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 question highlighted in <mark>yellow</mark>. Relevant survey data can be found in the following tabs/rows in the survey analysis tool, including, but not limited to:

- "TM & Brand Owners" tab, row 45-82

Clarifying Note: Except for 4(a), the other sub questions of this agreed Charter Question were not directly included in Analysis Group's development of the surveys. It is nevertheless included in the Sub Team review as the survey results may be relevant to answering those agreed sub questions.

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

Claims Charter Question 4:

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Sub Team Member Name	Do the survey results help answer Claims Charter Question 4?	If yes, which sub question(s) do the survey results assist?	How do the survey results assist (e.g. "Registries responses in tab/cell X demonstrate Y")?	Tab Title & Cell Number (if applicable)
George Kirikos	Yes*	a, b(i)	[asterisk with my usual disclaimer for "Yes", given the statistical deficiencies in the survey] 1 brand owner respondent to the survey (cell F9 of TM & Brandowners Tab) didn't register in the TMCH as their mark included a "Co", so the exact match requirement meant they wouldn't match domains without the "Co". A couple of brand owner responses in cell F55 of ™ and Brand Owners tab suggest that "Narrow scope of protection does not include confusingly similar names" and "because notices are limited to exact matches, applications for domains that include our recorded trademarks do not trigger NORNs and we are forced to rely on third party watches and services to identify such applications" are negatives of exact match requirements. Cells F66-68 of the TM and Brand Owners tab shows that some UDRP, URS or litigation involved "creative misspelling" of a company's trademark. Cells F70-73 of the TM and Brand Owners tab shows some domain name disputes	TM & Brand Owners tab, cells F9, F55, F66-68, F70-73, F80-81 Registry - Q29a tab, cell A7

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			involved combination of exact match plus some other terms/characters. Cells F80-81 of the TM and Brand Owners tab indicate brand owners who responded to the survey overwhelmingly desire expanded matches (not a surprise!). Cell A7 of the Registry - Q29a tab has a freeform response which indicates some IDN issues.	
Griffin Barnett	Yes	4(a)-(d)(ii)	4(a) The harm of exact-match only for Claims is that registrations that are still confusingly similar, and thus actionable under trademark laws and trademark-based dispute resolution mechanisms (like URS and UDRP), are not subject to notices, and thus there is no associated deterrent effect on such registrations, potentially preventing non-exact match bad faith registrations and causing brand owners to have to pursue greater enforcement action than they otherwise might. This is also a harm to prospective registrants because they are not made fully aware that even non-exact matches may be actionable based on a third-party trademark. 53% of potential registrants reported receiving a Claims notice [Reg G12]; 83% of those continued with registration [Reg E13]; 70% of actual registrants have never received any notices or warning of possible trademark conflict [Reg G19]; about 20% of potential registrants indicated they did not know anything about their country's trademark law [Reg F27], so providing Claims notices for certain non-exact matches that would still likely be found "confusingly similar" to exact matches may be helpful/instructive given the	Actual & Potential Registrants G12, E13, G19, F27 [None of the other data sets, including TM Owners or Ry/Rr, seem to discuss possible expanded

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			"likelihood of confusion" standard for trademark infringement in most jurisdictions around the world. Based on these findings, the matching criteria for Claims notices should be expanded, with the marks in the TMCH being the basis for expanded matching rules for Claims notices. Expanded matching criteria could have the effect of improperly deterring legitimate good faith registrations, but would also properly deter non-exact matches that would still be considered bad faith/infringing. The matching rules should be crafted fairly carefully to not be overbroad, thereby having an improperly large potential deterrent effect against good faith registrations. Many brand protection companies already provide services to detect and notify brand owners about non-exact matches based on a particular trademark, so the WG should leverage contacts in that area to advise on possible algorithmic criteria for achieving the proper balance. Implementing expanded matching criteria should be feasible, based on the existence of services that already do this. Existing Claims notice language should be amended to address expanded matching criteria, explaining the rationale (namely the likelihood of confusion standard, which is broader than a mere exact match of the mark). There should be no different in Claims period as between exact vs. non-exact matching criteria, as this would defeat the purpose of improving bad faith deterrence against non-exact, but still infringing, registrations (see discussion re Claims period uniformity).	matching for Claims]

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			--- Sub Team Comments: ● Griffin Barnett: A lot of the subparts of this question seem to relate more to conclusions. Somewhat tenuous to what the survey questions were seeking. ● Griffin Barnett: 53% potential registrants received Claims Notice, 20% potential registrants indicated they did not know their countries' trademark law. Lack of understanding of trademark law could cause confusion. There might be potential registrants who registered something which might not be exact match but could cause legal problems. ● This question was designed to follow the "what are the problems", then "what are the proposed solutions" format. So we would not expect the survey to directly answer b-d. The survey was intended to invite stories of harm. We figured we'd come up with solutions on our own. ● Kathy Kleiman: There is no data from trademark owners in answering this question. ● George Kirikos: There is data from trademark owners that may help answer this question. Registries & Registrars tab has data related to IDN issues. ● Rebecca Tushnet: Lack of understanding of Claims Notice from registrants would make the expansion of the match even more ineffective.	
Kristine	No		Agree with George's observations about the data.	

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Dorrain			@Griffin's work on potential recommendation language: I'd just mention the balance between preventative and curative rights at this point. We may wish to discuss at some point if the right balance is struck. The STI and IRT I think tried for that balance,but some of the teeth were knocked out in the process. One question we may be faced with is "how's the balance going?"	
Kathy	No (for many of the questions of #4)		I think we discussed last week that Question 4(b),(c) and (d) had little if any data to be found in the Analysis Group survey.	

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