

Instructions:

This table was built to assist the Trademark Claims Data Review Sub Team in its analysis as to whether, and how, the Analysis Group survey results answer each of the final agreed Charter questions. Specifically, the Analysis Group survey gathered data to help answer the questions highlighted in yellow. Relevant survey data can be found in the following tabs/rows in the [survey analysis tool](#), including, but not limited to:

- “Actual & Potential Registrants” tab, row 12-27
- “TM & Brand Owners” tab, row 45-82

When providing input, please note the tab title and cell number (if applicable) as reflected in the survey analysis tool.

Claims Charter Question 3:

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(iii) Are translations of the Trademark Claims Notice effective in informing domain name applicants of the scope and limitation of trademark holders’ rights?

(b) Should Claims Notifications only be sent to registrants who complete domain name registrations, as opposed to those who are attempting to register domain names that are matches to entries in the TMCH?

Sub Team Member Name	Do the survey results help answer Claims Charter Question 3?	If yes, which sub question(s) do the survey results assist?	How do the survey results assist (e.g. “Registries responses in tab/cell X demonstrate Y”)?	Tab Title & Cell Number (if applicable)
George Kirikos	Yes*	a(i),(ii), (iii), (b)	<p>[asterisk besides Yes*, for the same reason as prior documents]</p> <p>Registrant responses in E23 and F23 of Actual & Potential Registrants tab openly state there was confusion and/or intimidation. E18 and F18 demonstrate that registrants don’t appear to understand the scope/limitations.</p> <p>Registry&Registrars tab, cell G74 reinforces confusion/intimidation, as well as scope/limitations (e.g. surnames and dictionary terms).</p> <p>Trademark owners have mixed responses on the adequacy of the notices</p>	<p>Actual & Potential Registrants tab, cells E23, F23, E18, F18</p> <p>Registry & Registrars tab, cell G74, G67-68, G75</p>

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			<p>(TM*&Brand Owners tab, cell F50-55).</p> <p>With regards to translations (i.e. part (iii)), as the survey was in English, it’s hard to get data from registrants on this point. But, the registrars who participated in the survey did state, in the Registry&Registrars tab, cells G67-68) that not all the languages that they do business in received translations, which implies that there is a potential problem.</p> <p>For (b), we have very limited data on the implementation aspects, it appears to only come from Registry&Registrars tab, cell G75, but it doesn’t discuss the differences between those implementations in terms of their effectiveness (there are pros/cons).TM & Brandowners tab, cell F56 indicates overwhelming percentage of TM Holders want the notice sent before the registration is completed, not afterwards.</p> <p>---</p> <p>Comment from Sub Team:</p> <ul style="list-style-type: none"> • Kristine Dorrain: I generally agree with George's characterizations of the data. 	<p>TM &Brand Owners tab, cells F50-55, F56</p>
Kathy Kleiman	Yes	(a) Does the	This seems to be an “umbrella question” and one best looked at initially through its	E18 (Actual

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		<p>Trademark Claims Notice to domain name applicants meet its intended purpose?</p>	<p>subpoints.</p> <p>Accordingly: (i) If not, is it intimidating, hard to understand, or otherwise inadequate? If inadequate, how can it be improved?</p> <p>The survey results provide abundant data indicating problems of misunderstanding by registrants (actual and potential) with the TM Claims Notice. This multiple choice question on this topic was drafted to include right and wrong answers about the purpose of the Notice. Of the 120 actual registrant respondents, 67 (more than half) selected incorrect responses -- and an additional 9 said they did not know. This data shows that for the majority of users, the TM Notices were hard to understand. This implies a miscommunication -- that might be remedied in the type of information conveyed to registrants, and the accessibility of that information to those reading it (e.g., perhaps lawyers should not draft it this time :-)).</p> <p>Using these multiple choice questions as a guide, those trained in drafting for general audiences and/or global audiences might draft a new/revised TM Notice with much clearer messages to registrants/potential registrants, with more accessible and understandable language.</p> <p>Further, given our ability to reach out to actual and potential registrants (e.g., as shown by this survey), it might make sense to "field test" one or more newly-drafted Notices with registrants/potential registrants and questions very similar to the ones in this survey -- to see if the new text is clearer and much of the confusion is now</p>	<p>Registrant Response)</p> <p>F18 (potential registrants)</p>

