC
ICM Registry LLC	--	ICM
Verisign	Chuck Gomes	CG
Microsoft	Russell Pangborn	RP
Donuts	Jon Nevett	JN
Uniregistry Corp.	Bret Fausett	BF
Top Level Design LLC	Andrew P Merriam	APM
Google	Andy Abrams	AA
dotQUEBEC	Norman Fortier	NF
ZA Central Registry	Andrew Marshall	AM
American Insurance Association (AIA)	Angela Gleason	AG
DotMusic	Constantine Roussos	CR
United TLD	Statton Hammock	SH
GE Company (GE)	Sean Merrill	SM
Dot London	Helena Real	HR
Hamburg Top-Level-Domain GmbH	Oliver Sume	OS
CORE Association (CORE)	Amadeu Abril i Abril	AAiA
Nominet UK (Nominet)	Sarah Walden	SW
puntCAT (also on behalf of the City Council of Barcelona)	Nacho Amadoz	NA
GeoTLDs Interest Group (GeoTLD)	--	GEO
punkt.wien GmbH	Ronald Schwarzler	RS
Dot Saarland GmbH	Dorothea Marx	DM
Region Alsace	Benjamin Louis	BL
dotShabaka Registry	Yasmin Omer	YO
ARI Registry Services (ARI)	Yasmin Omer	YO
FAITID	Maxim Alzoba	MA
Minds + Machines	Antony Van Couvering	AVC
dotBERLIN GmbH & Co. KG (dotBERLIN)	Dirk Krischenowski	DK

**INDIVIDUALS:**

Name	Affiliation (if provided)	Initials
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Serg (dsds7977)		--
Andy Gardner		AG
Bobby Yeld		BY
Benjamin Hayes		BH
Steve Epstein		SE
Tim Greer		TG
Toren Chikalut		TC
David Cohen		DC
Edwin Hayward	Memorable Domains Ltd.	EH
Andrew J. Snow		AJS
Dmitriy Felistovich		DF
Thaitanicbkk		--
Hiroyoshi Tanaka		HT
Thomas Lowenhaupt		TL
Werner Staub		WS
Jiri Prusa		JP

### Section III: Summary of Comments and Analysis

*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). Responses labeled "Analysis" are intended to provide a preliminary analysis and evaluation of the comments received.*

#### TLD Startup Information

Verisign recommends that ICANN specify the following in the RPMs: (i) the criteria and process steps involved in the TMCH Sunrise and Claims Operator's acceptance of the start date and duration of a Registry Operator's sunrise; and (ii) what documents and/or information the Registry Operators must provide to ICANN and the TMCH Sunrise and Claims Operator to sufficiently evidence this confirmation. *Verisign (6 September 2013)*

Section 2.1.1.2 is unclear as it seems to indicate that a Registry Operator must inform the TMCH Operator that the TMCH Operator has accepted the TLD Start-Up Information prior to this submission. The IPC urges ICANN to consider separating the TMCH Operator confirmation step to another section for clarity. *IPC (27 August 2013)*

General registration policies should be submitted with the TLD Start-Up Information. *Verisign (6 September 2013)*

Microsoft recommends that ICANN should require the Registry Operator to submit the Sunrise Dispute Resolution Policy as part of the TLD Start-Up Information. *Microsoft (27 August 2013)*

Section 2.1.2 should state that ICANN will reject TLD Start-Up Information that is non-compliant with the TMCH Requirements and ICANN should publish notice on its website if it deems a particular TLD Startup submission to be non-compliant along with the basis of such determination. *Microsoft (27 August 2013)*

***Analysis:***

*The process for testing and coordinating start dates with the TMCH Sunrise and Claims Operator is available at <http://newgtlds.icann.org/en/about/trademark-clearinghouse/scsvcs>. The intention is for the Sunrise start date and duration time to be submitted to the TMCH Sunrise and Claims Operator through the ICANN customer service portal described in such document. Registry Operators simply need to provide a written statement that certifies that such requirement has been satisfied.*

*The submission of TLD Startup Information will be an automated process intended to feed the submitted data to the public information page. If TLD Startup Information does not comply with the requirements of the TMCH Requirements (for example, if a Claims period is less than 90 days), the automated process will notify the Registry Operator that an error has occurred and will not accept the TLD Startup Information.*

*As suggested in the comments, the requirements have been revised to clarify that Registry Operators will submit their Sunrise Dispute Resolution Policy as part of the TLD Startup Information. It was also suggested that ICANN should require the submission of general registration policies. This requirement, which would thereafter require that any updates thereto also be submitted, could place an unnecessary burden on Registry Operators and could potentially distract sunrise registrants from the information that is more pertinent to Sunrise Registrations, generally. ICANN has not imposed such a requirement, but will accept the additional information at the Registry's option.*

Posting of TLD Startup Information

The IPC believes this section should contain an explicit requirement that the Registry Operator make the TLD Start-Up Information public. *IPC (27 August 2013)*

TLD Start-Up Information should be publicized by the registry on its website at the same time as notices are posted by ICANN and the TMCH. *GE (27 August 2013)*

***Analysis:***

*The TMCH Requirements have been revised to provide that the Registry Operator should publish its TLD Startup Information on its primary website for the TLD. Also, note that Specification 11 to the Registry Agreement provides that: "Registry Operator will operate the TLD in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing, and adhering to clear registration policies."*

#### Timing of Submission of TLD Startup Information

United TLD believes allowing the announcement of Sunrise and Start-Up Information once the Registry Operator begins the IANA transition to delegation would allow for further dissemination of Start-Up Information, giving rights holders additional time to decide on their plan in relation to that TLD. *United TLD (27 August 2013)*

Donuts believes the notification clock should start when the TLD is sent to IANA for delegation. *Donuts (27 August 2013)*

#### **Analysis:**

*ICANN takes note of the comments seeking to move the notification of TLD Startup Information to an earlier point in time. ICANN believes that it is preferable that TLD Startup Information not be provided until a TLD has been delegated to avoid consumer confusion, reduce uncertainty as to scheduled Sunrise Periods, and provide greater timing certainty and visibility for potential sunrise registrants who intend to accurately calendar Sunrise Periods across TLDs.*

#### Notice of Sunrise Period and Allocation

United TLD proposes adjusting the current 30-day notice in advance of the 30-day Sunrise period to a 60-day Sunrise period, with the understanding that names may not be allocated until 30 days after the notice is submitted. The combination of the notice and Sunrise periods maintains the respective times, but allows registries the flexibility to offer a longer period for rights holders to submit names for qualified Sunrise registrations. *United TLD (27 August 2013)*

Top Level Design, LLC believes that a 60-day Sunrise was preferred by the IPC during the Strawman discussions. Top Level Design, LLC hopes that there can be renewed consideration of achieving this through conflating the currently mandatory 30-day warning period and 30-day Sunrise into a minimum 60-day Sunrise. *Top Level Design (27 August 2013)*

Google supports the option of a 60-day Sunrise period (as originally proposed by the BC/IPC in the Strawman discussions) which does not distinguish between notice and Sunrise periods. *Google (27 August 2013)*

