

SUMMARY TABLE – REVIEW OF AGREED TRADEMARK CLAIMS CHARTER QUESTIONS AND RELATED DATA

Prepared by ICANN staff for use by the proposed new Trademark Claims Review Sub Team

LIST OF FINAL AGREED TRADEMARK CLAIMS CHARTER QUESTIONS ¹	RELEVANT AG CLAIMS SURVEY RESULTS	RELEVANT DATA REVIEWED PREVIOUSLY ²	SUB TEAM POLICY/OPERATIONAL FIX RECOMMENDATIONS (for WG discussion)
<p>Q1 Is the Trademark Claims service having its intended effect? Consider the following questions specifically in the context both of a Claims Notice as well as a Notice of Registered Name:</p> <ul style="list-style-type: none"> • Is the Trademark Claims service having its intended effect of deterring bad-faith registrations and providing notice to domain name applicants? • Is the Trademark Claims service having any unintended consequences, such as deterring good-faith domain name applications? 			
<p>Q2 If the answers to 1.a. is “no” or 1.b. is “yes”, or if it could be better: What about the Trademark Claims Notice and/or the Notice of Registered Name should be adjusted, added or eliminated in order for it to have its intended effect, under each of the following questions?</p> <ul style="list-style-type: none"> • Should the Claims period be extended - if so, for how long (up to permanently)? • Should the Claims period be shortened? • Should the Claims period be mandatory? 			

¹ For the actual text of the proposed refined questions submitted by the Trademark Claims Charter Questions Sub Team to the full Working Group, please see the accompanying Status of TMCH & Related RPM Discussions summary document also circulated by ICANN staff (3 December 2018). Between the date of the Sub Team’s report and the submission of a Working Group data request to the GNSO Council in September 2017, the Working Group discussed the Sub Team’s suggestions for refining the original Charter questions as well as for data collection.

² See attached Appendix for a list of the data collected and reviewed by the Working Group to date.

<ul style="list-style-type: none"> • Should any TLDs be exempt from the Claims RPM and if so, which ones and why? • Should the proof of use requirements for Sunrise be extended to include the issuance of TMCH notices? 			
<p>Q3</p> <p>(a) Does the Trademark Claims Notice to domain name applicants meet its intended purpose?</p> <ul style="list-style-type: none"> • If not, is it intimidating, hard to understand, or otherwise inadequate? • If inadequate, how can it be improved? • Does it inform domain name applicants of the scope and limitations of trademark holders' rights? • If not, how can it be improved? • Are translations of the Trademark Claims Notice effective in informing domain name applicants of the scope and limitation of trademark holders' rights? <p>(b) Should Claims Notifications only be sent to registrants who complete domain name registrations, as opposed to those who are attempting to register domain names that are matches to entries in the TMCH?</p>			
<p>Q3</p> <ul style="list-style-type: none"> • Should Registry Operators be required to create a mechanism that allows trademark owners to challenge the determination that a second level name is a Premium Name or Reserved Name? Additionally, should Registry Operators be required to create a release mechanism in the event that a Premium Name or Reserved Name is challenged successfully, so that the trademark owner can register that name during the Sunrise Period? What concerns might be raised by either or both of these requirements? 			
<p>Q4</p>			

<p>Is the exact match requirement for Trademark Claims serving the intended purposes of the Trademark Claims RPM? In conducting this analysis, recall that IDNs and Latin-based words with accents and umlauts are currently not serviced or recognized by many registries.</p> <ul style="list-style-type: none"> a) What is the evidence of harm under the existing system? b) Should the matching criteria for Notices be expanded? <ul style="list-style-type: none"> i. Should the marks in the TMCH be the basis for an expansion of matches for the purpose of providing a broader range of claims notices? ii. What results (including unintended consequences) might each suggested form of expansion of matching criteria have? iii. What balance should be adhered to in striving to deter bad-faith registrations but not good-faith domain name applications? iv. What is the resulting list of non-exact match criteria recommended by the WG, if any? c) What is the feasibility of implementation for each form of expanded matches? d) If an expansion of matches solution were to be implemented: <ul style="list-style-type: none"> i. Should the existing TM Claims Notice be amended? If so, how? ii. Should the Claim period differ for exact matches versus non-exact matches? 			
<p>Q5 Should the Trademark Claims period continue to be uniform for all types of gTLDs in subsequent rounds?</p>			

APPENDIX

Data available to date:

