

Instructions:

This table was built to assist the Trademark Claims Data Review Sub Team in its analysis as to whether, and how, the Analysis Group survey results answer each of the final agreed Charter questions. Specifically, the Analysis Group survey gathered data to help answer the questions highlighted in yellow. Relevant survey data can be found in the following tabs/rows in the [survey analysis tool](#), including, but not limited to:

- "Actual & Potential Registrants" tab, row 12-27
- "TM & Brand Owners" tab, row 45-82

When providing input, please note the tab title and cell number (if applicable) as reflected in the survey analysis tool.

Claims Charter Question 3:

(a) Does the Trademark Claims Notice to domain name applicants meet its intended purpose?

(i) If not, is it intimidating, hard to understand, or otherwise inadequate? If inadequate, how can it be improved?

(ii) Does it inform domain name applicants of the scope and limitations of trademark holders' rights? If not, how can it be improved?

(iii) Are translations of the Trademark Claims Notice effective in informing domain name applicants of the scope and limitation of trademark holders' rights?

(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?

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George Kirikos	Yes*	a(i), (ii), (iii), (b)	[asterisk besides Yes*, for the same reason as prior documents] <u>Registrant responses in E23 and F23 of Actual & Potential Registrants tab openly state there was confusion and/or intimidation. E18 and F18 demonstrate that registrants don't appear to understand the scope/limitations.</u> <u>Registry&Registrars tab, cell G74 reinforces confusion/intimidation, as well as scope/limitations (e.g. surnames and dictionary terms).</u>	<u>Actual&Potential Registrants tab, cells E23, F23, E18, F18</u> <u>Registry&Registrars tab, cell G74, G67-68, G75</u>

Commented [1]: I generally agree with George's characterizations of the data.

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			<p>Trademark owners have mixed responses on the adequacy of the notices (TM & Brand Owners tab, cell F50-55).</p> <p>With regards to translations (i.e. part (iii)), as the survey was in English, it's hard to get data from registrants on this point. But, the registrars who participated in the survey did state, in the Registry & Registrars tab, cells G67-68) that not all the languages that they do business in received translations, which implies that there is a potential problem.</p> <p>For (b), we have very limited data on the implementation aspects, it appears to only come from Registry & Registrars tab, cell G75, but it doesn't discuss the differences between those implementations in terms of their effectiveness (there are pros/cons). TM & Brandowners tab, cell F56 indicates overwhelming percentage of TM Holders want the notice sent before the registration is completed, not afterwards.</p>	<p>TM & Brand Owners tab, cells F50-55, F56</p>
Kathy Kleiman	Yes	(a) Does the Trademark	This seems to be an "umbrella question" and one best looked at initially through its subpoints.	E18 (Actual Registrant Response)

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		<p><u>Claims Notice to domain name applicants meet its intended purpose?</u></p>	<p>Accordingly: <u>(i) If not, is it intimidating, hard to understand, or otherwise inadequate? If inadequate, how can it be improved?</u></p> <p>The survey results provide abundant data indicating problems of misunderstanding by registrants (actual and potential) with the TM Claims Notice. This multiple choice question on this topic was drafted to include right and wrong answers about the purpose of the Notice. Of the 120 actual registrant respondents, 67 (more than half) selected incorrect responses -- and an additional 9 said they did not know. This data shows that for the majority of users, the TM Notices were hard to understand. This implies a miscommunication -- that might be remedied in the type of information conveyed to registrants, and the accessibility of that information to those reading it (e.g., perhaps lawyers should not draft it this time :-)).</p> <p>Using these multiple choice questions as a guide, those trained in drafting for general audiences and/or global audiences might draft a new/ revised TM Notice with much clearer messages to registrants/potential registrants, with more accessible and understandable language.</p> <p>Further, given our ability to reach out to actual and potential registrants</p>	<p>F18 (potential registrants)</p>
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Commented [2]: Kathy, could you elaborate on "incorrect" please?

