Alternate Trademark Clearinghouse Proposal

October 9, 2012
Introduction

» Late 2011: Trademark Implementation Assistance Group (IAG) established.
» Jan. 2012: Final Applicant Guidebook posted
» April 2012: ICANN posts summary of Input from IAG and draft implementation model.
» June 2012: ICANN announces selection of Deloitte and IBM as TMCH providers with Preliminary Cost model.
» July 2012: TMCH-Tech list formed to discuss implementation issues.
» Sept. 2012: Community developed alternate models released for comment.
» Sept. 25, 2012: ICANN posts next version of TMCH Requirements document for comment. No mention of alternate proposed models.
Development of Alternate TMCH Proposals

» ARI / Neustar submit initial draft of alternate proposals on June 20, 2012.

» Comments received from other registries and registrars and extensive discussion in Brussels at technical implementation forum.
  » Overwhelming support from the technical providers of >90% of the new gTLD applications on alternate models as opposed to ICANN implementation models.

» ARI, Neustar, Verisign & Demand Media worked on revised version of alternate models based on feedback.

» 9/26/12: Release of Alternate TMCH Models to community.
Issues with ICANN-Proposed Sunrise Model

1. ICANN’s model proposes use of obscure sunrise codes
   » Implies that Trademark Owners have to get a unique code for each mark in each TLD (100 marks for 1000 TLDs = 100,000 Sunrise Codes).
   » Complicates ability to provide support – registries and/or registrars unable to diagnose or resolve issues without TMCH involvement.

2. No access to trademark information for registries
   » Registries looking at additional criteria have to re-engage with TMCH - increasing costs
   » Must rely on TMCH for registry eligibility requirements – creates legal liability issues.

3. Inability for Registry to publish Sunrise information in WHOIS.

4. More burdensome for registries to store all Sunrise codes regardless of how small/large the registries will be (increases costs).
**Alternate Sunrise Proposal**

» Uses PKI encryption/certificates as opposed to Sunrise Codes.
  » 1 certificate (Signed Mark Data - SMD) per mark regardless of number of TLDs applied for.

» TM Owner (or its agent) downloads certificate from TMCH once mark is validated and authenticated. Certificate has TMCH “signature” on it.

» TM Owner (or its agent) uploads applicable certificate from TMCH when providing registrar with domain name registration information.

» Registry verifies “signature” on certificate, with known “signature” of TMCH.

» Registry provided access to all information in the certificate (which TM owner voluntarily provided to Registry).
  » Registry is NOT provided with any other information from the TMCH or any information related to marks for which no Sunrise Application was received.

» Registry allocates the domain name and notifies TMCH so that it can notify other TM owners with matching marks.
## Alternate Sunrise Flow

<table>
<thead>
<tr>
<th>Mark Holder / Registrant</th>
<th>Registrar</th>
<th>Registry</th>
<th>TMCH</th>
</tr>
</thead>
</table>

**Step 1 – Distribution of Public Key**
## Alternate Sunrise Flow

<table>
<thead>
<tr>
<th>Mark Holder / Registrant</th>
<th>Registrar</th>
<th>Registry</th>
<th>TMCH</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provide Mark information to TMCH for validation</td>
<td>Validate Trademark Information</td>
<td>Valid?</td>
<td>Approve entry into TMCH &amp; Generate SMD</td>
</tr>
<tr>
<td>Download SMD</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Step 2 – Mark Holder gets information into TMCH**
Alternate Sunrise Flow

Step 3 – Mark Holder applies to TLD during Sunrise

<table>
<thead>
<tr>
<th>Mark Holder / Registrant</th>
<th>Registrar</th>
<th>Registry</th>
<th>TMCH</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provide SMD with Sunrise Application</td>
<td>Collect Application</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Send Application with SMD</td>
<td>Receive Application with SMD</td>
<td>Valid SMD?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Create the Application</td>
</tr>
</tbody>
</table>

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## Alternate Sunrise Flow

### Step 4 – Allocation of Names

<table>
<thead>
<tr>
<th>Mark Holder / Registrant</th>
<th>Registrar</th>
<th>Registry</th>
<th>TMCH</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Sunrise Close &amp; Allocate Names</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Successful Application?</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Add to TMCH Notification List</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Notify Registrar of Result</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Notify Registrar of Result</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Upload Notification List to TMCH</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Generate and send NORNs</td>
<td></td>
</tr>
</tbody>
</table>
Alternate Sunrise - Benefits

