



# Comments on Rights Protection Mechanism (RPM) Requirements

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**Business Constituency Submission**

**GNSO//CSG//BC**

## Background

This document is the response of the ICANN Business Constituency (BC). The BC's comments arise from the perspective of Business users and registrants, as defined in our Charter<sup>1</sup>:

The mission of the Business Constituency is to ensure that ICANN policy positions are consistent with the development of an Internet that:

1. promotes end-user confidence because it is a safe place to conduct business
2. is competitive in the supply of registry and registrar and related services
3. is technically stable, secure and reliable.

ICANN opened a public comment period on Rights Protection Mechanism (RPM) Requirements<sup>2</sup> including Proposed Revisions to RPM Requirements Sections 2.1.1, 2.1.3, 2.2.5, 3.2.7 and 5<sup>3</sup>.

The BC does not support the proposed revisions, as they give Registry Operators (ROs) the ability to bypass carefully constructed Rights Protection Mechanisms by decreasing the registration priority of entrants into the Trademark Clearinghouse (TMCH), and increasing the possibility of abuse.

### Comments on Proposal for Notice of Sunrise

The BC supports a minimum combined 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 in the Sunrise period 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 ROs Sunrise Dispute Resolution Procedure. Allowing the RO 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.

### Comments on Proposal for Allocation of 100 Names

The BC also rejects the Proposals for Allocation of 100 Names, as written. The proposed language allows ROs to register up to 100 names to third parties **prior** to or during the Sunrise Period in connection with a registry launch and promotion program for the TLD.

We suggest that the language be modified, so that names could only be registered to third parties prior to Sunrise **if the names DO NOT match any entry in the Trademark Clearinghouse** that is eligible for registration in that specific TLD.

Entries that match a Trademark Clearinghouse record may be registered DURING Sunrise, or after. This allows Registered Owners to register names to themselves in connection with the launch of a TLD (e.g.: Promotion.TLD) and to certain municipal authorities (e.g.: CityHall.GEO) without circumventing the priority of Trademark owners.

## Comments on Proposal for Exemption Procedure

Again, the BC insists that periods of registration that occur before Sunrise should be restricted to strings that do not match any entry in the Trademark Clearinghouse that is eligible for registration in that specific TLD.

In addition, the BC notes that exemptions to the TMCH Requirements, which permit ROs to implement a secondary Clearinghouse, is not timely given the limited time frame before the first new TLDs are implemented.

The community simply does not, at this point, have the opportunity to fully vet any system for adequacy or compliance with established ICANN policies. Especially given the BC position that any priority registrations should be subject to existing TMCH registrations, this proposal promises to create too many insurmountable problems.

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Elisa Cooper and Andy Abrams led drafting of these comments, which were approved in accordance with the BC Charter.

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<sup>1</sup> Business Constituency Charter, at <http://www.bizconst.org/charter.htm>.

<sup>2</sup> Trademark Clearinghouse Rights Protection Mechanism Requirements (Revised 6 Aug 2013), at <http://www.icann.org/en/news/public-comment/rpm-requirements-06aug13-en.htm>.

<sup>3</sup> Revisions to Rights Protection Mechanism (RPM) Requirements, August 6, 2013, at <http://www.icann.org/en/news/public-comment/rpm-requirements-06aug13-en.htm>.