

(Draft) ALAC statement on the Preliminary Issue Report on a Policy Development Process to Review All Rights Protection Mechanisms in All Generic Top-Level Domains

The At-Large Advisory Committee (ALAC) welcomes the opportunity to comment on the Preliminary Issue Report on a Policy Development Process to Review All Rights Protection Mechanisms in All Generic Top-Level Domains, and hereby submits the following as a formal statement to the Board:

1. The ALAC recognizes the continued effort involved in reviewing Rights Protection Mechanisms (RPMs) implemented to protect different assets as they relate to Intellectual Property rights and domain names;
2. The ALAC is concerned, however, that these RPMs seem to be more focused on protecting the Intellectual Property rights of big corporations as their current structure create serious barriers of accessibility to end users that derive in the existence of a divide between those with enough means to protect their Intellectual Property rights and those with not enough means to do so as the principal barrier to achieve equal chances of protecting the Intellectual Property rights of the former and the latter is the cost of accessing the different mechanisms designed and implemented to achieve that goal.
3. The cost of registering a trademark may already be a burdensome challenge to many end users. If we add to that the cost of protecting that trademark against unlawful or abusive registration in the DNS, then the end users end up being unable to access the RPMs.
4. The ALAC recommends that a PDP review is carried by the GNSO in line with the suggested list of potential issues included in the Preliminary Issue Report being commented.
5. The ALAC further recommends to add the following questions to the potential issues concerning UDRP, URS, TMCH, Trademark Claims and Sunrise Period:
 - a. Are there any barriers that can prevent and end user to access any or all RPMs?
 - b. How can costs be lowered so end users can easily access to RPMs?
6. The ALAC is concerned that, so far, the role of the TMCH has not achieved its goal of protecting a large number of trademarks in the DNS. This concern is based on the fact that "Between March 2013 and May 2015, the Clearinghouse verified and accepted for inclusion 32,667 nationally or regionally registered trademarks, 42 trademarks protected by stature or treaty, and two court-validated trademarks"¹ which amount to a little over 10% of the 2015 Year-to-date registered trademarks only in the United States Patent and Trademark Office.² This, of course, is a clear signal that

¹ Preliminary Issue Report on a Policy Development Process to Review All Rights Protection Mechanisms in All Generic Top-Level Domains, p. 14.

² USPTO Data Visualization Center Trademark Dashboard consulted on November 19, 2015 <http://www.uspto.gov/dashboards/trademarks/main.dashxml>

registrants are not using the services of the TMCH although the reasons are not as clear. One of the possible reasons may be the fact that there is only one provider of the service. In that sense, the ALAC recommends that the TMCH services be open to more providers so that competition will drive prices down and lower the barriers of entry to end users to this specific RPM. A single provider for the TMCH services harms the market and the end users' rights insofar its monopoly constitutes a serious barrier to access its services.

The ALAC is confident that a thorough Policy Development Process to review all rights protection mechanisms in all generic top-level domains will benefit end users and contribute to enhance trust in the DNS.