

The background of the image is a night-time photograph of a cityscape in Abu Dhabi. On the left, several tall, modern skyscrapers with glass facades are illuminated with blue and white lights. In the center, there is a large, ornate fountain structure with a sign that reads "Emirates Palace" and "البرج الكائن في المدينة القديمة". To the right, a large, illuminated archway with a dome and classical architectural elements is visible. The foreground is filled with colorful flower beds in shades of white, red, and purple. The sky is a deep red and orange, suggesting a sunset or sunrise. The overall scene is vibrant and modern.

ICANN
ANNUAL GENERAL

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ABU DHABI

28 October–3 November 2017

Competition, Consumer Trust, and Consumer Choice (CCT) Review Team

Meeting with RPM Review Working Group

Jonathan Zuck, David Taylor

30 October 2017



Agenda

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CCTRT
Mandate & Timeline

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Parked Domains

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DNS Abuse

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Rights Protection
Mechanisms

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Next Steps

CCTRTRT Mandate & Timeline

Jonathan Zuck

CCTRT Mandate

Evaluate how
New gTLD Program
has promoted
Competition,
Consumer Trust and
Consumer Choice

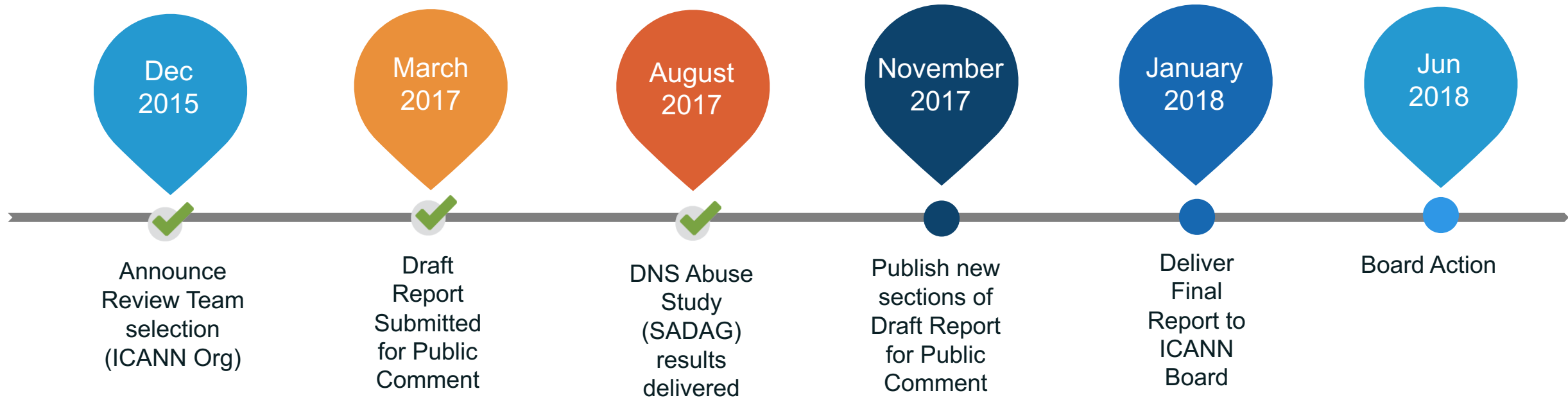
Evaluate
Effectiveness of
Application and
Evaluation
Processes

Evaluate
Effectiveness of
Safeguards

CCT Goals

- Perform data driven assessment of the New gTLD Program
- Inform policy related to the entry of new gTLDs

Timeline



New Sections to Draft Report

- **New sections to be published for public comment (30 days) in November on:**
 - Parked Domain
 - DNS Abuse
 - INTA Survey

- Updates and additions will be marked in orange, public comments on previous draft report will not be considered.

- **Commitment to Data-Driven Effort**
 - **Statistical Analysis of DNS Abuse in gTLDs (SADAG)**
 - Measures the effectiveness of technical safeguards.
 - Analyzes rates of spam, phishing, and malware distribution in the global gTLD.
 - DNS from 2014 to 2016, distinguishing between legacy and new gTLDs.

 - **International Trademark Association (INTA) members survey:**
 - Understand the impact of the New gTLD Program on rights holders.



Rights Protection Mechanisms

David Taylor

Rights Protection Mechanisms

New rights protection mechanisms (RPMs) were specifically developed in connection with the introduction of the New gTLD Program alongside existing rights protection mechanisms.

CCT Review Team examined whether these **RPMs help encourage a safe environment and promoted consumer trust in the DNS** and also sought to **measure the costs impact of the New gTLD Program to intellectual property owners**.

How?

