

Question 29 - .design Application: Rights Protections Mechanisms

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Rights holder protection is a core element of STARTING DOT's (subsequently "the Applicant") approach to the management of new TLD spaces. We have built our comprehensive rights-protection plan by carefully reviewing the many mechanisms developed during the launch of other recently introduced and already established TLDs in order to learn from previous experience and find innovative solutions to certain common issues. Our outsourced registry service provider, KSregistry GmbH, will comply with all required management and gateway mechanisms needed for the .design new gTLD. Thus, the outsourced registry service provider and the Applicant will jointly undertake the following actions:

- Implement appropriate registration enforcement mechanisms during the various critical phases of the registry launch
- Execute a well-defined Sunrise period in compliance with ICANN requirements, which will include implementation of the Trademark Clearinghouse notification system
- Implement a professional Trademark Claims program, utilizing the Trademark Clearinghouse and drawing upon models of similar programs used successfully in previous TLD launches
- Enlist a third party Trademark validation service, as necessary, during the Sunrise period in conjunction with using the Trademark Clearinghouse
- Commit to operating the URS (Universal Rapid Suspension) Policy as described in the draft Registry Agreement
- Commit to operating and implementing the UDRP (Uniform Domain Name Dispute Resolution Policy) when and as needed in our capacity as the Registry Service Provider for the space
- Comply with the new Trademark Post-Delegation Dispute Resolution Procedure (PDDRP)
- Comply, as a named party, with findings issued in any Trademark Post-Delegation Dispute Resolution Procedures (PDDRP)
- Embed all rights protection elements that require compliance support or involvement with Registrars and/or their resellers into the Registry-Registrar Accreditation Agreement for all domains of the .design new gTLD
- Ensure the inclusion of all ICANN-mandated and TLD-specific rights-protection mechanisms in the Registry-Registrar Agreement entered into by ICANN-accredited registrars authorized to register names in the .design gTLD, including oversight of all provisions to be included in the end-user Registration Agreements in effect as between the registrar and registrants of the .design gTLD.

The following provides a brief outline of the steps the Registry Service Provider intends to implement in conjunction with the Registry Operator for the proper function of the .design gTLD.

A. Trademark Clearinghouse

The Trademark Clearinghouse is a new service offering provided for under the ICANN New gTLD program. It will provide a mechanism to notify trademark holders of qualified Sunrise applications for textual strings that present an identical match to their trademarks. The Clearinghouse system will be comprised of the following elements:

- Registration of marks in the Clearinghouse by trademark holders will be validated by the Clearinghouse operator, utilizing trademark filings and other rights as applicable under the established policies for the Trademark Clearinghouse
- An asynchronous comparison of marks submitted during Sunrise with the Trademark Clearinghouse
- Should an exact match be identified between an applied-for textual string and a mark registered in the Clearinghouse database, notification will be provided to the relevant mark holder and the Sunrise applicant in the manner and means specified in the Applicant Guidebook

The Company will comply with all required elements of the Trademark Clearinghouse system, and will utilize a trademark validation agent as necessary to assist with the Sunrise procedure.

B. Sunrise Procedure

B.1 Sunrise Mechanism

The .design gTLD Sunrise period will be conducted in compliance with ICANN specifications.

The Applicant will develop a fully compliant Sunrise policy, which will define what domains may be applied for during Sunrise applications and detail all dispute policies, including its SDRP (Sunrise Dispute Resolution Policy), for challenging the validity of Sunrise registration. The elected SDRP dispute provider will be a member of ICANN's list of approved UDRP providers. The Applicant will consult with both the dispute provider and expert legal counsel in drafting and finalizing the Sunrise Policy.

The Sunrise period will run for a minimum of 30 days prior to the general availability of domain names and will include a minimum two week quiet period. The registration functions will not be available during the quiet period while we work to complete related Trademark Clearinghouse matches and related notifications.

