

CCT Plenary Call #67

Agenda

1. Welcome, roll-call, Sol
2. Recommendation 47-48: *Jonathan*
3. Review of Public Comments Received: *Jean-Baptiste*
4. Next Steps: *Jonathan/Jean-Baptiste*
5. A.O.B.

Recommendation: As required by the October 2016 Bylaws, GAC consensus advice to the Board regarding gTLDs should also be clearly enunciated, actionable and accompanied by a rationale, permitting the Board to determine how to apply that advice. ICANN should provide a template to the GAC for advice related to specific TLDs, in order to provide a structure that includes all of these elements. In addition to providing a template, the Applicant Guidebook (AGB) should clarify the process and timelines by which GAC advice is expected for individual TLDs.

Rationale/related findings: The early warnings provided by GAC members helped applicants to improve delegated gTLDs by ensuring that public policy or public interest concerns were addressed, and should continue to be an element of any future expansion of the gTLD space. Applicants could withdraw their applications if they determined that the response or action required to respond to GAC early warning advice was either too costly or too complex and to do so in a timely manner that would permit them to recover 80% of the application cost. Where general GAC advice was provided by means of communiqués to the ICANN Board, it was sometimes not as easy to apply to the direct cases. Applying for a gTLD is a complex and time-consuming process and the initial AGB was amended even after the call for applications had closed. Given the recommendations to attempt to increase representation from applicants from the Global South, it would be appropriate to ensure that the clearest possible information and results from the last round were made available.

To: Subsequent Procedures PDP Working Group, GAC, ICANN organization

Prerequisite or Priority Level: Prerequisite

Details: While the details should be left to the Subsequent Procedures PDP Working Group, the CCT believe there should be a mechanism created to specifically allow objections by individual members of the GAC and means to challenge assertions of fact by GAC members. Finally, some sort of appeals mechanism is imperative.

Recommendation: As required by the October 2016 Bylaws, GAC consensus advice to the Board regarding gTLDs should also be clearly enunciated, actionable and accompanied by a rationale, permitting the Board to determine how to apply that advice. ICANN should provide a template to the GAC for advice related to specific TLDs, in order to provide a structure that includes all of these elements. In addition to providing a template, the Applicant Guidebook (AGB) should clarify the process and timelines by which GAC advice is expected for individual TLDs.

Success Measures: This recommendation stems from a more qualitative assessment by the CCTRT and anecdotal feedback from applicants. Consequently, the measures for success will be similarly qualitative as the next CCRT evaluates the process of gTLD application moving forward. That said, the proof will lie in the implementation of the recommendation. With a structured process and template for the submission of GAC advice and a process for objection and appeal, the most frequently voiced concerns of applicants, regarding such advice, will be addressed.

To: Subsequent Procedures PDP Working Group, GAC, ICANN organization

Prerequisite or Priority Level: Prerequisite

Details: While the details should be left to the Subsequent Procedures PDP Working Group, the CCT believe there should be a mechanism created to specifically allow objections by individual members of the GAC and means to challenge assertions of fact by GAC members. Finally, some sort of appeals mechanism is imperative.

Consensus within team: Yes

Recommendation: A thorough review of the procedures and objectives for community based applications should be carried out and improvements made to address and correct the concerns raised before a new gTLD application process is launched. Revisions or adjustments should be clearly reflected in an updated version of the 2012 AGB.

Rationale/related findings: Given the assessment carried out by the Ombudsman's Own Motion Report, the results of community-based objections, the Council of Europe report on the human rights perspective of those applications, and the interest raised by the ICANN community regarding the relative lack of success of community-based applications (an area where the ICANN community had intended to provide a special entry for communities to gTLDs of particular interest and use for them), it could be expected that there would be a higher rate of success for community-based applications.

