

2.2 URS Preliminary Recommendations and Community Questions

Preliminary Recommendation	Question Seeking Community Input	Volunteer(s)	Proposed Response	Comments/notes
<p>URS Recommendation #1 The Working Group recommends that URS Rule 3(b), and, where necessary, a URS Provider's Supplemental Rules be amended to clarify that a Complainant must only be required to insert the publicly-available WHOIS/Registration Data Directory Service (RDDS) data for the domain name(s) at issue in its initial Complaint.</p> <p>Furthermore, the Working Group recommends that URS Procedure para 3.3 be amended to allow the Complainant to update the Complaint within 2-3 calendar days after the URS Provider provides updated registration data related to the disputed domain name(s).</p>	<p>URS Question #1 1a. Should URS Rule 15(a) be amended to clarify that, where a Complaint has been updated with registration data provided to the Complainant by the URS Provider, there must be an option for the Determination to be published without the updated registration data? 1b. If so, when, by whom, and how should this option be triggered? 1c. Are there any operational considerations that will need to also be addressed in triggering this option?</p>	Georges	<p>The IPC supports the recommendation as written.</p> <p>With regard to Q1a., the IPC does not support the notion that there should be an option for a determination to be published without the names of the parties involved. Not publishing the name of a Respondent involved in a proceeding creates uncertainty and allows for a bad faith actors to shield their prior activities. The decisions in these proceedings are meant to be publicly available and searchable, and the privacy concerns are not greater in these types of administrative proceedings than those in court actions which typically publish the names of the parties involved in a matter.</p>	<p>[CK: Should we note that only the name of the parties - not contact info - is published? This should clear any GDPR-type concerns. SP - generally name and city/country are included in decisions, I think all of which are relevant for future assessment of pattern of behaviour]</p> <p>Discussed and agreed to leave as-is. A possible "give" later</p>
<p>URS Recommendation #2 The Working Group recommends that URS Providers send notices to the Respondent by the required methods after the Registry or Registrar has forwarded the relevant WHOIS/RDDS data (including contact details of the Registered Name Holder) to the URS Providers.</p>		Georges	<p>Support the recommendation as written, with the caveat that if the registry or registrar do not timely provide, or fail to provide, within the designated period of time the underlying information regarding the Respondent, the URS provider shall then send the notice by the prescribed manner to the Respondent at the contact information that is then available.</p>	
<p>URS Recommendation #3 The Working Group recommends that URS Providers must comply with URS Procedure para 4.2 and para 4.3 and transmit the Notice of Complaint to the Respondent, with translation in the predominant language of the Respondent, via email, fax, and postal mail.</p>		Russ (SP edit)	<p>Significant change.</p> <p>The IPC supports the intent of this recommendation, requiring URS Providers quickly and effectively provide registrant with notification of a Complaint, in clear and understandable language. Compliance with these notice requirements bolsters the efficiency and integrity of the URS mechanism.</p> <p>The IPC believes there would be benefit in more closely aligning the relevant language with that of the UDRP, where the reference is to the language of the registration agreement.</p> <p>For the avoidance of doubt, if recommendation #3 is retained then URS Procedure 4.2 provides that "The Notice of Complaint shall be in English and translated by the Provider into the predominant language used in the Registrant's country or territory" rather than "the predominant language of the respondent", and so recommendation #3 should be amended accordingly to accurately reference the existing procedure.</p>	<p>When we discussed Rec #9 we felt closer alignment with the URDP might be beneficial (i.e. language of the registration agreement rather than predominant language of the registrant's country.</p> <p>Should we be pushing to change to this? There are pros and cons of both.</p> <p>Discussed and agreed to align with UDRP</p>

