**Question 1 (Final Charter Questions for Trademark Claims)**

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:

a) Is the Trademark Claims service having its intended effect of deterring bad-faith registrations and providing Claims Notice to domain name applicants?

b) Is the Trademark Claims service having any unintended consequences, such as deterring good-faith domain name applications?

Summary of Data:

Available data seems to suggest that most registrants who receive a Claims Notice continue to complete the registration. The reason given is that they consulted with someone and were told it was OK to proceed. Answers indicating that the Claims Notice “worried” the registrant cannot be correlated to actually deterring the registrant from completing the registration. Over half of survey respondents indicated they spend less than 2 minutes reviewing the Claims Notice. It is hard to draw any specific conclusion from this data point, because it could mean either that registrants understand the Notice really well, or that they didn’t understand its significance at all. About half of registrants appeared to understand the significance of the Notice, whereas this rate was lower for the “potential registrant” group. About 70% of registrants indicated never receiving any further trademark enforcement action directed against them (need to confirm that this is 70% of registrants who had received a Claims Notice). This could be for any number of reasons though – good faith registration, or any number of reasons a brand owner might not (yet) have pursued enforcement action – no current use; no additional indicia of bad faith; budgetary constraints; prioritization of enforcement efforts; etc. Claims Notice was not listed as a top reason for abandoning a registration by potential registrants. Some of the data suggests that the Claims Notice is confusing or concerning, and it conveyed that the registrant or potential registrant might be exposed to legal risk if they were to proceed. A fairly high proportion of registrants and potential registrants felt confident they understood the Claims Notice (roughly between 76-88%).

Conclusions:

* The survey likely did not involve bad faith actors to begin with, so it is likely biased in favor of good faith registrants and potential registrants
* There is likely a need to improve the Claims Notice language to make it easier to understand and convey its significance in terms of the registration process and possible legal implications
* The Notice is probably not substantially deterring good faith registrations, but improving the language of the Notice would likely further reduce any unintended deterrence of legitimate registrations
* The Notice is probably not substantially deterring bad faith registrations, because bad actors would disregard the Notice no matter what, but improving the language of the Notice could potentially improve the appropriate deterrent effect on bad faith registrations (perhaps by further identifying examples of bad faith versus good faith purposes for registration / use of domain names)

Question Responses:

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:

1. Is the Trademark Claims service having its intended effect of deterring bad-faith registrations and providing Claims Notice to domain name applicants?

Yes it is providing notice to applicants (assuming registrars are all properly implementing the Claims Notice) during the Claims period, but probably is not having as strong a deterrent effect on bad faith registrations as it could be; the limited duration of the Notice period means that after the first 90 days of a TLD launch, there is no Notice at all (except in the few instances here a registry is voluntarily extending the Claims period) – it would be useful to know the time distribution of registrations in TLDs to confirm, but we suspect most registrations, including bad faith registrations, are occurring after the Claims period ends, without the opportunity for any notice or deterrent effect; Claims period should be extended for the life of all new gTLDs to ensure the notice is delivered regardless of registration timing (with the systems for doing this already in place, there should not be any substantial ongoing cost burdens on registries or registrars to doing this). Although NORNs are available on an ongoing basis through the TMCH, they only facilitate post-registration enforcement and not a pre-registration deterrent effect.

1. Is the Trademark Claims service having any unintended consequences, such as deterring good-faith domain name applications?

The evidence suggests that the Notice, while potentially puzzling to registrants or applicants, is not significantly deterring good faith registrations. That said, there is likely room to improve the language of the Notice to further improve comprehension and import to applicants, which, if crafted well, would reduce “innocent infringers” and potential bad faith applicants, while not substantially chilling good faith registrations.