To: New gTLD Subsequent Procedures PDP Working Group

Prerequisite or Priority Level: Prerequisite

Consensus within team: TBC

Details: (none)

Success Measures: Should the Subsequent Procedures Working Group deem it beneficial to proceed with the notion of community based applications, a metric for success would simply be a higher rate of success for such applications

Public Comments Received

1. *Verified Top-Level Domains Consortium*
2. *National Association of Boards of Pharmacy*
3. *Messaging, Malware and Mobile Anti-Abuse Working Group (M3AAWG)*
4. **International Trademark Association**
5. Kiran Kumar
6. Aaron Pace
7. **Registries Stakeholder Group**
8. Brand Registry Group
9. **At-Large**
10. **Intellectual Property Constituency**
11. Registrar Stakeholder Group
12. www.hosterstats.com
13. A concerned anonymous registrar
14. **Non-Commercial Stakeholders Group**
15. **Business Constituency**
16. **ICANN organization**
17. **Governmental Advisory Committee**

Public Comments Received

Comment Submission	Rec 3	Rec 9	Rec A	Rec B	Rec C	Rec D	Rec 40	Rec 41	Rec 42	Rec. 5
Verified Top-Level Domains Consortium			✓							
National Association of Boards of Pharmacy			✓							
Messaging, Malware and Mobile Anti-Abuse Working Group (M3AAWG)			✗		✓	✗				
International Trademark Association	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Kiran Kumar										
Aaron Pace										
Registries Stakeholder Group	✓		✗	✗	✓	✗	✓	✗	✓	
Brand Registry Group			✓		✓					
At-Large	✓		✓	✓	✓	✓				✓
Intellectual Property Constituency	✓		✓	✓	✓	✓	✓	✓	✓	
Registrar Stakeholder Group						✗				
www.hosterstats.com	✓									
A concerned anonymous registrar										
Non Commercial Stakeholders Group			✗		✓	✗	✓			
Business Constituency	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
ICANN organization			✓	✓	✓	✓				
Governmental Advisory Committee			✓	✓	✓	✓				✓

Support: ✓ Neutral: ✓ Disagreement: ✗

Recommendation: Collect parking data

Rationale/related findings: The high incidence of parked domains suggests an impact on the competitive landscape, but insufficient data **hinders** efforts to analyze this impact. **The Review Team was able to obtain a point-in-time snapshot of legacy gTLD parking rates, but a more robust analysis of the impact of parking on the gTLD marketplace would require both trend data over time as well as further study of the impact of parking on the marketplace, such as the influence on renewal rates.**

To: ICANN organization

Prerequisite or Priority Level: High

Consensus within team: Yes

Details: ICANN should regularly track the proportion of TLDs that are parked with sufficient granularity to identify trends on a regional and global basis. **Future reviews should conduct further analyses of whether there is a correlation between parked domains and renewal rates or other factors that may affect competition. Further analysis should be performed on the relationship between parking and DNS abuse.**

Success Measures: The availability of relevant data for use by the ICANN organization, contractors and the ICANN community for its work in evaluating competition in the DNS space.

Rec. 3 (ex. Rec. 5)

Concerns:

- Additional studies on parking are unnecessary at this time and are an ineffective use of ICANN's shrinking resources.
- Study should not be deferred to a future Review Team since the prevalence and potential impact of parked domains is not limited to new gTLDs.
- "the domain redirects to another domain in a different TLD. "appears in the "listed "examples of behaviors that could be considered parking" as these redirects to domain names in other TLDs are not "parking". Redirects are common in most TLDs and redirecting to domain names/websites in other TLDs is often done to prevent duplicate content issues with search engines and for brand protection purposes.

All submissions	16
Support	2
Against	0
Neutral	3
No indication	11

Suggestions:

- Review Team to reference the Impact Study's conclusion that brand owners generally park newly acquired gTLD domains to prevent third-party infringement, typosquatting, and related conduct.
- ICANN needs to take a critical approach and scrutinize the utility and validity of studies on parking, without pre-supposing the outcomes of any studies.
- Parking term is misleading, should be rephrased to "Collect usage data.", which would give a future review team, and ICANN, the ability to comprehensively analyze trends in how gTLDs are used and detect competition and other activities.

