CHARTER & COMMUNITY QUESTIONS ON THE TMCH: TABULATED WITH CONTEXTUAL BACKGROUND AND ADDITIONAL COMMENTS
23 November 2016
prepared by ICANN staff for the TMCH Charter Questions Sub Team of the RPM Review PDP Working Group

Current Suggested Categories:
Guidance; Verification & Updating of TMCH Data; Balance; Access & Accessibility; Costs & Other Fundamental Features

Items highlighted in green have been agreed by the sub-team, items highlighted in orange are to be moved for consideration during the WG's consideration of other aspects of the RPMs.

SUGGESTED CATEGORY: GUIDANCE			
No.	**Original Question/Question as agreed**	**Context/Background/ Origin**	**Comments/Suggestions**	**Proposed Edited Question**
1.	Should the verification criteria be clarified or amended? If so how? Clarifying paragraph: This issue was raised by various public comments to the Draft RPM Staff Paper (Feb 2015), referring to administrative challenges (e.g. inconsistent submission requirements such as for on non-Latin text marks, error corrections and certifications required), as well as the need for clearer communications and better guidelines from the TMCH; also supported by several commenters to the Preliminary Issue Report (Oct 2015) – though one noted the need to define	Supported by various public comments to the Draft RPM Staff Paper (Feb 2015), referring to administrative challenges (e.g. inconsistent submission requirements such as for on non-Latin text marks, error corrections and certifications required), as well as the need for clearer	Seems to go toward the process of verification by Deloitte and not the scope/standards of qualifying for entry into the TMCH	

	what "different" means (e.g. jurisdiction? Design vs work mark? Goods or services?	communications and better guidelines from the TMCH; also supported by several commenters to the Preliminary Issue Report (Oct 2015) – though one noted the need to define what "different" means (e.g. jurisdiction? Design vs work mark? Goods or services?)	
2.	What activities does the TMCH undertake to communicate (i) criteria does the TMCH apply when determining whether or not to accept marks and (ii) what to do when registrations are challenged?	Question proposed during RPM working group sub-team deliberations on Charter questions.	
3.	Should (and if so, how) the TMCH be responsible for education services for trademark owners, domain name registrants and potential registrants? If the TMCH is not to be responsible, who should be?	Public comments to Preliminary Issue Report (Oct 2015) (specific question suggested by one commenter)	
4.	How are design marks currently handled by the TMCH provider?		
5.	What information on the following aspects of the operation of the TMCH is available and where can it be found: • TMCH Services;	Public comments to Preliminary Issue Report (specific question suggested)	Proposal to move this question to guidance questios section.	

• Contractual relationships between the TMCH providers and private parties; and With whom the TMCH shares data and for what purposes?		KK: Perhaps divide this question into two? 1_ How can TMCH services be much more transparent in terms of what is offered pursuant to ICANN contracts and policies? 2 How can the TMCH be much more transparent in terms of what is offered to private New gTLD registries pursuant to private contracts? [KK note: may want to move the second question to a section on private uses of the TMCH Database]	

SUGGESTED CATEGORY: VERIFICATION AND UPDATING OF TMCH DATA			
No.	Original Question	Context/Background/ Origin	Comments/Suggestions	Proposed Edited Question
6.	Should there be an additional or a different recourse mechanism to challenge rejected trademarks?	Supported by several public comments to Preliminary Issue Report		
7.	How quickly can and should a cancelled trademark be removed from the TMCH to avoid discouraging or losing domain	Public comments to Preliminary Issue Report (specific		

	names registration? Is this satisfactory?	question suggested by one commenter)		

SUGGESTED CATEGORY: BALANCE

No.	Original Question	Context/Background/ Origin	Comments/Suggestions	Proposed Edited Question
8.	Does the scope of the TMCH and the protection mechanisms which flow from it, reflect the appropriate balance between the rights of trademark holders and the legitimate rights of non-trademark registrants? In particular are: • legitimate noncommercial, commercial and individual registrants; and • legitimate rights holders; losing legitimate opportunities to register domain names in New gTLDs?	Public comments to Preliminary Issue Report (specific question suggested by one commenter)		
9.	How do we determine what is "good chilling effect" and "bad chilling effect" in relation to RPMs?	Community suggestion at ICANN56	Agreed to move to questions on TM Claims and Sunrise. Note: Kathy can explain "bad chilling effect" and Jeff Neuman can explain "good chilling effect."	
10.	How should the TMCH scope be limited to apply to only the categories of goods and services in which the generic terms in	Public comments to Preliminary Issue Report (specific	Rephrase as: "Should the scope of the TMCH be limited to apply	

Commented [DT1]: The Sub-team agreed to add a focused version of the question into the list of questions addressed specifically to the Sunrise RPM, Claims Notice and Private RPMs.