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			<p>removed.</p> <p>(According to the Analysis Group, the confusion was more severe with potential registrants -- "Potential Registrants were less likely to understand the Claims Notice than the Domain Name Registrants." G18</p> <p>The data shows that of the 77 potential registrants who answered the question, 59 did not understand it. That certainly leaves room for improvement in the wording of the Notice -- and opportunities to test it with focus groups.</p> <p>---</p> <p>Comment from Sub Team:</p> <ul style="list-style-type: none"> • Justine Chew: "...67 (more than half) selected incorrect responses" -- Kathy, could you elaborate on "incorrect" please? • Justine Chew: "e.g., perhaps lawyers should not draft it this time :-)" -- Hey, lawyers are supposed to be great communications, no? ;) 	
Rebecca Tushnet	yes	(a)(i) and (ii)	Generally agree with Kathy: pervasive misunderstandings showed up in the responses of potential registrants and actual registrants who weren't recruited through those already involved in ICANN--both of whom did not much better than chance in answering questions about the meaning of the notice. Rewriting with attention to principles about communicating to ordinary internet users could be productive. It is also worth noting that about ¾ of respondents thought they understood the notice,	Registrant Q7, Potential Q9

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			while their actual comprehension answers indicated that 1/3 of those confident people were wrong.	
Kathy Kleiman	Yes	3(a)(ii)	(ii) Does it inform domain name applicants of the scope and limitations of trademark holders' rights? If not, how can it be improved? Special Tab Q11 shows that numerous actual registrants walked away from registrants, after receiving the Notice, including in situations that the questions appear designed to show were likely legal: (a) an existing business, program, initiative (with existing as an indicator that some work may have been done to ensure that the name was suitable for a new business in the locale in which it was incorporated or founded), (b) thinking about starting a blog or some other personal website (emphasis appears to be noncommercial activity); (c) domain name investing (a legal activity), etc, yet, over 17% percent of registrants walked away completely from the registration (and likely more given that a good cohort was trademark attorneys who knew when/how to proceed). When read in conjunction with F18, and the misunderstanding of many registrants that the purpose of the Notice is to "inform me about the potential rights of trademark owners against me should I proceed to complete registration of my selected domain name," there seems to be a lack of communication in the notices of the "scope and limitations of trademark holders' rights".	Special Tab Q11, F18

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			The improvement might lie in clearer language or a change in the approach to how the legal issues are explained. Testing the language before implementation, as discussed above, might be a key to successful change.	
Kathy Kleiman	Yes	3(a)(iii)	<p>Are translations of the Trademark Claims Notice effective in informing domain name applicants of the scope and limitation of trademark holders' rights?</p> <p>As pointed out in comments above, the translation issue is raised in the Registrar/Registry comments, and the data seems pretty clear: 5 out of 6 registrars did not provide TM Notices in the languages of their registration agreement (except English). Consequently, those registrants/potential registrants who do not speak English (or do not speak English well) would not then be informed of the scope and limitations of trademark holders' rights in an effective manner. This information can be combined with the data showing confusion among registrants/potential registrants (discussed above).</p> <p>Note: I'm not sure it was every envisioned (as the Analysis Group question suggests) that every registrar would have to do their own translations. Perhaps ICANN Org could handle the translations, and a set of Notices in different languages could be made available to Registrars; it would then be easier to share the translations.</p>	G68