<p>URS Recommendation #4 The Working Group recommends that the ICANN org establishes a compliance mechanism to ensure that URS Providers, Registries, and Registrars operate in accordance with the URS rules and requirements and fulfill their role and obligations in the URS process.</p> <p>The Working Group recommends that such compliance mechanism should include an avenue for any party in the URS process to file complaints and seek resolution of noncompliance issues.</p> <p>As an implementation guidance, the Working Group recommends that the Implementation Review Team considers:</p> <ul style="list-style-type: none"> Investigating different options for a potential compliance mechanism, such as ICANN Compliance, other relevant department(s) in ICANN org, a URS commissioner at ICANN org, a URS standing committee, etc. 	<p>URS Question #2 2a. What compliance issues have Registries and Registrars discovered in URS processes, if any?</p> <p>2b. Do you have suggestions for how to enhance compliance of URS Providers, Registries, and Registrars in the URS process?</p>	<p>Russ (SP edit)</p>	<p>R#4 - Support recommendation concept with minor change.</p> <p>The IPC supports the intent of this recommendation, which aims to ensure that there is a designated compliance mechanism to enforce the rules and requirements of the URS process. The IPC agrees that is important for interested parties to be able to raise issues with ICANN Compliance and have an effective mechanism for addressing non-compliance issues. The IPC notes that interested parties can already reach out to ICANN Compliance regarding contracted parties and dispute providers, and we believe that Compliance should be equally applicable for URS, just as it should be for UDRP. However, a number of the recommendations of this WG are essentially to the effect that the URS procedure and rules should be followed, indicating that the community considers existing compliance mechanisms to be inadequate or are not being followed.</p> <p>Additionally, the IPC would like to see a specific mechanism in place whereby failure to comply with reveal requests from a party with a legitimate interest should be an automatic trigger allowing for ICANN Compliance to act. The IPC further believes that such failures to respond to reveal requests occur too frequently, and undermine the effectiveness of dispute resolution mechanisms.</p> <p>Q2a The IPC believes the question of compliance issues in URS processes parallel issues in the UDRP. Both the URS and UDRP are reliant on responses by registrars to reveal requests and access to accurate registrant data in order for the RPM to be effective. So even if the number of compliance issues raised directly in URS processes to registries and registrars may be small, the need for consistent and effective relief exists.</p> <p>Registrar members of the IPC have encountered losing registrars who have failed to transfer a name as ordered by a UDRP panel, subsequently allowed it to lapse, thereby resulting in it being registered again and lost to the winning brand owner. In such circumstances, ICANN Compliance has appeared unwilling to take any action or impose any sanction.</p>	<p>If anyone has real-life examples of issues on the URS for Q2a please add them</p>
<p>URS Recommendation #5 The Working Group recommends that the ICANN org, Registries, Registrars, and URS Providers keep each other's contact details up to date in order to effectively fulfill the notice requirements set forth in the URS Procedure para 4.</p>	<p>URS Question #3 The Working Group recommends that public comment be sought from Registry Operators on the following question:</p> <p>3a. Have Registry Operators experienced any issues with respect to receiving notices from URS Providers?</p> <p>3b. Were these notices sent through appropriate channels?</p> <p>3c. Did the notices contain the correct information?</p>	<p>Susan</p>	<p>Support Recommendation As Written</p>	

<p>URS Recommendation #6 The Working Group recommends that a uniform set of educational materials be developed to provide guidance for URS parties, practitioners, and examiners on what is needed to meet the “clear and convincing” burden of proof in a URS proceeding.</p> <p>As an implementation guidance, the Working Group recommends that the educational materials be developed in the form of an administrative checklist, basic template, and/or FAQ. Specifically, the Working Group recommends that the educational materials be developed with help from URS Providers, Practitioners, Panelists, as well as researchers/academics who study URS decisions closely.</p>	<p>URS Question #4 4a. What content and format should these educational materials have?</p> <p>4b. How should these educational materials be developed?</p> <p>4c. Who should bear the cost for developing these educational materials?</p> <p>4d. Should translations be provided?</p>	<p>Cyntia</p>	<p>Support Recommendation As Written</p> <p>A high standard of proof is the fundamental characteristic of the URS. By requiring ‘clear and convincing’ evidence, there are no disputed questions of material fact. Clear-cut trademark infringement provides the basis for expedited remediation. It is, therefore, critically important that the standard is applied consistently, even by multiple URS Providers who pull Panelists from various countries where evidentiary standards may vary.