**EXCERPT FROM IAG SUMMARY OF INPUT (MAY 2012) CONCERNING TMCH DATA LOCATION AND ACCESS**

**Misuse of Data**

To minimize abuse, distribution of TMCH data should be limited to situations where necessary to implement TMCH functionality. It should also be justified by technical, performance, uptime, availability, and economic factors. At a minimum, there should be sufficient contractual restrictions to provide enforcement capabilities to guard against abuse of the access and information provided through the TMCH.

Specifically, rights holders have expressed concerns related to the aggregation of mark data through the TMCH, which may expose their brand protection strategies or be used to gather competitive intelligence by competitors. If the TMCH database is freely searchable and accessible, it could be possible to identify a rights holder’s gaps in its intellectual property protection strategies. For example, it might be possible to identify jurisdictions in which the rights holder has not registered its trademarks or in which it has not chosen to defensively register domain names. In this regard, this information could be misused by criminals, such as to conduct phishing attacks or other types of social engineering attacks.

In addition, concerns were raised with regard to limiting information submitted in the TMCH that may be valuable to a competitor, especially with regards to a brand-related registry. If it is possible to do extensive searching of the database to compile a list of marks that a mark holder has registered, some IAG members believed that this can reveal the mark holder’s brand protection strategy because it shows which marks it believes are more valuable than others. If someone can access all of the countries where a specific brand is registered, this may also create competitive advantage because a competitor might go to the unprotected jurisdiction and register the mark before the mark holder. The TMCH should not allow extensive searching to be done in a manner where a trademark holder’s entire portfolio could be easily accessed. Accordingly, the TMCH should be structured to address how to minimize data mining by a registry of a competitor’s trademark registration patterns.

**Recommendation to Deploy Technological Measures to Minimize Abuse**

In order to minimize abuse, the TMCH should restrict access to the data wherever possible. The TMCH should apply varying levels of technological and contractual restrictions depending upon the type of data accessed and the sensitivity of the data. For example, a lookup string service (identifies whether a string matches a record in the clearinghouse) should strive to achieve 100% availability and very high performance. This may be the only aspect of the data that may need to be replicated or cached at alternative data locations, such as at a registry or registrar’s location. With regard to data associated with the trademark claims service, it is believed that this information generally has more sensitive information, and may raise privacy concerns. From the registry or registrar perspective, there may be fewer performance requirements necessary for querying trademarks claims data, because this information is not required to sustain real-time registrations.