FINAL LIST OF SUGGESTED CHARTER QUESTIONS FOR REVIEW OF THE TMCH
Updated by ICANN Staff on 6 DECEMBER 2016

SUGGESTED CHARTER QUESTION	COMMENTS FROM THE TMCH CHARTER QUESTIONS SUB TEAM	WORKING GROUP DISCUSSION	WORKING GROUP NOTES
Category 1: Guidance			
1. Should the verification criteria used by the TMCH be clarified or amended? If so how?	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 what "different" means (e.g. jurisdiction? Design vs work mark? Goods or services?	Rebecca Tushnet (1 Dec), seeking clarity on Q1 esp. in relation to Q4:

"It seems to me that Q4, and maybe Q1, goes to the problem that the TMCH is only supposed to accept marks that are valid as word marks, not marks that are only valid in combination with a design. E.g., PARENTS + design for magazines should not be accepted into the TMCH, because the registrant has no rights in the word "parents" as such, even though that's the only word component of the mark. See Gruner + Jahr USA v. Meredith Corp., 991 F.2d 1072 (2d Cir. 1993). Am I mistaken about what Q1 is | |

		supposed to cover? It does appear to me that the TMCH's current handling of word + design marks is inconsistent with the instructions provided by ICANN."	
2. What activities does the TMCH undertake to communicate: (i) the criteria it applies when determining whether or not to accept marks; and (ii) what to do when registrations are challenged?			
3. Should the TMCH be responsible for education services for trademark owners, domain name registrants and potential registrants? If so, how? If the TMCH is not to be responsible, who should be?			

4. How are design marks currently handled by the TMCH provider?		See comments from Rebecca Tushnet under Q1, above. Mathieu Weill (3 Dec), noting that the TMCH seems to accept marks comprising Geographical Indications and suggesting: "How are Geographical Indications and/or Appellations/Designations of Origin handled by the TMCH provider? How many such registrations were submitted / approved?"	
5. What information on the following aspects of the operation of the TMCH is available and where can it be found: • TMCH services; • Contractual relationships between the TMCH providers and private parties; and	Note from staff – this may need to be discussed in tandem with the Co-Chairs' Paper on Private Protection Mechanisms (see separate paper)		

• With whom does the TMCH share data and for what purposes?			
Category 2: Verification & Updating of TMCH Data			
1. Should there be an additional or a different recourse mechanism to challenge rejected trademarks?		Justine Chew (5 Dec) with a follow up suggestion: "If answered in the positive, should such mechanism be incorporated into and administered under the TMCH Dispute Resolution Procedures?"	
2. How quickly can and should a cancelled trademark be removed from the TMCH to avoid discouraging or losing domain names registration? Is this satisfactory?			
Category 3: Balance			
1. 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?			
2. Should the scope of the TMCH be limited to apply only to the categories of goods and services in which the generic term(s) within a trademark are protected? If so, how?		Kiran Malachandruvil (1 Dec): "I still have serious concerns about the reference to "generics" in Question 10. I think the arguments about why "generics" is a legally inappropriate reference here have all been stated, and I support them. I think it should be deleted completely and I think the prior questions about balancing competing rights (and free speech) address the concerns this question tries to get at" and noting possible redundancy in view of earlier questions." Note additional discussion on the WG list on the use of the word "generic" in this	

		question; four additional WG members (as of 6 Dec) support deleting the term – is there alternative wording that will work?	
3. Should the TM+50[1] be retained or removed?			
4. 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?			
Category 4: Access & Accessibility			
1. How accessible is the TMCH database and RPM Rights Protection Actions and Defenses to individuals, orgs, trademark owners	Findings on this issue should be shared with the New gTLD Subsequent Procedures PDP Working Group		

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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.

and trademark agents in developing countries?			
2. What concerns are being raised about the TMCH being closed, what are the reasons for having/keeping the TMCH Database private, and should the TMCH Database remain closed or become open?			
Category 5: Costs & Other Fundamental TMCH Features			
1. 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?	WG input sought on the following options: Proposal 1 "Does the present structuring of the TMCH optimize such operational considerations as cost, reliability, global reach, and service diversity and consistency, or should significant changes be considered?"	As of 6 Dec, three WG members have indicated a preference for Proposal 2. George Kirikos (4 Dec) notes: "There's no technical reason why a central database would be required. There could instead be multiple independent databases, which registrars and/or registries could query in parallel via a standardized API. There'd only need to be	

	Proposal 2 "What are the concerns with the TMCH Database being provided by a single Provider - and how might those concerns be addressed?"	a central *list* of which TMCH providers needed to be queried. From a coding perspective, the registrar/registry could simply query the entire list of providers, and collate the results. Most registrars already have this technology/capability, as they often query multiple registries (and secondary marketplaces) in parallel when customers attempt a new domain name registration (e.g. customer searches for EXAMPLE.COM, but they'll query not only the Verisign-operated .com registry, but also .net/org/biz/info/us and hundreds of other TLDs, marketplaces like Sedo/Afternic, and they'll even generate and query variations of "EXAMPLE.TLD" for availability, presenting the customer with a list of hundreds of alternatives)."	

2. Are the costs and benefits of the TMCH, for rights holders, for ICANN, for the community, proportionate?			