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IAG P3 and P5 Comments, and  
IAG T1 and T3 Comments

Tom Barrett  
EnCirca, Inc

### **P3: Responsibility for Trademark Holder Registration Notice**

I propose that the TMCH be responsible to informing trademark owners that there has been a domain name registration that matches one of their validated trademarks.

- It already has an existing business relationship with the trademark owner
- It is easily able to verify transmission of the notice
- It enables awareness of the event for possible billing purposes

#### **How does the TMCH know when to send out notices to trademark owners?**

How does the TMCH know when to a claims notice needs to be sent to the trademark owner?

One approach is for each registry/registrar to notify the TMCH when a registration has occurred that triggers a claim. The TMCH would then send out notices to trademark owners. However, to ensure compliance, The TMCH would need to conduct audits of the TLD Whois and/or zone files.

Another approach would be for each TLD to provide daily registration reports to the TMCH and let the TMCH scan the data to determine which ones require claims processing. This would be simplest although it could mean a 24 hour delay between the registration and notice to the claimants. Is this delay acceptable?

Another possible approach has the TMCH determining on its own when to send out the notices. Depending on the approach for accessing claims data, The TMCH might be able to detect when a claims notice is displayed to a potential registrant. Then, armed with the domain names that were accessed, it can scan the TLD Whois to detect if the domain name is subsequently registered.

Feedback on these choices would be welcomed.

### **P5: Responsibility to Perform Trademark Claims Checks**

The options are:

1. Registrar does the check.

The registrar first queries the registry to determine availability and then performs the claims check independently from the registry.

2. Registry does the check.

The registrar queries the registry to determine domain availability. The registry does the claims check and responds back to the registrar that the name is available and whether a claim exists.

I propose that the registry, as opposed to the registrar, performs the check, as this will simplify implementation and compliance. However, in section T1: Data Locations, we describe a mechanism for performing the claims check and retrieving claims information that can be completed by either the registry or registrar.

### **When does the TMCH get paid for processing claims?**

How should the TMCH get paid for processing trademark claims? This is an important consideration in determining how the work is distributed and how data is accessed. Options are:

- 1) The TMCH receives no compensation for processing claims
- 2) Each TLD pays a flat fee that covers an unlimited number of claims
- 3) There is a TMCH fee each time a trademark claim is displayed to potential registrants
- 4) There is a TMCH fee each time a claims notice is sent to a trademark owner
- 5) There is a TMCH fee for each completed registration that had one or more claims
- 6) A combination of the above

The first option means that trademark owners pay the entire cost of the TMCH. This is contrary to the goals stated by ICANN.

The second option does not seem fair, since it is not based on actual use. Some TLD's will generate very few claims while others might generate a lot.

The third option means that the TLD could pay multiple claims fees that might not actually result in the registration of a domain name. Theoretically, there could be more claims notices than actual registrations for a TLD.

The fourth option links the actions performed by the TMCH to the fees it receives. A downside is that the TLD could be paying multiple fees for just one registration.

The fifth option ensures that the TLD can have a potential off-setting revenue stream each time it pays for a trademark claim. In this scenario, the fee would not vary if there were one or 10 claimants for the registered domain. The downside is that the TMCH could be doing work (i.e. sending out more than one notice per registration) that it would not get compensated for.

The sixth option would be a combination of the above.

I propose the fifth option is the fairest model for the TMCH getting paid for processing trademark claims. What do others think?

### **Who pays the TMCH for processing claims?**

The ICANN spec says that registries/registrar should pay the TMCH for processing claims and sunrise registrations. Who should pay the TMCH for processing claims?

If registrars paid for claims, this means that the TMCH will need a billing arrangement with every active ICANN registrar for claims. This doesn't seem practical.

I would propose that the registries pay the TMCH for claims since they already have a financial relationship with the TMCH for sunrise.

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IAG T1 and T3 Comments  
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### **T1: Implementation: Data Locations (see Appendix 1, 2)**

The stated objectives are:

- (1) Avoid introduction of performance impacts that degrade domain name registration SLA's
  
- (2) Minimize erroneous decisions introduced by data update delay

The data location issue is driven by these, sometimes, competing issues:

- Speed: Will the TMCH be scalable enough to quickly respond during the claims process for hundreds of TLDs?
- Consistency: Can we trust every registry/registrar to implement the claims process in a consistent manner?
- Integrity: How do we avoid data abuse or inaccurate data?
- Notices to Claimants: How does the TMCH know when a registration has occurred?