Recommendation: Conduct periodic surveys of registrants.

Rationale/related findings: The inability to determine registrant motivations and behavior **hinders** efforts to study competition and choice in the TLD marketplace.

To: ICANN organization

Prerequisite or Priority Level: Prerequisite

Consensus within team: Yes

Details: The survey should be designed and continuously improved to collect registrant trends. Some initial thoughts on potential questions is in Appendix F: Possible Questions for a Future Consumer Survey. **To expand the benefit ICANN org recommends leveraging and aligning the survey with the requirements of the gTLD Marketplace Health Index.**

Success Measures: The availability of relevant data for use by the ICANN organization, contractors and the ICANN community for its work in evaluating competition in the DNS space.

Rec. 9

Suggestion:

- Include and clarify in the report that "defensive registrations do not promote either consumer choice or competition – they are simply a sunk cost of no benefit to the DNS, the market or the end-user."

All submissions	16
Support	1
Against	0
Neutral	1
No indication	14

Recommendation: Consider directing ICANN org, in its discussions with registries, to negotiate amendments to existing Registry Agreements, or in negotiations of new Registry Agreements associated with subsequent rounds of new gTLDs, to include provisions in the agreements to provide incentives, including financial incentives, to registries, especially open registries, to adopt proactive anti-abuse measures.

Rationale/related findings: The new gTLD safeguards alone do not prevent technical abuse in the DNS. Abuse rates are correlated to registration restrictions imposed on registrants and registration prices may influence rates too. Some registries are inherently designed to have strict registration policies and/or high prices. However, a free, open, and accessible Internet will invariably include registries with open registration policies and low prices that must adopt other measures to prevent technical DNS abuse. Registries that do not impose registration eligibility restrictions can reduce technical DNS abuse through proactive means such as identifying repeat offenders, monitoring suspicious registrations, and actively detecting abuse instead of merely waiting for complaints to be filed. Therefore, ICANN should incentivize and reward the implementation of proactive anti-abuse measures by such registry operators to reduce technical DNS abuse in open gTLDs.

To: The ICANN Board, the Registry Stakeholders Group, the Registrar Stakeholders Group, the Generic Names Supporting Organization and the Subsequent Procedures PDP WG

Prerequisite or Priority Level: High

Consensus within team: Yes

Details: The ICANN Board should consider urging ICANN org to negotiate with registries to include in the registry agreements fee discounts available to registry operators with open registration policies that implement proactive measures to prevent technical DNS abuse in their zone.

Success Measures: TBD

Comments:

- Inequitable and sends the wrong message to reward registries that did not implement solutions to prevent abuse, while ignoring the registries that have devised and implemented methods proven effective.
- If ICANN made it more financially advantageous to verify eligibility, other registries may be encouraged to adopt this model. ICANN should implement anti-abuse measures, including registration restrictions, and incentivize the adoption of such measures by current and future registries.
- One commenter strongly supported the concept of incentives in relation to all existing Registry agreements, not just future agreements.

All submissions	16
Support	7
Against	4
Neutral	2
No indication	3

Concerns:

- Data presented in the CCT and SADAG report clearly do not support the fundamental paradigm shift to alter the state of domain abuse from “reactive” to a more “proactive” state.
- Opposed amending the RA as recommended, to mandate or incentivize ‘proactive’ anti-abuse measures, which, without a clear agreed-upon definition of abuse, could be challenging.
- Amending the Registrar Accreditation Agreement and Registry agreements to incorporate these requirements is not an action that ICANN organization can take unilaterally.
- CCT to clarify what type of further research is needed on privacy and proxy services, used by registrants to block their identities, to reach the conclusion that these services pose substantial barriers to the efficient resolution of conflicts and increase the cost consumers and trademark owners face in ensuring a safe and trustworthy domain name and online environment.

Rec. A

- One commenter did not support this recommendation and strongly called for its rejection, as it is beyond ICANN scope and mission.

