

## NTAG letter to ICANN CEO and COO regarding TMCH implementation

Dear ICANN,

The New TLD Applicant Group (NTAG) is an interest group formed under Article III.D. of the Charter for the gTLD Registries Stakeholder Group (RySG), which is a recognized entity within the Generic Names Supporting Organization (GNSO) of the Internet Corporation for Assigned Names and Numbers (ICANN).

The primary role of the NTAG is to represent the interests of entities that applied for a new gTLD(s) in ICANN's 2012 gTLD round. The NTAG is open to all applicants and represents the views of its members to the RySG, the GNSO Council, ICANN Staff / Executive Management, the ICANN Board of Directors, and other influential bodies such as the NTIA and GAC representatives.

The NTAG is concerned about the development of the TMCH program and wishes to bring its concerns to your attention. The background and present status of the TMCH program are outlined below for your diligent consideration.

1. A [Draft Implementation Model](#), based on work by the TMCH- IAG working group, was published on 13 Apr 2012, one day after the (original) New gTLD application submission deadline. Unfortunately, future users of the TMCH were unavailable to participate in the IAG WG because of the overlap with the new gTLD application submission period, so little input from applicants and service providers was provided in the original drafting. Comments were collected and a revised model was published in June 2012. ICANN Staff clearly put a lot of work into the June draft model, however they seemed to overlook many practicalities, industry standards, and operational needs leading to an intense discussion and significant additional work by the community. The work included hundreds of hours of meetings, drafting, modeling, and vetting by current registry operators, registrars, TM holder representatives, new gTLD applicants, members of the Deloitte/IBM/CHIP consortium, ICANN staff (Karen Lentz, Kurt Pritz and Amy Stathos amongst others), and the project manager assigned to the TMCH project development.
2. In order to address industry standards and operational concerns with the June 2012 draft model, an alternate Implementation Model was drafted by several members of the ICANN community and presented to the Community and ICANN Staff for consideration (most recent version <http://www.ariservices.com/blog/community-support-required-for-alternative-trademark-clearinghouse-solution/>). The alternate model addresses and corrects many of the issues identified of the June draft model. The alternate model was thoroughly discussed during a two-day face-to-face meeting held on 20-21 August 2012. The two-day face-to-face meeting had full participation by all interested parties – current registry operators, backend registry services providers, registrars, ICANN staff, Deloitte, IBM, CHIP and the TMCH project manager. The proposed alternate model addresses the industry standards and operational concerns identified in ICANN's draft model while continuing to meet all requirements set forth in the Applicant Guidebook.

3. On 24 September 2012, following the August face-to-face consultation, ICANN staff published a revised draft of the TMCH Implementation model for comment. This revised model did not include any of the recommendations from the community expressed through four months of work on the TMCH tech mail list (<http://mm.icann.org/pipermail/tmch-tech/>), two days of face to face meetings (See <http://www.dotyou.biz/summary-of-tmch-meeting/>), and multiple phone meetings (<http://audio.icann.org/new-gtlds/tmch-sunrise-claims-20sep12-en.mp3>)

The excerpt below from the 25 September 2012 TMCH phone call transcript summarizes the community concern and staff's response:

" Jeff Neuman - Neustar:All, ICANN just put out this draft requirements document <http://newgtlds.icann.org/en/about/trademark-clearinghouse/draft-tmch-requirements-24sep12-en.pdf>, but it does not reflect any of our discussions, though I am sure people reading it will be confused and believe that it does.

"William Yang (TMCH project manager) : we have not revised requirements to reflect changes suggested by your proposals. Work is ongoing.

" Jonathan Robinson (Afilias):ICANN has two documents on the model. The current requirements doc is a 3rd document which reflects the April & June models but DOES NOT account for any of the discussions of this group.

" William Yang:@Jonathan: yes. The 2.2 requirements does not reflect discussions or comments from the public in August or September."

Based on the above facts, the NTAG is concerned that legitimate and valuable input from the Community still remain unaddressed. The community has not asked for changes to the Applicant Guidebook, but rather changes to the ICANN staff's implementation proposal. Thus far, ICANN:

- has not responded to community input and suggestion;
- has not released documents [formally requested by the RySG](#);
- has not responded to questions about the contract and development of the program;
- has posted for public comment a series of documents that have yet *to include any of the work done by the Community*.

Representatives of the Registries and Registrars have publicly stated their deep concern that should the ICANN TMCH Implementation fail to account for their technical, functional, and business requirements, the TMCH program might be subverted and/or abandoned by operators, leading to a complete failure of the TMCH program. Should such a situation occur, it would severely damage the new gTLD program as a whole and would negatively impact the reputation of ICANN in the eyes of TM Holders, multi-stakeholder participants and the end user registrants. While Trademarks and Rights Protections are important and critical, ICANN must also care about other members of the community such as registries , registrars and of course registrants. Putting the interests of one party ahead of all others is not in the best interests of this program and the Internet as a whole.

The ICANN multi-stakeholder model is being jeopardized by the very staff that are hired to support the work requested and implemented by the community. Section 2.4.1 of the AGB (Clearing House Section 2) says "The Clearing house shall be separate and independent from ICANN. It will operate based on market needs and collect fees from those who use its services..." Blocking input and failing to accept input from the community that will use the TMCH is in direct opposition to the concept that the TMCH would be separate and independent from ICANN.

We request that the ICANN New gTLD Program Staff and Senior Management look into the failure of the ICANN staff to include the contributions of the community, and, direct ICANN staff to issue the alternate TMCH implementation model for public comment.

Sincerely,

NTAG