</p> <p>The IPC believes that uniform application of the ‘clear and convincing’ standard for URS filings results in consistent outcomes, shared understanding by all the parties, a reduction in frivolous or malformed filings, and provides the basis for future performance evaluation. Such uniformity could also reduce undesirable activities like forum-shopping and complaints against Panelists.</p> <p>Therefore, the IPC supports the formation of a small group of experienced URS Practitioners (both Complainant & Respondent), Providers, and subject matter experts to draft educational materials elucidating the ‘clear and convincing’ standard in a simple, easily understandable format such as a checklist or guide. ICANN’s participation to facilitate production of the materials, but no to opine on the legal standard, would be desirable.</p> <p>It should be noted that Panelists are vetted and selected because of their expertise in these matters. The IPC believes that the educational material should not constrain their ability to make fair and sound decisions relevant to the specifics of each dispute. Rather the IPC supports a simple document that can facilitate a consistent interpretation of the standard.</p> <p>Lastly, it is the opinion of the IPC that this proposal has the support of the community. Although (2) of (3) URS Providers offered a tepid response when surveyed, the remaining Provider supported the development of such guidance and a plurality of Practitioners representing both Complainants & Respondents agreed that more guidance would be</p>	
<p>URS Recommendation #7 The Working Group recommends that all URS Providers require their examiners to document their rationale in sufficient detail to explain how the decision was reached in all issued Determinations.</p> <p>As an implementation guidance, the Working Group also recommends that URS Providers provide their examiners a uniform set of basic guidance for documenting their rationale for a Determination. The purpose of the guidance is to ensure consistency and precision in terminology and format as well as ensure that all steps in a proceeding are recorded. Such guidance may take the form of an administrative checklist or template of minimum elements that need to be included for a Determination.</p>		<p>Georges</p>	<p>Support Recommendation As Written</p> <p>There is disagreement as to the extent that this is an issue. The vast majority of URS decisions have a reasonably stated rationale for the decision and there is only a small set of URS decisions that might fall in this category of not stating a rationale. That being said, the IPC supports the idea of a requirement that Panelists provide a reasonably expressed rationale for the decision issued. The IPC does not support the notion of a detailed checklist of items to be included or a template to be followed. There is no need for such as most decisions have clearly expressed rationales and the possibility of imposing detailed requirements could become onerous in what is supposed to be a streamlined process. In addition, given the fees paid to Panelists for a URS decision, imposing strict requirements may deter many good Panelists from not wanting to take on URS cases, which will harm both Complainants and Respondents. In addition, imposing strict checklist requirements or templates are likely to create additional issues and burdens on Providers as well as the possibility of challenges of decisions on technical grounds, if only to delay the conclusion of proceedings. As such, the IPC believes that this issue, which involves a small number of cases, can be handled more easily and efficiently by simply requiring that Panelists provide a reasonably expressed rationale for their URS decisions, and by requiring providers to not release a decision until such contains a stated rationale for the decision.</p>	

<p>URS Recommendation #8 The Working Group recommends that the Implementation Review Team considers reviewing the implementation issues with respect to the Registry Requirement 10 in the “URS High Level Technical Requirements for Registries and Registrars” and amend the Registry Requirement 10, if needed. The Providers Sub Team discovered issues with respect to implementing the outcomes of a URS proceeding (e.g. relief awarded following a URS decision, or where the parties settle the case prior to Determination, or where a Complainant requests to extend a suspension).</p>	<p>URS Question #5 Should the Registry Requirement 10 be amended to include the possibility for another Registrar, which is different from the sponsoring Registrar but accredited by the same Registry, to be elected by the URS Complainant to renew the URS Suspended domain name, and to collect the Registrar renewal fee?