All submissions	16
Support	7
Against	4
Neutral	2
No indication	3

Suggestions

- Rationale/related findings need to take into consideration the following:
 - 1) It is the verification, not the price tag, that keeps bad actors out of vTLDs.
 - 2) ICANN should reward the registries that have already implemented anti-abuse measures, including registration restrictions, and incentivize the adoption of such measures by current and future registries. Verifying registrant eligibility prior to use of a domain name is costly, but prevents bad actors from registering domains in the TLD, and having a clean, safe space is worth the cost to some registries.
 - 3) Registries with registration restrictions generally have lower volumes of registrations, these result in a disproportionately higher per-domain fee to ICANN.
- ICANN could subsidize such anti-abuse efforts in the form of fee discounts.
- Request that before the suggested direction regarding negotiations and pricing is given to ICANN org, further study and consultation with the community take place.

Recommendation: Consider directing ICANN org, in its discussions with registrars and registries, to negotiate amendments to the Registrar Accreditation Agreement and Registry Agreements to include provisions aimed at preventing systemic use of specific registrars for technical DNS abuse.

Rationale/related findings: Current policies focus on individual abuse complaints. However, registrars and registry operators associated with extremely high rates of technical DNS abuse continue operating and face little incentive to prevent technical DNS abuse. Moreover, there currently exist few enforcement mechanisms to prevent systemic domain name abuse associated with resellers. Systemic use of particular registrars and registries for technical DNS abuse threatens the security and stability of the DNS, the universal acceptance of TLDs, and consumer trust.

To: The ICANN Board, the Registry Stakeholders Group, the Registrar Stakeholders Group, the Generic Names Supporting Organization and the Subsequent Procedures PDP WG

Prerequisite or Priority Level: High

Consensus within team: Yes

Details: The ICANN Board should consider directing ICANN org to negotiate amendments to the Registrar Accreditation Agreement and Registry Agreement provisions aimed at preventing systemic use of specific registrars for technical DNS abuse. Such language should impose upon registrars, and their affiliated entities such as resellers, a duty to mitigate technical DNS abuse, whereby ICANN may suspend registrars and registry operators found to be associated with unabated, abnormal and extremely high rates of technical abuse. ICANN must base such findings on multiple verifiable reliable sources and such findings may be rebutted by the registrar upon sufficient proof that the findings were inaccurate. The following factors may be taken into account when making a determination: whether the registrar or registry operator 1) engages in proactive anti-abuse measures to prevent technical DNS abuse, 2) was itself a victim in the relevant instance, 3) has since taken necessary and appropriate actions to stop the abuse and prevent future systemic use of its services for technical DNS abuse.

Success Measures: TBD

Rec. B

Comments:

- Opposed to any scheme in which a contracted party is deemed guilty until it proves its innocence, and strongly objects to placing the business and reputations of contracted parties at the whim, error, or (mis)interpretation of 3rd party abuse data feed providers (3Ps)
- Already within ICANN’s remit to act against bad-acting registries and registrars. The CCTRT should call on ICANN Compliance and ICANN Legal to ensure ICANN is adequately enforcing its existing contracts.
- Support of the suggestion made by the CCTRT to “impose on registrars and their affiliated entities as resellers, a duty to mitigate technical DNS abuse, whereby ICANN may suspend registrars and registry operators found to be associated with unabated, abnormal and extremely high rates of technical abuse.”

All submissions	16
Support	5
Against	1
Neutral	1
No indication	8

Concerns:

- Recommendation would put ICANN org in the position of endeavoring to prevent the use of registrars that it accredits, which will likely violate a registry’s equal access obligations, and attempts to force gTLD registries to do what ICANN cannot: indirectly control resellers.
- Request that further study and consultation with the community take place to ensure that the direction given to ICANN org best incentivizes proactive anti-abuse measures.
- Changes to registry and registrar agreements directly affect the broader community and the internet in innumerable ways. Therefore, discussions and negotiations on changing them is the business of the entire ICANN community—not just ICANN Org contract parties.
- Amending and the the Registrar Accreditation Agreement and Registry agreements to incorporate these requirements is not an action that ICANN organization can take unilaterally.

