RPM Recommendations 40,41 and 42 – Drafting Updates by D Taylor pursuant to the Sub Team and Plenary Calls pre ICANN61 and meetings in ICANN61

For Discussion on the CCT Review Safeguards and Trust Meeting #42 of 29 March 2018

Old 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.

Amended 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 study 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 in order to help ensure a higher and more statistically significant response rate

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.

OLD 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.

Amended Recommendation 41 Since our initial draft recommendation, the PDP Review of All RPMs in All gTLDs has started reviewing the URS in detail and this is currently ongoing. Given this ongoing review the CCTRT recommends that the RPM WG continues its review of the URS and also looks into the interoporability of the URS with the UDRP. Given the current timeline it would appear that the appropriate time to do so will be when the UDRP review is carried out by the PDP WG and at this time consideration be given to how it should interoperate with the UDRP.

The CCTRT has encountered a lack of available data in many respects and the PDP Review of All RPMs appears to also be encountering this issue and this may well prevent it drawing firm conclusions. If modifications are not easily identified then the CCTRT suggests continued monitoring until more data is available for a review at a later date. It is important that future review teams are able to have sufficient data and thus efforts need to be made to collect this on an ongoing basis.

Rationale/related findings: ~~The URS appears to be a useful RPM and 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 so the applicability of the URS should be considered to all gTLDs.

Old 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.

Amended 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. Since our initial draft recommendation, the PDP Review of All RPMs in All gTLDs has started reviewing the TMCH in detail. Provided that this PDP Review of All RPMs has sufficient data and is able to draw firm conclusions the CCTRT does not consider that an additional review is necessary. However the CCTRT does still underline its recommendation for a cost-benefit analysis to be carried out in order to help obtain sufficient data for conclusions to be drawn objectively. Such cost-benefit analysis should include but not necessarily be limited to looking at cost to brand owners, cost to registries and cost to registrars of operating with the TMCH now and going forward and look at the interplay with premium pricing.

Rationale/related findings: The Independent Review of Trademark Clearinghouse (TMCH) Services Revised Report138 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.

28/3/2018 DT