In Donuts' Sunrise, no matter how many days the registry accepts applications, no names would be allocated until the end of the Sunrise period. Whether the Sunrise period is 60 days and includes the notice period, or 30-day notice and 30-day Sunrise, the last day would be exactly the same. If more than one rights holder applies for the name, it will go to a Sunrise auction in either scenario. There are no downsides to trademark holders if the Sunrise is extended to 60-day notice/Sunrise period so long as the Registry Operator does not employ a first-come first-serve allocation. *Donuts (27 August 2013)*

NTAG supports the combined 60-day notice/Sunrise period which would allow registries additional flexibility in their rollouts to better serve their registrants. Applicants would be

willing to accept a limitation that in order to offer a longer Sunrise in lieu of a 30-day notice period, all allocation decisions must be made at the end of the Sunrise period. *NTAG (18 September 2013)*

MarkMonitor does not support the adjustment of the current requirement for 30-day notice in advance of Sunrise to 60-day notice from the end of the Sunrise period. This adjustment has the potential to eliminate the ability of rights owners to register marks in the TMCH in advance of Sunrise, thereby opening up the possibility of creating advantages to partners of Registry Operators over rights holders. *MarkMonitor (22 August 2013)*

Microsoft supported a separate 30-day required notice period for Sunrise as having the potential to be very helpful to trademark owners in preparing for over 1400 Sunrise periods. Merging the notice period with the Sunrise registration period undermines the value of this notice. *Microsoft (27 August 2013)*

GE believes it should be provided with reasonable and adequate time to register relevant marks in the TMCH before a Sunrise period commences, so that companies will receive Claims Notices for applications made throughout the entire Sunrise period. If the Sunrise period commences before marks are in the TMCH, brandowners will not receive Claims Notices for Sunrise applications made during this “gap period.” Commencing the Sunrise period before notice is sent (as this proposal appears to allow) is just as problematic. *GE (27 August 2013)*

MarkMonitor can support a zero notice, 60-day Sunrise if: (i) no names are allocated until the end of the 60-day Sunrise period, (ii) all identical requests for second-level domain names are placed in contention on equal grounds for resolution through the registry-specific Sunrise Dispute Resolution Procedure (SDRP), (iii) timing of requests will play no role in deciding the outcome of SDRPs and (iv) trademarks which have been entered into or validated by the TMCH after the start of the 60-day Sunrise are not prejudiced in any way. *MarkMonitor (18 September 2013)*

The BC can only support a 60-day Sunrise/notice period ONLY if domains are allocated at the end of the Sunrise period. The ability to allocate names 30 days from the date of notice, with 30 days left is particularly problematic given that validation by the TMCH may take up to 34 days. All requests for Sunrise registration should be compiled and then analyzed for competing, identical requests. These requests should be subject to the Registry Operator’s SDRP. Allowing the Registry Operator to allocate at 30 days, when a competing request for registration could be received during the next 30 days creates a first-come first-served system, which disenfranchises certain legitimate rights holders. *BC (18 September 2013)*

The IPC does not oppose the option for longer Sunrise periods, but does oppose the change to 60 days’ notice from the end of the Sunrise period. *IPC (27 August 2013)*

The IPC also maintains that allocation at the end of Sunrise is preferable to a “first come, first

serve” Sunrise. *IPC (27 August 2013)*

The proposal to allow allocation of domain names during a Sunrise period controverts a basic tenet of Sunrise periods: Sunrise is not “first come, first served.” Under this proposal, an early applicant with the brand ACME could have that domain name allocated, while a later Sunrise applicant also with the brand ACME would find that same domain name unavailable. This is fundamentally unworkable, and would present a material change to Sunrise. *GE (27 August 2013)*

The 30-day notice period should start from the date ICANN publishes the TLD Start-Up Information not the date the Registry Operator provides the TLD Start-Up Information to ICANN. *Microsoft (27 August 2013)*

Section 2.4.4 should be restated as “Registry Operator may not allocate or register any given domain name related to a Limited Registration Period, until Registry Operator has completed all allocations and registrations with respect to that domain name in the Sunrise Period.” *ARI (27 August 2013)*

ICANN must clarify that any overlapping Sunrise period and LRP are subject to both Section 3.2.4 and Section 2.4.4, and that any conflict between a Sunrise period application and a LRP application is resolved in favor of the Sunrise period application. (*Various*)

Section 3.2.4 should be clarified so that LRP registrations will be subordinate to Sunrise Registrations. *IPC (27 August 2013)*

Sections 2.2.4 and 3.2.4 appear to be contradictory. Allowing domain name registrations during the LRP would necessarily involve allowing registration in contravention of Section 2.2.4, were the two periods to overlap. *ZA Central Registry (27 August 2013)*

**Analysis:**

*ICANN acknowledges the broad spectrum of views submitted on these topics.*

*Registry Operators will be given the option of choosing either a “Start-Date Sunrise” or an “End-Date Sunrise” for their Sunrise Period when they submit their TLD Startup Information. TLD Startup Information for a Start-Date Sunrise must be submitted at least 30 days before the start of a Start-Date Sunrise, but such Sunrise Period may allocate Sunrise Registrations in any manner once the Sunrise Period commences. TLD Startup Information for an End-Date Sunrise can be submitted at any time following delegation of the TLD and the End-Date Sunrise can start at any time thereafter, but such Sunrise Period must last for at least 60 days and no Sunrise Registrations may be allocated until the end of such Sunrise Period.*

*While there should be no measurable delay between a Registry Operator’s submission of compliant TLD Startup Information to ICANN and ICANN’s posting of the TLD Startup Information, the start of a*

*Registry Operator's Sunrise Period should not be delayed if there is a delay in ICANN's posting of the TLD Startup Information. Based on input received by Registry Operators, such a delay would adversely affect a Registry Operator's planning and potentially jeopardize the successful launch of a TLD, which could adversely affect consumers. Based on a balancing of these interests, the relevant measuring point for calculating the 30 day notice period will be the date the Registry Operator submits compliant TLD Startup information to ICANN. Registry Operators are encouraged to post their TLD Startup Information on their own websites as well, as specified in the revised TMCH Requirements.*

*Other than the prohibition on time-based allocation processes for End-Date Sunrises, ICANN does not stipulate the allocation of domain names in a TLD within registration periods, such as first come, first serve or auction. Under the TMCH Requirements, Registry Operators may not allocate or register a domain name to a third party in a Limited Registration Period (even if such period overlaps with the Sunrise Period) until registrations of Sunrise Registrations are complete.*

#### Launch Programs and Related Matters

The IPC can support pre-Sunrise allocation to the Registry Operator of names necessary for promotional information (e.g. sunrise.tld) for the Registry Operator's use, but these domains should NEVER be allocated, registered or controlled by third parties, partners or affiliates at any time in the future. *IPC (27 August 2013)*