C. Eligible Rights

The proposed Sunrise Eligibility Requirements (SERs) will conform to the following qualifications derived from numerous past TLD Sunrise programs:

C.1 Ownership of a qualifying mark

See Section 7.2, number (i): The registry will recognize and honor all

- Word marks that are nationally or regionally registered and for which proof of use (which can be a declaration and a single specimen of current use) was submitted to, and validated by, the Trademark Clearinghouse
- Trademarks not in the Clearinghouse but that are verified by a third party Trademark validation contractor and conform to the following standards:
 - * the Domain Name is identical to the textual or word elements of the trademark or service mark registration on which the registration of the Domain Name is based; AND
 - * the trademark or service mark registration on which the registration of the Domain Name is based is of national effect; AND
 - * the trademark or service mark registration on which the registration of the Domain Name was based was issued (registered) prior to [a cutoff date to be determined]
- Representation that all provided information is true and correct
- Provision of data sufficient to document rights in the trademark

D. Application Process

All submissions during Sunrise will be accepted as applications only and not a full registration until the Trademark has been validated to conform per the SERs listed above, and the Sunrise applicant has been determined to meet the eligibility requirements for registration in the .design gTLD. As mentioned above, the name space will follow an open-registrant model. Multiple applications for the same string, were they to occur, would be allowed from multiple Trademark holders. Contention would be resolved through auction were there to be more than one qualifying applicant. Following winning an auction, or if there is a single qualifying applicant, the application would be promoted to a full domain registration.

D.1 Field Submission and Validation Safeguards

To support the Sunrise process the registry system will apply requirements to data submissions, in the registry application. KSregistry will use the data fields/extensions from the DotAsia and DotXXX launches. The field types listed below are mandatory during Sunrise submissions and are not able to be updated once an application has been submitted in order to avoid manipulation of the validation process. Please see the related EPP extension <Q25_Figure3.pdf> attached to the Question 25 response.

<claimName>

The word mark of the trademark, as noted in the trademark or service mark registration record.

<claimNumber>

The registration number (not the application number) of the trademark.

<claimRegDate>

The date the trademark was registered. This is the date that the trademark was granted.

<claimCountry> <claimRegion>

The two-letter code for the nation or national jurisdiction the trademark was registered in. Allowable values will be limited to identify national trademark registries and regional trademark registries (such as the Benelux and EU trademark registry registrations).

<claimEntitlement>

Whether the applicant (corresponding to the Registrant Contact) holds the trademark as the original “owner,” “co-owner,” or “assignee”.

D.2 Trademark Validation and Safeguards

As mentioned previously we will employ a third party Trademark validator to examine Sunrise applications. The Trademark Validator will have the ability to request additional data or clarifying materials about any Sunrise Application, including additional direct verification of the Sunrise applicant’s identity in respect to the cited trademark.

The contracted party will be globally experienced in intellectual property law and will employ the following stepped process and functions:

Examination of Trademark

Trademarks will be validated against either the Trademark Clearinghouse, or against a National Trademark Database from a qualifying country. This is required for a Sunrise application to be considered “qualified or validated”.

Deterrents

In policy documents, training materials, and FAQs, we will communicate clear language indicating that administration fees associated with filing Sunrise applications are NOT refundable. The administration fee will be designed to recover validation costs and should financially dissuade frivolous applications.

D.3 Contending Applications, Sunrise Auctions

The Registry will complete all Sunrise application validations following the close of the Sunrise period. There are only three possibilities for outcome and subsequent actions:

- One valid application for a given string:
 - * The domain will be awarded to that applicant
- Two or more valid applications for the same string:
 - * The domain will be offered to the applicants at auction. The highest bidder will be awarded the domain.
- No valid applicants for a given string:

* The domain will be offered in subsequent phases of the Registry but without Trademark requirements.

D.4 Additional Considerations

Sunrise auctions may take some time to conduct and likely will run over other later phases such as Landrush. In the event no applicant bids at auction, the first valid application received will be awarded the domain.

Domains awarded under Sunrise will be locked (Sunrise lock status) for at least 60 days following the procedure to support parties wishing to file a Sunrise Challenge.

Once a Sunrise domain is awarded, it will be promoted to a full registration and the relevant RDDS (WHOIS) data will be published as per standard Registry RDDS (WHOIS) policy.

Conflict of Interest restrictions will be applied to employees, contractors, consultants and significant investors of the Registry disallowing participation in Sunrise auctions. See also the answer to Question 28.

E. Sunrise Challenges

The Sunrise Dispute Resolution Process (SDRP) will allow challenges based on the following four grounds:

1. at the time the challenged domain name was registered, the registrant did not hold a trademark registration of national effect
2. the domain name is not identical to the mark on which the registrant based its Sunrise registration
3. the trademark registration on which the registrant based its Sunrise registration is not of national effect (or regional effect)
4. the trademark registration on which the domain name registrant based its Sunrise registration did not issue on or before the effective date of the Registry Agreement and was not applied for on or before ICANN announced the applications received

We see that ICANN's Module 4, "Trademark Clearinghouse" document, paragraph 6.2.5 says "The Clearinghouse will maintain the SERs, validate and authenticate marks, as applicable, and hear challenges." We are not sure exactly what "hearing challenges" means. If it means that the Clearinghouse Provider is the only party that can adjudicate Sunrise Challenges, then of course the .design gTLD's Sunrise Challenges will go there to be heard. Otherwise, we will retain the services of a well-known dispute resolution provider such as WIPO to receive and adjudicate the Sunrise Challenges. All applicants and registrars will be contractually obligated to follow the decisions handed down by the dispute resolution provider.