</p>	<p>Cyntia</p>	<p>Support Recommendation As Written</p> <p>The IPC strongly encourages the Implementation Review Team take the action(s) required to ensure that Registrars, Registries, and Providers understand their roles and responsibilities when implementing URS outcomes; that they timely perform their duties; and that compliance mechanisms are created/strengthened and made easily-available to Practitioners, Complainants and Respondents to ensure the URS functions as intended; namely as a speedy remedy for obvious cases of trademark infringement. Given the seriousness of the abuse and the high standard of proof Complainants must meet, it is reasonable that relief should be swiftly implemented & capably administered. Unfortunately, important deficiencies appear to exist.</p> <p>Data from the Provider Sub-team’s survey of Providers indicate that Registrars/Registries seem confused about their role in extending suspensions. Providers also said they experienced the following difficulties: slow response in general and specifically slow/no response to provider info requests, delays in lock notifications, delays notifying Providers of suspension completion, and inaction/lack of communication to Providers requesting notifications (until reported to ICANN).</p> <p>Please note, as well, that there appears to be no consensus among Providers on whether Registrant info of suspended domains may be changed if/when suspension renewed. Some FORUM Examiners supported the possibility of altering registration information during the additional year of suspension.¹</p> <p>Responses to the Practitioners Sub-team survey of Practitioners likewise reveal problems when implementing ordered suspensions. One-third of Practitioners surveyed responded that they had “problems with the implementation of the relief awarded following a URS decision.” Such problems included difficulties: renewing suspensions, paying for such renewals, and re-registration by losing Respondents or other “cybersquatters”. Some Practitioners suggested that these serious deficiencies reduce/eliminate the value of URS as a protection mechanism.²</p>	<p>Views on Q5 please (changing registrar for the domain suspension). Has anyone encountered problems with leaving the domain with the registrant’s registrar - for example difficulty making payment to a provider you do not work with?</p> <p>Discussed and agreed we would support this as beneficial to a brand owner, but recognising that cointeracted parties may raise practical/procedural concerns or risks.</p> <p>Response too long - cut down to:</p> <p>IPC encourages IRT to ensure that Rrs, Rys, & Providers understand their roles & responsibilities in implementing URS outcomes; timely perform their duties; & that compliance mechanisms are created/strengthened and made accessible to ensure URS functions as intended. Given seriousness of the abuse and high standard of proof, relief should be swiftly implemented & capably administered. Important deficiencies exist. Provider survey indicates CP confusion about their role in extending suspensions. Providers encountered difficulties: slow response, slow/no response to provider info requests; delayed lock notification; delay notifying completion of suspension;</p>
<p>URS Recommendation #9 The Working Group recommends that as an implementation guidance, the Implementation Review Team considers developing guidance to assist the URS providers in deciding what language to use during a URS proceeding and when issuing a Determination. Such guidance should take into account the fact that domains subject to a URS Complaint may have been registered via a privacy or proxy service and the location of the service will determine the language of that service, which may be relevant.</p>		<p>Russ</p>	<p>Support recommendation as written</p> <p>The IPC believes it is important that there be consistency in guidance across URS service providers to ensure greater consistency in both instructions and resulting decisions.</p> <p>See our comments on recommendation #3 above, which would address the privacy/proxy concern.</p>	<p>When we discussed this Rec #9 we felt closer alignment with the URDP might be beneficial (i.e. language of the registration agreement rather than predominant language of the registrant’s country would overcome the problem of P/P oprovider appearing to be the registrant.</p> <p>However, on Rec #3 we supported the current language provision. Should we be pushing to change to this? There are pros and cons of both.</p>

