**CONSOLIDATED TABLE OF PROPOSED REFINEMENTS TO CHARTER QUESTIONS FOR TRADEMARK CLAIMS AND SUGGESTIONS FOR DATA COLLECTION**
**20 June 2017**

| | Original Charter Questions | Updated Question | Sub Team Comments/Discussion | Data Available/Collection Needed? |
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| 1. | Does a Trademark Claims[1] period create a potential "chilling effect" on genuine registrations, and, if so, how should this be addressed?<br><br>What is the effect of the 90-day Trademark Claims process?<br><br>Should the Trademark Claims period be extended beyond ninety (90) days? | **1. Is the Trademark Claims service having its intended effect, specifically:**<br><br>**a. Is the Trademark Claims service having its intended effect of deterring bad-faith registrations and providing notice to domain name applicants[2]?**<br>**b. Is the Trademark Claims service having any unintended consequences, such as deterring good-faith domain name applications?** | 1a:<br>(KD): Since we don't have a list of marks in the TMCH to compare to the list of URS cases, suggest getting a researcher to review all URS cases to see if the Examiner noted that the brand owner relied on an SMD file. From the Forum's site: There are 698 URS cases and 15 of them contain the term "SMD."<br><br>(MG): Ask URS filers if their/their client's mark was in the TMCH.<br><br>1b:<br>(KD): Of those who abandoned: How many thought about it and went back later (that is, it made them think but they made an educated decision)? | 1 (generally):<br><br>1a: Numbers: 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 not 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)<br><br>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 versus those who abandoned attempts in response to distinctive trademarks.<br><br>Others: |

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[1] The Sub Team agrees that, as used in this list of Charter questions, the phrase "Trademark Claims" covers both the pre-registration Claims Notice that is sent to a prospective registrant who is attempting to register a domain name that matches a trademark label in the TMCH, and the post-registration Notice of Registered Name that is sent to the relevant rights-holder when the registrant proceeds to complete the registration.
[2] 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.

| | | | | 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<br><br>Data available in the Analysis Group revised report pertinent to 1a/1b:<br>● 125.8 million records of Claims Service downloads between October 4, 2013 and February 24, 2016<br>● Unique download[3] requests (after excluding duplicative records): 113.2 million<br>● Number of unique verified trademarks in the TMCH downloaded during the Claims Service period (at least once): 26,405 out of a total of 33,523 current and verified records in the TMCH<br>● About 17,500 disputes (UDRP/URS) between January 2014 – December 2015<br>● 12.9% of disputes matched Claims Service notification (dispute rate of domains that trigger Claims Notice)<br>● Abandonment rate (all downloads of trademarks from IBM that are not associated with a domain name |
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[3] Unique downloads are defined as the unique combination of trademark string, downloading registrar ID, and download time stamp (NOTE FROM MG: I think we should ask AG to change both the definition and the resulting figures. I think "unique downloads" should be defined not as comprising all three qualities but must be the unique trademark string and either the registrar ID or the download time stamp. Otherwise, the same registrar could download at two different times the same string and still be considered unique.)

| | | | registration): 94%[4] |
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| | | | • Percentage of new gTLD domain name registrations that resulted in Claims Notice generation and subsequent disputes: 0.3%<br><br>NOTE: The specific rates of Claims Service registration abandonment, completion and disputes (October 2013 - February 2016) and reported by the Analysis Group were as follows:<br>  • 1,696,862 out of 1,810,546 attempted registrations generated Claims Notices and were abandoned (93.7%)<br>  • 113,338 out of 1,810,546 attempted registrations generated Claims Notices, were not abandoned, and were not subsequently disputed (6.3%)<br>  • 346 out of 1,810,546 attempted registrations generated Claims Notices, were not abandoned, and were subsequently disputed (0.0%)<br>  • The registrations in the Claims Service data account for approximately 5% of 2.2 million registrations made in new gTLDs during Claims Service periods that occurred between October 2013 and February 2016 (i.e., the time period covered by the Claims Service data) |

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[4] Due to limitations of the data, the Analysis Group analyses of the data required an assumption that each download is associated with a registration attempt (and was not downloaded by a registrar for a purpose unrelated to domain name registrations). If this assumption is incorrect, then their results will exaggerate the size of any observable registration-deterrent Claims Service effect.