Pre-Sunrise allocation of domain names to third parties would undermine the requirement that Sunrise be the first opportunity for any third parties to register domains. Section 3.2 of Specification 5 allows activation of up to 100 names by the registry to be used in the "operation or promotion" of the TLD. This section was intended to allow registries to use a few domains for their own use (e.g. billing.TLD or sunrise.TLD); it was not intended to establish a Founders' Program. Such a program could be used to allow a registry to arbitrarily choose one brandowner over another and award domain names to the most lucrative bidder. GE believes the Sunrise period must be a level playing field and names activated by the registries through Section 3.2 should be used only by the registries in their business. *GE (27 August 2013)*

Section 2.2.4 should be revised to state "Registry Operator MUST NOT allocate (i.e., assign, designate, or otherwise earmark), release or register a domain name in the TLD, including any names withheld from registration or allocated to any entity other than the Registry Operator pursuant to Sections 3.2 or 3.3. of Specification 5 of the Agreement, to a registrant that is not a Sunrise-Eligible Rights Holder with a valid SMD prior to the conclusion of the Sunrise Period." *Microsoft (27 August 2013)*

MarkMonitor is concerned with the proposed language of Section 2.2.5. MarkMonitor believes that allowing Registry Operators to register names to third parties prior to Sunrise has significant potential to contravene the primary purpose of Sunrise registration. Any attempted registration of a string that may match entry in the TMCH should take place, at the earliest during the Sunrise period and should be subject to SDRP where matches occur. Sending a



TMCH Claims Notice is inadequate in this instance. No third party should have priority registration rights over validated entries in the TMCH. *MarkMonitor (22 August 2013)*

Section 2.4.3 should be revised to clarify that any and all domain names that will be released by a Registry Operator must be subject to all RPMs—not just the Claims Services. Before release or allocation of any domain names, whether or not initially reserved pursuant to Section 3 of Specification 5 the domain names should be checked against the TMCH database and should be subject to a Sunrise period for Sunrise-Eligible Rights Holders and a Claims period. There is no reason that different rules should be established for the 100 reserved names and ICANN should make clear that Section 3 of Specification 5 cannot be used to circumvent the RPM Requirements. *AIA (27 August 2013)*

Section 2.4.3 should be revised to state “If Registry Operator reserves domain names from registration prior to or during the Sunrise Period in accordance with Section 2.6 of the Agreement and Specification 5 of the Agreement (including without limitation Sections 3.2 and 3.3 thereof) then, if any such domain name is later made available at any time following the conclusion of the Sunrise Period, such domain name MUST be subject to (i) a special Sunrise Period of the same duration as the Sunrise Period conducted by the Registry Operator and subject to the same notice provisions as such Sunrise Period and (ii) the Claims Services specified in Section 3 hereof, each so long as the Trademark Clearinghouse (or any ICANN-designated successor thereto) remains in operation.” *IPC (27 August 2013)*

Section 2.4.3 is too narrow and should read: “If Registry Operator reserves domain names from registration during the Sunrise Period in accordance with Section 2.6 of the Agreement and Specification 5 of the Agreement, then, if Registry Operator later makes available, activates or allocates any such domain name to any entity other than Registry Operator at any time following the conclusion of the Sunrise Period, such domain name MUST be subject to the Claims Services specified in Section 3 hereof as long as the Trademark Clearinghouse (or any ICANN-designated successor thereto) remains in operation.” *Microsoft (27 August 2013)*

The BC rejects the proposal as written. The BC suggests modifying the language so that names could only be registered to third parties prior to Sunrise if the names DO NOT match any entry in the TMCH that is eligible for registration in that specific TLD. *BC (18 September 2013)*

Toren Chikalut notes that once ICANN allows 100 names to be set aside per Section 3.2 of The New gTLD Agreement, then “why not 200 or 10,000 to be set aside?” If legally acceptable, it should not matter one way or the other. *TC (31 August 2013)*

This proposal allows Registry Operators to facilitate and induce third party registrants to circumvent the Sunrise Period. *Microsoft (27 August 2013)*

In order to have a successful new gTLD launch—that benefits the global Internet community as well as the markets to which each specific new gTLD is designed to serve—registries must be

allowed to conduct a Founders' Program that allows prominent figures in the respective markets to register and promote domain names in the new gTLD. The requirements of Section 2.4.4, combined with the inadequate date restrictions of Section 2.3.1.4 effectively hobble any attempt to launch a new gTLD that will "foster diversity, encourage competition, and enhance the utility of the DNS," the stated purpose of the new gTLD program. *Minds + Machines (26 August 2013)*

Registries must be allowed to launch a Founders' Program that allows prominent entities (or Music Community Member Organizations) in the respective community to register and promote domain names to benefit those corresponding communities. *DotMusic (27 August 2013)*

The American Bible Society (ABS) sees a Founders' Program as critical to not only raise the awareness of its TLD but also to model the TLD for its intended use. The ABS strongly urges ICANN to take a balanced approach and allow for Founders' Programs that provide Registry Operators with the flexibility to launch their TLD while complying with all the required RPMs that are part of the new gTLD program. *ABS (18 September 2013)*

Founders' Programs must be sensitive to intellectual property rights. Google proposes that the total number of such registrations be limited to the 100 reserved names as set forth in Specification 5.3.2. Additionally, participants may be limited to securing only their brand or business name as well as key generic terms related to their field. Finally, any names allocated under a Founders' Program would still be subject to the Trademark Claims service. *Google (27 August 2013)*

Founders' Programs should be limited to the 100 reserved names and be subject to Trademark Claims service. *NTAG (18 September 2013)*

United TLD proposes that the registry have the flexibility under a Qualified Registry Launch Program, to allocate the 100 names to a third party or entity in advance of the Sunrise period. If a Registry Operator opts to participate in such a program, the names allocated in this program would be transmitted to the TMCH in the format described in the TMCH Functional Specification Section 6.3 LORDN File. Through this process, these names would still be subject to the applicable Trademark Claims process, therefore not diminishing the legal rights of others. *United TLD (27 August 2013)*

Dot London believes it should have flexibility in the number of names available to allocate to Founders and in the way these are allocated. If this is not possible, then Dot London would support the more limited proposal for the ability to allocate and activate 100 names in advance of the Sunrise Period. *Dot London (27 August 2013)*

DotMusic requests that the proposed language of Section 2.2.5 be modified to allow Registry Operators to protect as many names as needed to protect the intellectual property interests

of relevant, famous marks involved in the classes or business pertinent or related to the string, in this case, the music community. The Proposal for Allocation of 100 names is an arbitrary proposal which is insufficient in cases where communities are large and in strings where there are many famous marks pertaining to the activities in question. *DotMusic (27 August 2013)*

Google supports the ability to run parallel sunrise periods, “landrush” and/or limited registration periods (LRPs), so long as actual delegation and registration of domains remain subject to Sunrise requirements. Prospective landrush registrations should be permitted to request domain names immediately upon launch, but have such requests be subordinate to any competing Sunrise claim and would not be delegated until after all Sunrise registrations had been allocated. *Google (27 August 2013)*