<p>URS Recommendation #10 The Working Group recommends that clear, concise, easy-to-understand informational materials should be developed, translated into multiple languages, and published on the URS Providers' websites to assist Complainants and Respondents in URS proceedings. Such information materials should include, but not be limited to: 1) a uniform set of basic FAQs, 2) links to Complaint, Response, and Appeal forms, and 3) reference materials that explain URS Providers' services and practices.</p>	<p>URS Question #6 Who has the responsibility for developing the uniform set of basic FAQs for URS Complainants and Respondents?</p>	<p>Cyntia</p>	<p>Support Recommendation as Written</p> <p>The IPC agrees that ICANN should develop educational materials for Complainants & Respondents which outline the URS process. The materials should include an easy-to-understand, concise process overview, simple FAQ page, and copies of common documents; list links to Provider websites and compliance mechanisms; and be translated into the six United Nations languages.</p> <p>Much of the Providers' processes are automated and offered online, so Complainants and Respondents are often on their own when navigating the procedure. MFSD and ADNDRC have a manual administrative review following submission. Deficient complaints are dismissed without prejudice (they cannot be amended), but the filing fee is not refunded.</p> <p>The RPMs PDP, Session 4 (March 15, 2018/San Juan) showed little uniformity in how the URS is administered by the three Providers:</p> <ul style="list-style-type: none"> • ADNDRC, a collaboration of four Asian organizations, communicates only in English • FORUM provides downloadable documents and step-by-step explainer videos on their website • MFSD provides detailed descriptions of the URS program, rules and fees on their website • ADNDRC has six unlinked bullet points for rules & procedures, a flowchart, and submission guide • FORUM is aware that some Respondents did not file a response as they did not know how to proceed • FORUM received a number of complaints about their online portal • The Providers were generally amenable to the creation of these materials to supplement the information they already offer <p>NOTE: Providers should be allowed to provide additional resources that may be useful to the parties and information on their own services and practices.</p> <p>The recommended guidance would demystify the URS, set reasonable expectations, and increase URS use and satisfaction. The IPC supports these goals.</p>	
	<p>URS Question #7 What mechanism do you suggest that allows a URS Provider to efficiently check with other URS and UDRP Providers in order to ensure that a disputed domain name is not already subject to an open and active URS/UDRP proceeding?</p>	<p>Georges</p>	<p>This is a situation that rarely occurs and is one that in most instances would be known to a Respondent, and which should be raised by a Respondent. To the extent there is consensus that there is a need to address this rare issue that may in fact have never occurred, then it should be limited to a simple check by a provider (as part of their normal review of a matter) of existing online databases of pending cases to make sure that the domain name at issue is not involved in another case.</p>	
	<p>URS Question #8 The Working Group recommends that public comment be sought from Registry Operators on the following questions:</p> <p>8a. What issues have you encountered with respect to implementing the HSTS-preloaded domain suspension remedy, if any?</p> <p>8b. What would need to be done to help resolve the issues you have encountered?</p>	<p>Directed to Registry Operators</p>		

	<p>URS Question #9 Are the non-refundable, late Response fees paid by Respondent reasonable?</p> <p>FORUM has a flat fee for late response. ADNDRC and MFSD have fees based on the number of domains and/or the type of Respondents involved. FORUM has never collected these fees for late response.</p> <ul style="list-style-type: none"> - FORUM: <ul style="list-style-type: none"> o Re-examination Fee (more than 30 days late): 200 USD o Re-examination Extension Fee: 100 USD - ADNDRC: <ul style="list-style-type: none"> o 1 to 5 domain names: 180 USD o 6 to 14 domain names: 200 USD o 15 to 29 domain names: 225 USD o 30 domain names or more: To be determined by the Relevant Office of ADNDRC - MFSD: <ul style="list-style-type: none"> o Paid by the Respondent who is natural person/sole proprietorship/public body/non- profit entity <ul style="list-style-type: none"> 1-15 domain names: 175 EUR 16-50 domain names: 200 EUR 50 domain names or more: To be decided with MFSD o Paid by the Respondent who is partnership/corporation/public company/private limited/limited liability company <ul style="list-style-type: none"> 1-15 domain names: 190 Euros 16-50 domain names: 225 Euros 50 domain names or more: To be decided with MFSD 	Scott	The late fees as written are reasonable. The Respondent has the choice of paying the late fees to avoid a default.	
