

	Takeaway	CCTRT Member highlighting	Comments / Discussion	
1	(1) While the goal of the new gTLD program is to increase choice, for brand owners, choice does not seem to be a prime consideration, rather the principal reason by far why trademark owners are registering domain names in the New gTLDs is defensive.	David Taylor	General Metrics: Nearly 2/3 of responding INTA members acquired 50 or more new domain names in the past 24 months; 13% acquired 500 or more. 21% acquired over 100 domain names in the new gtlds.	Factual but suggest deleting "new" to avoid confusion with new gTLDs. Could substitute "additional" but think it is fine w/o
2			However, Few respondents considered Legacy or ccTLD domain names to be an alternative to a New TLD domain name. This suggests that competition from these new gTLDs, at least among larger scale, commercial registrants is limited. It appears that the primary behavior is to register <i>specific</i> new TLDs. (Nielsen quote, slide 21). This in turn suggests the new gTLDs do not serve the intended function of increasing choice for most respondents.	Accurate
3			89% of respondents said that none of their duplicated domain names were registered for any purpose other than to prevent the domain name from being used by another registrant. (SLIDE)16-25?	Accurate
4			It would be very useful if we could have historical data regarding defensive registrations. Sure, there were lot of defensive activities in new gTLD area within last 24 months, but before that period trademark owners were focused on legacy	No comment

			and ccTLDs.	
5	(2) Domain names registered by brand owners in new gTLDs are commonly parked and not creating value other than preventing unauthorized use by others	David Taylor	Slide 9: parking is a common practice; redirection also common, though less so for new TLDs. Registrations of new TLDs were overwhelmingly made for defensive purposes.	Accurate—full data on slides 22, 23 and 24. The last sentence basically duplicates row #4
6			Brand owners are not seeing a return on gTLD investments, and largely do not find gTLDs to add value. <i>Anecdotal evidence: [QUOTES OR SUMMARIZATION?] So far, there is no indication of any return on investment or other value in the new gTLD's for our company. It is a cost source only; all of these costs have a negative impact on both the business and the consumers to whom businesses offer their goods and services, and have limited value to most businesses; We have plenty of TLDs. Adding more just adds more enforcement costs.; They should be cheaper.</i>	Correct this is anecdotal but consistent theme across the verbatim comments, see slide 54
7	(3) There has been an increase in the overall costs to defend TMs with internet monitoring actually being one of the main costs.	David Taylor	Slide 10: 14% of costs from 2015-16 attributed to new TLDs.	The data from slide 10 is correct, same data as slide 24 (slide 10 is abbreviated for exec summary) However, this may be low if we choose to move the “trademark related” costs out of general and into new TLD related costs. HOWEVER, “with internet

				<p>monitoring actually being one of the main costs” should be qualified— these costs are general and not specific to new TLDs. We discussed during design that an entity will pay for monitoring across all TLDs. While there may be some incremental increase for the added TLDs, we did not break this out and it was treated basically as a sunk cost.</p>
8			<p>Brand owners generally consider rights protective mechanisms to be overly expensive.</p> <p><i>See Slide 52: “The .vn registry allows cyber squatters to thrive and hold domain names for ransom. Defensive registrations are also expensive because there are so many new TLDs. You can't register in them all, and when you do register in a select few, some have much higher prices during the Sunrise period, which is the only time you can guarantee being able to register the name.”; “the cost is totally unreasonable..”; “going after cybersquatters remains a very expensive line item...”; “the RPMs are just another way to spend money on something that doesn't buy much protection.”; “we do not believe that the balance has been struck correctly between the high cost</i></p>	<p>Again, anecdotal but consistent interpretation</p>

			<i>and limited effectiveness of the measures”</i>	
9			<p>While brand owners typically evaluate premium pricing for domain names on a case-by-case basis, 67% have had domain registration decisions affected by premium pricing. Few brand owners refuse to pay all premium pricing. <i>See slide 48: 73% evaluate premium pricing on a case by case basis; 67% have had domain name registration decisions affected by premium pricing. “.sucks” is repeatedly mentioned as (1) being very expensive and (2) the TLD brand owners did pay premium pricing for. Slide 50: While roughly half of brand owners said they did not observe evidence of discriminatory pricing, but discriminatory pricing was a common source of frustration for those respondents that left comments</i></p>	<p>Overall accurate. I would amend the statement from slide 50—a non-response is not necessarily a “no” response, though it may be the best assumption. Specifically, 4 said “no” and the others left it blank.</p>
10	<p>(3a) Even in the early years of the new TLD program, brand owners are finding the new TLDs are more costly to defend/enforce, on average, than other types of domains.</p> <p><i>{See questions for Nielsen below. Would Nielsen agree that this a reasonable takeaway from slide 27?}</i></p>		<p>Slide 27: While the new TLDs account for 1/7th (\$41K/\$292K, or 14%) of the average total defense and enforcement costs per company, they do not yet represent 1/7th of domains. Slide 27: Since these costs were for the early years of the new TLD program, it is reasonable to expect the proportion</p>	<p>Yes, agree that they are more costly on average, accurate conclusion. Not sure what question is being referenced in the highlighted phrase.</p>