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Rebecca Tushnet	Yes	3(a)(iii)	If it's not working well in the language in which it was initially drafted, it would be very surprising for it to be more comprehensible in translation.	
Kathy Kleiman	Yes	3(b)	<p>(b) Should Claims Notifications only be sent to registrants who complete domain name registrations, as opposed to those who are attempting to register domain names that are matches to entries in the TMCH?</p> <p>G72 shares an array of responses by registrars to some of the difficulties the Claims Notice makes to pre-registration of domain names prior to General Availability (which is a service of a number of registrars). One registrar says it causes confusion and frustration. Another registrar says that sometimes later-enrolled pre-registered customers will sometime obtain the domain name because the answer the Notice first: "This leaves the first customer without the domain even though they purchased it before the 2nd customer. A very poor customer experience. - very challenging"</p> <p>One registrar suggests: "that we remove the rotation of the claim token every 48 hrs and that the token is only updated when the claim has changed."</p> <p>Another notes the problem that "-claim keys expire quickly, sometimes the registries don't deliver claim keys in a reliable manner - a little challenging."</p> <p>This combined with the large turnback percentages shown by AG findings in Special Tab Q11 indicates that other types of timing for Notices-- such as sending notices to registrants "who complete domain name registrations" 3(b) charter question -- might</p>	G72 Tab Q11

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			be a) fairer for those who pre-register, and b) easier for registrants who need to further research, understand and/or translate the TM Notice (and would then be able to do so without relinquishing their first-come-first-served rights to a new gTLD domain name).	
Griffin Barnett	Yes	(a)(i)-(iii), (b)	The Claims Notice to domain name applicants appears to fall short of meeting its intended purpose, which is to deter bad faith domain name registrations while not substantially deterring legitimate registrations. However, the survey data does not fully allow us to definitively answer the overarching question. For instance, the survey likely did not involve bad faith actors to begin with, so it is likely biased in favor of good faith registrants and potential registrants. Survey data does, however, suggest that the Claims notices may be intimidating (in the sense of causing concern, but not necessarily in the sense of correlating to a deterrent effect), hard to understand, or otherwise inadequate at effectively conveying the meaning they are intended to convey. Available data seems to suggest that most registrants who receive a Claims Notice continue to complete the registration. The reason given is that they consulted with someone and were told it was OK to proceed. Answers indicating that the Claims Notice "worried" the registrant cannot be correlated to actually deterring the registrant from completing the registration. Over half of survey respondents indicated they spend less than 2 minutes reviewing the Claims Notice. It	Actual & Potential Registrants D12-27; E12-27; F12-27

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			<p>is hard to draw any specific conclusion from this data point, because it could mean either that registrants understand the Notice really well, or that they didn't understand its significance at all. About half of registrants appeared to understand the significance of the Notice, whereas this rate was lower for the "potential registrant" group. Claims Notice was not listed as a top reason for abandoning a registration by potential registrants. Some of the data suggests that the Claims Notice is confusing or concerning, and it conveyed that the registrant or potential registrant might be exposed to legal risk if they were to proceed. A fairly high proportion of registrants and potential registrants felt confident they understood the Claims Notice (roughly between 76-88%). The survey is not clear as to the effect of language barrier issues in understanding the notice, so it is hard to answer the question regarding the effectiveness of translation separately from general results concerning the ability of potential registrants to understand the notices. Ultimately, the wording of the Claims Notice could likely be improved to improve its effectiveness, the notice delivered in additional translations in multiple languages, and mechanisms put into place to ensure potential registrants confronted with a Claims Notice actually read the entire notice before choosing whether to proceed with registration or not.</p> <p>It is critical that Claims Notices be generated and provided to potential registrants</p>	Actual & Potential

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			during the registration process itself, rather than after registration is completed – otherwise, the entire deterrent purpose of the notice would be eviscerated.	Registrants D12-27; E12-27; F12-27; TM & Brand Owners D-F56
Rebecca Tushnet			<p>Cross-referencing comments on Griffin’s</p> <p>The data indicate pervasive confusion and not much time spent reading the notice—later delivery when it’s not interrupting a planned registration may allow better evaluation of a claim, producing a more orderly and thoughtful response. There’s no guarantee, of course, but it doesn’t seem like the current workflow is producing a lot of careful attention either.</p> <p>Separately, the current workflow seems to be causing problems with the overall process for registrars: they report expired claims notices and disruptions of first come first served when the notice is delivered before registration. (Note Pot & Actual registrants cell 27W: would not stop & consult because “Someone else may register the domain name before I have a chance to consult the said attorney.”)</p>	

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