NTAG supports the ability to run parallel Sunrise periods, landrush and/or LRPs, with the actual delegation and registration of domains remaining subject to Sunrise requirements. Thus, prospective landrush registrants would be permitted to request domain names immediately upon launch, but such requests would be subordinate to any competing Sunrise claim by a TMCH entry owner, and would not result in delegation until after all Sunrise registrations had been allocated. *NTAG (18 September 2013)*

Any exception procedure must be implementable and predictable with clear procedures and fixed time limits for evaluation and should consider defining classes of exceptions (such as exceptions that were previously approved) as automatically approved as long as they do not raise the risk of consumer confusion. *Google (27 August 2013)*

Nominet believes that it is imperative that ICANN clearly explain its definition of a “Qualified Registry Launch Program” and provide clarity as to the exact process for applying for an exemption under Sections 5.1 and 5.3. *Nominet (27 August 2013)*

The exemption process is too vague and will lead to unnecessarily lead to negotiations and instead should have well-defined parameters with a list of pre-approved scenarios that would be allowed. *ZA Central Registry (27 August 2013)*

MarkMonitor can support a specific exemption procedure for emergency services, and government offices (as non-prohibitive examples), but cannot accept a blanket priority registration period before Sunrise, without a narrowly tailored set of criteria to define what can be registered during this time. *MarkMonitor (18 September 2013)*

NTAG proposes that if the exception process is used, ICANN should offer a simple online form as part of the CIR process with a drop-down menu or checkboxes for selecting predetermined Sunrise exception categories. The entire approval process should be limited to 15-days unless the registry proposes an exception, which is not included in one of the predetermined categories or in its gTLD application, in which case the proposal may be submitted for public comment and more extensive review. *NTAG (18 September 2013)*

The exemption procedure should be termed "Procedure for Validation of Additional RPMs." The intent should not be an exception, that is, a permission not to protect rights, but should be based on additional or alternative rights being protected, or additional mechanisms to protect them all. *CORE (27 August 2013)*

NTAG believes that Applicants should be allowed to incorporate start-up plans included in applications or otherwise announced unless ICANN determines that the procedures would contribute to consumer confusion or infringement of legal rights. Where public review has already taken place, the presumption should be that the start-up mechanisms should be allowed. *NTAG (18 September 2013)*

The IPC believes LRPs are a sufficient way for Registry Operators to launch their TLDs. The IPC does not support granting exemptions for any proposal that would circumvent Sunrise periods because LRPs should be sufficient. *IPC (27 August 2013)*

The IPC supports the requirement that registration eligibility criteria imposed by a Registry Operator apply to all registration periods unless certain exceptions apply. Accordingly, the IPC opposes the position that certain eligibility requirements may be limited only to the Sunrise period. *IPC (18 September 2013)*

Allowing Registry Operators to request exemptions increases the number of domains that are exempt from the RPMs and increases the likelihood of consumer confusion and cybersquatting. If ICANN allows Qualified Launch Registry Programs, such programs must (i) be posted for public comment and (ii) reduce the number of domains available to the Registry Operator under Section 3.2 of Specification 5. *Microsoft (27 August 2013)*

ICANN should grant exceptions to trademark priority in situations where the exception will reduce the probability of consumer confusion (such as police.london or subway.nyc) and should reject exceptions that are likely to increase it. Exceptions should be narrowly tailored to avoid abuse and should be subject to the Registry Operator's SDRP. *Google (27 August 2013)*

As part of the new gTLD application process, dotBERLIN was required to obtain documented government support from the City of Berlin. Obtaining such support required dotBERLIN to make certain representations as to the allocation of domain names to relevant community groups and stakeholders. dotBERLIN wishes to continue with its original plans. ICANN should be aware that the relevant government(s) may revoke their support letter(s) if the representations made by the applicant(s) are not allowed by ICANN. *dotBERLIN (25 August 2013); see also Hamburg Top-Level-Domain GmbH (27 August 2013)*

Geographic applicants want to continue with their original plans to make sure that they can (i) prioritize and allocate names to appropriate organizations and individuals in a manner that

promotes the GeoTLD while protecting the rights of locals and meeting commitments mandated by the supporting government, and (ii) launch the GeoTLD in a way that best promotes its adoption and ensures its success. *GeoTLD (27 August 2013)*

dotBerlin must be able to give priority to organizations and individuals with a nexus to the City of Berlin. Allowing only TMCH trademark holders to be given priority defeats this objective and would cause a public relations problem for many supporting organizations and the city government, potentially resulting in the low adoption of .BERLIN. dotBerlin seeks an exemption from the RPM requirements to offer a .BERLIN gTLD-specific startup plan which includes a local priority period before the TMCH Sunrise period. This phase will include protection for additional legal rights. *dotBERLIN (25 August 2013)*; see also *Hamburg Top-Level-Domain GmbH (27 August 2013)*

GeoTLDs should be allowed to include criteria based upon a sufficiently tailored “nexus” to the city/region during their Sunrise. *GeoTLD (27 August 2013)*

In order to protect local stakeholders, .london should be able to prioritize entities with a physical London address during the Sunrise period. After launch phases Dot London plans for non-London entities to have the opportunity of buying .london domain names. Dot London seeks the flexibility therefore to have a ‘London’ requirement in Sunrise even though it will not be a criterion during general availability. *Dot London (27 August 2013)*

Companies named Quebec, Montreal, Laval and Sutton should not have priority for the .QUEBEC TLD over local governments. Using the TMCH must be an option for each trademark holder wishing to participate in the Sunrise, not a requirement. The registry must be allowed to offer alternative avenues. The registry must be able to make public interest assignments BEFORE that phase, having of course the responsibility of preventing trademark infringement when doing so. *dotQUEBEC (27 August 2013)*

While the ability to restrict marks eligible for the Trademark Sunrise to a class of goods related to the new gTLD in question is good, the inability to restrict marks geographically (unless the entire new gTLD is so restricted) is unacceptable. This allows .auto and .fishing to restrict marks to those that serve the automobile and sport fishing industries (even if those new gTLDs are not closed or restricted), respectively, but does not allow Moscow or New York to limit their Trademark Sunrises to marks that serve their respective populations. This is unfairly detrimental to geographic new gTLDs. *Minds + Machines (26 August 2013)*

ZA Central Registry uses .AFRICA as an example of how ICANN should implement a reserved names program. .AFRICA should be able to implement its Government Reserved Names List Policy that allows governments to reserve names in four categories (i) geographic names that are of substantial significance to governments, (ii) religious, cultural and linguistic names, (iii) economic and public interest names, and (iv) offensive names, with categories (i)-(iii) being redeemable by the relevant government for 12 months after Sunrise and (iv) being blocked

indefinitely – it is unclear whether Section 5.2 of the RPMs would allow this or allow names to be reserved prior to Sunrise. *ZA Central Registry (27 August 2013)*

GeoTLDs should have the ability to create and reserve a list of names (Reserve Name List) or create criteria by which names would fall under this category (in the event that a name is inadvertently left off their initial list) and not have these names be subject to the Sunrise period, as required in the Registry Agreement. In other words names on a Reserved Name List would trump names applied for during Sunrise. These names could then be available to be either:

- reserved by the registry;
- registered by the registry; or
- registered by the eligible third parties through an “early adoption” phase with strict eligibility criteria.