			specific to new TLDs to rise in future.	
11	<p>(3b) Most brand owners appear* to have seen significant costs incurred from Trademark Clearinghouse claim notices related to the new TLD program. While these costs vary widely by organization, on average they appear to represent several thousand dollars per company per year, not including associated overhead costs (legal staff salaries, etc.).</p> <p><i>*There is a low sample size (n<30) from the study.</i> <i>{See questions for Nielsen below. Would Nielsen agree that this a reasonable takeaway?}</i></p>		<p>Slide 32: 72% of brand owners received at least one TM clearinghouse claim notice related to the new TLDs during 2015-16. 36% of brand owners received more than 100 such claim notices during this period.</p> <p>Slide 33: Most of those brand owners who received claim notices appear* to have taken action against these, principally investigations (71% of companies investigated at least one case) and warning/cease-and-desist letters (46% sent at least one letter).</p> <p>Slide 34: For companies reporting having spent money on investigations, the average cost per company over the two-year period was \$12,837; the reported range was \$1 - \$60,500. For cease-and-desist letters, the average cost per company over the two-year period was \$4,652; the reported range was \$500 - \$16,800.</p>	<p>Regarding comment 3b—respondents were instructed to include all costs including overhead and were given a method to approximate it if they could not do it exactly.</p> <p>Slide 32: Accurate</p> <p>Slide 33: The overall conclusion is correct. Since the base is those who received notices, it would probably be better to cite a percentage for the entire sample, which would be that 51% of respondents received a notice AND took an investigative action. 33% sent at least on C&D letter.</p> <p>Slide 34: Accurate</p> <p>Not sure what questions are being referenced in the highlighted phrase.</p>
12	<p>(3c) Internet monitoring is a big-ticket item for brand owners, with most companies spending tens of thousands of dollars per year to protect their brands against potentially abusive or infringing domain names.</p>		<p>Slide 35: Three-quarters of the members have incurred costs for internet monitoring, with more than half spending \$10,000 or more.</p> <p>Note: while it's not clear from our study how the new TLDs have impacted this spend category (see question for Nielsen below), it's reasonable to</p>	<p>Statement is accurate. I am not familiar with the pricing structure for internet monitoring so cannot comment on if or how much it would increase, but it could be true. Not sure what question the highlighted passage is referring to.</p>

			<p>assume that the new TLDs have increased the importance of this monitoring activity.</p> <p>Slide 12: even the \$10K number cited in Slide 35 may be underselling the “true” cost attendant with Internet monitoring, as relatively few (~33%) of the survey respondents have actually investigated damages from web traffic diversion.</p>	<p>Slide 12—the \$10K is about specific to monitoring trademark infringement; the comment from slide 12 (see also slide 36) is specific to diversion of web traffic, a different issue as I understand it.</p>
13	<p>(4) Regarding Disputes, more than 75% of cases brought now involve privacy and proxy services and close to 2/3rds encounter some level of inaccurate/incomplete WHOIS information.</p>	David Taylor	<p>Slide 41: 77% of domain name owners have taken action against privacy and proxy services; 62% of owners have taken action against inaccurate/incomplete WHOIS info</p>	<p>Slide 41—the numbers quoted here are not of the total sample. Should read “61% of domain name owners have taken action . . .” and “49% of owners have . . .”</p>
14	<p>(4a) The majority of respondents who send cease and desist letters direct them to privacy/proxy services. Of those, most receive at least one response from the registrant.</p>		<p>Slide 47: Of the respondents who sent cease and desist letters, 64% were directed to privacy/proxy service. Among those directed to privacy/proxy service, the majority (86%) have received at least one response from the registrant.</p>	Accurate
15	<p>(5) Brand owners are using a variety of tactics, including but not limited to RPMs, as part of their overall brand-protection strategy in new TLDs. They like some more than others.</p>		<p>Slide 11: ~90% of respondents have entered at least one trademark in the TMCH. And ~90% of respondents have registered a new TLD during a Sunrise period.</p> <p>Slide 13: 76% of respondents have taken action against a domain name owner using a new TLD by sending a cease-and-desist letter. Far fewer (~27%) have</p>	<p>Slide 11: First point is accurate. Second point (re Sunrise) should be 80%--90% would only include those who registered a new TLD, not all respondents</p> <p>Slide 13: Accurate, full data can be found on slide 39</p> <p>Slide 15: The numbers quoted refer to the percentage who feel</p>

