

TRADEMARK CLAIMS SUB TEAM REPORT (EXCERPTS)

Updated Questions	Sub Team Suggestions for Data Collection
<p>1. Is the Trademark Claims service having its intended effect, specifically:</p> <p style="padding-left: 40px;">a. Is the Trademark Claims service having its intended effect of deterring bad-faith registrations and providing notice to domain name applicants¹?</p> <p style="padding-left: 40px;">b. Is the Trademark Claims service having any unintended consequences, such as deterring good-faith domain name applications?</p>	<p>1a: URS cases corresponding to marks for which a Claims Notice was or would have been issued had the registration taken place during the notice period; URS cases <u>not</u> corresponding to such marks (to get a sense of the relative contribution of the marks in the TMCH to the overall set, though this may require further analysis to find non-TMCH marks to compare fairly)</p> <p>1b: Anecdotal data from registrants or domain name applicants who received Claims Notices. More granular data about the percentage of those who abandoned attempts in response to a notice based on dictionary terms vs. those who abandoned attempts in response to distinctive trademarks.</p> <p><u>Other Suggestions (see also separate list of Suggested Questions for Registrars):</u></p> <ul style="list-style-type: none"> • Consumer survey evidence, perhaps via Amazon Turk or online survey group, using existing notice and perhaps other alternatives to test comprehension of the Notice among individuals likely to consider registering a domain name • Research on UDRP/URS case decisions can be conducted via WG academic participants, law firms sponsoring a clerk to collect data or potentially have ICANN commission a study

¹ The use of the term “domain name applicant” is not meant to ascribe any intent on the part of the applicant, as intent cannot be confirmed.

	<ul style="list-style-type: none"> • ICANN monthly registry reports contains data that may be useful – e.g. study behavior/ratios of disputes resulting from registrations during the Claims Notice Period vs. after the period is over • UDRP/URS providers have search functionality on their websites, which could be used to collect data • Data should include numbers of domains that were registered and did not result in UDRP/URS disputes
<p>2. If the answers to 1.a. is “no” or 1.b. is “yes”, or if it could be better - What about the Trademark Claims service should be adjusted, added or eliminated in order for it to have its intended effect?</p> <ol style="list-style-type: none"> Should the Claims period be extended - if so, for how long (up to permanently)? Should the Claims period be shortened? Should the Claims period be mandatory? Should any TLDs be exempt from the Claims RPM and if so, which ones and why? 	<p>2a: Is there a spike in registrations that are ultimately subject to the URS [and UDRP?] after the Claims period ends?</p>
<p>3. Does the Trademark Claims Notice to domain name applicants meet its intended purpose?</p> <ol style="list-style-type: none"> If not, is it intimidating, hard to understand, or otherwise inadequate? If inadequate, how can it be improved? Does it inform domain name applicants of the scope and limitations of trademark holders’ rights? If not, how can it be improved? Are translations of the Trademark Claims Notice effective in informing domain name applicants of the scope and limitation of trademark holders’ rights? 	<p>3 (general): Ideally, present the Claims Notice to average internet users and get their opinion (i.e. a survey). To address 3c, include people from other regions, using the TMCH's translations.</p> <p>3b: What is the correlation between domain names that were registered during the Claims Period, and subsequently subject to a UDRP/URS? Objective is to determine if the registrant was on notice when the domain was registered, then subsequently resulted in a UDRP/URS filed</p> <p>3b: How many of the disputes filed in response to registrations during the Claims Notice Period were found to be in favor of the complainant?</p>

<p>4. Does the exact match criteria for Trademark Claims Notices limit its usefulness?</p> <p>a. What is the evidence of harm under the existing system?</p> <p>b. Should the matching criteria for Notices be expanded?</p> <p>i. Should the marks in the TMCH be the basis for an expansion of matches for the purpose of providing a broader range of claims notices?</p> <p>ii. What results (including unintended consequences) might each suggested form of expansion of matching criteria have?</p> <p>iii. What balance should be adhered to in striving to deter bad-faith registrations but not good-faith domain name applications?</p> <p>iv. What is the resulting list of non-exact match criteria recommended by the WG, if any?</p> <p>c. What is the feasibility of implementation for each form of expanded matches?</p> <p>d. If an expansion of matches solution were to be implemented:</p> <p>i. Should the existing TM Claims Notice be amended? If so, how?</p> <p>ii. Should the Claim period differ for exact matches versus non-exact matches?</p>	<p>4(a)(i): Obtain research help to identify studies, reports or articles discussing the harm of typosquatting and other forms of non-exact-match cybersquatting, including² all forms of consumer harm, not just traffic redirection?</p> <p>4(a)(i): Survey to determine actual experience of brand owners</p> <p>4(a)(i): Include questions for a proposed UDRP/URS study. Ask: What are the limitations of relying on UDRP/URS studies?</p> <p>4(a)(i): Open question to WG: What other sources of information should be used to explore the level of harm?</p> <p>4(b): Review Graham/Shatan/Winterfeldt proposa (note: data most likely found in analysis of UDRP/URS cases)</p> <p>4(c): What are the technological options for creating a non-exact match system, what would it cost, and who should pay (and at what point(s))? [note: selection of a provider would likely be through an RFP process, but the WG should obtain minimal feasibility data before making its recommendation.]</p> <p>General: Re-test Claims Notice language with relevant criteria.</p>

² Based on our discussions, the subteam recommends that the WG not limit the harm investigated to just harm against a brand's reputation, but advises the WG that this investigation has a strong potential to get out of scope quickly, so care should be taken to stay in scope during the data gathering phase.

5. Should the Trademark Claims period continue to be uniform for all types of gTLDs in subsequent rounds?

Member suggestion: solicit feedback from ROs about if they think something about their business model should exempt them from claims and why.