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			<p><u>(e.g., as shown by this survey), it might make sense to "field test" one or more newly-drafted Notices with registrants/potential registrants and questions very similar to the ones in this survey -- to see if the new text is clearer and much of the confusion is now removed.</u></p> <p><u>[According to the Analysis Group, the confusion was more severe with potential registrants -- "Potential Registrants were less likely to understand the Claims Notice than the Domain Name Registrants." G18 The data shows that of the 77 potential registrants who answered the question, 59 did not understand it. That certainly leaves room for improvement in the wording of the Notice -- and opportunities to test it with focus groups.</u></p>	
Rebecca Tushnet	yes	(a)(i) and (ii)	<p><u>Generally agree with Kathy: pervasive misunderstandings showed up in the responses of potential registrants and actual registrants who weren't recruited through those already involved in ICANN--both of whom did not much better than chance in answering questions about the meaning of the notice. Rewriting with attention to principles about communicating to ordinary internet users could be productive. It is also worth noting that about ¾ of respondents thought they</u></p>	Registrant Q7, Potential Q9

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			<u>understood the notice, while their actual comprehension answers indicated that ½ of those confident people were wrong.</u>	
<u>Kathy Kleiman</u>	<u>Yes</u>	<u>3(a)(ii)</u>	<u>/ii) Does it inform domain name applicants of the scope and limitations of trademark holders' rights? If not, how can it be improved? Special Tab Q11 shows that numerous actual registrants walked away from registrants, after receiving the Notice, including in situations that the questions appear designed to show were likely legal: (a) an existing business, program, initiative (with existing as an indicator that some work may have been done to ensure that the name was suitable for a new business in the locale in which it was incorporated or founded), (b) thinking about starting a blog or some other personal website (emphasis appears to be noncommercial activity); (c) domain name investing (a legal activity), etc. yet, over 17% percent of registrants walked away completely from the registration (and likely more given that a good cohort was trademark attorneys who knew when/how to proceed). When read in conjunction with F18, and the misunderstanding of many registrants that the purpose of</u>	<u>Special Tab Q11, F18</u>

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			<p><u>the Notice is to "inform me about the potential rights of trademark owners against me should I proceed to complete registration of my selected domain name," there seems to be a lack of communication in the notices of the "scope and limitations of trademark holders' rights".</u></p> <p><u>The improvement might lie in clearer language or a change in the approach to how the legal issues are explained. Testing the language before implementation, as discussed above, might be a key to successful change.</u></p>	
Kathy Kleiman	Yes	3(a)(iii)	<p><u>Are translations of the Trademark Claims Notice effective in informing domain name applicants of the scope and limitation of trademark holders' rights?</u></p> <p><u>As pointed out in comments above, the translation issue is raised in the Registrar/Registry comments, and the data seems pretty clear: 5 out of 6</u></p>	G68

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			<p><u>registrars did not provide TM Notices in the languages of their registration agreement (except English). Consequently, those registrants/potential registrants who do not speak English (or do not speak English well) would not then be informed of the scope and limitations of trademark holders' rights in an effective manner. This information can be combined with the data showing confusion among registrants/potential registrants (discussed above).</u></p> <p><u>Note: I'm not sure it was every envisioned (as the Analysis Group question suggests) that every registrar would have to do their own translations. Perhaps ICANN Org could handle the translations, and a set of Notices in different languages could be made available to Registrars; it would then be easier to share the translations.</u></p>	
Rebecca Tushnet	Yes	3(a)(iii)	<u>If it's not working well in the language in which it was initially drafted, it would be very surprising for it to be more comprehensible in translation.</u>	

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Kathy Kleiman	Yes	3(b)	<p><u>(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?</u></p> <p>G72 shares an array of responses by registrars to some of the difficulties the Claims Notice makes to pre-registration of domain names prior to General Availability (which is a service of a number of registrars). One registrar says it causes confusion and frustration. Another registrar says that sometimes later-enrolled pre-registered customers will sometime obtain the domain name because the answer the Notice first: "This leaves the first customer without the domain even though they purchased it before the 2nd customer. A very poor customer experience. - very challenging"</p> <p>One registrar suggests: "that we remove the rotation of the claim token every 48 hrs and that the token is only updated when the claim has changed."</p> <p>Another notes the problem that "-claim keys expire quickly, sometimes the registries don't deliver claim keys in a reliable manner - a little challenging."</p> <p>This combined with the large turnback percentages shown by AG findings in Special Tab Q11 indicates that other types of timing for Notices-- such as sending notices to</p>	<p>G72</p> <p>Tab Q11</p>
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			<u>registrants "who complete domain name registrations" 3(b) charter question -- might be a) fairer for those who pre-register, and b) easier for registrants who need to further research, understand and/or translate the TM Notice (and would then be able to do so without relinquishing their first-come-first-served rights to a new gTLD domain name).</u>	