Dear Mr. Evans, Mr. Corwin and Ms. Kleiman,

I am writing in regards to the discussion on transparency and the Rights Protection Mechanisms (RPMs), and in particular to follow up on some of the discussions I heard at ICANN58. By way of context, I have been serving as Co-Rapporteur of the Work Stream 2 subgroup examining transparency at ICANN. In my time in this position, I have heard a near constant refrain about the importance of transparency to ICANN’s work and mission. I believe that this emphasis is appropriate.

Against this background of an institution seeking to expand and improve transparency, it is troubling to hear arguments that the Trademark Clearinghouse database should be kept secret. Although I sympathise with concerns that information contained in the database could be misused to facilitate cybersquatting, there are also perfectly legitimate reasons why businesses or individuals might want information about what has been registered. While trademarks serve an important function to protect legitimate business interests they are also, fundamentally, a restriction on what other people can say. This system only works if there is full clarity about the extent of the boundaries which have been reserved, in order to grant the public a full understanding of what remains available.

More importantly though, keeping the database secret would fly in the face of ICANN’s broader push for more transparency. The legitimacy of ICANN to fulfil its function is predicated on its accountability to its stakeholders, and ultimately to the public at large. Effective accountability in turn depends on the ability of people to obtain accurate and complete information about how the process is working. Accountability is meaningless in the absence of transparency. Without openness, it will be impossible for ICANN’s stakeholders to assess how the RPMs are working, whether their operations are optimally established to promote a robust Internet, and how they should be improved going forward.

I hope that you, and the working group, will consider these ideas as deliberations continue, and I hope to have the opportunity to engage more directly with the process as things move forward.

Best wishes,

Michael Karanicolas

Senior Legal Officer

Centre for Law and Democracy