Rec. B

Suggestions:

- Recommendation could be tied to the following recommendation on data collection (including through DAAR), such that ICANN could define by contract what would constitute prima facie evidence (or at least a rebuttable presumption) of an “excessive” level of abuse.
- CCT to take into account that each of the 3P sources ICANN uses for DAAR has its own, independent (i.e. not controlled by any standards organization) definition of abuse, so does each contracted party. No community-defined process existed to classify a 3P abuse report of conduct that violates the 3P’s “abuse” definition, but does not violate the relevant contracted party’s “abuse” definition. ICANN to openly and transparently identify how it will address these and other concerns before it releases and relies upon DAAR.
- CCTRT to call on ICANN Compliance and ICANN Legal to ensure ICANN is adequately enforcing its existing contracts.

All submissions	16
Support	5
Against	1
Neutral	1
No indication	8

Recommendation: Further study the relationship between specific registry operators, registrars and DNS abuse by commissioning ongoing data collection, including but not limited to, ICANN Domain Abuse Activity Reporting (DAAR) initiatives. For transparency purposes, this information should be regularly published in order to be able to identify registries and registrars that need to come under greater scrutiny and higher priority by ICANN Compliance. Upon identifying abuse phenomena, ICANN should put in place an action plan to respond to such studies, remediate problems identified, and define future ongoing data collection.

Rationale/related findings: The DNS Abuse Study commissioned by the CCT-RT identified extremely high rates of abuse associated with specific registries and registrars as well as registration features, such as mass registrations, which appear to enable abuse. Moreover, the Study concluded that registration restrictions correlate with abuse, which means that there are many factors for which to account in order to extrapolate cross-TLD abuse trends for specific registry operators and registrars. The DNS Abuse Study has highlighted certain behaviors that are diametrically opposed to encouraging consumer trust in the DNS. Certain registries and registrars appear to either positively encourage or at the very least willfully ignore DNS abuse. Such behavior needs to be identified rapidly and action must be taken by ICANN compliance as deemed necessary.

To: The ICANN Board, the Registry Stakeholders Group, the Registrar Stakeholders Group, the Generic Names Supporting Organization and the Subsequent Procedures PDP WG, SSR2 Review Team.

Prerequisite or Priority Level: High

Consensus within team: Yes

Details: The additional studies need to be of an ongoing nature, collecting relevant data concerning DNS abuse at both the registrar and registry level. The data should be regularly published, thereby enabling the community and ICANN compliance in particular to identify registries and registrars that need to come under greater compliance scrutiny and thereby have such behavior eradicated.

Success Measures: TBD

Rec. C

Comments:

- Recommend community-wide involvement in the data collection efforts implementation, and requested that the CCT reinforce this in their report.

All submissions	16
Support	9
Against	0
Neutral	1
No indication	6

Concerns:

- Recommendation may entail additional cost if specialized expertise is needed for further study of the data, and if additional data sources are subscribed to. It further noted that it would expect to work with stakeholder groups, including registry operators and registrars, to develop an action plan for responding to issues identified in the data.

Suggestions:

- Establish a limited period of time instead of “regularly published” in the recommendation.
- ICANN to make these data collection efforts open, transparent and reproducible. Another commenter added that transparency into how the DAAR is works is necessary.
- ICANN to look into including a broader set of data in research efforts if DAAR falls short.

Recommendation: A DNS Abuse Dispute Resolution Policy ("DADRP") should be considered by the community to deal with registry operators and registrars that are identified as having excessive levels of abuse (to define, e.g. over 10% of their domain names are blacklisted domain names). Such registry operators or registrars should in the first instance be required to a) explain to ICANN Compliance why this is, b) commit to clean up that abuse within a certain time period, and / or adopt stricter registration policies within a certain time period. Failure to comply will result in a DADRP, should ICANN not take any action themselves.