*GeoTLD (27 August 2013)*

GeoTLD proposes allowing GeoTLDs to implement and launch a tightly controlled “early adoption” phase prior to the Sunrise. Participants could be limited to securing certain names such as their brand, business or organization name, as well as key generic terms related to their field of intervention. The GeoTLD may leverage the TMCH or its own parallel validation process to determine eligibility and priority. GeoTLD also recognizes that it is appropriate that any names allocated under such a priority program would be subject to Trademark Claims, irrespective of when they are allocated. *GeoTLD (27 August 2013)*

Nominet believes it is important for the Welsh Government that the .cymru and .wales TLDs promote and support Wales’ identity, language and economy. In order to achieve this it is crucial that prominent Welsh businesses, institutions, personalities and organisations are able to register and promote domain names through a widely publicized Founders’ Program. Because Nominet’s interpretation of Section 2.2.5 is that it would be able to register up to 100 domain names for its Founders and key statutory bodies before or during Sunrise, Nominet supports Section 2.2.5. *Nominet (27 August 2013)*

The adoption of Section 2.2.4 [prohibiting a Founders’ Program] without the addition of Section 2.2.5 would impose an undue burden on the new gTLD Program, a burden that could ultimately threaten the gTLD Program’s success by severely diminishing public interest and awareness. Therefore, to ensure the validity of the New gTLD Program, .CLUB DOMAINS implores ICANN to adopt the proposed Section 2.2.5 if it adopts Section 2.2.4. *.CLUB DOMAINS, LLC (18 September 2013)*

Globally Protected Marks Lists (famous marks highly relevant to a string) should be given priority over any Sunrise registration. *DotMusic (27 August 2013)*

Each community-based Registry Operator should be allowed to reserve semantic keywords that are highly relevant to their respective string’s community, even if these terms are

trademarked words (e.g. rap.music; latin.music). *DotMusic (27 August 2013)*

If a place name has an intrinsic property of referring to a communitarian concern when associated with a given TLD, it should have priority over a trademark (e.g. ipanema.rio; Ipanema is a place as well as a footwear company). *WS (27 August 2013)*

Local interests should be able to protect their interests in TLDs (e.g. Antwerp.hotel; Napoli.sport) by having Registry Operators entrust such domains to neutral parties mandated to provide content in the public and community interests before the Sunrise starts. *WS (27 August 2013)*

The public has a right to proper signposts (e.g. plumbers.paris), especially when the TLD is run on behalf of the local public authority. *WS (27 August 2013)*

Granting trademark holders priority would give "Corona" beer priority over New York's Corona neighborhood, "Mayor" cigars over New York's mayor office and the band "Police" over New York's police department. Thomas Lowenhaupt believes that the trademark system was created to protect the public from unsavory imitators. That it might now be used to appropriate historic intellectual resources is highly undesirable. Some say, "better no TLD than one we can't control." Lowenhaupt suggests looking toward multi-stakeholder entities to address the complexities. *TL (27 August 2013)*

Cities need TLDs to help them run better, not to sell domains. *TL (27 August 2013)*

CORE believes that trademarks are not the only legal right regarding names. Geographic denominations, public-service denominations, iconic landscapes and public authority symbols, are often protected by relevant local laws. Geographically-oriented registries must abide by those laws, most notably if we take into account that those registries will either be the public authorities themselves or entities having obtained, under conditions, their support. *CORE (27 August 2013)*

CORE believes allowing what has often been outside the scope of trademark law be solved outside the rules of TMCH-bound Sunrise causes no harm to any trademark owner. Sunrise will indeed be in place for all TLDs, but allowing "champs-elysées.paris", "police.london", "tourism.barcelona" or "airport.amsterdam" to be allocated with priority over trademarks (which CORE insists could never legitimately register such names as trademarks for the evident meanings suggested by these domain names) does not deprive them from any protection. *CORE (27 August 2013)*

Protecting rights does not mean creating new rights. The current draft of minimum requirements for RPMs focuses on the protection of trademark rights. However, trademark rights are not the only category of another party's legal rights that deserve/require protection in many jurisdictions. The rights and legitimate interests of public authorities, local businesses

and individuals may deserve greater protection than the rights of trademark holders that are by definition linked to the use in commerce for certain categories of goods and services. *City of Paris (19 September 2013)*

The creation of new rights in the framework of RPM limits innovation and competition. The City of Paris believes it is feasible and appropriate for ICANN to depend on market mechanisms to promote and sustain a competitive environment, while making sure that the rights of trademark holders are protected. In order to protect the rights of trademark holders, there is no need for ICANN to intervene in the launch scenarios by limiting the possibility for Registry Operators to create RPMs to be used in conjunction (or prior to) the minimum RPMs designed by ICANN. *City of Paris (19 September 2013)*

ICANN should enable Registry Operators to exempt certain parts of the generic namespace from Sunrise. Registries should be able to exempt any term from any dictionary that is affiliated with the respective TLD, all geo-names affiliated with the TLD, and any 3 letter code from Sunrise. In the alternative, the Registry Operator should have the possibility of rejecting any Sunrise application which meets one of the described criteria. *dotgay, LLC (18 September 2013)*

Toren Chikalut requests allowing Registries to reserve generic names even if they are within the TMCH and not give the trademark owner first rights to those names. *TC (31 August 2013)*

Third parties can and should have priority registration rights over validated entries in the TMCH in the following instances:

- Geographical names relevant to their specific communities;
- Any domain related to their specific community; and
- Generic domains and IDN generic domains.

This should allow registries to create Founders' Programs. *TC (31 August 2013)*

For geo-oriented TLDs, CORE proposes that the following entities will be able to apply for geoTLD domain names:

- Public Authorities with competencies over the relevant territory;
- Other Public Institutions (e.g. agencies, consortiums; commissions, etc.) carrying out public-service activities in the territory on behalf of the entities comprised in the first category [need to establish criteria for verification]; and
- Other entities which have been granted specific responsibilities in the management of public resources in the territory by relevant authorities comprised in the first category [need to establish criteria for verification].

The entities listed above will be able to register the following during this phase:

- Their own names (and evident variations and/or abbreviations thereof);
- Names of the public services under their management;
- Names of landmarks, and other locally-relevant and iconic names for which they have specific responsibilities; and



- For Public Authorities as listed above, other names related to their public-interest activities.

