

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
- “Registries & Registrars” tab, row 59-76

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

Claims Charter Question 1:

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?

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Several Trademark Claims Sub Team members (Kristine Dorrain)	Yes	Q1(a)	<p>Many respondents indicated they received a Claims Notice, but their responses do not directly answer whether the Claims Notice is deterring bad-faith registration.</p> <p>There is evidence that the Claims Notice does affect the decision whether or not to proceed with a registration, and that various reasons were cited by respondents for not proceeding. The Claims Notice is supposed to make people pause and consider, and that is the intended effect.</p> <p>We could cautiously say that the Claims Notice has some deterrence to registration.</p> <p>Responses in E23 and F23 in the Actual & Potential Registrant tab indicate that the Claims Notice is confusing and/or intimidating to some respondents.</p>	Actual & Potential Registrants, E12, F12, E22-23, F22-23,

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			<p>---</p> <p>Potential Recommendations:</p> <ul style="list-style-type: none"> • We can recommend improving the wording of the Claims Notice to reduce confusion and improve future results. • Recommend including translation for the Claims Notice? Putting some foreshadowing to translations is helpful, but there is no specific survey data about translations in answering this Charter Question. Revisit this point when translation related Charter Question is being reviewed.. 	
George Kirikos	Yes	Q1(b)	TBD	Registry - Q26; Registry - Q29; Registrar - Q4i; Registrar - Q10; Registrar - Q11 TM & Brand Owners, F52
Kristine	Yes	Q1(a) & (b)	There is some evidence that the Claims Notice may cause some registrants to take	Actual/

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Dorrain			<p>notice, particularly if the registrant is unsophisticated, which I think is the goal (though, as one would expect, there is some collateral damage, with some potential registrants shying away). A common UDRP response was "I didn't know - if I had, I wouldn't have registered it, why was it available or why was I not warned." On the other hand, the TM/brand survey indicates that (as one might expect), industry players will disregard the notices and take their chances. Some registrants register domain names only to monetize them for the few weeks it takes brandowners to catch on and file a UDRP - the notice is clearly not affecting them (and I would argue those people are not the target audience anyway)..</p> <p>For the target audience, I think the claims notice is likely working, but should be fixed to be more clear to reduce collateral damage. I further believe that this is unlikely to have a lot of impact on the brand protection efforts against habitual, recidivist cybersquatters who are going to infringe anyway.</p> <p>---</p> <p>Comments from Sub Team:</p> <ul style="list-style-type: none"> • "Industry Player": The term is purposefully used vaguely; it could be lots of different people. Point is that if you are already in the know, you know. • "Cybersquatters": need to distinguish between committed cybersquatters from those who might not know they there are running into a problem. • Support further measures targeting recidivist cybersquatters • Question 1(a) and 1(b) there are two sides to one coin. The question is 	<p>potential - E14-19</p> <p>TM F50-52, 81</p>
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			whether the right sorts of people are being deterred by the Claims Notice.	
George Kirikos	Yes*	Q1(a) & (b)	<p>* As discussed previously [see: https://mm.icann.org/pipermail/gnso-rpm-trademark/2018-December/000092.html], there were serious statistical problems with the survey, so any "Yes" must include an "asterisk", given the low weight that should be attached to any results.</p> <p>Having said that, we can unequivocally conclude that the trademark claims service is "providing Claims Notice to domain name applicants" (the 2nd part of Q1(a)).</p> <p>For the first part of Q1(a) It's clear from the answers that registrations are being deterred, but we have no way of knowing whether these were limited to only "bad faith" registrations. So, we can conclude that adding the warning creates an obstacle/impediment to registration, but those could very well be good faith registrations (as per the Q1(b) second part of this question).</p> <p>We can also see that the notice was found to be "confusing and/or intimidating", which is an unintended consequence, given that we don't want to confuse or intimidate good faith registrants (and most prospective registrants are likely to be good faith ones; indeed, if one is a "bad faith" registrant, would such a person answer a survey honestly?). Written reasons in Registrant Q11c tab show there's a burden to contacting a lawyer to discuss things, which is a chilling effect on registrants.</p> <p>In the ™ & Brandowners Tab, cell F52 ("names should be published generally") seems</p>	<p>Actual/Potential Registrants, cells E12, F12, E18/F18, E22-23, F22-23</p> <p>Registrant - Q11b and Q11c tabs</p> <p>™ & Brand Owners, - F52</p> <p>Registry -Q26 tab, cells B8-14</p> <p>Registry - Q28 tab, cells D5-7 E5-7, G5-7, H5-7, I5-7, J5-7</p>