After any Sunrise name is awarded to an applicant, it will remain under a "Sunrise Lock" status for at least 60 days so that parties will have an opportunity to file Sunrise Challenges. During this Sunrise Lock period the domain name will not resolve and

cannot be modified, transferred, or deleted by the sponsoring registrar. The domain name will be unlocked at the end of that lock period only if it is not the subject of a Sunrise Challenge. Challenged domains will remain locked until the dispute resolution provider has issued a decision, which the registry operator will promptly execute.

F. Continuing Rights Protection Mechanisms in the Specific TLD Space

Following the conclusion of the Sunrise period for the .design gTLD, certain rights protection mechanisms will continue to be active. These mechanisms are the dispute resolution policies, which shall include the URS, UDRP, Trademark PDDRP, a Trademark Claims service and any other policies ICANN may enact from time to time via the adoption of Consensus Policies.

F.1 Uniform Rapid Suspension (URS)

The registry operator will implement decisions rendered under the URS on an ongoing basis.

As per the URS policy, STARTING DOT will receive notice of URS actions from ICANN-approved URS providers. These e-mails will be directed immediately to our support staff, which is on duty 24 x 7 x 365. The support staff will be responsible for executing the directives from the URS Provider, and all support staff will receive training in the proper procedures.

As per ICANN's URS guidelines, within 24 hours of receipt of the Notice of Complaint from the URS Provider, our staff will lock the domain, meaning the registry shall restrict all changes to the registration data, including transfer and deletion of the domain names, but the name will continue to resolve. The support staff will accomplish this by associating the following EPP statuses with the domains and relevant contact objects:

- ServerDeleteProhibited, with an EPP reason code of "URS"
- ServerTransferProhibited, with an EPP reason code of "URS"
- ServerUpdateProhibited, with an EPP reason code of "URS"

Our support staff will then notify the URS Provider via e-mail immediately upon locking the domain name.

Our support staff will retain all copies of the e-mails from the URS providers. We will assign each case or order a tracking or ticket number. We will use this to track the status of each opened URS case through to resolution via a database.

Our support staff will then execute further operations upon notice from the URS providers. Each URS provider is required to specify the remedy and required actions of the registry operator, with notification to the registrant, the Complainant, and the Registrar. We will set up the necessary DNS re-pointing required by the URS guidelines.

The guidelines state that if the Complainant prevails, the "registry operator shall suspend the domain name, which shall remain suspended for the balance of the

registration period and would not resolve to the original web site. The nameservers shall be redirected to an informational web page provided by the URS Provider about the URS. The WHOIS for the domain name shall continue to display all of the information of the original Registrant except for the redirection of the nameservers. In addition, the WHOIS shall reflect that the domain name will not be able to be transferred, deleted or modified for the life of the registration.”

F.2 Uniform Dispute Resolution Policy (UDRP)

Although UDRP actions are typically implemented at the Registrar level, it’s conceivable that a court order may be directed to the Registry through the APOC. Such an order would be escalated to the support and/or legal department contacts as required. Support staff would quickly affect a mandated transfer, if so ordered, or an order requiring the lock-down of a domain name. The Registry’s legal counsel would also typically verify the court order. Registry functionality outlined in the answer to Question 27 describes the necessary functionality required by Registrars to support their UDRP commitments, and the Applicant is committed to meeting these standards.

F.3 Trademark Post-Delegation Dispute Resolution Procedure (Trademark PDDRP)

The Applicant would be the defending party in a Trademark PDDRP. The Applicant commits to abiding by the directives of the Trademark PDDRP Provider assigned by ICANN, up to and including the cessation of all registration activities and cancellation of the Registry Agreement with ICANN.

F.4 Trademark Claims Service:

For at least the first 60 days of general registration, the Applicant will enable a Trademark Claims service for trademarks recorded in the Trademark Clearinghouse, which will provide a real-time notice to a party attempting to register a domain name if it matches a trademark in the Clearinghouse and notify trademark holders when domain names are registered that match marks in the Clearinghouse.