	<p>URS Question #10 10a. Are penalties for Complainant or Respondent who abuses the URS process sufficient?</p> <p>10b. If not, should they be expanded?</p> <p>10c. If they should be expanded, how?</p> <p>Per Section 11.4 and 11.5 of the URS Procedure, the penalties for abusive complaints are:</p> <ul style="list-style-type: none"> - 11.4 In the event a party is deemed to have filed two (2) abusive Complaints, or one (1) "deliberate material falsehood," that party shall be barred from utilizing the URS for one-year following the date of issuance of a Determination finding a complainant to have: (i) filed its second abusive complaint; or (ii) filed a deliberate material falsehood. - 11.5 Two findings of "deliberate material falsehood" shall permanently bar the Complainant from utilizing the URS. 	Scott (SP Edit)	<p>URS Q #10 refers to penalties for a complainant or respondent who abuses the URS process. Whilst the URS procedure does include specific penalties for a complainant found to have abused the the process, there is in fact no penalty for an abusive respondent, whether this takes the form of abusing the URS process or repeated cybersquatting. In order to bring appropriate balance, and to encourage good behaviour, there should also be penalties for abusive respondents.</p> <p>Regarding the existing penalties for complainants, the IPC considers these to be more than sufficient. Indeed, in the absence of the balance that would be brought by penalties for the respondent, we consider these to be unduly harsh.</p>	
2.3 TMCH Preliminary Recommendation				
Preliminary Recommendation		Volunteer(s)	Proposed Response	

<p>TMCH Recommendation #1</p> <p>The Working Group considered the following aspects of the TMCH:</p> <ol style="list-style-type: none"> Whether the "TM +50" rule should be changed or maintained; Whether the current "exact match" rules should be changed or maintained; and Whether, where a trademark contains dictionary term(s), the Sunrise and Trademark Claims RPMs should be limited in their scope such as to be applicable only in those gTLDs that relate to the categories of goods and services for which the dictionary term(s) within that trademark are protected. <p>The Working Group's preliminary recommendation for these three questions is that the status quo (i.e. the current rules as applied to the gTLDs delegated under the 2012 New gTLD Program round) should be maintained.</p> <p>The Working Group's review of the public comments on these topics may lead to Working Group consensus to amend its preliminary recommendation in respect of one or more of these topics, in which case the Working Group's Final Report will be updated accordingly with specific,</p>	<p>Scott (SP edits)</p>	<p>Do Not Support</p> <p>The IPC supports maintaining the status quo on questions 1 and 3.</p> <p>The IPC does not support maintaining the status quo on question 2. As noted in related comments on the exact match issue below (see comments on Sunrise Recommendation #1 and Trademark Claims Recommendation #6) we consider the matching rules ought to be expanded. Given the substantial number of URS and UDRP decisions involving disputed domains incorporating a brand owner's mark in its entirety, some consideration for expansion should be given. The IPC suggests that for the purposes of Trademark Claims in particular we would strongly support expanding matching to also include "mark plus" and "mark-contained" variations. We would support expanding the matching rules to any variation in which the entire mark is contained – we believe this is important in terms of deterring bad faith registrations that rely on variants and not exact matches of a TMCH-recorded mark and to enhance the ability of TMCH-recorded mark owners to more robustly monitor new registrations for possible infringement and bad faith registration/use.</p>	
<p>2.4 Sunrise Service Preliminary Recommendations and Community Questions</p>			
<p>Preliminary Recommendation</p>			
<p>Sunrise Recommendation #1</p> <p>In the absence of wide support for a change to the status quo, the Working Group recommends that the current availability of Sunrise registrations only for identical matches should be maintained, and the matching process should not be expanded.</p>	<p>Scott (SP edits)</p>	<p>Support recommendation as written.</p> <p>As IPC participants have made clear throughout the discussion in the WG, we consider that limiting to exact matches only is inadequate to protect brand owner interests and avoid consumer deception. We are prepared to live with this in the spirit of compromise.</p>	