» Reduced complexity to ICANN Model
» Allows the Registry to see trademark information of the applicant (and only the applicant) for:
  » Customer support purposes;
  » Allocation;
  » Additional eligibility requirements;
  » Incorporation in the Registry WHOIS.
» For registries, it allows the use of a simple standard EPP extension (decreasing costs).
» Leverage well known industry of PKI for providing trust with no need for replicating data in highly distributed environment (security best practice)
» Certificate can also be used for other purposes including potentially for URS (pending community input as part of URS process).
Issues with ICANN-Proposed Trademark Claims Process

- ICANN Decentralized Model - involves sending entire TMCH database to every registry.
- Unnecessary burden placed on TMCH and registries to replicate data for every entry in the TMCH.
  - Registries managing multiple TLDs will have to store multiple copies of the database.
  - Involves the storage and maintenance of large data sets.
- Encrypted data is easily decrypted and can be easily data mined by registrars and registrants across any launching TLD – Data not secure.
- Unnecessary and obscure encryption of data – customer support issues.
- Risks and issues with use of “stale” data.
- Proposed Model only considers first-come, first-served model and seemingly ignores models that have a contention resolution process.
Alternate Trademark Claims Process

» Centralized Model – Breaks down TM Claims into 2 parts.
  » Does a claim exist for the matching domain name string?
  » If yes, please send me the claims notice to display to the registrant.
» TMCH publishes list of strings registered in the TMCH.
  » Only involves the strings and **NOT** any other TM information.
» Potential Registrant submits domain name application through Registrar
» Registrar checks to see if domain name is available and whether it matches a claim (by comparing to TMCH published list of strings).
  » If no, name is registered as normal.
  » If yes, then registrar queries TMCH to get TM Claims data, downloads notice content from TMCH, and displays data to registrant. Registrant reads notice.
    » If Registrant accepts the terms of the claim notice, name will be sent to registry to be created.
» If registered, notice sent from Registry to TMCH to notify TM owners for matching strings.
# Alternate Trademark Claims Flow

<table>
<thead>
<tr>
<th>Registrant</th>
<th>Registrar</th>
<th>Registry</th>
<th>TMCH (CNIS)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Download List of Mark DNS labels</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Publish list of mark DNS labels</td>
</tr>
</tbody>
</table>

## Step 1 – Distribution of Mark DNS Labels
Alternate Trademark Claims Flow

**Step 2 – Registration of Names During Claims (Claims Check)**
Step 3 – Registration of Names During Claims (Claims Notice)

Alternate Trademark Claims Flow
Alternate Trademark Claims Flow

<table>
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<td></td>
<td></td>
<td></td>
<td></td>
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</table>

**Step 4 – Registration of names During Claims (Registration)**

- **Matching mark?**
  - **Yes**
  - SCNS passed and valid?
    - **Yes**
      - Add to TMCH Notification List
      - Create Domain
    - **No**
      - Upload Notification List to TMCH
      - Generate and send NORNs

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Alternate TM Claims - Benefits

» Provides a realistic option for the TMCH to manage data mining based on various centralized protection mechanisms (e.g., rate limiting, authentication, etc.)
» Does not involve sending entire database to Registries.
» Technically efficient and simple to implement
» System is auditable for dispute processes to ensure that notices were generated and made available to the registrant.
» Accommodates multiple allocation mechanisms during landrush / general availability.
Alternate TM Claims – Increased Complexity for TMCH Providers

» Requires TMCH to be highly available, redundant with strict SLAs for uptime and processing time.
  » Puts TMCH in critical path for a limited percentage of registrations if a TM claim exists for a name.
  » If TMCH is “down”, then registries will not be able to process a registration for domain names that match a TM in the TMCH.

» We recommend TMCH follow standard requirements that gTLD Registries are required to follow:
  » Data should be escrowed with reputable escrow provider;
  » Redundant data centers to ensure robustness;
  » Industry-standard business continuity plans;
  » Strict SLAs with financial penalties.
Alternate TM Claims – Outstanding Issues

There are some issues we need feedback on.

1. How are claims to work during landrush style period where registrations are not on a first-come, first-served principal.

2. How long after retrieving a TM Claims notice is it allowed to be accepted for use in a domain name registration?

3. How long after accepting a TM Claims notice is that acceptance allowed to be used in a domain name registration without checking for updated data at the TMCH?

4. How do we deal with issues of “pre-registrations” that were accepted by registrars prior to TM Claims period.
Conclusion

» Considering the decreased complexity, decreased cost, increased security, increased flexibility, and overwhelming support of the registry community, we are asking for your support with the alternate model.


» If you support the alternate models, please submit comments.