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| - Yes, I received a Claims Notice once (31) - Yes, I received a Claims Notice on more than one registration attempt (17) - No (37) - Don’t know / Not sure (9) | - Yes (27) - No (21) - Don't know / not sure (3) | **48 out of 94 actual registrants (51 percent) received a Claims Notice at least once.  27 out of 51 potential registrants (53 percent) recalled receiving a Claims Notice during a registration attempt  A higher portion of the Panel Sample received a Claims Notice than the ICANN Sample.** |

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| **39 out of 47 respondents (83 percent) who received a Claims Notice completed the registration attempt** - Yes (39) - No (6) - Don't know / not sure (2) | No potential registrants answered this question |  |
| - I consulted with someone about the notice and was told it was fine (21)  - I did not understand the notice (6)  - I did not think the notice applied to me (9)  - Other (5)  \* Irrelevant \* We owned the trademark  \* Registered on behalf of the TMCH registered trademark owner \* The domain name was generic and the combination of my branch and the Nice classes the trademark is registrered for do not match \* The notice was against our own mark | No potential registrants answered this question | **The most common reason for completing the registration attempt was that the respondent consulted with someone about the notice and was told it was fine (21 out of 39 respondents)** |
| - I consulted with someone about the notice and was told not to continue (1)  - I did not understand the notice but it worried me (3) - I understood the notice and it worried me (2) | No potential registrants answered this question |  |
| - Less than 5 seconds (5) - Less than a minute (7)  - Less than 2 minutes (14) - More than 2 minutes (18) - Don’t know / Not sure (3) | - Less than 5 seconds (4) - Less than a minute (6)  - Less than 2 minutes (7) - More than 2 minutes (8) - Don’t know / Not sure (1) | **26 out of 47 actual registrants (55 percent) who received a Claims Notice recall spending less than two minutes reviewing the Notice** |
| - No, I always decide not to complete my registration when I am presented with a Claims Notice and always for the same reasons given in the previous question (5)  - No, I always decide to complete my registration when I am presented with a Claims Notice and always for the same reasons given in the previous question (10)  - Yes, on at least one later attempt I chose not to complete my registration although I completed the first registration when I received a Claims Notice. Some reasons that my decision was different from the first time I received a Claims Notice were (2) \* I reviewed the trademark category and information presented and evaluated how that compared to my planed use. | No potential registrants answered this question |  |
| - To inform me about the potential rights of trademark owners against me should I proceed to complete registration of my selected domain name (38)  - To inform me that there is a trademark owner with a trademark or a protected term that matches the domain name I have selected (44)   - To offer me the right to make legal claims on my domain name against others in the future (13)  - To inform me of ICANN's general policy on domain names (14)  - None of the above (2) \* The possibility that domain could be taken away  - Don’t know / Not sure (9) | - To inform me about the potential rights of trademark owners against me should I proceed to complete registration of my selected domain name (28)   - To inform me that there is a trademark owner with a trademark or a protected term that matches the domain name I have selected (18)   - To offer me the right to make legal claims on my domain name against others in the future (15)   - To inform me of ICANN's general policy on domain names (14)   - None of the above (2)  \* A scammer had registered a generic name as a trademark \* To inform me of people being greedy  - Don’t know / Not sure (6) | **44 out of 92 actual registrants (48 percent) thought the purpose of the Claims Notice was to inform them that a trademark or protected term matched their desired domain name  Potential Registrants were less likely to understand the Claims Notice than the Domain Name Registrants.** |
| - Uniform Rapid Suspension System (URS) or Uniform Domain Name Dispute Resolution Policy (UDRP) Complaint notice (11)  - Letter from a lawyer representing a trademark owner (e.g., Cease and Desist letter from another party) (12)  - Notice of a lawsuit regarding trademark infringement (5)  - No, I have not received any warnings or notices of possible trademark conflict regarding my choice of domain name (64)   - Prefer not to answer (1)   - Other (2)  \* The warning that domain uses already existing trademark name. This was from domain registrar  - Don’t know / Not sure (6) | No potential registrants answered this question | **64 out of 91 actual registrants (70 percent) have never received any warnings or notices of possible trademark conflict** |
