

Instructions:

This table was built to assist the Trademark Claims Data Review Sub Team in its analysis as to whether, and how, the previously collected Trademark Claims data (between December 2016 and March 2018) answer each of the final agreed Charter questions.

- In the **Trademark Claims Tab** of the [analysis tool](#), Staff have included excerpts, as well as the relevant page/slide reference, from the previously collected data that staff believe may assist in answering the final agreed Charter questions. Summaries of the excerpts are included in Column B.
- The excerpts cited by Staff are nonexclusive; Sub Team members are welcome to download and reference the actual documents, linked from the **Source Tab**, to cite relevant information that may help answer the final agreed Charter questions.
- When providing input, please note the source name and page/slide number of the previously collected data.

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?

Sub Team Member Name	Do the previously collected data help answer this Claims Charter Question?	If yes, which sub question(s) do the survey results assist?	How do the data assist (e.g. "Information X in document Y demonstrate Z")?	Source Name & Page/Slide Reference
Kristine Dorrain	no		Not helpful to this charter question	RY responses to data subteam (Source #1)
Kristine Dorrain	yes	b	Some parties have alleged that the mark+50 list gives a right holder too much. Q16 indicates only 375 such labels have been added to the TMCH, suggesting that there is not as much deterrence as might have been	Questions from RPMs to TMCH

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			expected.	provider
Kristine Dorrain	no		Not helpful to this charter question	TMCH report 2013-2017
Kathy	maybe	(b)	<p>Strange question: If Deloitte is not allowed to delete mark records, then wouldn't that have the unintended consequence of deterring good-faith domain name applications:</p> <p>Deloitte wrote: "As the TMCH is not allowed to delete any mark records, the total number of trademark records submitted to (the TMCH doesn't register trademarks) the Trademark Clearinghouse can be found under section 2.3. in the report provided to ICANN on a monthly basis and are indeed cumulative."</p> <p><i>Operational fix to allow reasonable deletions?</i></p>	<p>QUESTIONS FROM THE REVIEW OF ALL RIGHTS PROTECTION MECHANISM... TO THE TRADEMARK CLEARINGHOUSE PROVIDER, Ques 4.</p>
Kathy	yes	b	Deloitte's acceptance of design mark registration has been discussed in the WG as having enormous unintended consequences, including for TM Claims. Here's one area in which it is discussed briefly and Deloitte confirms this practice.	Same as above, Ques 10.
			Deloitte will allow registration of marks for "a registry's individual requirements" (even if not trademarks) into the main TMCH Database. The rules adopted by the	Same as above, Ques

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			<p>GNSO and Board allow such words to be added to secondary databases, but not the main TMCH database (out of worry for Claims and Sunrise).</p> <p>The idea here was to allow pre-registration, on registry request, of a whole series of non-registrable marks in a secondary database if clearly useful and applicable, e.g., in a .AUTOSHOPS, Jerry's AutoShop, Bill's AutoShop and Rebecca's AutoShop (my daughter does auto mechanics) would like not have trademarks, but could pre-register into a secondary database for special pre-registration as a registry might seek.</p> <p>These marks should never be co-mingled with the main TMCH database, that that possibility seems to distinctly exist.</p> <p>[quote from doc] How many marks in the TMCH fall under the following category: "Other marks that constitute intellectual property and meet a registry's individual requirements"? How would Deloitte keep these marks from being used in the Sunrise and Claims periods of other registries? As to date, no registry operator has pursued this option with the TMCH.</p> <p><i>Clarification in order?</i></p>	14
Kathy	yes	b	We have talked about the TM Claims notice being something registrants should understand. One aspect of the TM Claims, for those who drafted it, was the ability of	FOLLOW UP QUESTIONS

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			<p>third parties to review it -- including the TM attorneys of small businesses and non-profits. This was part of the "due diligence" vision in 2009 -- that third parties could review, consult and advise.</p> <p>Note: the third party investigative/preparatory/advising role was envisioned in the original TMCH rules and asked about in our Ques 2: "the TMCH Dispute Resolution Procedures appear to contemplate the possibility of third party (i.e. not a trademark holder or agent who has recorded trademark labels in the TMCH),"</p> <p>Deloitte responds: "It is correct that the Trademark Clearinghouse database is not publically available and therefore third parties cannot retrieve information regarding what trademark records are recorded in the TMCH. However, a third party is informed of a record in the TMCH through the claims notice which is presented prior to registration. The claims notice holds the Mark name, Registrant and registrant contact and the Jurisdiction and goods and services of the mark recorded in the TMCH." [sorry, spacing problems in the cut-and-paste]</p> <p>Accordingly, arguably, the TMCH is having unintended consequences on the Trademark Claims service by deterring good-faith domain name applicants, with their</p>	<p>FOR DELOITTE FROM THE GNSO'S REVIEW OF ALL RIGHTS PROTECTION MECHANISMS (RPM) REVIEW POLICY DEVELOPMENT PROCESS WORKING GROUP Updated 5 March 2017 Ques 2</p>

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			attorneys, counsels and clinics, from researching and understanding sound domain name choices prior to registration -- because research and preparation cannot be done in traditional and well-established manner.	
kathy	yes	b	<p>Question 6, bullet point 2, indicates a very broad scope of protection for trademarks that are registered for design mark purposes -- with resulting implications and unintended effects for Claims service and recipients of notices.</p> <p>Deloitte responds: "These are mentioned in the TMCH guidelines: For those marks that do not exclusively consist of letters, words, numerals or special characters, the verification agents will verify the trademark name based upon the image on the trademark certificate. In the event that there is any doubt about the order in which the characters appear, the description provided by the Trademark office will prevail. In the event no description is provided, such Trademark records will be allocated to a Deloitte internal team of specialists with thorough knowledge of both</p>	Above, Ques 6

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			national and regional trademark law who will conduct independent research on how the trademark is used, e.g. check web site, or they may request that the trademark holder or agent provide additional documentary evidence on how the Trademark is used."	
George Kirikos	No		(no for first 4 documents, will adjust this later on as we go through the other 8) I can understand the points that Kathy is making above re: figurative marks, though. (I was making the same points in the Sunrise preamble document, with regards to "abuses" as these all don't belong in the TMCH at all) I don't know whether we should put a separate question about "inclusion in TMCH", as all these overlap in some way)	

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