

## CCT-RT DISCUSSION PAPER WORKSHEET

### HIGH LEVEL QUESTION 4:

#### Did the New Rights Protection Mechanisms (RPMs) Help Mitigate Certain Risks Involved with the Expansion of the new gTLD program?

(In the context of Topic 2: Has the New gTLD Program put sufficient mechanisms in place to mitigate risks to the trustworthiness of the DNS?)

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#### SUB-QUESTIONS:

1. Were they used? How were they used?
2. Did their existence deter infringers?
3. Did they provide an effective solution to the overarching issue of trademark protection in the new gTLDs?
4. Were other new gTLD RPMs introduced by Registry Operators (i.e. over the baseline of obligatory RPMs) effective?
5. Did the availability of new RPMs cause an increase in the total number of complaints (URS/UDRP) being brought overall?
6. If there was an increase in number of complaints (URS/UDRP) how did this compare to the total number of new domain name registrations across all gTLDs?
7. Did the availability of these RPMs reduce TM infringement (by discouraging abuse)?
8. What other enforcement measures were taken in addition to complaints (cease and desist, watching, lawsuits, increase registrations?)
9. Did the launch of new gTLDs create an increase in enforcement costs for brand owners compared to pre-new gTLD status quo?
10. What type of abuse is prevalent in new gTLDs?
  - a. Bad Faith Registration and Use
  - b. Malware
  - c. Phishing
  - d. Security breaches
11. Has the rate of transfer or cancellation changed in the UDRP since the existence of new gTLDs?
12. Has the TMCH functioned satisfactorily? Has there been abuse of it?
13. Has the URS functioned satisfactorily? Has there been abuse of it?
14. Has the PDDRP functioned satisfactorily? Has there been abuse of it?
15. Has the TM Claims Service functioned satisfactorily? Has there been abuse of it?
16. Has the Sunrise Period system functioned satisfactorily? Has there been abuse of it?
17. Has the Legal Rights Objection Mechanism functioned satisfactorily? Has there been abuse of it?
18. Has the String Confusion Objection Mechanism functioned satisfactorily? Has there been abuse of it? What if anything should be changed?
19. Has the Community Objection Mechanism functioned satisfactorily? Has there been abuse of it?

NB Trying to map these questions to INTA survey and other potential sources

#### FINDINGS:

Our analysis has been hampered by the lack of relevant data to respond to these questions. Having considered the data which we do have available and whilst there has been outreach

made to the Dispute Resolution Providers for the UDRP and URS, as well as to the providers for the LRO and SCO and Community

1. Numbers of Cases filed (UDRP and URS)

According to metrics available to ICANN which have been compiled from Uniform Dispute Resolution Procedure (UDRP) and Uniform Rapid Suspension (URS) providers we have seen a drop in UDRP complaints since the introduction of new gTLDs. If we take 2012 as a baseline there were 3987 UDRP complaints filed. In 2013 this had dropped 15% to 3371 UDRP complaints before rising slightly in 2014 and 2015 but both years were still 13% down on the 2012 level. The URS may have picked up some of the slack and been more attractive to certain brand owners, in both 2014 and 2015 there were 229 and 220 URS complaints filed respectively. However, even taking these into account, the total complaints filed whether UDRP or URS remain lower than the total in 2012 by around 7.5%.

Based on this data it is difficult to conclude that there has been a higher enforcement cost to brand owners using the available ICANN mechanisms. However, the number of UDRPs and URSs filed may only be the tip of the iceberg and the bulk of enforcement costs incurred with defensive registrations / watching / cease and desist letters. It is harder to get data on these aspects and we will need to wait on results of the INTA Impact Study.

Year	Total
2012	3,987 (UDRP)
2013	3,371 (UDRP)
2014	3,436 (UDRP) & 229 (URS)
2015	3,466 (UDRP) & 220 (URS)

2. Complaints to ICANN concerning Implementation of UDRP and URS decisions

Turning to complaints made to ICANN concerning implementation of UDRP and URS decisions we do have some data from the ICANN itself. The number of UDRP complaints has been going down year on year from 2012 to 2015 with 2015 seeing some complaints down by some 70% compared to 2012. However, URS complaints have been on the rise, in the two years where we have data, some 42% higher in 2015. It is too early to make conclusions other than it would seem that there are potentially more issues with URS complaints than UDRP complaints since as a percentage of total complaints in 2015 the UDRP saw 6% complaints compared to the URS with a little over 12%.

Also to note, these are complaints made to ICANN regarding these procedures but we do not know the nature of these complaints and what they pertained to. They may just be disgruntled registrants or brand owners. We need to have more information on the nature of the complaints themselves.

Year	UDRP Complaints
2012	658
2013	408
2014	226
2015	210

Year	URS Complaints
2014	19
2015	27

### 3. Registry Restrictions Dispute Resolutions Procedure (RRDRP) Decisions

The RRDRP is intended to address circumstances in which a community-based New gTLD Registry Operator deviates from the registration restrictions outlined in its Registry Agreement.

As of 22 February 2016 there have been no RRDRP cases.

### 4. Share of Sunrise Registrations and Domain Blocks to Total Registrations in Each TLD

We presently only have data from ICANN on the number of sunrise registrations compared to total registrations in new gTLDs. With regard to Domain blocks or commercial blocking services offered by registries there is no current consolidated data available.

To review the data available on the share of sunrise registrations to total registrations in each TLD

#### Findings:

Sources:

**Compilation of procedures related sources:**

<https://community.icann.org/display/CCT/Procedures>

**Compilation of impact of safeguards & PICs related sources:**

<https://community.icann.org/pages/viewpage.action?pageId=59649288>

<https://www.icann.org/resources/pages/cct-metrics-rpm-2016-06-27-en>

#### Action / Ongoing

- Other Findings ongoing: Sources: WIPO, Forum
- Future findings source: INTA Impact Study
- Data on which new gTLDs have the most abuse in them

#### **CAUSES:**

#### **PRIORITY TO ADDRESS:**

1. High priority to have full Impact Study results in order to fully inform the community

#### **RECOMMENDATIONS:**

1. Need to have a full Impact Study to seek to identify the actual costs incurred by brand owners with regard to new gTLD enforcement and defensive registrations. This will hopefully be something that the INTA Impact Study will provide in December 2016 – March 2017
2. The Impact Study needs to be repeated at regular intervals, eg 18 -24 months in order to see the evolution
3. Consider the relationship between the URS and the UDRP
4. Consider whether there should be a transfer option with the URS rather than only suspension

5. Consider loser pays models and what the benefit would be as opposed to the costs
6. Consider the applicability of new gTLD RPMs to legacy TLDs
7. Consider the scope of the TMCH should it be expanded beyond merely identical matches to include mark+keyword or common typographical errors of the mark in question, if so under what basis
8. Consider the usefulness of Donuts DPML Plus

**REVIEW:**

Draft