

Launch Application #1
(Public Administrations Program)

Internet Corporation for Assigned Names and Numbers (“**ICANN**”)
12025 Waterfront Drive, Suite 300
Los Angeles, California 90094
Attention: New gTLD Program Staff

RE: Launch Application Request

The Comunidad de Madrid (the Government of the Region of Madrid), Registry Operator for the .madrid TLD, hereby submits for approval the below described launch program pursuant to Section 4.5.2 of the Trademark Clearinghouse Rights Protection Mechanism Requirements (the “**TMCH Requirements**”). The Comunidad de Madrid desires to offer a launch program on the following registration policies and terms and conditions (the “**Launch Application**”):

1. Description of the Launch Program

1.1 Mission and status

During the Approved Launch Program (“**ALP**”) only the relevant Public Authorities with competences over and/or legal seat in the Region of Madrid (Comunidad de Madrid) will be allowed to register names subject to the Eligibility and Name Selection requirements set forth below. As outlined in the .madrid application, the territory of the “**Region of Madrid**” (*Comunidad de Madrid*) comprises the 179 Municipalities, including the city of Madrid.

To put this Public Administrations ALP in due context, we enclose as **Annex 1** an overview of the whole Start-Up program, which the Comunidad de Madrid intends to conduct.

This ALP is independent from the Qualified Launch Program under Section 4.5.1 of the TMCH Requirements (Pioneer Program) that the Comunidad de Madrid intends to conduct, as it has a different purpose. Namely, the aim of this ALP is the protection of legitimate rights, not the promotion of the registry services at its launch as is the case in the QLP.

Finally, this ALP was anticipated in the Comunidad de Madrid's answer to Q18(b) iv:

“During the launch phase, all registrations are pre-validated; launch phase pre-validation depends on priority status (**public service**, trademark, civil society sector, no prior rights) but will always involve community nexus.” (bold typeface added).

1.2 Eligibility

Public Authorities with competences over and/or legal seat in the Region of Madrid (Comunidad de Madrid) only. Here, “**Public Authorities**” means international, national, and regional public authorities, as well as local and municipal authorities under Spanish law (*Ley 7/1985 de Bases del Régimen Local*) and Madrid's own legislation (*Ley 2/2003 de Régimen Local de la Comunidad de Madrid*), including but not limited to agencies, consortiums, commissions, and other administrative divisions of the Region of Madrid and/or having competences over it.

Specifically, this definition of "Public Authority" fully matches that of "Public Administration" as defined in Spanish Law 29/1998 on the Contentious Administrative Jurisdiction (art. 1.2 of Law 29/1998 on the Contentious Administrative Jurisdiction), which comprises:

- a) The General Administration of the State;
- b) The Autonomous Communities Administration;
- c) The Entities which form part of the local Administration (these entities are regulated by the two laws referred to above: Law 7/1985 and Law 2/2003);
- d) Public Law entities which are dependent of or are linked to, the State, the Autonomous Communities or Local Entities;

Except that the Registry Operator has added an additional limitation: i.e. that the Public Authorities have competences over the Region of Madrid (Comunidad de Madrid) and/or legal seat in the Region of Madrid (Comunidad de Madrid). In practice this means that, in addition to the General Administration of the State (Kingdom of Spain) and the administration of the Autonomous Community of Madrid (named “Comunidad de Madrid”), only the following would be eligible:

- The municipalities in the Region of Madrid which form part of the local Administration; and

- Public Law entities which are dependent of or are linked to the above.

In addition to this, the definition of Public Authority under this launch program also includes "international" authorities with competences over or presence (i.e. legal seat) in the Region of Madrid. For example:

- The European Union, a supranational organization with competences in the Region of Madrid; and
- The World Tourism Organization, a UN Agency which has legal seat in Madrid.

Any domain name registered under this Launch Program will not be transferred to a third-party except (i) to another eligible Public Authority or (ii) in the event of a sale of all or substantially all of the assets of the registrant. This will be made clear in the .madrid Launch Policy and the Registry Operator will enforce compliance with this requirement.

