CONSOLIDATED LIST (CATEGORIZED) OF CHARTER QUESTIONS AND ADDITIONAL COMMUNITY-SUGGESTED QUESTIONS FOR PHASE ONE – 26 SEPTEMBER 2016

On the TMCH:

From the Charter:

1. Should further guidance on verification guidelines for different categories of marks be considered?

2. Is the protection of the TMCH too broad? Is the TMCH providing too much protection for those with a trademark on a generic or descriptive dictionary word?

3. Should TM+50 be reversed?

4. Are legitimate noncommercial, commercial and individual registrants losing legitimate opportunities to register domain names in New gTLDs?

5. How should the TMCH scope be limited to apply to only the categories of goods and services in which the generic terms in a trademark are protected?

6. Should the TMCH matching rules be expanded, e.g. to include plurals, 'marks contained' or 'mark+keyword', and/or common typos of a mark?

7. Should there be an additional or a different recourse mechanism to challenge rejected trademarks?

8. How quickly can a cancelled trademark be removed from the TMCH?

9. How can TMCH services be much more transparent in terms of what is offered pursuant to ICANN contracts and policies vs. what is offered to private New gTLD registries pursuant to private contracts?

10. Should there be a review on accessibility to TMCH for individuals, private trademark holders and trademark agents in developing countries?

11. How can the TMCH provide education services not only for trademark owners, but for the registrants and potential registrants who are equally impacted by their services?

From the community in Helsinki:

1. Does the TMCH provide avenues that are procedurally and substantively fair to effectively balance the rights of rights holders versus normal Internet users?

2. Does the TMCH create a tendency to perpetuate the status quo?

3. How accessible is the TMCH to reviewing accessibility for trademark agents in developing countries?

4. Should the TMCH remain a single provider or should we open it to different providers, of course with a central database that should be accessed by the different providers?

5. Are the costs of the TMCH, for rights holders, for ICANN, for the community, proportionate to the benefits it provides?

6. How do we determine what is "good chilling effect" and "bad chilling effect" in relation to RPMs?

On Sunrise:

<u>From the Charter</u>:

1. Should the availability of Sunrise registrations only for "identical matches" (e.g. without extra generic text) be reviewed?

2. Is the notion of "premium names" relevant to a review of RPMs, and, if so, should it be defined across all gTLDs?

3. Following from Question 2, should there be a mechanism to challenge whether a domain is a 'premium name'?

4. Should there be a specific policy about the reservation and release of "reserved names" (e.g. modification of Section 1.3.3 of Specification 1 of the current Registry Agreement)?

5. Should there be a public, centralized list of all reserved trademarks for any given Sunrise period?

6. Should holders of Trademark Clearing House-verified trademarks be given first refusal once a reserved name is released?

7. Should Sunrise Periods continue to be mandatory? If so, should the current requirements apply or should they be more uniform, such as a 60-day end-date period?

8. Whether and how to develop a mechanism by which trademark owners can challenge Sunrise pricing practices that flout the purpose of Sunrise.

9. Whether more can be done to improve transparency and communication about various Sunrise procedures.

<u>From WG discussions</u>:

1. How is the emerging discourse within the ICANN community on human rights issues relevant to this PDP?

   • This suggestion is based on a general Additional Question appended to the WG Charter, as follows:

     Are recent and strong ICANN work seeking to understand and incorporate Human Rights into the policy considerations of ICANN relevant to the UDRP or any of the RPMs?

2. How often are SMD files compromised and have to be revoked? How prevalent is this as a problem?

3. Confirm that there is no data on how many LRP registrations were made available and in which registries - is there no data on additional voluntary mechanisms e.g. ALP?

4. Are the ALP and QLP periods in need of review?

5. Is it possible to expand the Charter questions to include some of the underlying TMCH questions concerning TM scope in the sunrise period?