<p>Sunrise Recommendation #2</p> <p>The Working Group recommends that the Registry Agreement for future new gTLDs includes a provision stating that a Registry Operator shall not operate its TLD in such a way as to have the effect of circumventing the mandatory RPMs imposed by ICANN or restricting brand owners' reasonable use of the Sunrise rights protection mechanism.</p>	<p>Griffin (Phil edit)</p>	<p>Support recommendation with minor changes</p> <p>We strongly support this recommendation, and must ensure it is implemented in an appropriately robust and enforceable manner.</p> <p>See also our response on the TM-PDDRP Recommendation #1</p>	<p>Do we include the reference to the change being effected via SubPro. Does this invite challenge?</p> <p>Agreed to cover this to an overarching comment at the end: "The IPC notes that an explicit provision prohibiting registry operators from engaging in fraudulent or illegal activity is also necessary, and that this is under consideration in SubPro, since it does not relate specifically to the RPMs."</p>
<p>Sunrise Recommendation #3</p> <p>In the absence of wide support for a change to the status quo, the Working Group does not recommend the creation of a challenge mechanism.</p>	<p>Griffin</p>	<p>Do not support recommendation</p> <p>We would support a uniform challenge mechanism to challenge a registry operator's designation of a name matching a TMCH-recorded mark as a premium or reserved name, and thereby unreasonably inhibiting the relevant brand owner from securing the name either during Sunrise or general availability. In our experience, registry operators will consider changing such designations on an ad hoc basis in response to direct, individual outreach from the brand owner, but there is no uniformity, transparency, or accountability around these informal communication channels, which would be improved through a single uniform mechanism applicable to all registries.</p>	
<p>Sunrise Recommendation #4</p> <p>In the absence of wide support for a change to the status quo, the Working Group does not recommend the publication of the Reserved Names lists by Registry Operators.</p>	<p>Griffin (Claudio and Phil edits)</p>	<p>Support Recommendation with minor changes</p> <p>It is important to note that disclosure of a reserved names list (or part of the list) may ultimately prove necessary, for example in the context of a dispute resolution/challenge process, in order to ensure that registry operators are not using them to circumvent RPMs, for example, by reserving all names in the TMCH or targeting specific trademarks.</p> <p>Due to the expressed concerns of some Working Group members regarding the confidentiality of registries' business plans in relation to the publication of all Reserved Names in the new gTLD, we propose a compromise solution to address the need for compliance, transparency, uniformity, and operational effectiveness of the Sunrise RPM. Specifically, we propose that second-level strings reserved by the registry operator prior to, and during the Sunrise Period, shall be reflected in some form as reserved in the Registry Data Directory Services system. This solution will enable trademark owners who are prevented from defensively registering domain names during Sunrise because the New gTLD Registry has reserved the domain name to perform a Look-Up query to identify the domain name as reserved by the registry, without interfering with the ability of the registry operator to maintain a confidential list of all reserved strings.</p>	

Sunrise Recommendation #5 The Working Group recommends that the current requirement for the Sunrise Period be maintained, including for 30-day minimum period for a Start Date Sunrise and the 60-day minimum period for an End Date Sunrise.	John	Support Recommendation as written	Should we be arguing for longer sunrise period. Some of the comments in INTA's Impact Study supported this
Sunrise Recommendation #6	John	Support Recommendation as written	Discussed and agreed to keep as-is
Sunrise Recommendation #7 The Working Group recommends that the next version of the Applicant Guidebook (AGB) for future new gTLDs be amended as follows: 1. The new version of the AGB should include the TMCH dispute resolution procedure for challenging the validity of trademark records entered into the TMCH. This procedure is currently published at: https://www.trademark-clearinghouse.com/dispute#3.3 . ICANN org should ensure that its contract for the provision of TMCH services makes	John (SP edit)	Support concept with minor change Although we support the concept behind this recommendation, paragraph 3 should be amended: rather than a RO immediately deleting a domain name following a finding by the TMCH that it was based on an invalid TMCH record, the name ought to be suspended for a period in order to allow for the exhaustion of any time period to challenge that finding.	