G. Contractual Operation of Provision via the Registry-Registrar Agreement

The Registry-Registrar Agreement will be signed by all registrars interested in offering registrations under the .design gTLD. This agreement will contractually bind such registrars to follow certain registry-mandated procedures, and will include inter alia the following provisions:

- The registrar will ensure that the relevant Registrar-Registration Agreements between itself and any prospective registrant in the TLD space will incorporate all registry-mandated policies, restrictions, and guidelines
- The registrar will comply with all eligibility and registration restriction criteria established by the registry in issuing registrations within the .design gTLD. The registrar shall not register a domain name to an individual or entity who does not meet the eligibility criteria for registration within the TLD
- The registry shall have the authority to refuse or reject any registration request received for a domain name within the TLD's space, or to cancel, transfer, delete,

suspend, revoke, or otherwise modify a registration within the space, for the following reasons:

- * The domain name was registered through a registrar error or oversight, the provision of inaccurate data, fraud, or mistake, and the registrant is determined to be ineligible to register domain names within the TLD

- * The request for registration was not made in the proper format, did not contain sufficient information under ICANN and/or registry requirements, or such information was not properly updated as required by ICANN and/or registry requirements

- * In order to rectify or correct any mistake or error made by the registry or registrar in the registration of the domain name

- * In order to comply with any request received from law enforcement, a court order, arbitral panel decision, appropriate dispute resolution provider, or to comply with any applicable laws or regulations

- * For the purpose of protecting the stability, safety and integrity of the registry, the TLD infrastructure, or the stability of the DNS

- * In order to avoid any civil or criminal liability on the party of the registry, its affiliates, subsidiaries, officers, directors, representatives, employees, contractors, and stockholders

- * In order to establish, assert or defend the rights of the registry or any third party

- * For any other reason provided for in either the Registry-Registrar Agreement or the Registrar-Registrant Agreement.

H. Preventative Safeguards

The Applicant will implement several additional mechanisms to prevent misuse of the TLD space, including the introduction of best practices, standards, and a comprehensive monitoring system.

H.1 Best Practices - Reducing Opportunities for Behaviors such as Phishing or Pharming

The extensive mark requirements and trademark validation procedures during the Sunrise phase will prevent the registration of effective phishing domains during the start-up period.

In our answer to Question 28 (“Abuse Prevention and Mitigation”) above, we described our strong anti-abuse program, which is proven to shut down phishing and pharming and has provisions for rapid takedown of domain name abuses. The system prompts notification of relevant registrars for rapid take-down action should phishing activity be identified. Please see the full explanation of this system above under Question #28.

This program will deter bad actors from operating within the space by reducing the effectiveness of their attempts to initiate phishing domains, without infringing upon the rights of legitimate registrants. Since pharming is commonly accomplished by redirecting traffic at the recursive DNS level, mitigation is effective at the ISP level.

H.2 Monitoring of the Success of Abuse Prevention Programs

Every six months, the Anti-Phishing Working Group (APWG) publishes its latest Global Phishing Survey, which is made publicly available on the Group's website. This study contains an analysis of phishing per TLD. The Applicant will review the performance of our anti-abuse program by using the APWG reports and other metrics developed within the security community. The Applicant notes that, according to the APWG's available data for 2011, only around 12% of malicious phishing sites contained a brand name (or misspelled variant) in the relevant domain name, and that in the 2010-2011 data only 5,700 brand-targeted phishing sites were known worldwide. Accordingly, phishing represents a very small percentage of brand-targeted domain name registrations, and the Applicant believes its adopted best practices and restrictive registration policies will mitigate the risk of bad actors entering the TLD space.

H.3 Ongoing Rights Protection Resources

The maintenance of the new TLD space and the ongoing monitoring and RPM mechanisms will require dedicated resources and staff from both the registry service provider and the Registry Operator. KSregistry maintains a team of experts dedicated to these procedures, which draws from a wide pool of experience and includes engineers, developers, security, and enforcement personnel. The Applicant additionally has in place state-of-the-art technical equipment and software systems, and is capable of implementing the proposed mechanisms.

STARTING DOT likewise is fully staffed and ready to undertake the procedures outlined in this application and maintains a dedicated team for the oversight and management of the .design new gTLD, consisting of a Customer Support Team of three employees (1 manager and 2 assistants), dedicated to the whole portfolio of TLDs of STARTING DOT.