

RPM Recommendations 40,41 and 42 – Final 18 June 2018

Final Recommendation 40: A Study to ascertain the impact of the New gTLD Program on the costs required to protect trademarks in the expanded DNS space should be repeated at regular intervals to see the evolution over time of those costs. The CCT recommends that the next Study be completed within 18 months after issuance of the CCT final report, and that subsequent studies be repeated every 18 to 24 months.

The CCT acknowledges that the Nielsen survey of INTA members in 2017 intended to provide such guidance yielded a lower response rate than anticipated. We recommend a more user friendly and perhaps shorter survey 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.

To: ICANN organization

Prerequisite or Priority Level: High

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 results of such Impact Studies would provide significantly more data to the relevant working groups currently looking into RPMs and the TMCH as well as future ones, thereby benefitting the community as a whole. Recommendations would then also be able to evolve appropriately in future CCT Review Teams.

Final 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 CCT recommends that the RPM WG continues its review of the URS and also looks into the interoperability 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 CCT Review has encountered a lack of data for complete analysis in many respects. 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 CCT recommends continued monitoring until more data is collected and made available for a review at a later date.

Rationale/related findings: It is important for all gTLDs to have a level playing field so the applicability of the URS should be considered to all gTLDs.

To: Generic Names Supporting Organization

Prerequisite or Priority Level: Prerequisite

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.

Final 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 and ICANN has appointed Analysis Group, Inc. to develop and conduct the survey(s) to assess the use and effectiveness of the Sunrise and Trademark Claims RPMs. Provided that this PDP Review of All RPMs has sufficient data from this survey or other surveys and is able to draw firm conclusions the CCT does not consider that an additional review is necessary. However, the CCT reiterates its recommendation for a cost-benefit analysis to be carried out if such analysis can enable objective conclusions to be drawn. 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 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.

To: Generic Names Supporting Organization

Prerequisite or Priority Level: Prerequisite

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.