   > *(1) When the TM registered in the TMCH database is a generic or descriptive word, and sunrise is used for registering that mark as a domain name completely unrelated to the goods and service category of TM protection, is that fair for other/future/potential domain name registrants?*

   > *(2) Should sunrise registrations be limited to the categories of goods and services of the TM?*

6. Is there any evidence of 'gaming' e.g. of registering a number of valuable trade mark names under the sunrise period of marks to which they do not have a traditional legal claim?

7. What is the relationship between premium pricing and trademark rights? To what extent do premium names correspond to registered trademarks?

8. Further explore "use" and the types of proof required by the TMCH

On Claims:

<u>From the Charter</u>:

1. Should the Trademark Claims period be extended beyond ninety (90) days?

2. Should the Trademark Claims period continue to apply to all new gTLDs?

3. Should the Abused Domain Name Label service be continued?

4. Does a Trademark Claims period create a potential "chilling effect" on genuine registrations, and, if so, how should this be addressed?

5. Is the TMCH and the Sunrise Period allowing key domain names to be cherry-picked and removed from New gTLDs unrelated to those of the categories of goods and services of the trademark owner (e.g., allowing "Windows" to be removed from a future .CLEANING by Microsoft)?

6. What is the effect of the 90-day Trademark Claims process?

General (not related to any specific RPM):

On Providers:

1. Are the processes being adopted by Providers of UDRP, URS, and TMCH services fair and reasonable?

2. Are the Providers' procedures fair and equitable for all stakeholders and participants?

3. Are the Providers consulting with all stakeholders and participants in the evaluation, adoption and review of these new procedures?

4. Are the Providers training both the Complainants and the Respondents, and their communities and representatives, fairly and equally in these new procedures?

5. Are Providers exceeding the scope of their authority in any of the procedures they are adopting?

6. Is ICANN reaching out properly and sufficiently to the multi-stakeholder community when such procedures are being evaluated by ICANN at the Providers' request? Is this an open and transparent process? expeditiously and fairly created?

7. What changes need to be made to ensure that procedures adopted by providers are consistent with the ICANN policies and are fair and balanced?

8. What remedies exist, or should exist, to allow questions about new policies by the Providers offering UDRP, URS and TMCH services, and how can they be expeditiously and fairly created?

9. Assess the benefit of the Arbitration Forums self-reviews, including the *WIPO Advanced Workshop on Domain Name Dispute Resolution, May 2015*[italics in original], in which inconsistencies of decisions, including in the free speech/freedom of expression area were candidly discussed and contemplated

Others:

1. Do the RPMs work for registrants and trademark holders in other scripts/languages, and should any of them be further "internationalized" (such as in terms of service providers, languages served)?

2. Do the RPMs adequately address issues of registrant protection (such as freedom of expression and fair use?

3. Have there been abuses of the RPMs that can be documented and how can these be addressed?

4. Examine the protection of country names and geographical indications, and generally of indications of source, within the RPMs

5. In the light of concrete cases (case law) and from the perspective of owners of protected signs and of marks, which are the identified deficits of the RPMs?

6. Are recent and strong ICANN work seeking to understand and incorporate Human Rights into the policy considerations of ICANN relevant to the UDRP or any of the RPMs?

7. Are there any barriers that can prevent an end user to access any or all RPMs?

8. How can costs be lowered so end users can easily access RPMs?

Over-arching issues/questions:

1. Do the RPMs collectively fulfil the objectives for their creation, namely "to provide trademark holders with either preventative or curative protections against cybersquatting and other abusive uses of their legally-recognized trademarks? In other words, have all the RPMs, in the aggregate, been sufficient to meet their objectives or do new or additional mechanisms, or changes to existing RPMs, need to be developed?

2. Should any of the New gTLD Program RPMs (such as the URS), like the UDRP, be Consensus Policies applicable to all gTLDs, and if so what are the transitional issues that would have to be dealt with as a consequence?

3. Whether, and if so to what extent, changes to one RPM will need to be offset by concomitant changes to the others