			gone further to file a UDRP; even fewer have filed a civil lawsuit or URS action. Slide 15: respondents think some RPMs work better than others at mitigating risks. In terms of how many respondents think the RPM is effective, the ranking goes: UDRP (67%); Sunrise (64%); Claims (36%); URS (27%); PDDRP/RRDRP/PICDRP (15%).	each mechanism protects to a major or moderate extent. There were also some who said they had helped to “a minor extent”. If we include those, the numbers would be UDRP 73%, Sunrise 79%, Claims 66%, URS 49%, and PDDRP etc. 27% (with 45% being unsure. See slide 51.
16	(5a) Just over twice as many respondents brought UDRP proceedings in comparison to those who brought URS proceedings		Need number of UDRP actions taken by the 9 respondents.	Accurate. Number of UDRP actions by the 9 is average of 2, 4 said 1 and then we had responses of 2, 3, 7, 10, and 30
	(5b) Introduction of the URS process has provided an acceptable alternative to UDRPs.		Over double the number of responding members brought UDRP proceedings in comparison to the number that brought URS proceedings.	I’m not seeing the difference between this row and row 16
17	(5c) Comments on RPMs		<p>Please tell us why you feel the Rights Protection Mechanisms listed above have or have not mitigated the risks involved with new TLDs?</p> <ul style="list-style-type: none"> • <i>“UDRP still helps mitigate risks the best. While URS is helpful, the escalated proof required and limited remedy makes it of limited usefulness.”</i> • <i>“UDRP - criteria are well-defined; there is now a body of helpful case law; transfer of the name is an option. However price is a</i> 	Accurate list of comments included in the report.

deterrent for all but the most egregious cases.”

- *“The URS and DRPs are burdensome procedures - have to be selectively pursued, compared to the broad number of registrations which incorporate a protected mark”*
- *“...the UDRP has traditionally been an incredibly effective tool for reclaiming assets... [c]annot speak to the URS or post procedures; have not used these mechanisms.”*
- *“I don't think URS is very useful since it only suspends the domain temporarily.”*
- *“URS - name does not get transferred; narrow criteria for action.”*
- *“The URS has a fairly high burden of proof compared to the less cost effective UDRP.”*
- *“URS: it is costly only to suspend (and not transfer) the litigious domain”*
- *“These are good, but incomplete*

mechanisms. URS is faster than UDRP, but it is more than a matter of "days," - ineffective with really bad malware - and you don't get the domain. UDRP takes a few months. Both are costly."

- *"We find the URS of limited value because of the requirement for multiple domains. We use UDRP but only have done so with legacy TLDs because an overwhelming volume of infringing domains are in .com."*
- *"PDDRP - criteria are so narrowly drawn that circumstances extremely unlikely to arise."*
- *"The PDDRP, RRDRP, and PICDRP can be effective, but are not well understood as available options, leading them to have minor impacts on mitigating risks."*
- *"Post Delegation: very interesting, but difficult and heavy to put in place (joint actions from various TM holders almost required)."*

18	(5c) Required Sunrise Periods and UDRP are the most effective rights protections mechanisms, with 64% and 67% (respectively) of respondents stating that these mechanisms mitigate risk to either a major or moderate extent.	Dejan Djukic	Slide 51. Sunrise: 18% major extent, 45% moderate extent. UDRP: 27% major extent, 39%.	Accurate. Same as row 15.
19	(5ci) Sunrise Period Comments		<p>Please tell us why you feel the Rights Protection Mechanisms listed above have or have not mitigated the risks involved with new TLDs?</p> <ul style="list-style-type: none"> • <i>“Sunrise Periods have quickly become more a money-making product than a protective tool.”</i> • <i>“Sunrise periods always helped protect trademark owners...”</i> • <i>“Sunrise - often come with a major cost to the brand owner”</i> • <i>“Sunrise period and trademark claim periods are too short; companies need to implement additional measures to watch their portfolio in numerous gTLDs being published week per week.”</i> • <i>“Sunrise periods have only a minor effect because many registries target brand owners</i> 	Accurate list

with discriminatory pricing while at the same time many offer the same domain name to non-brands at a much cheaper price.”