*CORE (27 August 2013)*

MarkMonitor express concern over TLD-specific startup plans that offer priority periods before or concurrent with Sunrise period for geographic, community or other strings. No third party should have priority registration rights over validated entries in the TMCH, regardless of the business objectives of the Registry Operator. *MarkMonitor (22 August 2013)*

The IPC could support a narrowly tailored exemption that would allow pre-Sunrise allocation of certain domains to the government or public authority under certain circumstances. The IPC is prepared to put forward IPC members who are willing to work with ICANN and the applicants to develop mutually acceptable language for geo-related exemptions that could be posted for short public comment. *IPC (18 September 2013)*

Additional RPMs for the Launch phase described in the Application should benefit from a rebuttable presumption of acceptance from ICANN. In principle, these proposals have been reviewed and evaluated, and ICANN had to send unacceptable applications to Extended Evaluation. But CORE could also understand that ICANN could have some time, upon reception of those proposals, once again, this time as Qualified Launch Periods, in order to justify its opposition to any aspect of them. At the very least, though, the presumption should be that they are accepted. In this regard, the proposed Section 5.3 (in the proposed new Section 5) should be reversed, and, for the plans submitted in the applications, deem them approved unless ICANN justifies in writing its opposition in a period of 30 days from notification. *CORE (27 August 2013)*

NTAG supports a slight modification of the proposed language for Section 2.2.5 in order to clarify that “Registry Operator MAY register any or all of such domain names in the TLD prior to or during the Sunrise Period to third parties *or to itself* in connection with a registry launch and promotion program for the TLD...” *NTAG (18 September 2013)*

Because top-level domains for cities have special responsibilities to the city communities they serve, ICANN should allow flexibility in the proposed RPM requirements. These proposed RPM rules were not part of the original Applicant Guidebook and applicants would have written their applications differently if these rules had been in place at the time of application. *dotBERLIN (25 August 2013); Hamburg Top-Level-Domain GmbH (27 August 2013)*

The ability to have LRPs that are more restrictive than general availability eligibility—for instance, to allocate to government entities their exact names or widely-known nicknames—is a crucial step in making the new gTLDs credible and functional. *Minds + Machines (26 August 2013)*

GeoTLDs should be allowed to have restricted and open registration periods with different

eligibility criteria. Restricted registration periods (early adoption, Sunrise, and additional limited registrations) would be in place to ensure that local businesses, stakeholders and individuals have a priority. The open registration period(s) (landrush and general availability) could then have the same eligibility criteria as the restricted period or no eligibility criteria, depending on an individual GeoTLDs' needs. (i.e., the choice should be left to the GeoTLD). The GeoTLD may want to continue to restrict registrations or alternatively promote its region to the rest of the world. *GeoTLD (27 August 2013)*

***Analysis:***

*ICANN notes the varying opinions of members of the community on these issues.*

*The desire to subject any previously reserved domain name that is later released from reservation to the Sunrise Services is understandable, but it is not practical to implement. If a Registry Operator releases a previously reserved domain name prior to the start date of the Claims period, the released domain name will be treated subject to the requirements of any applicable registration period under the TMCH Requirements. If, however, a Registry Operator releases a previously reserved domain name after the start date of the Claims Period, the released domain name must be subject to an individualized 90 day Claims Period from the date of release (so long as the Trademark Clearinghouse is operational). This provides a minimum level of protection for the rights holder regardless of when the domain name is released. It is also noted that, except as may be available under a launch program, the TMCH Requirements prohibit the allocation of domain names prior to the start of the Sunrise Period.*

*Pursuant to Section 3.2 of Specification 5 of the gTLD Registry Agreement, Registry Operators may either allocate or register to themselves up to 100 domain names over the life of the TLD necessary for the operation or promotion of the TLD. 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 these 100 domain names prior to or during the Sunrise Period to third parties for the purposes of promoting the TLD is approved by ICANN, ICANN will prepare an addendum to the TMCH Requirements providing for the implementation of the approved process, which will be automatically incorporated into the TMCH Requirements.*

*Additionally, if Registry Operators desire to have additional launch programs not provided for in the parameters of the TMCH Requirements, they may seek approval from ICANN to conduct an additional launch program. Such a launch program application could, for example, provide for authorization to implement programs set forth in Registry Operator's application for the TLD, which, if set forth in reasonable detail in the application for the TLD, will carry a presumption of being approved, unless ICANN determines that the requested registration program could contribute to consumer confusion or the infringement of intellectual property rights. Additionally, if a requested program is substantially similar to a previously approved launch program, the application will carry a presumption of being approved, unless ICANN determines that such requested registration program could contribute to consumer confusion or the infringement of intellectual property rights. In order to ensure protection of intellectual property rights and to provide flexibility for the consideration of novel registration*

programs, ICANN reserves the right to submit any application for registration programs submitted for public comment.

ICANN notes that the Intellectual Property Constituency stated that it would be open to working with representatives of “geo TLDs” to reach a mutually agreeable solution that would protect intellectual property rights but allow geo TLDs flexibility in allocating key geographically related names. If such a solution is reached, ICANN will review the solution, which, if approved and implemented, would thereafter be available to geo TLDs through the launch program application process discussed in the TMCH Requirements.

### Registry Specific Proposals

Verisign believes existing registrants with an exact match second level in another TLD operated by the registry operator should get priority over Sunrise. *Verisign (6 September 2013)*

Verisign provides the following criteria that could be included in the TMCH RPMs to allow for registration policies that provide for an exact match second level in another TLD operated by the Registry Operator: (i) eligibility – registrants who have a registered second-level domain name in a TLD that is (a) owned/operated by the same Registry Operator and/or its subsidiaries and (b) the operation of such TLD is intended to mitigate potential user confusion among TLDs operated by such Registry Operator; and (ii) name selection – persons and entities in (i) will only be eligible to register their directly matching second level domain names that are currently registered in a TLD that is owned/operated by the same Registry Operator and/or its subsidiaries. *Verisign (6 September 2013)*

Verisign proposes modifying the parenthetical example in Section 2.3.1.2 so that it may read “Registry Operator MAY specify requirements that are not related to the scope of mark rights, provided that such requirements are imposed consistently...(e.g. if the TLD is restricted by Registry Operator to allow registrations only to members of a particular industry or community or to registrants with an exact second level domain name in a TLD operated by the Registry Operator and/or its subsidiaries, then Registry Operator MAY also impose such registration restriction on Sunrise Registrations).” *Verisign (6 September 2013)*

Edwin Hayward of Memorable Domains Ltd. supports Verisign’s proposal. Hayward writes, “to allow different registrants to own such domain names is to invite mass confusion and destroy trust in the IDN .coms before they have a chance to establish themselves.” *EH (17 September 2013)*

Tim Greer supports Verisign’s proposal and writes “Anything other than sole ownership of both IDN.IDN and IDN.com would lead to confusion and hinder the diffusion of multilingual extensions among native users.” *TG (18 September 2013)*

Benjamin Hayes writes, in support of Verisign’s proposal, “Should the rules not be changed,

and the release mechanism of new transliterated 'com' names be registered to parties other than the current registrants, then we foresee a huge opportunity for confusion and fraud, that will most likely result in rejection of IDN by end-users globally across the web." Hayes concludes that it is critical that owners of IDN.com receive an equivalent new transliterated "com." *BH (18 September 2013)*

David Cohen writes, "Registries should have a right to have a reserved list which shall include generic terms (ASCII & IDN) even if they exist within the TMCH, and should not be subjected to the TMCH. Reserved lists and founder programs are of generic names in general and of domains related to the specific TLD or community. There is no reason to allow the TMCH to be gamed as done in the .EU launch and other instances. Real trademark owners of non-generics have nothing to worry about." *DC, TC (18 September 2013)*

