

Trademark Clearinghouse Independent Review

April 5, 2017

Who We Are

- Our team includes:
 - Greg Rafert, Vice President, Analysis Group, a firm specialized in economics, health care analytics, and strategy consulting for Fortune 500 companies, global health care corporations, government agencies and law firms.
 - Katja Seim, Associate Professor of Business Economics and Public Policy, Wharton School, University of Pennsylvania.
 - Jiarui Liu, Non-Residential Fellow, Center for Internet and Society, Stanford Law School.
 - Stacey Chan, Manager, Analysis Group.

TMCH Report Timeline

- Draft report published: July 25, 2016
- Public comments closed: September 3, 2016
- Revised report published: February 23, 2017

Overview of AG's TMCH Study

- Our analyses are intended to determine the strengths and weaknesses of TMCH services (and not to make policy recommendations).
- The study focuses on three aspects of the TMCH:
 - The trademark protections provided by the sunrise registration period;
 - The trademark protections provided by the claims service; and
 - The matching criteria used to determine which domain names are relevant to the claims service and sunrise registration periods.
- Our data-driven review is informed by an analysis of third-party and TMCH data sources, as well as interviews and surveys of TMCH stakeholders.

Data Sources

- TMCH database (Deloitte): Registered trademarks, trademark holder information, and TMCH agent information (where applicable)
- Claims Service data (IBM): Registrar downloads during the Claims Service period
- UDRP/URS Dispute data: Dispute data for 2014-2015
- Whois data: Registered domain name, registration date, and registrant name. Data is based on 25% sample of TMCH strings (exact matches and permutations)
- Survey data: Launched a public web form and targeted questionnaires at registries, registrars, trademark holders, TMCH agents/law firms, and non-trademark holder registrants

Key Findings: Sunrise Period

- ~20% of trademark holders who have been eligible to use the Sunrise Period have ever made a Sunrise registration. Of those that use the Sunrise Period, ~7% of their registrations were Sunrise registrations.
- Trademark holders with more trademarks submitted in the TMCH have a higher usage of Sunrise Periods.

Key Findings: Claims Service

- Attempted registrations that receive Claims Service notifications appear to be abandoned ~94% of the time, but completed registrations are only disputed 0.3% of the time. We are unable to observe the abandonment rate for registrations that do not trigger Claims Service notifications.
- Registrations of domain names that match trademark strings decline after the end of the Claims Service period, suggesting that extending the period would have diminishing benefit.

Key Findings: Matching Criteria

- Non-exact matches represent a relatively small percentage of observed registrations.
- Exact-match, plural typo, and character removal typo registrations are the preferred string variations of third-party registrants.

Revised Report Analyses

Public Comment Suggestions – Claims Service

- Claims Service Analyses
 - Acquire registration information from registrars to better understand whether high registration abandonment rates exist outside the Claims Service Period.
 - Insufficient data was available: one registrar responded to our data request.
 - Analyze commercial watch service offerings and pricing to determine how those services interact with the TMCH.
 - Data on commercial watch service enrollment is not available.
 - Analyze how enrollment in Ongoing Notifications varies across geographic locations of trademark holders.
 - TMCH agents are more likely to enroll in Ongoing Notifications than trademark holders in all countries.

Public Comment Suggestions – Matching Criteria

- Matching Criteria Analyses
 - Incorporate a “mark plus keyword” variation to the analyses.
 - Generating a meaningful set of keywords for every industry and effectively categorizing trademarks into unique industries was intractable.
 - Analyze the effect of expanding the matching criteria for the Sunrise Period.
 - Insufficient data are available for such an analysis, since only exact-match registrations are allowed during the Sunrise Period.

Public Comment Suggestions – Sunrise Period

- Sunrise Period Analyses
 - Compare Sunrise registration prices to general availability prices to illustrate whether Sunrise prices may have a deterrent effect on Sunrise registrations.
 - Insufficient data were received from registries.
 - Analyze how the use of global blocking programs has interacted with the use of the Sunrise period.
 - Data were not available on the adoption of global blocking programs, but a discussion was added to the report text.
 - Analyze whether low rate of Sunrise registrations is due to lack of awareness about Sunrise period.
 - “Aware” registrants use the Sunrise period more often than “unaware” registrants, but the majority of trademark holders do not use the Sunrise Period.

Public Comment Suggestions

- Other Suggestions
 - Analyze the costs and benefits associated with expanding the TMCH services.
 - Financial cost and revenue information were not available for registries, registrars, or other relevant parties.
 - Evaluate the presence of false “trademark holder” Whois registrations and the true identities of registrants using privacy and proxy services.
 - Information on registrant data from privacy and proxy services was not available.
 - Analyze the effect of allowing competition between TMCH service operators (i.e., competition with Deloitte and IBM).
 - A quantitative analysis was outside the scope of the report. We expect that the market for TMCH service operation will not be a perfectly competitive market.