Instructions:

This table was built to assist the Trademark Claims Data Review Sub Team in its analysis as to whether, and how, the previously collected Trademark Claims data (between December 2016 and March 2018) answer each of the final agreed Charter questions.

- In the **Trademark Claims Tab** of the analysis tool, Staff have included excerpts, as well as the relevant page/slide reference, from the previously collected data that staff believe may assist in answering the final agreed Charter questions. Summaries of the excerpts are included in Column B.
- The excerpts cited by Staff are nonexclusive; Sub Team members are welcome to download and reference the actual documents, linked from the **Source Tab,** to cite relevant information that may help answer the final agreed Charter questions.
- When providing input, please note the source name and page/slide number of the previously collected data.

Claims Charter Question 3:

(a) Does the Trademark Claims Notice to domain name applicants meet its intended purpose?
(i) If not, is it intimidating, hard to understand, or otherwise inadequate? If inadequate, how can it be improved?
(ii) Does it inform domain name applicants of the scope and limitations of trademark holders' rights? If not, how can it be improved?
(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 previously collected data help answer this Claims Charter Question?	If yes, which sub question(s) do the survey results assist?	How do the data assist (e.g. "Information X in document Y demonstrate Z")?	Source Name & Page/Slide Reference
George Kirikos	Yes	a(ii)	Answer to Q2 in Deloitte April 2017 Response to followup questions, says the claims notice contains the mark name, Registrant, Registrant Contact, Jurisdiction, Goods and Services. I believe this might be insufficient for registrants to actually locate the trademark in all jurisdictions. We can see a sample notice at: https://domainnamewire.com/2014/01/30/trademark-claims-notice/ and you'll note	Deloitte April 2017 Response to followup questions, Q2

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			that it doesn't include the registration number of the trademark, or its creation date. I'm not 100% sure, but I believe some national trademark databases aren't online, or aren't searchable. See: https://www.idownloadblog.com/2017/07/31/apple-trademark-filings-sleuts/ for more, where it says that "Apple, Google and others register product names in foreign countries without searchable trademark databases, which include Trinidad and Tobago, Barbados, Peru and Jamaica." There might also be multiple trademarks in a given jurisdiction by a company in the same goods and services for the same terms (e.g. different figurative marks for different logos, etc.) and so one wouldn't be able to tell which one was the basis for the TMCH recordal.	
KKleiman	yes	3a(i) and (ii)	We have a problem: what information is the Claims Notice providing when the TMCH registration is not a trademark, but a geographical indication, a protected designation of origin, or a protected appellation of origin? What is being shown on the Claims Notice, and how can it possibly inform the domain name applicant of the scope and limitations of the trademark holders rights (for there is no trademark owner and these are very complicated and contested rights in the international sphere)?	Follow-up Questions Deloitte (5 March 2017), 7, 6

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			Note: no Claims Notice was never drafted for this situation because only internationally recognized trademarks were supposed to be entered into the TMCH. Under the current circumstances, the Claims Notice is clearly *not* meeting its intended purpose, is by definition hard to understand, and cannot possibly be informing applicants of their rights in a world where those issues are the subject of high level international disagreement (Staff can cross-reference testimony received by WG from US Trademark Office in Copenhagen or Helsinki). Ditto for design marks since the Claims Notice did not anticipate them either (they were barred by original rules passed by Council). TM Claims Notices make no mention of, and share nothing about the full design mark, and certainly do not print out the design or logo. Accordingly, the answers to charter questions are clear (since the application cannot see the logo or design, and has no basis even to evaluate their proposed domain name against it): Notice not serving intended purpose, materials delivered are not adequate, and it does not inform the application of the scope and limitations of the trademark holders rights. Sub Team Comments: ● Kathy K: Claims Notice not meeting its intended consequences since it was not drafted for these situations. For example, geographical indications and	

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			design marks (as was noted in comments to Q1); Claims Notice cannot show the design marks. ● Griffin Barnett: There is small amount of relevant data in answering this question. First (as also related to Q1) from the first Deloitte responses -- most questions they received related to TM management issues. Such as what to do after you receive a Claims Notice. Secondly, the other data was Deloitte summarizing what is in the Claims Notice.	
Griffin Barnett	Yes		Deloitte Responses: - Based on our customer support team experience, most of the questions relate to the actual trademark management such as … 3) I have received a claims notification, what do I do now [this suggests some confusion regarding the meaning of Claims notices, and the TMCH role in administering them] Deloitte Further Responses: - However, a third party is informed of a record in the TMCH through the claims notice which is presented prior to registration. [relates to timing, subquestion (b)] The claims notice holds the Mark name, Registrant and registrant contact and the jurisdiction and goods and services of the mark recorded in the TMCH.[factual discussion of what is presented in the notice, relates to subquestion (a)(ii)]	Listed in Prior Column Comment from Kathy Kleiman: Hi, Hoping Griffin will share doc and page. Tx!

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Rebecca Tushnet	yes	(a)	Top notice triggers are common words for large classes of legitimate economic and social activity (cloud, hotel, etc.), suggesting a substantial risk that many legitimate applicants get a Notice	AG Revised Report, p. 8-9
Sub Team Discussion			● Kathy K: Consider the use of ordinary words. ● Susan P: It is not our role in ICANN to determine whether trademarks are valid. Not dispute we want to minimize the confusion by registrants by redrafting the Claims Notice. ● Rebecca T: This isn't a question of validity of the underlying mark. It's a question of the unintended effects of how this particular system—which sends out notifications based only on a linguistic match to a common term that is only a trademark under certain circumstances—works. Now that we know that "cloud" and the like are the most common triggers of notifications, it matters that many notifications are likely to be going out to people whose uses aren't conflicting. ● Brian B: The more productive way to address the issue is at the level of Sunrise Dispute Resolution Policy. https://mm.icann.org/pipermail/gnso-rpm-wg/2017-July/002233.html	

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