REPORT ON ACTIVITIES OF THE TRADEMARK CLEARINGHOUSE SUB TEAM TO 5 AUGUST 2016

This is the interim report of the Review of all Rights Protection Mechanisms ('RPMs') in all gTLDs PDP Working Group (the 'Working Group') sub-team on the Trademark Clearing House (the 'Sub-team'). This report will:

1. Detail issues which the Sub-team wishes to seek clarification from the full Working Group regarding;
2. Propose next steps to be undertaken by the Sub-team and staff; and
3. Summarise the outcomes of a call on data gathering between the Sub-Team and the Analysis Group (the independent examiner responsible for preparing the draft report on the TMCH, published for public comment on 25 July).

<u>Issues for Working Group clarification</u>

The Sub-team is seeking clarification from the full WG regarding the scope and direction of its activities. Specifically, whether the role of the Sub-team is merely to seek and catalogue publicly available data which may assist the review of the TMCH by the WG, or whether the Sub-team should consider what non-publicly available data can be sought from third parties (this may conceivably include contacting the TMCH providers and other groups, including gTLD registrars and registries). In this respect the Sub-team also seeks clarity from the Working Group as to whether by "publicly available" the Working Group means information that has been published or that is otherwise publicly accessible (e.g. via an online search) or includes information that exists but that is not published or publicly accessible (e.g. a formal request may need to be made to obtain the documents). The Sub-team seeks this information to better focus its work and instructions to staff going forward.

<u>Proposed next steps</u>

The Sub-team has instructed staff to review and extract any relevant data contained within the following publicly accessible sources for consideration by the Sub-team prior to remittance to the WG. These sources are:

(Deliverable 1) Monthly reports made to ICANN by the TMCH;
(Deliverable 2) Community presentations (including webinars) by Deloitte and IBM on the operation of the TMCH;
(Deliverable 3) Public documents drafted by or for, or otherwise currently known to ICANN (e.g. public comment summaries, implementation reports and the Draft Report on the TMCH Independent Review); and
(Deliverable 4) Reports provided to ICANN by gTLD Registries and Registrars.

The Sub-team has instructed staff to conduct an initial extraction and summary of relevant data from the above-noted documents, following which the Sub-team will analyze the information to

determine its usefulness to the deliberations of the WG on the TMCH. Data deemed relevant will be shared with the WG for its consideration.

Policy support staff has also been instructed to coordinate with their colleagues in the Global Domains Division (GDD) to ascertain what information provided to ICANN by the TMCH providers is publicly available and what may be more restricted.

While staff prepares the data extraction summary from the sources noted above, the Sub-team will continue to develop data-related questions, based on the Charter questions and suggestions since raised by Working Group and community members.

Summary of meeting with the Analysis Group

The Sub-team met with the Analysis Group (represented by Greg Rafert and Stacey Chan) on 29 July 2016. Several Working Group members were also in attendance on that call. In advance of the meeting, the Sub-Team had developed a number of questions relating to data collection and sources. The Analysis Group representatives first provided a brief overview of their work and then responded to each question individually. The key points of the meeting were:

- The Analysis Group was primarily interested in whether registrars pinged the TMCH to see if potential registrations matched TMCH records. This was presumed to correspond to attempted domain registrations, although the TMCH does not have data to confirm this (ie no data retained about what the proposed registered domain was). They were also interested in the number of domain registrations which subsequently went ahead. All the data they requested for purposes of the study was provided. Limitations on data available to them meant that it was not possible to confirm whether there was a deterrent effect on bad faith registrations or a chilling each on good faith ones. Registrars were not contacted.

  Discussions are ongoing with ICANN staff to ascertain what of this information can be shared with the Sub-team and the Working Group (due to factors such as non-disclosure agreements and other contractual limitations).

  The Working Group could consider finding out how often trademark owners are using other monitoring services, and what permutations on their strings are they monitoring.

  The Working Group could consider seeking more specific information from registrars and registries which may be able to provide both more granular and more pertinent data.

A complete note of the questions and answers received during this meeting is Annexed to this report.

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ANNEX 1: QUESTIONS & RESPONSES

1. **What information did the TMCH have but was not prepared to provide?**
   - Essentially, all the data that was requested for the study was provided. There were essentially two types of data (from Deloitte, e.g. the verified TM records; and from IBM – from whose data the Analysis Group was primarily interested in whether registrars pinged the TMCH to see if potential registrations matched TMCH records).

2. **What, if anything, did the TMCH say they did not have?**
   - From the data, it was not possible to distinguish between whether a registrar pinged the TMCH because there were attempted registrations or for some other reason; the WG may need to get that data from registrars themselves (if needed).

