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 4:

Is the exact match requirement for Trademark Claims serving the intended purposes of the Trademark Claims RPM? In conducting this analysis, recall that IDNs and Latin-based words with accents and umlauts are currently not serviced or recognized by many registries.
(a) What is the evidence of harm under the existing system?
(b) Should the matching criteria for Notices be expanded?
(i) Should the marks in the TMCH be the basis for an expansion of matches for the purpose of providing a broader range of claims notices?
(ii) What results (including unintended consequences) might each suggested form of expansion of matching criteria have?
(iii) What balance should be adhered to in striving to deter bad-faith registrations but not good-faith domain name applications?
(iv) What is the resulting list of non-exact match criteria recommended by the WG, if any?
(c) What is the feasibility of implementation for each form of expanded matches?
(d) If an expansion of matches solution were to be implemented:
(i) Should the existing TM Claims Notice be amended? If so, how?
(ii) Should the Claim period differ for exact matches versus non-exact matches?

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

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George Kirikos	Yes	b(i)	Section 2.3.1 of the Deloitte TMCH Report (March 2013 - February 2017) stated there were 209 cases of abused labels, with 375 abused labels in total, compared to 38,172 successfully verified records. This would suggest limited current usage of "expanded match" via those abused labels. (™+50). Same stats in answer to Q16 of January 2017 document. According to sections 2.1.1 and 2.1.2, there were 28,549 total verified trademark records, and 57,393 total number of domain names/labels derived from those trademark records, imply that there is already a "doubling" (expansion) of the matches, compared to a strict 1:1 ratio.	Deloitte TMCH Report, March 2013 - February 2017, point 2.3.1, 2.2.1.2, 2.1.1, 2.1.2 January 2017 Deloitte responses to initial questions from TMCH Data Gathering Sub Team, Q16
Griffin Barnett	Not really		Although not directly relevant to answering these questions, the following info might be tangentially relevant. RO Responses: - DONUTS: The SMD file is used to: 1. authenticate the right of the	See prior column

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			registrant to request a label to be blocked. 2. Validate the blocked term. (The SMD file doesn't have any inherent blocking capability). The customer requests the block and submits the SMD file. Our system then reads the SMD file to verify that it contains the label as either an exact match or in "contains" format before completing the transaction. When the request for a block is complete, our system will then block most new registrations of such names. - DONUTS: The DPML block prevents the registration of a domain that matches or contains the block holder's label. The mark holder pays a single fee for a domain, such as "example.dpml.zone". Later, when a registrant attempts to register "example.TLD," after a DPML block is in place, our registry system queries the DNS to see if "example.dpml.zone" exists. If it does, the registration of "example.TLD" fails, with certain exceptions. The customer is informed of the number of TLDs in which a block will occur.	
KKleiman	yes	4b and d	Analysis Group report indicates harm if the matching criteria is expanded. "However, the over-regulation of domain name registration activity can also harm non-trademark holders who have legitimate intentions behind domain name registrations that are identical or similar to trademarked strings. In addition, services that are put into place to protect trademark holders, like those	Revised Report of Analysis Group, p. 6 Later segments, p.2

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			provided by the TMCH, impose costs on various stakeholder groups, such as registries, who must pay a fee to the TMCH for each gTLD operated, and registrars, who must develop software systems to query the TMCH." Also, p.2: "In addition, extending the Claims Service period or expanding the matching criteria used for triggering Claims Service notifications may be of limited benefit to trademark holders and may be associated with costs incurred by other stakeholder groups, such as registries, registrars, and non-trademark-holder domain registrants. Although our data do not permit us to perform a cost-benefit analysis of extending the Claims Service or expanding the matching criteria, the tradeoffs felt by different stakeholder groups should be considered when weighing those policy decisions."	
KKleiman	yes	Q4	"Table 10 shows that dispute rates among registrations are very low, which is consistent with the result that 0.3% of completed registrations that receive a Claims Service notification are disputed. Although it is difficult to make a statistical comparison of the dispute rates in Table 10 to the 0.3% dispute rate found in our Claims Service analysis, this result indicates that expanding the matching criteria may not help to deter many bad faith registrations that would be disputed by trademark holders." "To the extent that the Claims Service deters good-faith registrations, it is possible that extending the Claims Service to include non-exact matches could cause many	Same, p.32

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			registrations to be abandoned." (also p. 32)	
KKleiman	yes	Q4	"We find that exact-match registrations account for a disproportionately large share of registrations in our Whois data compared to their relative share in our Whois data request."	Same, p. 29
Susan Payne	Only to a limited extent	4	"We note that our data and analyses are descriptive in nature, and we are only able to draw conclusions regarding whether the results of the evaluation are consistent with what one would expect to see if the TMCH services were effective (or not) at helping to deter domain name abuse. Our data also do not quantify the costs and benefits associated with the present state of the TMCH services, nor the potential costs and benefits of expanding or altering the way the services function, making concrete cost-benefit analyses outside the scope of this report"	AG Revised Report p6; C IV Data
Susan Payne	Limited - anecdotal	4b	"Initial responses to our questionnaires from trademark holders and TMCH agents often expressed interest in expanding the matching criteria.66 However, registries and registrars expressed some concern regarding the cost associated with implementing additional matching criteria."	AG Revised Report p25
Susan Payne	Limited - limitations on the data	4b	"We would have liked to also incorporate the goods or services sold by trademark holders into another set of permutations (e.g., "apple-computer" for the trademark string "apple" registered by Apple, Inc.). However, due to the lack of detail in the Nice	AG Revised Report p26

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			classification codes available in the TMCH data, we were unable to include these types of variations in our analysis"	
Susan Payne	Limited - limitations on data	4b; (iv)	"Plural typos and character removal typos are the only other string variations with registrations disproportionately large relative to their share of strings in the Whois data request (2.9% vs. 1.3% and 23.2% vs. 11.1%, respectively).76 This seems to indicate that these string variations are the most popular among registrants, although we are unable to tell what portion of plural and character removal registrations have been made in bad faith."	AG Report p29
Rebecca Tushnet	yes	4(b), (c)	smart 15,198 Smart Communications, Daimler AG forex 14,823 Forex Bank AB hotel 14,690 Hotel Top Level Domain GMBH one 14,205 American Academy of Ophthamology love 13,912 Cartier International AG, The Conde Nast Publications cloud 13,821 Individual nyc 13,622 City of New York, NYC & Company london 13,343 London & Partners abc 13,331 LV Insurance Management Limited luxury 13,125 ILUX Holdings The most popular matches already are standard words that are generic for large sectors of legitimate economic & social activity. Removing exact match would worsen this problem substantially, so that hiltonhotels, localhotels, and simpsonhotels would	AG Revised report 8-9

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			all trigger Notices. Depending on the match criteria, motel and hotep would also trigger notices. This would create a significant burden on potential registrants as well as NORN recipients. Among other things, a notice that is too easily triggered will even more easily be ignored, contrary to the "stop and think" purpose articulated for the Notice. Empirical research has already found that US national registrations are getting longer in terms of characters to deal with the widespread registration of common terms, https://harvardlawreview.org/2018/02/are-we-running-out-of-trademarks/, but an expanded match will interfere with that strategy. As Beebe & Fromer (linked) find, this is a particular problem for market entrants without preexisting marks.	