NOTE: Sub-team agreed that only the first sentence/question is needed.

Commented [DT2]: Proposed revision to remove this question entirely as dealt with by preceding question. [Not resolved by sub-team].

Commented [MW3]: Language as suggested on WG call of 5 Oct.

		only to the categories of goods and services in which the generic term(s) within a trademark are protected? If so, how?" [KK Question: is this now redundant to questions above?]	
a trademark are protected?	question suggested)		
11.	Should the TM+50[1] be retained or removed?	Issue highlighted in various public comments to draft RPM Staff Paper (noting under-utilization, high costs, verification standards, arbitrary nature) and Preliminary Issue Report		
12.	Should the TMCH matching rules be retained, modified, or expanded, e.g. to include plurals, 'marks contained' or 'mark+keyword', and/or common typos of a mark?	Supported by various public comments to draft RPM Staff Paper and Preliminary Issue Report; however, one commenter to the Preliminary Issue Report noted the		

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[1] Trademark owners can add up to 50 variations that are similar to each valid submission in the TMCH—within the notification process—provided that the variant of the mark was awarded to the trademark holder in a prior UDRP case.

		origin of this in the balance struck in the STI		

SUGGESTED CATEGORY: ACCESS & ACCESSIBILITY				
No.	**Original Question**	**Context/Background/ Origin**	**Comments/Suggestions**	**Proposed Edited Question**
13.	Should there be a review on accessibility to TMCH for individuals, private trademark holders and trademark agents in developing countries?	Supported by various public comments to draft RPM Staff Paper (i.e. that greater outreach is needed in regions that underutilized TMCH); public comments to Preliminary Issue Report (suggesting this specific question)	WG call of 5 Oct noted that this may be a question for the New gTLD SubPro WG; also that "accessibility" need not be limited to developing country mark-holders (e.g. could include small businesses or those with very few marks).

[So recommendation is to move this question to gTLD SubPro WG? If so, how do we do this formally?] | |
| 14. | How accessible is the TMCH to reviewing accessibility for trademark agents in developing countries? | Community suggestion at ICANN56 | Possibly addressed by the question above on "review on accessibility"?

[This is a question that J.Scott referred to as "access by SMEs." Seems properly grouped with | |

No.	Original Question	Context/Background/Origin	Comments/Suggestions	Proposed Edited Question
			Guidance/Validation/Verification/Access above.]	
15.	Should the TMCH Database be entirely public?	Suggested on WG call of 5 Oct 2016	[Recommend moving to Guidance/Validation/Verification/Access above.]	

SUGGESTED CATEGORY: COSTS AND OTHER FUNDAMENTAL FEATURES OF THE TMCH			
No.	**Original Question**	**Context/Background/Origin**	**Comments/Suggestions**	**Proposed Edited Question**
16.	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? Is it practical to have more than one provider?	Noted in public comments to Preliminary Issue Report (on single provider issue)	Which aspects of the TMCH's operations are most important and should be taken into consideration for the next round? Aspects that can be considered are: • cost, • reliability, • global reach, • diversity of services, • consistency. What implementation guidelines should be given to ICANN to achieve these goals in the proper balance?	Rephrase as: "Which aspects of the TMCH's operations are most important and should be taken into consideration for the next round? Some aspects that can be considered are cost, reliability, global reach, diversity of services, and consistency, as well as the question of whether it would be desirable and practical to have more than one provider for the TMCH services."
17.	Are the costs of the TMCH, for rights holders, for ICANN, for the community, proportionate to the benefits it	Derived generally from various public comments to draft RPM Staff Paper and	[KK Comment: This does not appear to be a rewrite of the charter	Has (and to what extent has) the TMCH achieved its primary goal to reduce costs

Commented [MW6]: Based on suggestions raised on the Sub Team email discussion list.

Commented [MW5]: Suggested on the WG's 5 Oct call.

provides?	Preliminary Issue Report	question. But the charter question (left column) may fall within the scope of the "balance question" above. that is: "Does the scope of the TMCH and the protection mechanisms which flow from it, reflect the appropriate balance between the rights of trademark holders and the legitimate rights of non-trademark registrant….?"]	to Trademark owners? Have these benefits outweighed the costs?