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AT-LARGE ADVISORY COMMITTEE

ALAC Statement on the Phase 1 Final Report on the Review of All Rights Protection Mechanisms in All gTLDs Policy Development Process

The At-Large Advisory Committee (ALAC), on behalf of the At-Large Community, thanks the Review of All Rights Protection Mechanisms in All gTLDs PDP Working Group (RPM PDP WG) for its significant efforts resulting in the Phase 1 Final Report. The Phase 1 Final Report reviews the Uniform Rapid Suspension (URS) process, the Trademark Clearinghouse (TMCH), Sunrise registration process, the Trademark Claims Process and the Trademark Post-Delegation Dispute Resolution Procedure (TM-PDDRP).

The ALAC responded to the request for comments on the RPM PDP WG Preliminary Report in May 2020, via the form-based input tool. The ALAC now responds to the request for comments to the Final Report. This Statement is largely consistent with ALAC comments on the Preliminary Report, though ALAC notes that the Report evolved in a number of respects.

The ALAC has focused in its response on recommendations that are consistent with the ALAC's principles and goals. These include improving accountability and transparency; expanding uses of languages other than English; improving data gathering and supporting the use of metrics; improving the comprehensibility and intelligibility of ICANN policies and requirements to the benefit of end-users (among others); and improving access to processes. The ALAC has also indicated its support for maintaining policies that are working as intended, which improves predictability, access and understanding. However, where matters were technical, administrative or of significant concern only to RPM participants, the ALAC has not provided a substantive response.

URS Final Recommendations

Final Recommendation 1: (Amend USR rules to clarify that only publicly available WHOIS/RDDS data needs to be inserted in the initial Complaint. Complainant may update the Complaint after receiving updated registration data) Support. This is consistent with related efforts to comply with GDPR.

Final Recommendation 2. (URS Panelists have discretion to publish or to redact full registration data in the URS Determination decision. Parties may also request redaction.) Support with modifications. Redaction should only be used in exceptional circumstances on a fact-specific basis, taking into account both the data privacy interests of the Respondent and principles of accountability and transparency in connection with URS proceedings.

Final Recommendation 3: (Panel may order that submissions in a language other than the language of the proceedings be accompanied by a translation.) Support. Translation into the language of the proceedings improves due process and is consistent with ALAC principles.

Final Recommendation 4. (Notice of Complaint must be translated by Provider into the language of the Registration Agreement. Providers must send Notice of Complaint to Respondent by all methods mentioned in the URS Procedures.) Support; this is consistent with ALAC principles of accessibility and use of appropriate languages.

Final Recommendation 5: No opinion; procedural issue not of sufficient concern to end users.

Final Recommendation 6: (Providers should publish list of Examiners along with their CVs, identifying how often each one has been appointed a providing links to decisions.) Support; consistent with ALAC general principles of transparency.

Final Recommendation 7 (Each Provider should publish and reasonably enforce an Examiner Conflict of Interest policy.) Support; consistent with ALAC general principles of transparency and fairness.

Final Recommendation 8 (ICANN org should develop compliance mechanisms applicable to the URS activity of Providers, Registries and Registrars, and metrics for measuring performance of these parties.) Support. This Recommendation is consistent with principles of accountability, reliance on metrics and ability to seek redress, all of which are supported by the ALAC.

Final Recommendation 9. (Educational materials should be developed to provide guidance to all URS participants on URS requirements to meet the “clear and convincing” burden of proof, in the form of a checklist, template or FAQ.) Support. This recommendation improves access by providing assistance to those who may not be able to afford to retain legal counsel.

Final Recommendation 10. (Informational materials should be developed to provide guidance to Complainants and Respondents, such as FAQ, forms and reference materials). Support. This recommendation improves access by providing assistance to those who may not be able to afford to retain legal counsel.

Final Recommendation 11: (After URS Providers receive contact details from relevant WHOIS/RDDS data, Providers must send notices to the Respondent by all required methods.) Support; this is a clarification of current good practices.

