

Recommendation 40 on the Impact Study on the cost and effort required to protect trademarks in the DNS and repeating it at regular intervals.

[16 submissions 5 in Support 0 Against]

All respondents who commented approved the adoption of this recommendation. There is a clear need to make the survey more user friendly and obtain a higher response rate. On the positive there is strong support for the survey having been carried out, and agreement with our conclusions, also our recognition of further study being needed and the low response rate meaning this is only an indication of trends rather than trends themselves. Thus no responses saying that the survey should not be carried out periodically with an improved response rate and improved statistical significance. One critical comment from NCSG wishes that we highlight the low response rate and specifically include Nielsen disclaimer that "Analysis of sub-samples less than 30 are subject to high variability-- caution is advised when interpreting them". If anyone thinks that the actual text does not capture that then happy to reword it as need be.

One point that interested me was the comments that the effectiveness of the work during phase 1 of the PDP Review of All RPMs in All gTLDs ("RPMs PDP") is hampered by lack of data, which is not unsurprising as we have hit the same issue.

NB From our previous discussions and input after the draft report was published I have also taken away that we may wish to include a recommendation to assess whether there has been any abuse by TM owners of RPMs and also recommend an assessment of whether TM protection is costing registries / registrars in anyway? I'd welcome thoughts on including that in the final version.

Recommendation 41 Concerning a full review of the URS, noting that given the PDP Review of All RPMs in All gTLDs, 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.

[16 submissions 2 in Support 1 Against]

Of the four SGs that commented, there is majority support for its adoption. We should look again at the Impact Study to see if we can include further information on the 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 as pointed out by INTA. The BC states: " While we support this proposal, it should be transferred into the work of the RPM PDP, as a recommendation from the CCTRT" This is helpful and more specific on the overlap we have faced with the PDP and it is something I sought to cover in the original recommendation with wording that was sufficiently broad. To discuss on our call or comments by email on how best to go about this.

There is also some concern expressed on our assumptions on lack of popularity of the URS, which the IPC considers unfair. That section needs looking at again, frankly those assumptions were not meant to be opining as to it being an unpopular mechanism, rather pointing to factors that may well have had an impact on or have delayed its take up so there for consideration by the PDP and those who go on to review the URS. Thus to look at this section again and reword as need be.

Recommendation 42 Carrying out a cost-benefit analysis and review of the TMCH and its scope 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.

[16 submissions 2 in Support 0 Against]

Those who commented all approved the adoption of the recommendation. The RySG requests that we provide additional detail about how we believe 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. However the RPM PDP WG has not carried out any specific cost-benefit analysis, so this seems to me to underline the need to do so. I'd welcome input on what guidance we can give in carrying out such a cost-benefit analysis in order for the GNSO to be able to adopt this recommendation.

The BC again stated: " While we support this proposal, it should be transferred into the work of the RPM PDP, as a recommendation from the CCTRT" This is helpful and more specific on the overlap we have faced with the PDP and again it is something we sought to cover in the original recommendation with wording that was sufficiently broad. To discuss on our call or comments by email on how best to go about this. One note on this, we did not include the reference to the PDP in the actual recommendation, rather in the rationale:

"Indeed the PDP Review of All Rights Protection Mechanisms 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."

As such I would suggest we bring whatever wording we agree into the recommendation itself as for Rec 41.