The IPC opposes Verisign's proposal as it circumvents the RPMs and has not been considered by the community. Such a proposal should only be allowed if (i) the registrant has registered the exact match second-level domain in another TLD operated by the same Registry Operator and/or its subsidiary; (ii) the registrant is a Sunrise-Eligible Rights Holder with a valid SMD; and (iii) there is no competing Sunrise application / contention for the SLD. *IPC (18 September 2013)*

ICM supports Verisign's proposal and notes that as a consumer protection mechanism for .XXX registrants, ICM's Grandfathering Program allows .XXX registrants the sole right to the exact match names in any of the new adult-related TLDs it is awarded (e.g. .PORN, .ADULT, .SEX). *ICM (9 September 2013)*

The IPC supports the following elements of ICM's Grandfathering Program: "For names that are already .XXX registry-reserved names, there is nothing more that any entity needs to do. We will keep .XXX registry-reserved names reserved in the gTLDs as well. We will do this at no cost and for as long as we are authorized to operate the gTLD." *IPC (18 September 2013)*

***Analysis:***

*These proposals appear to be registry-unique processes rather than general provision applicable to all registries. Such proposals could be submitted for consideration as an Approved Launch Program under the TMCH Requirements, in which case they could be subject to further public comment.*

**Alternative Trademark Clearinghouse**

The IPC does not support the implementation of an alternative clearinghouse, since, if it has the same registration requirements as the TMCH it would be unnecessary and if an alternative clearinghouse has different requirements, it would create confusion. *IPC (27 August 2013)*

The IPC states it is not practical at this point to develop and approve an alternative clearinghouse, along with necessary corresponding dispute resolution policies. *IPC (27 August 2013)*

2013)

If an alternative clearinghouse is offered, all registrations in the TMCH should be included free of charge. *IPC (27 August 2013)*

If an alternative clearinghouse is going to validate national and regional trademark registrations, it would undermine the utility of the TMCH. Trademark owners that have already entered their trademark registrations into the TMCH will be compelled to have an alternative clearinghouse verify its trademark rights while owners that choose to have an alternative clearinghouse verify their trademark rights will also have to enter the TMCH to participate in other registries' Sunrise and Trademark Claims periods. *Microsoft (27 August 2013)*

The exemptions to the TMCH Requirements, which permit Registry Operators to implement a secondary clearinghouse, are not timely given the limited time frame before the first new TLDs are implemented. *BC (18 September 2013)*

GE writes that there is no need for an alternative clearinghouse, except as an additional source of revenue for registries. An alternative clearinghouse would introduce inconsistencies in approach, requirements and results and create confusion and uncertainty. GE also opposes the proposal to the extent it would also be used to register marks ineligible for the TMCH (e.g. unregistered marks). *GE (27 August 2013)*

If ICANN permits the creation of an alternative clearinghouses, each must operate under contract with ICANN to ensure accountability, neutrality and transparency. *Microsoft (27 August 2013)*

Registry operators should be granted the option to accept Sunrise applications (through ICANN accredited registrars) from registrants not utilizing the ICANN-designated TMCH, provided that;

- proper validation of such applications and their claimed rights are conducted;
- results are publicly posted, and confirmed to meet the requirements of the "Trademark Clearinghouse Requirements"; and
- appropriate Sunrise Challenge processes are in place should any dispute or contention arise from the acceptance of such applications by the Registry.

This includes allowing only the same kind of rights allowed in the ICANN-designated TMCH (e.g. registered trademarks, court-validated trademarks, marks protected by statute or treaty). This also includes using the same mapping criteria between marks and DNS Labels as the TMCH. These applications should have no more or less priority than those based on TMCH verified marks. *ARI (27 August 2013)*

GeoTLD applicants should be allowed to run their own parallel (concurrent) validation process

to enable local businesses, with or without a registered trademark, to participate in the Sunrise in a more cost effective and efficient manner. This process could adopt eligibility standards in line with TMCH criteria but which would be less costly to small local businesses. *GeoTLD (27 August 2013)*

It is important for smaller Welsh businesses to be able to benefit from the Sunrise period rights protection without being forced to deal only with the ICANN TMCH. The Welsh economy encourages SMEs, local artisans and craftsmen who would find the process and expense of registering their trademarks with the TMCH prohibitive and unnecessary when they are only applying for a .wales and/or .cymru domain. Nominet believes it can apply to ICANN to provide an alternative trademark validation services during the Sunrise periods and therefore Nominet supports Section 5.2. *Nominet (27 August 2013)*

SMEs and Craftsmen will not have any need to deposit their trademark in the TMCH except to obtain a .HAMBURG registration. If they are interested in just the .HAMBURG gTLD they are faced with a US\$150 fee to validate their trademark for a single domain. Much worse, SMEs and Craftsmen often even do not have a trademark but a company name that is protected at the same level as a trademark by German trademark law. *Hamburg Top-Level-Domain GmbH (27 August 2013)*

The obligation on local businesses to register their trademark in TMCH with its associated cost is not an ideal solution for businesses who would only be interested in a single domain. The ability to introduce a local cost-efficient trademark validation system that could be offered instead of the TMCH would allow London businesses with trademark rights to participate in the .london Sunrise. *Dot London (27 August 2013)*

Applicants should be able to make use of an alternative clearinghouse if it meets certain standards without applying for an exemption. Use of such a mechanism should be dependent on the meeting the validation standards, not the discretion of ICANN. *ZA Central Registry (27 August 2013)*

It is unclear as to whether Section 5.2 refers to the rights that can be validated or the standards that an alternative clearinghouse must meet in validating them. For example, it is not possible to validate a company name in the TMCH (unless the name has been validated by a court). Section 5.2 as drafted can be read to mean that a company name can be validated as long as it is validated using the same validation standards used by the TMCH. It is not clear whether this is ICANN's intention. *ZA Central Registry (27 August 2013)*

ZA Central Registry asks, would an alternative clearinghouse be able to validate rights (such as company names and trading names, which have not been registered or court-validated) before Sunrise or would such validation amount to the mark being "earmarked" as described in Section 2.2.4? Further, would such rights holders be able to register trademarks, court-validated marks and marks protected by treaty validated to a "TMCH standard" via the TMCH

or an alternative clearinghouse? *ZA Central Registry (27 August 2013)*

**Analysis:**

*While ICANN understands the desire of certain members of the community to implement alternative clearinghouses or other mechanisms for particular cases, it also notes the concerns expressed regarding consistency of standards used for validation, and the complexity of integrating a new clearinghouse within the existing steps for Sunrise and Claims processes. At this stage, it is not practical to set up an alternative clearinghouse. Additionally, ICANN notes that the impetus for the Trademark Clearinghouse was to have a single resource for the validation of rights, to create efficiencies in domain name registration processes.*