- CCT Metrics Reporting
- INTA Impact Study
- ICANN Rights Protection Mechanisms Review
- Independent Review of Trademark Clearinghouse (TMCH) Services Revised Report
- Parallel work by the ongoing Working Group

Rights Protection Mechanisms

INTA Survey

- Concern on multiple occasions about the New gTLDs on the basis that such expansion would likely create additional and increased costs in enforcing intellectual property rights.
- Assess what additional costs and efforts have been required to protect trademarks in the DNS.

INTA members were asked to capture all costs over the past 2 years (2015 and 2016). 33 respondents in total including one not for profit.

Key Takeaways :

- Main reason for 90% of brand owners elect to register in new gTLDs: defensive purposes.
- Domain names registered by brand owners in new gTLDs are commonly parked
- The New gTLD Program has increased the overall costs of trademark defense
- Further investigation in future surveys needed on total enforcement costs related to TLDs generally (both legacy and new) per company
- Disputes: 75% of cases brought now involve privacy and proxy services, 2/3rds encounter some level of inaccurate/incomplete WHOIS information.
- Disproportionate cost associated with new gTLD enforcement actions compared to overall enforcement actions. An indication of proportionately more TM infringement in new gTLDs than legacy gTLDs.
- RPMs are generally considered to have been helpful in mitigating the risks anticipated with new gTLDs.

Rights Protection Mechanisms

ICANN Competition, Consumer Trust and Consumer Choice (CCT) Metrics Reporting

- Numbers of Cases Filed (UDRP and URS): increased considerably since the introduction of new gTLDs
- Between 2013 and 2016 - 36% increase in cases filed across all providers
 - (25% if use the baseline as the average of 2012 and 2013)

Year	Total split UDRP and URS	Total cases combined
2013	3,371 (UDRP)	3,371
2014	4,056 (UDRP) & 231 (URS)	4,287
2015	4,130 (UDRP) & 213 (URS)	4,343
2016	4,368 (UDRP) & 222 (URS)	4,590
2017 Q1/Q2	2,112 (UDRP) & 104 (URS)	2,216 (NB for half a year)

- Proportionally more TM infringement in new gTLDs than in legacy TLDs in 2016
 - (18.6% of WIPO gTLD caseload involve new gTLDs compared to 14% of gTLD registrations being new gTLDs)
- NB UDRP / URS cases only part of overall enforcement costs to brand owners
- URS not proving popular. Only around 5% of the total cases. Case numbers are flat.

Rights Protection Mechanisms

Conclusions

- Increasing numbers of disputes since the introduction of new gTLDs rising year on year.
 - 2016: Total cases running at 36% higher than 2013
 - (25% if use the baseline as the average of 2012 and 2013)
- Trademark owners also use a variety of other means to deal with abusive domain name registrations so filing costs are only part of the total enforcement costs.
- More trademark infringement presently in new gTLDs than in legacy TLDs
- Impact Study on cost and effort required to protect trademarks in the DNS needs to be repeated to obtain more data and be more user friendly
- URS and its value is questionable given its low usage compared to the UDRP
- TMCH cost benefit analysis needed and improved data so as to enable definitive conclusions to be drawn.

Rights Protection Mechanisms - Recommendations

Recommendation 40: An Impact Study in order 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. The CCTRT acknowledges the fact that this was carried out in 2017 by Nielsen surveying INTA members and we encourage that to continue noting that the study needs to be more user friendly.

Rationale/related findings: 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.

To: ICANN organization

Prerequisite or Priority Level: High

Consensus within team: Yes

Rights Protection Mechanisms - Recommendations

Recommendation 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 PDP Review of All RPMs in All gTLDs, 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.

Rationale/related findings: 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 PDP Review of All RPMs in All gTLDs, which is running in parallel to this CCT Review Team, will contribute to this consideration with its report due in 2018. That Working Group's report needs to be considered to set the scope of any review and potential modifications.

To: Generic Names Supporting Organization

Prerequisite or Priority Level: Prerequisite

Consensus within team: Yes

Rights Protection Mechanisms - Recommendations

Recommendation 42: A cost-benefit analysis and review of the TMCH and its scope should be carried out to provide quantifiable information on the costs and benefits associated with the present state of the TMCH services and thus to allow for an effective policy review.

Rationale/related findings: It seems likely that a full review of the TMCH is necessary including a cost-benefit analyses. The effectiveness of the TMCH appears to be in question. The Independent Review of Trademark Clearinghouse (TMCH) Services Revised Report has not been able to make definitive conclusions due to data limitations and indeed specifically noted that it was unable to perform a cost-benefit analysis of extending the Claims Service or expanding the matching criteria. Indeed, the PDP Review of All RPMs in All gTLDs, 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.

To: Generic Names Supporting Organization

Prerequisite or Priority Level: Prerequisite

Consensus within team: Yes

Questions?

Thank you!



Stay tuned for our “New Sections” report



Meet with us at ICANN60 / Schedule a conference call



Follow our wiki at <http://cct.wiki> for more information!