

OWNERS: Fabro, Jamie, Carlton (lead)

CCT-RT HYPOTHESIS WORKSHEET

HYPOTHESIS:

(ex. The outreach program failed to reach potential applicants in the developing world)

OWNER:

(ex. Carlton Samuels)

HIGH LEVEL QUESTION:

(ex. Was the new gTLD application and evaluation program effective at serving the developing world?)

FINDINGS:

(a list of relevant findings and supporting data)

1. Applications from the developing world (define) were disproportionately (define, perhaps ratio of applications to internet users) low.

Source: Applicant data, internet usage study

2. Potential applicants in the developing world did not know about the new gTLD program.

Source: Applicant cohort survey found that 70% of potential applicants were unaware or vaguely aware of the new gTLD program.

CAUSES:

(refer to relevant hypothesis worksheets on causes)

1. Outreach program was begun too late in the process

see Outreach too late worksheet

2. Outreach program used the wrong media

see Outreach media worksheet

PRIORITY TO ADDRESS:

(ex. Prior to Subsequent Procedures, Mid-term, Long-term

This is an important area for community input)

RECOMMENDATIONS:

(recommendations to ICANN. For each, specify:

- 1. Target of recommendation (ie Staff, Board, SubProc PDP)*
- 2. Nature of recommendation*
- 3. Implementation details, exceptional costs, etc.)*

(ex:

- 1. Begin Outreach 6 months prior to accepting applications*
 - a. Staff recommendation*
 - b. Likely 20% increase in outreach cost*
- 2. Use more radio advertising for outreach*
 - a. Staff recommendation*
 - b. Likely 30% increase in outreach cost)*

REVIEW:

(how the effectiveness of these recommendations will be reviewed)

- 1. Data source recommended for review*
- 2. Recommended timeframe for review)*

(ex:

- 1. Repeat applicant cohort survey, look for 40% increase in awareness*
- 2. Review in one year to make changes if an increase is not observed.)*

Research Analysis Worksheet
(intended to feed into the hypothesis worksheet)

TITLE RPMs IN THE DOMAIN NAME SPACE

OWNER Carlton (lead), Fabro, Jamie

DESCRIPTION

(short description of the product, article, survey, economic analysis, including the underlying methodology)

Rights Protection Mechanisms (RPMs) refer the set of procedures and processes adopted and mandated by the ICANN community that offer binding protection for verified and verifiable legal rights pertaining domain names in the namespace by way of a non-judicial process.

Trademark Clearinghouse (TMCH)

The TMCH is sometimes confusingly classed as an RPM itself instead as the tool it is that supports exercise of all the named RPMS. It is an ICANN-mandated centralized repository of authenticated data on trademarks derived variously from their registration, court-validations or those protected by statute/treaty. It is principally accessible to registries and registrars with the intent that it would assist in the protection of trademark owners and consumer by prohibiting registration of trademark infringing domain names. The framework consists of three (3) distinct approaches:

- ∅ **Sunrise Registration Period** which offers priority registration of domain names to trademark owners for a minimum thirty (30) days prior to general registration availability.
- ∅ **Trademark Claims Service** runs a minimum of ninety (90) days after general availability of the string for registration and notifies a prospective domain name registrant of a potential conflict between the domain name being sought and an existing trademark. If a registration proceeds after Claim Service notification, the trademark owner is apprised.
- ∅ **Uniform Rapid Suspension (URS)** proceedings may be invoked if a positive TCS is evidenced.

The clearing house process is as follows:

1. Trademark is submitted by trademark holders or their agents to the Trademark Clearing House Database operated and maintained under contract by IBM
2. Submitted mark is subjected to a verification process marshalled by Deloitte
3. Verified mark is afforded access to the Sunrise Registration Period and Trademark Claims Services for all new gTLDs

Refer the [TMCH website](#) as well as the [Final Report](#) of the Implementation Recommendation Team (IRT).

There are three (3) general categories of RPMs:

Legal Rights Objections (LRO)

- a dispute resolution procedure administered by the World Intellectual Property Organisation (WIPO) Arbitration and Mediation Centre that is accessed and used to adjudicate formal objection to a third party's application for a new Top-Level Domain by trademark owners and intergovernmental organizations. The framework outlines appointment of an independent panel of one (1) or three (3) neutral experts to consider and determine if the string applied for infringes the objector's existing trademark, or IGO name or acronym.

Uniform Domain Name Dispute Resolution Policy (UDRP)

Is an out-of-court dispute resolution mechanism for trademark owners to resolve cases of bad-faith and/or abusive registration and use of domain names. It was designed in 1999 by the World Intellectual Property Organisation (WIPO) and at origination was applicable to second-level domain name registrations in sixteen (16) gTLDs; .aero, .asia, .biz, .cat, .com, .coop, .info, .jobs, .mobi, .museum, .name, .net, .org, .pro, .tel and .travel. This category predates all other RPMs. Its scope was subsequently expanded to contractually cover all domain name registrations in ICANN-approved TLDs, both current and new, at the first and second levels.. Some ccTLDs utilize the UDRP and some others have developed variants they have placed in production in use. See [WIPO listing](#) of ccTLDs that make use of the UDRP.

Trademark owners are granted standing as complainants to access the UDRP process. The process allows them to assert their rights in the complaint but they must prove infringement to prevail. The complainant must also further demonstrate that the domain name registrant lacks rights or legitimate interests in the name, and that the registrant has registered and uses the name in bad faith. If the complaint is successful, the infringing domain name registration is transferred to the complainant following a ten-day waiting period. The respondent has the right to seek judicial relief from the ruling of the arbitration panel in a court of competent jurisdiction.