Rationale/related findings: The DNS Abuse Study commissioned by CCT-RT identified extremely high rates of abuse associated with specific registries. It is important to have a mechanism to deal with this abuse, particularly if it's prevalent in certain registries. Abusive behavior needs to be eradicated from the DNS and this would provide an additional arm to combat that abuse.

To: The ICANN Board, the Registry Stakeholders Group, the Registrar Stakeholders Group, the Generic Names Supporting Organization, the Subsequent Procedures PDP WG and the SSR2 Review Team

Prerequisite or Priority Level: High

Consensus within team: Majority consensus but not unanimity

Details: ICANN Compliance is one route to dealing with this high level of DNS abuse, enforcing existing and any amendments to the Registrar Accreditation Agreement to prevent systemic use of specific registrars for technical DNS abuse as per Recommendation 2. However, in addition, a specific DADRP should be considered as it could also be very helpful in dealing with such DNS abuse, and it could also serve as a significant deterrent and help prevent or minimize such high levels of DNS abuse. Registry operators or registrars that are identified as having excessive levels of abuse (to be defined, for example where a registry operator has over 10% of their domain names blacklisted by one or more heterogeneous blacklists (StopBadware SDP, APWG, Spamhaus, Secure Domain Foundation, SURBL and CleanMX). A DADRP should set out specific penalties. Examples from the DNS Abuse Study of new gTLDs with over 10% of their domain names blacklisted, according to Spamhaus for example are .SCIENCE (51%), .STREAM (47%), .STUDY(33%), .DOWNLOAD (20%), .CLICK (18%), .TOP (17%), .GDN (16%), .TRADE (15%), .REVIEW (13%), and .ACCOUNTANT (12%). Thus, each of these registries should be obliged to review their second level domain names being used for DNS abuse and explain why this is, commit to cleaning these up within a certain timeframe, and adopt stricter registration policies if necessary to ensure that there exist relevant contractual terms to effectively handle such registrations. If the domain names at issue are not cleaned up satisfactorily, and in the event ICANN does not take immediate action, then a DADRP may be brought by an affected party. The process should involve a written complaint to the registry, time allotted for a response from the registry, and an oral hearing. Final decisions should be issued by an expert panel which could recommend one or more enforcement mechanisms to be agreed upon by the community.

For purposes of this recommendation, a registrar acting under the control of a registry operator would be covered by the DADRP so it is important to ensure that “registry operator” shall include entities directly or indirectly controlling, controlled by, or under common control with, a registry operator, whether by ownership or control of voting securities, by contract or otherwise where ‘control’ means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether by ownership or control of voting securities, by contract or otherwise.

Success Measures: TBD

Rec. D

Support:

- Continued discussion and consideration of a DADRP as an additional tool to supplement existing dispute resolution procedures within ICANN, but not as a remedy designed to fill a gap or gaps which ICANN Compliance is not addressing.
- CCTRT to also recommend that ICANN Compliance has sufficient resources to do its job robustly and properly.
- Registries do have an important role to play in combatting DNS Abuse and any indicators that Registries and existing safeguards are not doing enough to address DNS abuse should not be rationale for a reduced role for registries, but instead a call for more data and safeguards to be explored.

All submissions	16
Support	5
Against	4
Neutral	1
No indication	6

Disagreements:

- Programs such as the DADRP would only further introduce more complexity and expense to combat abuse and should not be considered.
- Strongly disagreed with the proposal to create a DNS Abuse Dispute Resolution Procedure (DADRP) and supports the rationale of the Minority Statement included in the report. It would require a significant outlay of time, energy and resources from the community – especially considering that there is no clear definition of “abuse” – with little obvious benefit or return on that effort.
- Factual basis used to justify the recommendation is missing, and that seeking to mitigate DNS abuses through registry-registrar relationships is ineffective, and from a standpoint of causal responsibility, morally objectionable.