Regarding (ii) above please note that while it may seem unlikely that a Public Authority's assets could be sold to a third party who was not also a Public Authority there are certain public entities which allow transfer of ownership to public-private consortia -- e.g. airports currently owned by the central Government are being transferred to consortia in which chambers of commerce and private entities have partial ownership. As a result, they are transformed into different legal entities while performing the same public service mandate: managing the airport. Some of these entities are private-law legal entities.

1.3 Name Selection

Under this ALP, Public Authorities referred to in 1.2 above may register the following names:

- (i) Names of Public Authorities referred to in 1.2 above, including any clear variations and abbreviations thereof (e.g. acronyms) and other terms in common use to describe them (e.g. comunidad.madrid);
- (ii) Geographical names for any subdivision of the Region of Madrid (Comunidad de Madrid), like, e.g. districts, neighbourhoods, streets..., local landmarks, and other locally-relevant and iconic names over which the Public Authorities referred to in 1.2 above are the relevant authority according to local law, including clear variations and abbreviations thereof; and

- (iii) Names of public services (according to Spanish Law) for which Public Authorities referred to in 1.2 above have specific responsibilities.

The Names of public services must be used by the relevant Public Authority in connection with the public services that domain name represents. This will be made clear in the .madrid Launch Policy and the Registry Operator will enforce compliance with this requirement.

1.4 Contention Resolution within this category

If within this ALP there is more than one application for the same name:

- 1.4.1 “Sub-category 1 names” will include names applied for by the Comunidad de Madrid and its institutional administrations. “Sub-category 1 names” will have priority over the names applied by any other eligible Public Authorities (as defined in 1.2. above).
- 1.4.2 “Sub-category 2 names” will include names applied for by the municipalities (*ayuntamientos*) in the Region of Madrid (Comunidad de Madrid). “Sub-category 2 names” will have priority over the names applied by any other eligible Public Authorities (as defined in 1.2. above) except for those in “Sub-category 1”, as defined in 1.4.1 above.
- 1.4.3 “Sub-category 3 names” will include names applied for by local public authorities and entities other than Municipalities (*ayuntamientos*) in the Region of Madrid (Comunidad de Madrid). “Sub-category 3 names” will have priority over the names applied by any other eligible Public Authorities (as defined in 1.2. above) except for those in “Sub-category 1” and “Sub-category 2”, as defined in 1.4.1 and 1.4.2 above, respectively.
- 1.4.4 “Sub-category 4 names” will include names applied for by any eligible Public Authorities (as defined in 1.2. above) other than those in “Sub-category 1”, “Sub-category 2” and “Sub-category 3”, as defined in 1.4.1, 1.4.2 and 1.4.3, respectively. Specifically, eligible International Public Authorities fall under this sub-category.

If there is more than one application for the same name applied for by Public Authorities within the same sub-category according to this clause, the following contention resolution processes will be offered to the parties in contention:

- (i) agreement between contenders (withdrawal and refund of application);
- (ii) mediation and arbitration or random selection (if all contenders agree); or

- (iii) If contender parties do not agree on any of the above contention-resolution mechanism, or such method provides no resolution of the contention, the name will remain non-allocated or reserved by the Registry Operator, at its sole discretion.

1.5 Priority

This Public Administration ALP will allocate eligible names with priority over Sunrise and any Limited Registration Periods.

1.6 Duration

This ALP will last approximately seventy (70) calendar days. During the first approximately sixty (60) days it will run in parallel with the rest of the Launch Phase categories. Due to the nature and formalities inherent to the Public Administration procedures, it was considered necessary to extend the duration of this Launch Program for a few additional days following the end of the Launch period for the other eligible launch categories (see Annex 1).

1.7 Challenges to domain names allocated or rejected under this category

Allocations and rejections of domain names under this category will be able to be challenged through the **Public Administrations Launch Program Dispute Resolution Policy** established by the Comunidad de Madrid (attached as **Annex 2**). The said Public Administrations Launch Program Dispute Resolution describes the process and standards that will be applied to resolve challenges alleging that a domain name has been allocated or declined to be allocated in the TLD in violation of the Public Administration Launch Program Eligibility and/or Name Selection Requirements set forth in 1.1 and 1.2 above.