Final Recommendation 12: No opinion; administrative issue not of significant concern to end-users..

Final Recommendation 13: (Examiners should be required to document rationale for decision in sufficient detail; URS Providers should provide guidance to Examiners (e.g., checklist, template).) Support. This recommendation is consistent with ALAC principles of accountability and transparency.

Final Recommendations 14 and 15: No opinion; administrative issues not of significant concern to end-users..

TMCH Final Recommendations

Final Recommendation 1: (Scope of TMCH should be clarified so that it does not include non-trademark strings such as geographical indications, protected designations of origin or other quality schemes that are not trademarks. Also clarify that TMCH Providers may provide ancillary databases for non-trademark strings.) Support. This clarifies the scope of the TMCH consistent with its role, while clarifying that other databases can be provided for other purposes.

Final Recommendation 2: (Maintain TMCH status quo on other matters.) Support. The current policies appear to be working as intended.

Final Recommendation 3. (TMCH Validation Provider should educate rights-holders, registrants and potential registrants regarding TMCH and consider enhancing educational materials.) Support. This improves accountability and transparency and is consistent with general goals of improving understanding of all aspects of the Domain Name System by end-users.

Final Recommendation 4: No opinion; technical issue not of significant concern to end0users.

Sunrise Final Recommendations

Final Recommendation 1: (Registry Agreement should provide that Registry Operator will not intentionally circumvent mandatory RPMs or reasonable use of the Sunrise RPM). Support. Practices of some registries raised concerns about efforts to circumvent policy; however, the ALAC cautions against actions that would directly regulate registry pricing.

Final Recommendation 2: (Maintain Sunrise status quo on other matters.) Support. The current policies appear to be working as intended.

Final Recommendation 3. No opinion; administrative issue not of significant concern to end-users.

Final Recommendation 4: (Maintain Sunrise status quo on registration only for identical matches.) Support. The current policies appear to be working as intended.

Final Recommendation 5: (Maintain Sunrise status quo and do not recommend limiting scope of Sunrise by categories of goods and services in trademark registrations.) Support. The current policies appear to be working as intended.

Final Recommendations 6 and 7: (Maintain Sunrise status quo and do not recommend a challenge mechanism to Premium Names and Reserved Names or a requirement to publish Reserved Names lists.) Support. The current policies appear to be working as intended.

Final Recommendation 8: (Clarify that TMCH dispute resolution procedure is primary mechanism to challenge the validity of a TMCH record used to support a Sunrise registration.) Support. This clarifies current practice and makes rules more understandable.

Trademark Claims Final Recommendations

Final Recommendation 1: (Continue requirement for mandatory Claims Period, with exceptions for Specification 13 (.Brands) and Specification 9 (Section 6) (gTLDs without multiple second level registrants). Support. This is a process improvement.

Final Recommendation 2 (Claims Notice must be in English and in language of the registration agreement, with a link to webpage with translations in all six UN languages). Support. This recommendation is consistent with policies of transparency, clarity and comprehensibility for the broadest group of end-users and other participants. This recommendation is consistent with principles of supporting uses of languages other than English and using primary languages of participants.

Final Recommendation 3 and 4. (Maintain status quo on mandatory Claims Period and on use of exact match criteria for Notices) Support. The current policies appear to be working as intended.

Final Recommendation 5. No opinion; administrative/technical issue not of significant concern to end-users.

Final Recommendation 6. (Revise Trademark Claims notice to improve comprehension) Support. This recommendation is consistent with policies of transparency, clarity and comprehensibility for the broadest group of end-users and other participants.

TM-PDDRP Final Recommendation

Final Recommendation 1: (Allow consolidation of Complaints against the same registry under certain circumstances.) Support.. This is a process improvement that appears consistent with carrying out the intent of current policies.

In closing, the ALAC once again thanks the members of the RPM PDP WG for their years of hard work and support for the continuing evolution of ICANN policies and processes.