There are two types of data involved in trademark claims:

1. **Strings:** The list of eligible domain name strings that can trigger a claim. This list is queried for every attempted domain name registration.
  
2. **Notices:** The trademark information included in the claim notice to the end-user. This is retrieved only when there is a registration that matches one of the eligible domain name strings

There are two parts to a claims notice: 1) the “boilerplate” that is common to every notice and 2) the trademark-specific data matching the domain name. The boilerplate can be pre-distributed to registrars and can be in the language(s) used by the registrar. The dynamic trademark-specific data part of the claims notice can be retrieved by querying a database or from pre-generated static html pages.

I've split the Data Location issue into two parts: Part 1 addresses the Strings and part 2 addresses the Notices.

### **Part 1: Data Location of TMCH Strings**

#### **Determine if a claim exists for requested domain name**

The requested domain name is submitted as a real-time query to see if there is an exact match to a validated trademark in the TMCH. We propose a query method provided by the TMCH that is light-weight and fast. As an analogy, think of a DNS zone file for a “thin” Whois. TMCH zone file would contain the list of eligible domain names that match validated trademarks. Each eligible domain name in the zone includes a randomly-generated alpha-numeric key to its corresponding claims notice. There are no contacts associated with this Whois entry. There is no way to directly

determine the associated trademark or trademark owner from this information. The random key can be expired and changed on a regular basis.

Benefits of this approach:

- It is fast and uses a well-established protocol
- The random key masks the claims associated with a matching domain name
- The TMCH zone files can be segmented according to languages for IDN TLD's for improving performance in checking the file
- The random key associated with each domain name can expire and be updated on a regular basis to avoid misuse of the data

### **Centralized versus Distributed “String” Data**

The approach described above is a centralized approach. But this approach can also be used as a distributed approach without compromising data security or integrity. Again using the zone file as an analogy, each TLD could be set up as a secondary mirror for the TMCH zone. The only data in this zone is the list of eligible domain names along with a randomly-generated key to the corresponding claims notice.

- The mirror zone file is updated automatically by the TMCH, and therefore is always accurate and current
- Registries are able to check for the existence of claims on every attempted registration without relying on the TMCH
- The random key can expire and be changed to avoid caching and mining of the notices
- The random key can even vary by TLD for logging and to avoid re-use
- Even large registrars can become mirror sites so they can perform checks directly

## **Part 2: Data Location of TMCH Notices**

### **Retrieve the Claims Notice**

With the unique key associated with the matching domain name, the registrar or registry can then retrieve the claims notice. This is accomplished by querying a database or formatting the key so that it represents a static URL.

We favor static HTML pages over a database to ensure consistent presentation of data and avoid performance issues involved with formatting a database response into screen presentation.

When a registrar is informed that a requested domain name has trademark claims against it, they are given a unique key for the claim. The key will point to a temporary URL containing a pre-generated claims notice for the eligible domain name. Each notice includes data for all of the validated trademarks matching the domain name. In this approach, the randomly-generated string is actually a full URL pointing to a static HTML web page. The boilerplate language can be included on this page or pre-pended by the registrar. The registrar then simply needs to download the static URL and display it to their customer.

Benefits of this approach:

- TMCH is not distributing the claims notices but is hosting them as temporary URLs using randomly generated alphanumeric keys
- TMCH maintains these web pages, thereby ensuring they are accurate and current
- Since the URL's are temporary, this will help prevent inappropriate behavior
- TMCH can provide language-specific claims notices and allow registrars to select which languages to display to their customers
- Access to the temporary URL's can be restricted to registries and registrars to prevent data mining by third parties
- Access to the URL's by TLD's can be logged to determine when notices need to be sent to claimants (after checking to see which of the domain names were subsequently registered)

### **Centralized versus Distributed “Notice” Data**

We propose that Notice data be centralized by the TMCH rather than making copies at each registry or registrar. This will ensure the data is accurate and current.

### **T3: Implementation: Communication Protocols**

The proposed approach described here for the data locations of strings and notices associated with trademark claims (T1) uses a combination of the universal Internet protocols that Registries and Registrars are well aware of.

- EPP
- Whois (“Thin”)
- HTTP “Get”
- Zone files