Rec. D

Concerns:

- Support for the idea of a DADRP is conditioned on the premise that it will be an additional arm to combat abuse – not a substitute for any existing dispute-resolution procedure (e.g., the UDRP, PDDRP, PICDRP), and not a substitute for ICANN Compliance rigorously enforcing all the existing provisions of the New RA or the 2013 RAA that are related to abuse.
- DADRP did not achieve full consensus within the CCTRT, and would further welcome discussion on certain of the points raised by the minority views.
- ICANN community to frame the issue of the causal agents of DNS abuse properly, to collect relevant data, and to consider the problems associated with DNS abuse in a more deliberate and focused fashion.

All submissions	16
Support	5
Against	4
Neutral	1
No indication	6

Suggestions:

- Update to text on page 19 "For the fifth safeguard, Registry Agreements require new gTLD operators to create and maintain Thick WHOIS records for domain name registrations." that it is rephrased with a possibility verb rather than a certainty one, as it is not clear yet what data will be collected (for both thick and thin WHOIS) and what data can be displayed.

Recommendation: 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

Details: The evolution over time will provide a more precise picture of costs as they evolve and track the effectiveness of RPMs generally in the Domain Name System.

Success Measures: The evolution over time will provide a more precise picture of costs as they evolve and track the effectiveness of RPMs generally in the Domain Name System.

Rec. 40

ICANN Org public comment:

None

Suggestions:

- CCT to add to the conclusion “RPMs are generally considered to have been helpful in mitigating the risks anticipated with new gTLDs.” that it is increasingly difficult and costly for trademark owners to protect against the exponentially expanding opportunities and instances of trademark infringement and misuse in domain names.
- CCT to conduct follow-up studies to develop additional and important data to ascertain the impact of the New gTLD Program on the cost and effort required to protect trademarks. These studies will result in engagement by and responses from a greater number of trademark owners, and will support the findings of the initial Impact Study.
- ICANN to take steps to ensure that any studies conducted are optimized to solicit meaningful and statistically significant data from a representative sample of respondents.
- CCT to include the Nielsen disclaimer, page 5 of the INTA Cost Impact Report revised 4-13-17 v2.1.pdf, that “Analysis of sub-samples less than 30 are subject to high variability-- caution is advised when interpreting them.” in the introduction to the INTA Survey in clear text (not small footnotes). Also include analysis of statistical validity problems of the survey based on the small response rate.
- Add a recommendation for an Impact Study in order to ascertain the impact of the New gTLD Program on the cost and effort required to register new domain names in the DNS, and whether consumers, namely registrants, understand what remedies are available to them if the domain name they choose to register for their business, organization, or speech is not available to them, yet not registered in a gTLD, what their rights are when challenged by a Trademark Claims Notice and what responses and timing is available to them when their domain name is challenged by the URS and UDRP (both remedies not intended to require attorneys to draft responses as originally drafted, presented and accepted by ICANN).

All submissions	16
Support	5
Against	0
Neutral	1
No indication	10

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

Details: A review of the URS consider inter alia (1) whether there should be a transfer option with the URS rather than only suspension; (2) whether two full systems should continue to operate (namely UDPR and URS in parallel) considering their relative merits, (3) the potential applicability of the URS to all gTLDs and (4) whether the availability of different mechanisms applicable in different gTLDs may be a source of confusion to consumers and rights holders.

Success Measures: Based on the findings, a clear overview of the suitability of the URS and whether it is functioning effectively in the way originally intended.

Rec. 41

Concerns:

- Costs associated with the costs of trademark enforcement efforts, such as court action, UDRP and URS complaints, and other actions that do not involve an adversarial proceeding are provided in the Impact Study and can be included by the CCT in their report.
- Recommendation is already being followed through the work of the RPM PDP WG; and that the CCT-RT has only provided a list of suggestions, but no information as to what issues or problems led to them. It would be very helpful to the RPM PDP to include a reason for each suggestion.
- CCT does make assumptions about the lack of popularity of the URS as an RPM which they consider to be somewhat unfair: URS does not apply to all TLDs but only to new gTLDs, when looking at the total number of URS cases when compared to UDRP cases.