- *“The Sunrise Period allows trademark owners to purchase a domain incorporating a key trademark before anyone else can.”*

Have you observed any evidence or examples of discriminatory pricing or other unfair business practices related to any of the new TLDs? If so, please describe.

- *“[H]aving higher prices during the Sunrise period effectively means trademark owners will pay higher prices to ensure they obtain an important domain registration in a certain new TLD.”*
- *“Yes, the .top registry raised the Sunrise fee by \$30,000 for [company].top. We refused to register.”*
- *“Increasing number of nTLDs that are setting premium pricing for both Sunrise and trademark*

			<p><i>registration of domain names including: .sucks, .top, .love, .yoga, .voting, .site, .rent."</i></p>	
20	(5cii) Trademark Claims Service Limitations		<p>Please tell us why you feel the Rights Protection Mechanisms listed above have or have not mitigated the risks involved with new TLDs?</p> <ul style="list-style-type: none"> • <i>"Trademark Claims are merely another form of Monitoring and are useful in perhaps 20% of cases where an inadvertent application is filed."</i> • <i>"For Trademark Claims, Trademark registration is higher and more difficult than obtaining domain names. The owner of the registered trademark in any jurisdiction might be considered to be authorized by the Trademark Office to use the mark. Therefore, I feel that Trademark Claim has mitigated the risks."</i> • <i>"...the claims process strong [sic]."</i> • <i>"Claims - the name is already registered before we are notified."</i> 	Accurate list

			<ul style="list-style-type: none"> “Claims notices do not prevent squatters from registering domain names despite notice of existing rights, which means that the same problems as exist in the legacy TLDs persist in the new gTLDs after registration has occurred.” 	
21	(5d) PDRP/RRDRP/PICDRP is the least effective rights protection mechanism. It was the only mechanism that no respondents claimed mitigated risk to a major extent, and had the largest number of respondents claim that it did not mitigate risk at all.		Slide 51: This mechanism mitigates risk: 0% major extent, 15% moderate extent, 12% minor extent, and 47% unsure	Accurate reflection of data; however, given the large number of unsure responses, it may be that is less understand or used rather than less effective when it is used. If we take out the unsure responses, 54% said it has some level of effectiveness, only a bit behind URS
22	(5e) A common suggestion to improve the efficiency or effectiveness of enforcement actions is a “loser pays” model in UDRP/URS enforcement actions		See slide 53: “Include a “Loser Pays” provision in both UDRP and URS actions -- this would be a real threat to bad acting speculators”; “Perhaps a loser-pays model”	I see three comments about this, so “common” may be over-reaching. “Multiple respondents suggest a loser pays . . .” would be more accurate.
23	(6) Premium pricing in new TLDs is a problem for brand owners.		Slide 14: over 2/3 of respondents (67%) said they were affected by premium pricing to some degree, and over half (55%) said they’d actually observed examples of discriminatory pricing or unfair business practices related to new TLDs.	Accurate, same topic as row 9