   - The data was not maintained at a more detailed level that could have allowed for more in-depth analysis of cybersquatting trends, e.g. whether it is more prevalent amongst certain types of goods or services offered by particular brands. Deloitte's records list the 2-digit industry code (Ie the Nice class of goods or services) which is at a high level and thus not very informative as to specific goods or services of a specific TM holder (e.g. the Nice Classification System for Goods & Services has fewer classes than SIC codes might). Consequently, this could not be used to identify potential industry specific keywords for an assessment on Mark+ Keyword registration rates, and so this type of squatting as not included in the analysis.

3. **Are you able to provide to us the raw data you gathered, if we think it will be useful to our task? Are there any constraints on this?**
   - Greg and Stacey will consult with Deloitte and IBM as well as ICANN staff to determine what can be shared with the WG (there may be possible constraints because of non-disclosure agreements).

4. **Was there any information that you collected in the course of your review which did not go to the issues you focused on and so was not used? If so, can you provide it to us if we think it would be helpful to our work?**
   - All the data they received was used as described in the Draft Report.

5. **What data available to registrars and registries would have aided your investigation?**
   - QUESTION: Did registries do downloads to see what eligible TMs could be selected for premium pricing during Sunrise?
   - ANSWER: This data was not available for assessment; from the data they had, they couldn't see that registries made downloads (NOTE: they had asked for data for every single ping to the TMCH, so registry download behavior should have come up).
     - For registries, it may therefore be helpful to find out if any have pinged the TMCH to see what strings might be delineated for Sunrise.

- For registrars, to the extent this data is maintained, it may be helpful to get data on the numbers relating to notifications that were shown to potential registrants who then nevertheless proceeded with registration.
- From the data they had, the Analysis Group used could not discern the specific extent to which infringing as well as non-infringing registrations were deterred. They did not request data from registrars as they discovered deficiencies in the Deloitte and IBM data only very late in the process.

6. **What data could be collected from trademark owners to understand the effectiveness of the TMCH Sunrise and Claims?**
   - The Working Group could consider finding out how often trademark owners are using other monitoring services, and what permutations on their strings are they monitoring (Analysis Group could not draw strong conclusions about this from the data they had).

7. **What documents/sources did the Analysis Group find most useful and what (if any) would they recommend that the Sub Team look at? (NOTE: This can include documents that are not included either in the report (including the bibliography and footnotes) and materials consulted in the course of researching the report)**
   - They will review the question and follow up with the Working Group.

8. **What other data should be collected and from whom (TMCH database, TMCH validator, registrars, registries, others)?**
   - As noted, registrars and possibly also registries.

9. **Do they have any data on why the abandonment rate seems so high? Are registrars downloading records without corresponding registrations (thus skewing the numbers)? This may be helpful to truly understand what is happening in the Claims and Sunrise periods. Was there data that they didn't consider useful (e.g. abandoned shopping carts)?**
   - This goes back to the lack of data on this point, which conceivably might only be data that registrars can provide.

10. **Will it be difficult for Analysis Group to share underlying data (vs aggregate information), due to NDAs etc.? If so, Sub Team may want to go directly to TMCH Provider**
    - See response to Question 3 (above).

11. **From the report (Pg 17, Table 4) there were almost 1.7 million abandoned registrations – what is the relationship of this number with the numbers on Pg 7 (125.8 million claims service downloads)? Also, two registrars were apparently misusing TMCH data (by downloading in bulk) so they were excluded from some analysis – did Analysis Group conclude that misuse of data is outside the study scope?**
    - There are some registrars that download a large number of records almost every time from the TMCH. There's also an internal ICANN monitoring system that pings the TMCH regularly to ensure system is working. Note that Table 4 exclude the two registrars that

downloaded large numbers of records at a given time relative to other registrars (this was discernible from the data).

- QUESTION FOR ICANN: Is this something Compliance should be looking at to determine whether this was for appropriate or inappropriate purposes

12. On the report that only 6.3% of Claims Notices would trigger registrations – doesn't this seem very low (and, correspondingly, 93% very high)?
- They did not mean to provide that conclusion, and may amend Final Report to reflect this. They will also consider including an Appendix to the Final Report describing the data sources and metrics used.

13. What data was used to conclude that expanding matching rules would not be useful?
- Variations were developed based on TMCH data they had, e.g. plurals, number of characters, typos. They then looked at registration activities for these variations based on WHOIS data to see, e.g. how many recurring registrations were there for each string variation, were exact matches or other more common?
- However, they did not look at "mark+generic word", as they thought that could be discerned from the Deloitte industry codes (but this did not happen given the limitations of the codes).

14. Has there been follow up research on completed registrations vs Claims Notices issued vs UDRP/URS claims filed
- Not aware of any, but this is a good suggestion.

15. Will it be useful to have competition for the TMCH?
- They will take a look at the survey responses to see if there is anything there that might be useful to the Working Group's deliberations on this point.

16. Who was interviewed for the report?
- They cannot disclose the identities of individual respondents. Basically, interviewees were selected based on a number of criteria to ensure diversity of respondents (e.g. geographical distribution, size of trademark portfolio/strings registered in TMCH).

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