**Contracting**

Any exception to the RPM requirements should be included in the Registry Agreement (probably as an amendment to Specification 7). The RPM Requirements can contain the exception mechanism. *ZA Central Registry (27 August 2013)*

**Analysis:**

*The TMCH Requirements contain a mechanism for Registry Operators to apply for launch programs.*

**Section 1.1**

Language should be added clarifying the length of time integration testing will take. Also, any procedures must be publicly provided. *Verisign (6 September 2013)*

**Analysis:**

*For information regarding the process of testing, we refer you to the documents available at <http://newgtlds.icann.org/en/about/trademark-clearinghouse/scsvcs>.*

**Section 1.5**

Because registrars are not required to interact with the TMCH during Sunrise, registrars who have not completed integration testing should be allowed to handle Sunrise registrations. Section 1.5 should be restated as "Registry Operator MUST NOT accept a Claims Registration (as defined in Section 3 below) from any registrar that has not completed Integration Testing..." *ARI (27 August 2013); Demand Media (18 September 2013)*

**Analysis:**

*The TMCH Requirements have been revised to permit registrars who have not completed integration testing to submit Sunrise Registrations, as no direct interaction with the Trademark Clearinghouse will be required by the registrar during Sunrise. However, registrars will need to have completed integration testing to submit Claims Registrations.*

### Section 2.2.3

The minimum 4-day prior notice requirement to extend a Sunrise period might prevent a Registry Operator from dealing with unexpected situations (e.g. unexpected and uncontrollable last-minute onslaught of Sunrise registrations). *WS (27 August 2013)*

The Sunrise period should be extendable even shortly after it was scheduled to end. *WS (27 August 2013)*

#### **Analysis:**

*The TMCH Requirements have been revised to provide that ICANN will review requests to extend the Sunrise Period on less than four days notice on a case-by-case basis.*

### Section 4.3

The Terms of Service have not been posted for public comment. *Verisign (6 September 2013)*

#### **Analysis:**

*The Terms of Service were posted with the version of the TMCH Requirements posted for public review on 6 April 2013. ICANN remains open to comments and proposed changes on the Terms.*

### Section 4.4

ICANN should provide a copy of the IBM master agreement. *Verisign (6 September 2013)*

#### **Analysis:**

*A summary of the IBM framework agreement is provided at <http://newgtlds.icann.org/en/about/trademark-clearinghouse>, which covers all the substantive terms to the agreement.*

### Section 2.2.4

The IPC believes allocation should be defined in Section 2.2.4 as “‘Allocation’ includes any form of Reserved Names program, Founders program, Pioneer program or other program allowing third parties to seek or be offered registration of a domain name through any mechanism whatsoever.” *IPC (27 August 2013)*

#### **Analysis:**

*A definition for “Allocation” has been added to the TMCH Requirements.*

### Section 2.3.1.4

The IPC believes Section 2.3.1.4 should be revised to ensure the integrity of the process for all



stakeholders. The IPC recommends maintaining the safeguard that protections for trademarks do not extend to marks that are (i) subject to an opposition action or (ii) that remain within any opposition period. *IPC (27 August 2013)*

Section 2.3.1.4 should also clarify the one year restriction as it is unclear what date the restriction will be measured from: (i.e. one year before the date the Registry Agreement was signed, the date of delegation of that specific TLD, the date that Sunrise registration commences for that particular TLD, or some other milestone). *IPC (27 August 2013)*

The one-year period referenced in this section is inconsistent with Section 6.2.4(iv) of Module 5 of the Guidebook. *Microsoft (27 August 2013)*

***Analysis:***

*The restriction in Section 2.3.1.4 has been revised to give Registry Operators additional flexibility as to date restrictions on trademarks.*

RFC 2119

Because RFC 2119 does not include “MAY NOT” and MUST NOT appears to be the intent, ICANN should substitute uses of “MAY NOT” with “MUST NOT.” *Microsoft (27 August 2013)*

***Analysis:***

*Phrasing in the TMCH Requirements has been corrected to reflect RFC 2119.*

Audit and Payment Provisions

The IPC notes that all payment, charges and audit provisions are deleted from the August 6, 2013 draft and asks ICANN to clarify whether these provisions are contained in a different agreement. *IPC (27 August 2013)*

***Analysis:***

*These provisions were incorporated into the Registry Agreement.*

Trademark Claims Notice

The ICA proposes the following with regards to the Claims Notice to account for ICANN’s adoption of the Trademark-Plus-Fifty proposal:

- amending the Notice to provide registrants with more comprehensive information regarding the legal distinction between registered trademarks and their variants;
- requiring rights holders who register such variants in the TMCH to provide a hyperlink to the UDRP decision on which such registration is based, with such hyperlink(s) to be provided to the registrant in the Notice;
- requiring rights holders who register variants based upon court determination to provide a

hyperlink to the court case in which its use was found to be infringing; or, where an online database of court decisions is unavailable, to provide as much information as is available to assist the potential registrant in finding the text of the relevant court opinion. Such information should be included in the Notice; and

- requiring rights holders who register terms based on prior UDRP or court decisions to advise ICANN at the time of registration whether such decision was subsequently appealed and, if so, of the status and/or final result of the appeal. Again, such supplementary information to be conveyed to the registrant in the Notice.

*ICA (18 September 2013)*

***Analysis:***

*The form of the Claims Notice is the product of significant community discussions, with the goal of providing clear notice to registrants of the scope of the rights contained. The additional fields relevant to the additional labels (i.e., labels found to have been previously abused) have been incorporated into the existing framework of the Claims Notice and additional changes to the text, if undertaken, should be subject to a broader community discussion.*

IDN Variant Policies

The At-Large Advisory Committee advises ICANN to require the TMCH to implement IDN variant policies itself to ensure the integrity and consistency of user experience across new gTLDs and across scripts, such as Arabic. The At-Large Advisory Committee believes ICANN's RPMs should treat the trademarks in any language or character set equally, the principle being that Internet users in any language community should be equally protected against confusion.

*ALAC (11 September 2013)*

***Analysis:***

*IDN variant policies are to be implemented by Registry Operators. The Trademark Clearinghouse is not the proper forum to implement universal IDN variant policies. The trademarks in any script are subject to the same treatment with relation to the Clearinghouse. The comment about possible confusion resulting from various registries implementing different tables is understood; however, this is an issue that goes beyond startup rights protection mechanisms. Developing universal IDN variant policies for all gTLDs is beyond the scope of the Clearinghouse.*

Frivolous Trademarks

A typical ploy (which was used in the launch of .EU) is to register a trademark with a special character (such as &). The TMCH label matching rules allow the special character to be omitted. Unless there is a protective mechanism, a bad-faith party can easily get into the TMCH with trademark registrations like "Cell & Phones" or "Flo & Wers" as trademarks. The proof-of-use requirement is no credible barrier. From there, bad-faith actors can submit frivolous Sunrise registrations like "cellphones.london" or "flowers.nyc." *WS (27 August 2013)*

**Analysis:**

*The eligibility requirements were established based on community input prior to the launch of the Trademark Clearinghouse. The TMCH Requirements are not intended to modify those standards.*