			How respondents dealt with that type of differential pricing varied: some (15%) said they'd never pay premium pricing; some (6%) said they'd do it for their top trademarks only; most (73%) said they'd evaluate it on a case-by-case basis.	
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Clarification	CCTRT Member highlighting	Comments / Discussion													
Slide 27 – clearer breakdown of the costs needed and explanation in order to understand, eg what does "trademark related \$22 636 mean"?	David Taylor	<p>More specifically, what proportion of the “trademark related \$22,636” was actions vs owner, actions vs registrar, actions vs registry, other(?) for the traditional TLDs, corresponding to the breakout shown for the new TLDs in the orange pie-slice?</p> <p>Also - are we to understand from the pie chart that there were NO monitoring/diversion costs related to the new TLDs (i.e., the orange slice does not contain a monitoring component)? Why would this be?</p>	<p>I have updated the slide deck to break this out (new slide added at the end of the deck so as to now throw of side numbers, original slide still in place), here is a breakdown of the \$22,636: (#’s refer to the questions in the respondent worksheet.) #2 and #4 are not new TLD specific, #8 is (tho specific to TCH)</p> <table> <tr> <td>#2 TCH Registration costs</td> <td>\$7900</td> </tr> <tr> <td>#4 Proof of Use Filings</td> <td>\$1,574</td> </tr> <tr> <td>#8 Claim notice investigations</td> <td>\$7431</td> </tr> <tr> <td>#8 Claim notice warnings</td> <td>\$1823</td> </tr> <tr> <td>#8 Claim notice UDRPs</td> <td>\$3591</td> </tr> <tr> <td>#8 Claim notice Other</td> <td>\$317</td> </tr> </table> <p>Correct, as discussed above, Monitoring was not broken down—too hard to try to apportion any incremental cost for new TLDs since internet monitoring will be being done for brands in general</p>	#2 TCH Registration costs	\$7900	#4 Proof of Use Filings	\$1,574	#8 Claim notice investigations	\$7431	#8 Claim notice warnings	\$1823	#8 Claim notice UDRPs	\$3591	#8 Claim notice Other	\$317
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<p>Vast majority (97%) of members registered domain names in past 24 months, with 9 in 10 registering new TLDs. But the volume of registrations varies widely across companies.</p> <p>Registrations of new TLDs were overwhelmingly made for defensive purposes—to prevent someone else from registering it. As such, few (10%) felt there were alternative domains to consider—whether registering a New, Legacy or ccTLD. (page 9)</p>		<p>It would be very useful if we could have historical data regarding defensive registrations. Sure, there were a lot of defensive activities in new gTLD area within last 24 months, but before that period trademark owners were focused on legacy and ccTLDs.</p>	<p>Historical data is out of our scope/ability to provide</p> <p>As discussed about this is true. Using the numbers in the report, approx. 86% of the new TLDs would have been duplicate registrations for defensive purposes</p>
<p>Slide 33 – what is the <i>overall</i> fraction of those who have received Trademark Clearinghouse claim notices which resulted in costs?</p>	<p>(N/A - Charlie Hill, INTA)</p>	<p>In other words, if you merge all four cost categories together, what do the percentages look like?</p>	<p>Unclear on the exact ask here, If we sum all actions, then 42% took no actions, 15% took 1-10, 21% 11-99, 12% 100-299 and 9% 300+</p>
<p>Slide 34 – do these figures include Overhead (e.g., internal legal staff salaries / prorated by time spent on these types of projects)?</p>	<p>(N/A - Charlie Hill, INTA)</p>		<p>Respondents were directed to complete the work sheet in this fashion—here are the actual directions:</p> <ul style="list-style-type: none"> ESTIMATES: The more accurate you can make your answers, the better, but we understand that you may not be able to exactly capture all costs. In those cases, please report your best estimate. For example, if you have:

			<ul style="list-style-type: none"> ○ Three paralegals who work on internet trademark defense, ○ Each spends about 50% of his/her time on those tasks, ○ They make an average annual salary of \$45,000, <p>then their estimated labor cost would be $3 * .5 * \\$45,000 * 2 = \\$135,000$ (3 paralegals * .5 time * \$45K annual salary * 2 years)</p> <ul style="list-style-type: none"> ● CONSIDER ALL COSTS: To the best of your ability, make sure you capture both in-house and outside counsel legal fees, filing fees, investigation costs and the administrative costs of personnel responsible for these activities. <p>And remember internal labor costs would include the cost not just of salary but of benefits as well—if you are unsure of how much you pay in benefits, multiply the salary by 1.35.</p>
<p>Slide 35 – are these figures for the new TLD program specifically, or overall? (If overall, is there any indication of how the new TLD program has altered this amount of spend, since inception?) →</p>	<p>(N/A - Charlie Hill, INTA)</p>		<p>This is overall—here is exact wording:</p> <p>What is your estimate of the total amount spent in 2015 and 2016 on internet monitoring of trademarks to identify potentially abusive or infringing domain names, in USD?</p>

<p>otherwise, it's hard to say what impact the new TLDs have had on this cost category...and I'm leaving it out of the takeaways</p>			
<p>Slide 39 – numbers of UDRP proceedings brought, to allow comparison with the number of URS proceedings brought. Currently apparent that 9 responders had taken action by way of UDRP proceedings, but not how many proceedings were initiated (compared to 4 responders who initiated 35 URS proceedings).</p>			<p>Please refer to row 16 in this table</p>