| No actual registrants answered this question | - The registration cost was too expensive (18)  - The time requirement to make a website was too high for me (16)   - The registration process was too tedious or complicated (24)   - I received a Claims Notice during the registration process (5)   - I changed my plans and no longer needed a domain name (11)   - I thought someone else had already registered my domain name (8)   - Other (1) \* Just testing systems  - Don't know / not sure (1) | **The three most common reasons for abandoning domain name registrations (in order) were (1) The registration process was too tedious or complicated (24 out of 51 respondents), (2) The registration cost was too expensive (18 out of 51 respondents), and (3) The time requirement to make a website was too high (16 out of 51 respondents).** |
| - I have a business/program/initiative that uses that name or something very similar (33)  - I am thinking of starting a business/program/initiative using that name (36)   - I might start a blog or use the domain name for a personal website (31)   - The domain name might be valuable someday and I’m buying it as an investment (17)   - I have a trademark which contains the domain name string (20)   - Other: (3)  \* personal email  \* We register domain names on behalf of clients and transfer them to the clients later; we also register domain names following various legal disputes on behalf of clients \* I AM an intelectual property lawyer | - I have a business/program/initiative that uses that name or something very similar (32)  - I am thinking of starting a business/program/initiative using that name (93)   - I might start a blog or use the domain name for a personal website (82)   - The domain name might be valuable someday and I’m buying it as an investment (43)   - I have a trademark which contains the domain name string (11)   - Other: (2)  \* Just because \* For clients |  |
| **See Tab: Registrant - Q11**  - Proceed with the registration (57)  - Stop trying to register the name (24)   - Stop for now, do some research, and maybe come back (38)   - Stop and talk to a lawyer first (18) | **See Tab: Registrant - Q11**  - Proceed with the registration (79)  - Stop trying to register the name (33)   - Stop for now, do some research, and maybe come back (113)   - Stop and talk to a lawyer first (19)  - Other (1)  \* Cry | **In response to a hypothetical scenario in which they were to receive a Claims Notice:  - Most actual registrants reported that they would have proceeded with the registration. The next most common response was to stop and do research, with the possibility of returning to the registration process  - Most potential registrants reported that they would stop and do research, with the possibility of returning to the registration process. The next most common response was to proceed with the registration** |
| - I would think it would expose me to legal risk (i.e., I would think I could be sued or subject to legal action in some way) (24)  - The process of completing the registration would be taking too long and it would feel difficult to continue (7)   - The notice is confusing and/or intimidating and I would want someone to help me understand it (15)   - Other (2)  \* some is already protecting their trademark \* I will ask a lawyer first if I have a trademark too  - None of the above (5)   - Don't know / Not sure (5) | - I would think it would expose me to legal risk (i.e., I would think I could be sued or subject to legal action in some way) (61)  - The process of completing the registration would be taking too long and it would feel difficult to continue (19)   - The notice is confusing and/or intimidating and I would want someone to help me understand it (47)   - Other (3)  \* im not afraid to proceed but need to be sure of whats involved \* My business would not be protected by any laws \* I would do some research to ensure I am not infringing any other entity's existing rights  - None of the above (6)   - Don't know / Not sure (6) |  |
| **See Tab: Registrant - Q11b** | |  |
| **See Tab: Registrant - Q11c** | |  |
| - 1=Not confident at all (2)  - 2 (5)  - 3=Somewhat confident (15)  - 4 (33)  - 5=Extremely confident (27)  - Don't know / Not sure (3) | - 1=Not confident at all (6)  - 2 (22)  - 3=Somewhat confident (45)  - 4 (56)  - 5=Extremely confident (25)  - Don't know / Not sure (12) | **75 out of 85 actual registrants (88 percent) are at least somewhat confident in their ability to understand the Claims Notice and what it means about their rights and a trademark owner’s rights  126 out of 166 potential registrants (76 percent) felt at least somewhat confident in their ability to understand the Claims Notice and what it means about their rights and a trademark owner’s rights** |
| - I do not know anything about my country's trademark law (4)   - I know a little bit about my country's trademark law( 31)   - I know a lot about my country's trademark law (39)   - I am an expert in my country's trademark law (8)   - Don’t know / Not sure (2) | - I do not know anything about my country's trademark law (31)   - I know a little bit about my country's trademark law (87)   - I know a lot about my country's trademark law (36)   - I am an expert in my country's trademark law (7)   - Don’t know / Not sure (5) |  |