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| | | | **Discussion on data (from registrars) concerning the abandonment rate:**<br>● What is the abandonment rate associated with reasons other than a Claims notice being triggered? what is the difference between abandonment rates of applications that trigger Claims Notices, and those that don't?<br>● Analysis Group did reach out to registrars and registries, but was not able to acquire data on an abandonment rate of domain name registrations that did not trigger a Claims Notice<br>● Registrars may not be agreeable to providing data on abandonment rate not associated with a Claims Notice - may involve competitive issues<br>● A high-level set of data concerning abandonment rate of domain name registrations that did not trigger a Claims Notice might be obtainable from registrars, but need to first determine to what extent this would be helpful in providing/influencing direction to the PDP WG<br>● Would registrars be willing and able to share anecdotal data on why potential registrants did not complete registrations – |

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| | | | was abandonment the result of a Claims Notice being presented, or was it due to other reasons?<br>● At what point in the registration process is a trademark record downloaded? Does this happen when domain names are placed in carts, or does it happen when payment/attempted registrations are done later in the process?<br>● Many registrars take orders for domain names before general availability – preorders do not normally result in Claims notices being presented until within 48 hours of general availability – how does this contribute to the abandonment rate?<br>● An overview of how the general registrar processes leading up to Claims Notices and checkout processes work (during pre-order, general availability, after Claims period has expired) might be helpful, and possibly obtainable<br>● Would registrants be willing to participate in surveys during the next round of new gTLDs – for anecdotal evidence on why registrations are being abandoned?<br>● There is a process by which GNSO WG's can acquire data either internal or external to ICANN (possibly via third-parties), if the data is substantively helpful in answering |

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| | | | PDP Charter questions - this data can be anonymized<br>● Not all registrars keep records of when and why abandonment takes place – might be more achievable to keep records on this in future rounds, than rely on past data<br>● Can the Analysis Group provide anonymized data (percentages, not raw numbers) on specific registrars that downloaded trademark records, without providing registration services during the Claims Period?<br><br>**Suggested questions for registrars:**<br>● What is the abandonment rate associated with reasons other than only a Claims notice being triggered? what is the difference between abandonment rates between those that trigger Claims Notices, and those that don't?<br>● Is there anecdotal data explaining why potential registrants did not complete registrations?<br>● At what point in the registration process is a trademark record downloaded? Does this happen when domain names are placed in carts, or does it happen when payment/attempted registrations are done later in the process? |

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| | | | ● Many registrars take orders for domain names before general availability – pre-orders do not normally result in Claims notices being presented until within 48 hours of general availability – does this contribute to the abandonment rate? If so, to what extent are pre-ordered domain name registrations abandoned?<br>● Would it be feasible for registrars to run surveys of domain name applicants during subsequent rounds of new gTLDs for anecdotal evidence on why registrations are being abandoned? Is this something ICANN should mandate? |
| 2. | Should the Trademark Claims period continue to apply to all new gTLDs? | **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?**<br><br>　　a. **Should the Claims period be extended - if so, how long (up to permanently)?**<br>　　b. **Should the Claims period be shortened?**<br>　　c. **Should the Claims period be mandatory?** | Ideal research (because data doesn't yet exist in aggregated from): List of new gTLD domains subject to URS (and UDRP?) between 2013-present and note their registration date as compared to the end of claims period. | 2 (generally):<br><br>2a: Is there a spike in registrations that are ultimately subject to the URS after the Claims period ends?<br><br>Data available in the Analysis Group revised report pertinent to 2a/2b:<br>● Dispute rate for exact-match strings registered during Claims Service period/Number of exact-match registrations in the same period (October 2013 - February 2016): 323/136,732 (0.24%) |