The WIPO Center has administered [almost 30,000 UDRP-based cases](#) to date and makes available a range of globally used [jurisprudential UDRP Resources](#).

Uniform Rapid Suspension System (URS)

The URS could be classed UDRP-lite and may be utilized to front load a UDRP action. It is designed for use in open/shut cases of infringement and in within the ICANN domain name context, as enabled by the TMCH. It was never intended for use where doubts about facts or complicated legal maneuvers apply. The substantive criteria for the URS process are similar to those for the UDRP. But when the URS is invoked, the complainant shoulders a higher burden of proof to prevail. The URS includes a range of additional registrant defenses over an extended time period and in respect of remedies, the URS panel may order that the domain name registration be temporarily suspended for the remainder of the registration period. In addition, the successful complainant may thereafter extend the registration for one year at commercial rates.

When a complaint is dismissed by a panel, the proceeding is terminated without prejudice and the complainant may proceed with an action under the UDRP process or, in a court of competent jurisdiction. A panel may also deem a URS complaint "abusive" which may result in a complainant being barred from utilizing the URS for a period of time.

Post-Delegation Dispute Resolution Procedure (PDDRP)

The PDDRP is an administrative alternative to court action regarding gTLD strings at the first and second level. The procedure embeds mechanisms that enable trademark owners to seek redress when a registry operator's operation or use of a domain leads to or supports trademark infringement, either on the top level or second level. There are three (3) types of PDDRP:

∅ The Trademark PDDRP

∅ The Registration Restrictions PDDRP

∅ The Public Interest Commitments (PIC) PDDRP

To invoke the PDDRP, trademark owners are required to “demonstrate, by clear and convincing evidence a) affirmative conduct by a registry at the top level that infringes a trademark; and/or b) at the second level, affirmative conduct by a registry that amounts to a substantial pattern or practice of specific bad-faith intent by the registry to profit from the sale of domain names that infringe trademark rights.”

WIPO criticized the process as weighted to far in favour of ‘affirmative conduct’ of registry operators’ and that given the integration of registry, registrars and registry service operators, the conditions should be extended to registrars. A slew of its recommendations can be found [here](#). It appears the criticism was partially heeded. Because under the rules established, a registry operator cannot be deemed liable purely on the basis that names that infringe rights are contained in their registry and they know this to be the case or did not monitor names registered in the registry.

Registry-Level Blocking Mechanisms

The evidence suggests there are such processes offered by specific registry operators and are said to be more cost-effective than those thru the TCH.

EVIDENCE OF CLAIMS IN TIME

The WIPO Center is the sole provider of claims adjudication services for Legal Rights Objections (LRO) pursuant to new gTLDs. The objection filing window for the new gTLD program was defined as June 2012 – March 2013. When the LRO period was exhausted in September 2013, the WIPO Center recorded sixty-nine (69) compliant objections adjudicated by its experts. Five (5) cases terminated before judgment, two (2) were upheld and sixty-two (62) claims rejected. The outcomes can be viewed on the WIPO LRO website [here](#). WIPO also published this [report that examines the development, procedure and substance of the LRO process](#).

In respect of pre-new gTLD era, WIPO has released [these statistics](#) for UDRP filings for the period 2000 – 2011:

WIPO is just one of several providers of UDRP services.

In regard to UDRP and URS filings, the CCT RT pages shows the [evidence](#) of no significant increase use between 2012 – 2015; the first new gTLDs were delegated in 2013.

In regard of the TMCH:

“As of 4 August 2015, a total of 37,971 marks had been submitted to the Clearinghouse from 120 jurisdictions. Most of the verified trademark records in the Clearinghouse are nationally or regionally or registered trademarks, with the U.S. having the greatest number of registered trademarks

recorded. Out of the total number of marks submitted, approximately 90% of submissions were able to be verified and accepted for inclusion into the Clearinghouse.”

“Between December 2013 and May 2015, an average of 2,448 Sunrise period registrations occurred per month across all TLDs, with the average number of Sunrise transactions for a TLD approximately 125 registrations.”

- **Source “Rights Protection Mechanisms Review – Revised Report September 2015”**

There are other representations on Sunrise registrations that are perhaps less authoritative but with alternate numbers. See

<http://domainincite.com/?s=Rights+Protection+Mechanisms+statistics> and <http://domainincite.com/16718-how-much-are-new-gtlds-really-costing-trademark-owners-we-have-some-numbers>

TOP LEVEL QUESTIONS ADDRESSED

(a list of high level questions addressed by the research. If none, drop it ie:

1. *Did the new Gtld program enhance competition among registries?*
2. *Did the safeguards help to prevent DNS abuse*
3. *Did the application process serve the developing world)*

1. *Did the new Gtld program enhance competition among registries?*
2. *Did the safeguards help to prevent DNS abuse?*
3. *Did the application process serve the developing world*

HYPOTHESES ADDRESSED

(for each hypothesis, include the description of the hypothesis and the findings of the research ie

1. The new gTLD outreach program used the wrong vehicles for outreach
 - a. Support
 - b. The program used online advertising
 - c. The developing world still primarily uses radio for news)

The RPMs provided added protection for stakeholders in the new gTLD program against rights abuse.

