

**TABLE SUMMARY OF DRAFT CCT-RT PRELIMINARY RECOMMENDATIONS RELEVANT TO RPMS**  
**Prepared by ICANN Staff – 10 April 2017**

<b>CCT Draft Recommendation (directed to the RPM Review PDP Working Group)</b>	<b>Rationale</b>	<b>Pre-requisite for the next round?</b>	<b>Additional Comments</b>
#10: The ICANN community should consider whether the costs related to defensive registrations for the small number of brands registering a large number of domains can be reduced.	While most trademarks were either not registered in new gTLDs or in only a handful of new gTLDs, a small number of trademarks were responsible for a large number of registrations across many new gTLDs and were likely bearing most of the cost of registrations. This bimodal distribution suggests that RPMs tailored to certain of these trademarks may be appropriate.	Yes	Discuss with SubPro WG leadership
#40: A Full Impact Study to ascertain the impact of the New gTLD Program on the cost and effort required to protect trademarks in the DNS should be repeated at regular intervals to see the evolution over time as the New gTLD Program continues to evolve and new gTLD registrations increase. We would specifically recommend that the next Impact Survey be completed within 18 months after issuance of the CCTRT final report, and that subsequent studies be repeated every 18 to 24 months.	<p>Costs will likely vary considerably over time as new gTLDs are delegated and registration levels evolve. Repeating the Impact Study would enable a comparison over time.</p> <p>The CCT-RT notes: <i>“The need for data is pivotal and the results of the INTA Impact Study and other data are awaited in order to fully inform the community on the impact of ICANN’s New gTLD Program on the cost and effort required to protect trademarks in the Domain Name System ...These are draft recommendations awaiting the INTA/Nielsen Impact Study results that are due March 2017. Once these are received, we will prepare refined recommendations.”</i></p>	No, but described as High Priority	This recommendation was directed at ICANN Org, and not the RPM WG – noted here for WG informational purposes only

<p>#41: A full review of the URS should be carried out and consideration be given to how it should interoperate with the UDRP. However, given the [RPM] PDP which is currently ongoing, such a review needs to take on board that report when published and indeed may not be necessary if that report is substantial in its findings and if the report fully considers potential modifications.</p>	<p>The uptake in use of the URS appears to be below expectations, so it would be useful to understand the reasons for this and whether the URS is considered an effective mechanism to prevent abuse. It is also important for all gTLDs to have a level playing field. The [RPM] PDP is due to consider the URS during spring or early summer 2017 with a final report scheduled for January 2018. It would seem to be diluting resources to create a separate review of the URS without the clarity of the [RPM] PDP.</p>	<p>Yes</p>	
<p>#42: A review of the Trademark Clearinghouse (TMCH) and its scope should be carried out to provides us with sufficient data to make recommendations and allow an effective policy review.</p>	<p>It seems likely that a full review of the TMCH is necessary. The effectiveness of the TMCH appears to be in question. The draft report of Trademark Clearinghouse Independent Review of 25 July 2016 has not been able to make definitive conclusions due to data limitations. We need to await the final report of that Independent Review to finalize our recommendations. It is hoped that the INTA Impact Study will also provide useful data in that respect. Indeed the [RPM] PDP, which is running in parallel to this CCT Review Team, will contribute to this consideration with its report due January 2018. That Working Group's report needs to be considered to set the scope of any review and potential modifications.</p>	<p>Yes</p>	

**EXTRACT FROM THE CCT-RT DRAFT REPORT ON RPMS:**

“Consideration of [RPMs] and whether they have helped mitigate the issues around the protection of trademark rights and consumers in this expansion of gTLDs

The CCT Review Team looked at whether these mechanisms have helped to mitigate the issues around the protection of trademark rights and consumers in this expansion of gTLDs and have sought to obtain data to help assess the impact of ICANN’s New gTLD Program on the cost and effort required to protect trademarks in the Domain Name System.

Whilst awaiting that data, and given the ongoing Working Groups currently looking into the RPMs the CCT Review Team has not included in detail for the draft report how the RPMs are performing and whether they are encouraging a safe environment and promoting consumer trust in the DNS. It is hoped that the INTA Impact Study will provide substantial data in that respect. In the meantime, it can be said from the ICANN Rights Protection Mechanisms (RPM) Review, conducted by the ICANN organization and reported on 11 September 2015 that overall the URS has produced positive results in certain limited cases. The speed and low cost caters to those who have clear-cut cases and are indifferent towards the solution of a suspended domain name. However, some rights holders have not opted to use this service due to the “clear and convincing” standard being seen as too strict and the URS remedy being limited to suspension only. There is also concern voiced over the possibility of the domain name being registered once more by another potential infringer once it is released, thus some rights holders feel more comfortable having the domain name in their portfolio, which can be achieved via a UDRP. Indeed, the value of a suspended domain name is questioned.

A full and robust data analysis is not possible at the present time due to a lack of relevant and pertinent data. While such data are being collated, some preliminary findings have been made based on the information that was available as of November 2016.”

(See pages 95 – 104 of the CCT-RT Draft Report for further context around Recommendations 40, 41 & 42:

<https://www.icann.org/en/system/files/files/cct-rt-draft-report-07mar17-en.pdf>.)

**INFORMATION ABOUT THE INTA/NIELSEN SURVEY (FROM THE INTA WEBSITE):**

“To further the examination by the CCT Review Team and shape the conversation within the ICANN community with regards to brand protection, INTA will be soliciting responses from its members in the form of a survey from January 17, 2017 to February 3, 2017. The survey itself will be carried out by Nielsen Consumer Insights, an external services provider, that will aggregate all data to protect the confidentiality of individual responses. Neither INTA nor ICANN will have access to individual survey forms.

While completing the survey will only require approximately 30 minutes, the survey will require some preparatory work on the part of the corporate members with regard to the costs of trademark enforcement relative to domain registrations. Survey respondents will be provided

with a worksheet to assist them with this process. Information to be collected in preparation for responding to the survey includes:

- Number of domains registered under the “legacy” (i.e., .com, .net, etc.) and “new” (i.e., .bank, .sucks, etc.) gTLDs in the past 24 months;
- Reasoning behind registering such domains and possible alternatives;
- Number of trademark claims notices received and estimated cost associated with these claims notices (both in-house and outside counsel);
- Estimated cost spent on general Internet monitoring of trademarks to identify potentially abusive or infringing domain names;
- Estimated cost spent on any of the following: cease and desist letters; UDRP proceedings; civil actions after adverse UDRP rulings; URS proceedings; ACPA lawsuits; and other trademark lawsuits resulting from a new gTLD;
- Estimated cost spent on pursuing action against registrars and registries; and
- Company policy with regards to premium pricing for domain names.”