| | | d. **Should any TLDs be exempt from the Claims RPM and if so, which ones and why?** | | ● Dispute rate for exact-match strings registered within 90 days after the Claims Service period/Number of exact-match registrations in the same period (October 2013 - February 2016): 62/47,606 (0.13%)<br>● Exact-match registrations during and after Claims Service period by non-trademark holders/Month from the beginning of the Claims Service period (estimated numbers – *please refer to Figure 1 on page 20 of the AG revised report*):<br>→ Beginning of Claims Service Period<br>Month 0: 59,000<br>Month 1: 35,000<br>Month 2: 19,000<br>→ End of Claims Service Period<br>Month 3: 17,000<br>Month 4: 14,000<br>Month 5: 14,000<br>Month 6: 10,000<br>Month 7: 10,000<br>Month 8: 9,000<br>Month 9: 9,000<br>Month 10: 9,000<br>Month 11: 11,000<br>● TMCH users enrolled in ongoing notifications service/not enrolled:<br>a. Agent: 142/31 (82.1% of total)<br>b. Trademark holder: 673/833 (44.7% of |

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| | | | | total)<br><br>c. Total: 815/864 (48.5% of total)<br><br>2c:<br><br>2d:<br><br>Others: |
| | | **3. Does the Trademark Claims Notice to domain name applicants meet its intended purpose?**<br><br>i. **If not, is it intimidating, hard to understand, or otherwise inadequate?**<br>• **If inadequate, how can it be improved?**<br>ii. **Does it inform domain name applicants of the scope and limitations of trademark holders' rights?**<br>• **If not, how can it be improved?**<br>iii. **Are translations of the Trademark Claims Notice effective in informing domain name applicants of the scope and limitation of trademark holders' rights?** | | 3 (generally): See Notes on Q1<br><br>3a:<br><br>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<br><br>How many of the disputes filed in response to registrations during the Claims Notice Period were found to be in favor of the complainant?<br><br>3c:<br><br>Others: |

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| | | **4. Does the exact match criteria for Trademark Claims Notices limit its usefulness?**<br><br>     **a. What is the evidence of harm under the existing system?**<br><br>     **b. Should the matching criteria for Notices be expanded?**<br>  I.  **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?**<br>  II.<br>  III.  **ii. What results (including unintended consequences) might each suggested form of expansion of** | KD: 4.d.i. Depends on the scope of the changes. | 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, including[5] all forms of consumer harm, not just traffic redirection?<br><br>4(a)(i) Survey to determine actual experience of brand owners<br><br>4(a)(i) Include questions for a proposed UDRP/URS study. Ask: What are the limitations of relying on UDRP/URS studies?<br><br>4(a)(i) Open question to WG: What other sources of information should be used to explore the level of harm?<br><br>4(b) Review Graham/Shatan/Winterfeldt proposal[6]<br><br>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))? [Subteam notes that the selection of a provider would likely be through an RFP process, but the WG should |

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[5] 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.

[6] This reference is to the proposals submitted by Working Group members Michael Graham, Greg Shatan and Brian Winterfeldt in relation to exact/non-exact matches. The consolidated proposals can be reviewed here: https://community.icann.org/download/attachments/66080938/PROPOSALS%20ON%20NONEXACT%20MATCHES%20%E2%80%93%208%20JUNE%202017.docx?version=1&modificationDate=1498049562691&api=v2.

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| | | **matching criteria have?** | | obtain minimal feasibility data before making its recommendation.] |
| | | IV. | | |
| | | V. **iii. What balance should be adhered to in striving to deter bad-faith registrations but not good-faith domain name applications?** | | Re-test claims notice language with relevant criteria. |
| | | VI. | | |
| | | VII. **iv. What is the resulting list of non-exact match criteria recommended by the WG, if any?** | | |
| | | **c. What is the feasibility/implementability of each form of expanded matches?** | | |
| | | **d. If an expansion of matches solution were to be implemented:** **i. Should the existing TM Claims Notice be amended? If so, how?** **ii. Should the Claim period differ for exact matches versus non-exact matches?** | | |

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| | | **5. Should the Trademark Claims period continue to be uniform for all types of gTLDs in subsequent rounds?** | KD: we could solicit feedback from ROs about if they think something about their business model should exempt them from claims and why. | |