2. [Respect to third party intellectual property rights](#)

This Public Administrations ALP meets all the requirements of the Guidebook and Specification 7, as it expands the rights-protection mechanisms set forth there while fully respecting the minimum requirements established there. Specifically, this ALP (i) would not contribute to consumer confusion, but it is instead aimed at avoiding confusion; and (ii) would not contribute to the infringement of intellectual property rights, as discussed next.

This ALP is substantially similar (in fact, almost identical) to the Public Administrations Approved Launch Program applied for by the City of Paris for the .paris TLD, which was submitted to Public Comment (even though finally

withdrawn by the City of Paris due to lack of time before the launch period of .paris). Thus, the comments made therein should be taken into account here.

Regarding the comments submitted by the International Trademark Association (INTA) and the Association of European Trade Mark Owners (MARQUES) opposing some aspects of the .paris Public Administrations Approved Launch Program the following must be stressed:

2.1 As a starting point it is important to note that INTA and MARQUES do NOT dispute that as submitted in the .paris Public Administrations ALP application:

- Public Authorities have an uncontested right to use certain names for their public services. This uncontested right is based on the public interest behind those names and does not come from, nor conflict with, trademark rights; that
- Trademark registration is either unavailable or inadequate to protect these names for the relevant Public Authorities in relation to the goods or services within its primary meaning (for which they are non-distinctive) but is nevertheless available for third parties using the same name with a secondary meaning unrelated to the public sector. Examples such as “metro” (it can be trademarked for any service, except for underground railway transportation), “opera” (unavailable to registration for Opera Theatres but open to trademark registration for cafés, hotels or software services), “police” (unavailable for security forces, but available for registration as trademark for any other services or goods, like sunglasses) come to mind; and that
- Giving priority to the secondary meaning over the primary meaning of names for registration under the TLD would lead to notable user confusion and unwarranted extension of the rights. As all those public interest services have a strong identification with each locality, giving priority to other uses would be both confusing to local citizens and Internet users alike (think, in the case at hand) of metro.madrid for anything different than the public underground network of the region of Madrid) and also a stretch of trademark rights contrary to Spanish law.

2.2 Instead, what INTA and MARQUES claim is that the proposed eligibility and name selection criteria are too vague and broad, thus being open to abuse by those who would seek to circumvent the RPM Requirements. While the proposed eligibility and name selection criteria as outlined in this application may seem vague and broad to those who are unfamiliar with Spanish

Administrative Law, what “Public Service” is or who “Public Administration” is established by Spanish law. Spanish administrative law clearly defines Public Authorities, the respective areas of competences of each one, and Public Services. Thus, these are not unclear terms subject to different interpretations.

- 2.3 INTA and MARQUES also submitted that if the ALP was to be approved, more than 100 domains could be registered and this, according to them, would circumvent the Sunrise Period at the expense of TMCH rights holders in a manner that was previously proposed and rejected by ICANN. The argument is groundless.

This ALP is submitted for approval pursuant to Section 4.5.2 of the TMCH Requirements, not pursuant to Section 5.4.1. The limitation of 100 names does not apply to Section 4.5.2 of the TMCH Requirements. ICANN has never limited the number of names *with prior rights*, which may be registered with priority over Sunrise eligible names under an ALP previously approved by ICANN. On the contrary, the mere fact that the TMCH Requirements foresee the possibility to submit applications like this one to ICANN’s approval supports the contrary position.

- 2.4 The above said, once it is accepted that:

- Public Authorities have an uncontested right to use certain names for their public services;
- This uncontested right is based on the public interest behind those names and does not come from, nor conflict with, trademark rights;
- Trademark registration is either unavailable or inadequate to protect these names for the relevant Public Authorities in relation to the goods or services within its primary meaning (for which they are non-distinctive) but is nevertheless available for third parties using the same name with a secondary meaning unrelated to the public sector;
- Giving priority to the secondary meaning over the primary meaning of names for registration under the TLD would lead to notable user confusion and unwarranted extension of the rights; and
- All the above refers to abstract, universally-applicable, situations but not to concrete authorities having concrete competences over the very

concrete and well-defined area represented, and intended to be represented by the TLDs (Community of Madrid);

limiting the number of eligible registrations to 100 names seems totally arbitrary and unjustified. To restrict the number of names here would be as unreasonable as restricting the number of trademarks that could be registered during the Sunrise Period.