- Analysis Group Revised Report on the TMCH (February 2017):
<https://community.icann.org/download/attachments/64066042/Analysis%20Group%20Revised%20TMCH%20Report%20-%20March%202017.pdf?version=1&modificationDate=1490349029000&api=v2>
 - Analysis Group responses to questions from the Working Group:
 - June 2017: <https://mm.icann.org/pipermail/gnso-rpm-wg/2017-June/002043.html>
 - July 2017: <https://mm.icann.org/pipermail/gnso-rpm-wg/2017-July/002257.html>
- Registry Operator responses to initial survey from TMCH Data Gathering Sub Team (December 2016):
<https://community.icann.org/download/attachments/64066042/Registry%20Responses%20to%20TMCH%20Data%20Sub%20Team%20-%202013%20Dec.pdf?version=1&modificationDate=1485897782000&api=v2>
 - RPM Data Sub Team meeting with Jon Nevett, Donuts (March 2018):
<https://community.icann.org/download/attachments/79438928/Transcription%20ICANN61%20GNSO%20RPM%20Data%20Sub%20Team%20Meeting%2010%20March%202018.pdf?version=1&modificationDate=1521579214000&api=v2>
- Deloitte responses to initial questions from TMCH Data Gathering Sub Team (January 2017):
<https://community.icann.org/download/attachments/64066042/Deloitte%20responses%20to%20TMCH%20Data%20Gathering%20Sub%20Team%20questions%20-%20Jan%202017.docx?version=1&modificationDate=1485897782000&api=v2>
 - Follow up questions from Working Group (March 2017):
<https://community.icann.org/download/attachments/64066042/Follow%20Up%20Questions%20for%20Deloitte%20-%20updated%205%20March%202017.docx?version=1&modificationDate=1488753827000&api=v2> and
<https://community.icann.org/download/attachments/64066042/Deloitte%20Follow%20Up%20Questions%20Annex%20-%2004%20March%202017.docx?version=1&modificationDate=1488752114000&api=v2>
 - Deloitte response to follow up questions (April 2017):
<https://community.icann.org/download/attachments/64066042/Deloitte%20Follow%20Up%20Questions%20Annex%20-%2004%20March%202017.docx?version=1&modificationDate=1488752114000&api=v2>
 - Deloitte numbers report as discussed with the Working Group at ICANN58 (March 2017):
<https://community.icann.org/download/attachments/64066042/Deloitte%20Follow%20Up%20Questions%20Annex%20-%2004%20March%202017.docx?version=1&modificationDate=1488752114000&api=v2>
- INTA cost impact survey:
<https://community.icann.org/download/attachments/69277722/INTA%20New%20gTLD%20Cost%20Impact%20Study%20Presentation%20-%202030%20Aug.pdf?version=1&modificationDate=1504147055000&api=v2> and https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_download_attachments_61606864_INTA-2520Cost-2520Impact-2520Report-2520revised-25204-2D13-2D17-2520v2.1.pdf-3Fversion-3D1-26modificationDate-3D1500376749000-26api-

[3Dv2&d=DwMGaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4l5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0Aign-H4xR2EBk&m=MLOyWdAdSdj4cRa39aHRCVYsVa9ub30XpFPLr1fc51l&s=KXW3vtHBAKxxiT4X6sLxZQO2dIKSW8Zc-BhfZ1t7IAA&e](https://newgtlds.icann.org/en/program-status/sunrise-claims-periods)

- ICANN Org-maintained list of Registry Operators and relevant dates for Sunrise, Trademark Claims and other specific approved program periods (e.g. Limited Registration Periods, Qualified Launch Programs): <https://newgtlds.icann.org/en/program-status/sunrise-claims-periods>
- Analysis Group Sunrise & Trademark Claims survey results:
 - Inception Report (September 2018):
<https://community.icann.org/download/attachments/90771305/9.6.2018%20Inception%20Report.pdf?version=1&modificationDate=1536257221000&api=v2>
 - Final Report (October 2018):
<https://community.icann.org/download/attachments/90773066/Final%20ICANN%20RPM%20Survey%20Report%202018.10.18.pdf?version=1&modificationDate=1540302625000&api=v2>
 - All data files reported: <https://community.icann.org/pages/viewpage.action?pageId=90771305>
 - Analysis Group response to follow up questions (November 2018):
<https://community.icann.org/download/attachments/99483940/Questions%20%26%20Comments%20-%20Final%20Report%20RPM%20Survey%20-%20AG%20comments.pdf?version=1&modificationDate=1543271647000&api=v2>

Additional sources suggested previously:

- Articles from DNS industry and trademark-related blogs touching on Sunrise and Trademark Claims (list of suggested blogs posted at <https://community.icann.org/display/RARPMRIAGPWG/2017-08-16+Review+of+all+Rights+Protection+Mechanisms+%28RPMs%29+in+all+gTLDs+PDP+WG>)
- News articles and research on Sunrise and Trademark Claims from Lexis-Nexis (or similar) databases

Other potential sources:

- Metrics reports from ICANN Org relevant to Competition, Consumer Protection & Consumer Trust Reviews: <https://www.icann.org/resources/reviews/cct/metrics> (includes updated data on IDN gTLDs, Sunrise and UDRP & URS decisions)