All submissions	16
Support	2
Against	1
Neutral	1
No indication	12

Suggestion:

- CCT to reconsider the level of prioritization of the recommendation, as the “prerequisite” status may not be necessary; any future new TLD launches would not result in domain names which might be subject to a future URS action for some time.

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

Details: There appears to be considerable discussion and comment on whether the TMCH should be expanded beyond applying to only identical matches and if it should be extended to include “mark+keyword” or common typographical errors of the mark in question. If an extension is considered valuable, then the basis of such extension needs to be clear.

Success Measures: The availability of adequate data to make recommendations and allow an effective policy review of the TMC.

Rec. 42

Concerns:

- CCT to provide additional detail about how it believes such a cost-benefit analysis should be undertaken and what specific value it would add to the extensive evaluation of the TMCH already being undertaken by the RPM PDP WG.
- CCT to consider balancing the benefits of such an analysis with the time and resources required to undertake it.

All submissions	16
Support	2
Against	0
Neutral	2
No indication	12

Suggestions:

- A commenter invited the CCT to include that trademark owners are incurring substantial costs as a result of the new gTLD program solely to protect their trademarks and the public's ability to trust the accuracy of domain names to refer them to sites related to the trademarks contained in the domain names.
- CCT to transfer recommendation to the RPM PDP.

Recommendation: ICANN should collect data about and publicize the chain of parties responsible for gTLD domain name registrations.

Rationale/related findings: At present, there is no consistent mechanism for determining all of the ICANN contracted and non-contracted operators associated with a gTLD domain name registration. Whois records often do not distinguish between registrars and resellers. The DNS Abuse Study commissioned by the CCT-RT, for example, was unable to discern resellers from registrars to determine the degree to which technical DNS abuse rates may be driven by specific-resellers may affect levels of technical DNS abuse. This data should be available to enhance data-driven determinations necessary for recommendations proposed the CCT-RT, supplement new gTLD program safeguards, and improve ICANN Contractual Compliance determinations.

To: The ICANN Board, the Registry Stakeholders Group, the Registrar Stakeholders Group, the Generic Names Supporting Organization, the Subsequent Procedures PDP WG and the SSR2 Review Team, Registration Directory Service Review Team

Prerequisite or Priority Level: High

Consensus within team:

Details: Whois information is an important source of data for technical DNS abuse analysis. Safeguards, such as the Thick Whois requirements, do not mandate that resellers are listed in Whois records. Consequently, the full chain of parties to a registration transaction is not readily discernable. Without such information, it is difficult to determine the extent to which technical abuse is correlated to individual resellers, rather than registrars. For example, with such data obfuscated, it would be possible for a reseller associated with extremely high levels of abuse to remain in operation under a registrar with relatively normal levels of technical abuse. This would, in effect, permit systemic technical abuse by a non-contracted party, though bound by flow down requirements, to go unabated. Whereas, collecting and publicizing such information would enable end users to readily determine the registry, registrar, and reseller associated with a domain name registration to remove the opaqueness of parties responsible for mitigating technical DNS abuse. This would allow for more granular DNS abuse analysis and transparency for Internet users, thereby enhancing community accountability efforts, and contractual compliance enforcement.

Success Measures: TBD

Rec. 5

3 respondents expressed support for this recommendation.

All submissions	16
Support	3
Against	0
Neutral	0
No indication	13

Next Steps

31 January – 21 February:

- All RT members to read/review public comments
- New Sections penholders to update their respective sections, as appropriate, for Review Team approval

By 5 February COB: Penholders to identify action items and to send to Review Team list in anticipation of 7 February call.

7 February: Review Team discusses and approves action items on plenary call

8 February: ICANN org to publish Public Comments Summary

21 February: Penholders to present updated sections/recommendations on plenary call for approval

28 February: Penholders to present updated sections/recommendations on plenary call for approval

7 March: Penholders to present updated sections/recommendations on plenary call for approval

March: Incorporate latest updates, review and approval of final report.

A.O.B.