- 2.5 In addition, any alternative, such as reserving all possible names affected, would result in over-protection of those names and unneeded additional limitations to trademark rights. In fact, the Registry Operator could establish a list of reserved names according to Section 2.6 and Specification 5 of the Registry Agreement. In practice this would imply withholding such names from any possible registration during the Sunrise Period, and releasing them later on. But this solution puts all the relevant parties in a worse solution than the Launch Program hereby applied for the following reasons:

First, the list is difficult to make and it would necessarily leave many relevant names off. A Registry Operator is not the best-suited party to determine how each institution prefers or intends to use those names. In fact, ICANN's history provide plenty of examples of how difficult lists like this are to create and how imperfect they are.

Second, the list would necessarily overprotect the Public Authorities, as the Registry Operator would do its best to include all possible names with all their corresponding labels. This is a certainly overkill, Public Authorities should not have an exclusive and absolute right to these names. Many more names than would be desirable would be blocked without anybody really asking for them to be blocked. As a consequence, trademark owners, and the general public, would be restricted in their ability to register such names, even when the relevant Public Authority had expressed no intention to use or secure them. Thus, the list would not be consistent with the other Rights Protection Mechanisms, such as the Sunrise Period.

The same way trademark owners are allowed to protect their trademarks prior to their availability to registrants with no prior rights (but such names will be available if trademark owners decide not to register them), the same rationale should apply to the names of Public Authorities. Why granting in this case an absolute exclusion instead of a priority to protect them?

Under Section 2.4.3 of the TMCH Requirements, the names in the reserved list could be released at any time after the end of the Sunrise with only the

requirement of being subject to Claims Services. This is exactly as it would be in the ALP we are applying for. In conclusion, why all the hassle, all the costs of under-protection (due to omissions) and over-protection (due to the very nature of the list), why stretch the natural structure of the rights protection if at the end of the day the trademark holders would gain no better protection at all and, on the contrary, all the parties would lose choice, flexibility, clarity and simplicity?

Using an inferior backdoor to achieve the same result is at best a stretch and, at worst, ineptitude.

- 2.6 Finally, in view of the public comments submitted to the Public Administrations Approved Launch Program applied for by the City of Paris for the .paris TLD, (identical to this one), the following further assurances are hereby granted.

3. Further Assurances

- 3.1 First, eligible applications under this Approved Launch Program will not be hidden behind privacy registrations so that potentially aggrieved parties can determine whether the registrant met the .madrid eligibility and name selection requirements. Thus, registrations of eligible applications under this ALP via proxy services will not be allowed. In fact, this is not a possibility for any registration during the Launch Period, Sunrise and Landrush included.
- 3.2 Second, as mentioned in Section 1.3 above, the names of public services must be used by the relevant Public Authority in connection with the public services that domain name represents. This is made clear in the .madrid Launch Policy and the Registry Operator will enforce compliance with this requirement.
- 3.3 Finally, as mentioned in Section 1.2 above, any domain name registered under this Launch Program by an eligible Public Authority will not be transferred to a third-party except (i) to another eligible Public Authority or (ii) in the event of a sale of all or substantially all of the assets of the registrant. This will also be made clear in the .madrid Launch Policy and the Registry Operator will enforce compliance with this requirement.

4. Final Assurances

The Comunidad de Madrid (Registry Operator) acknowledges that the Launch Application described above is a true and correct description of the Comunidad de

Madrid's launch program. The Comunidad de Madrid agrees that if the Comunidad de Madrid makes any changes to the Launch Application (whether before or after the Launch Application has been approved), it will promptly provide ICANN with a revised description of the Launch Application.

The Comunidad de Madrid acknowledges and agrees that in the event that any of the information contained in the Launch Application becomes untrue (including after ICANN has approved the Launch Application), any approval granted by ICANN to the Comunidad de Madrid for the Launch Application shall immediately expire, and the Comunidad de Madrid shall immediately cease accepting registrations or allocations under the Approved Launch Program.

Enclosed:

Annex 1: CDM-puntoMadrid-ALP1-Overview-att1.pdf

Annex 2: CDM-puntoMadrid-ALP1-Public-Admin-Dispute-Resolution-Policy-att2.pdf

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Date Noted: 17 September 2014 (updated on 29 October 2014)

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