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			<p>to imply that having a secretive Claims service is having an unintended consequence, reducing the publicity for the marks that are being protected, or the conflicting domains that are being registered (hard to tell from the brief answer). Regardless, it seems to argue for a more transparent process.</p> <p>A mandatory claims service impacts registries negatively (see Registry Q26 tab, cells B8-14) which is arguably an unintended consequence (i.e. the intended consequences are upon cybersquatters, not innocent registry operators or registrars). The responses in rows 5-7 of the Registry-Q28 tab reinforce that, when the scenario of elimination of the claims period is presented, the impact is favourable in most columns for registries and registrars. Cells D6-8 of tab Registrar-Q10 reinforce this negative (unintended) impact on registrars. Similarly, this is implicit when contemplating a longer claims period hypothetical, registrars would experience an even greater negative unintended consequence, as per the Registrar-Q11 cells B6-8 + D5 responses.</p> <p>---</p> <p>Comments from Sub Team:</p> <ul style="list-style-type: none"> • "Unintended impact": It is part of a compromise and negotiation, not unintended • 83% of the respondents proceeded after having gotten the claims notice, 17% stopped. Not large-scale deterrence. We cannot know how many of the bad faith registrants continued, but can assume some proceeded after receiving the notice. We should not over conclude based on the data available. 	<p>Registrar - Q10, cells D6-8</p> <p>Registrar - Q11, cells B6-8, D5</p>
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			<ul style="list-style-type: none"> • The magnitude of the impact might be higher than was expected. • 3rd paragraph, replace "obstacle/impediment" with "requirement". • We should avoid results oriented analysis. 	
Griffin Barnett	Yes	Q1(a) and (b)	<p>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</p>	Actual & Potential Registrants D12-27; E12-27; F12-27

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			<p>felt confident they understood the Claims Notice (roughly between 76-88%).</p> <p>Conclusions:</p> <ul style="list-style-type: none"> - 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) <p>Question Responses:</p> <p>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>	
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			<p>a) Is the Trademark Claims service having its intended effect of deterring bad-faith registrations and providing Claims Notice to domain name applicants?</p> <p>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; <u>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)</u>. Although NORNs are available on an ongoing basis through the TMCH, they only facilitate post-registration enforcement and not a pre-registration deterrent effect.</p> <p>b) Is the Trademark Claims service having any unintended consequences, such as deterring good-faith domain name applications?</p> <p>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</p>	
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			<p>and import to applicants, which, if crafted well, would reduce "innocent infringers" and potential bad faith applicants, while not substantially chilling good faith registrations.</p> <p>---</p> <p>Comment from Sub Team</p> <ul style="list-style-type: none"> • A lot of people who were confident in what they were doing gave wrong answers. The level of confidence is an issue. • Rebecca Tushnet noted that the numbers included in Griffin's input are misleading and better information comes from the data received from Research Now SSI's global panel. 	
Rebecca Tushnet			<p>As Griffin agreed during our Jan. 9, 2019 call, confidence seems to have been overconfidence for many given the actual responses to the comprehension questions. The abandonment rate differs significantly as between ICANN (TM owner group) and the panel. Multiple survey respondents in the ICANN group indicated that they didn't abandon when they received a Claims Notice because they were IP attorneys or because they received a Claims Notice for their own mark registered in the TMCH. Those latter people in particular are not the target of the Notice (and in a perfectly coordinated world wouldn't even need to receive the Claims Notice for their own mark) and should not count as parties who aren't deterred by the notice; the notice is irrelevant at best to them. The abandonment rate for non-ICANN-experienced parties, who are much less likely to be lawyers, is both materially higher and more troubling because those are the people who can most easily be misled by a notice.</p>	<p>E.g., A&P Registrants ICANN group Full results tab W8 ("Most of the times the claims notice is for our own trademark."); W26; W29 ("I usually register domains for</p>

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				clients that own trademark rights and/or that are registered with the TMCH, so the notice would not apply to them."); N51 ("I AM an intellectual property lawyer"); W30, W35, W36, W50,

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