Sunrise Recommendation #8 In the absence of wide support for a change to the status quo, the Working Group does not recommend that the scope of Sunrise Registrations be limited to the categories of goods and services for which the trademark is actually registered and put in the Clearinghouse.	Claudio (SP edit)	We support the recommendation as written. This was discussed extensively by the WG, and for all the reasons put forward during those discussions we do not support limiting the scope of sunrise registration in this was	
Question Seeking Community Input	Volunteer(s)	Notes	
Sunrise Question #1 What remedy(ies) would you propose for any unintended effects of the Sunrise Period that you have identified in your public comment?	Claudio (SP edit)	The unintended effects of the Sunrise Period that we have identified relate to the abuses of the system by some registry operators (see Sunrise Q 2 below). Sunrise recommendation #2 would play an important part in remedying this, as would a the adoption of a challenge mechanism such as is referred to at Sunrise recommendation #3. It is also essential that ICANN Compliance adopts a robust and proactive approach to compliance with the Sunrise, which is mandatory for the Contracted Parties. The implementation of Sunrise by registry operators in any subsequent rounds of new gTLDs must conform to the spirit and letter of the RPM, including clear triggering mechanisms and timelines to provide ICANN Compliance the ability to prevent Sunrise abuses which circumvent, discourage, and/or defeat the purpose and use of the RPM.	
Sunrise Question #2 2a. Have you identified abuses of the Sunrise Period? 2b. To the extent that you have identified abuses of the Sunrise Period, if any, please describe them and specify any documentation to substantiate the identified abuses.	Claudio	2(a) Yes 2(b) We have identified multiple systematic abuses of the Sunrise by new gTLD registries. In many cases, the abuse of Sunrise has the net effect of reducing the efficacy of the RPM, leading to increased levels of domain registration abuse, consumer confusion, and a reduction in consumer trust in the DNS. Additionally, Sunrise abuse also imposes significant external costs on right holders to the detriment of ICANN's New gTLD Program. Some primary forms of Sunrise abuse include: (1) the withholding, reservation or self-allocation of trademark-corresponding domains with the intent of circumventing or discouraging the use of the Sunrise Period; and (2) discriminatory pricing practices designed to leverage the need for defensive Sunrise registrations, including the excessive and exorbitant pricing of Sunrise domains with the intent of targeting trademark owners either specifically, or as a general class of registrants. The following non-exhaustive list of resources provide documentation of Sunrise abuse: 1) ICANN's Competition, Consumer Trust, and Consumer Choice Review Team Final Report, see page 131 of the report. 2) The Panel Report of ICANN's Public Interest Commitment Dispute Resolution Procedure (PICDRP), finding that the .feedback registry engaged in Sunrise abuse. 3) Correspondence from the Federal Trade Commission (FTC) outlining the FTC's assessment of Sunrise abuse in the .sucks new gTLD, available at: https://www.icann.org/en/system/files/correspondence/ramirez-to-jeffrey-27may15-en.pdf . Also see related 2015 communications from the IPC, BC, and ICANN Org on the Correspondence page. The FTC letter expresses concern on the manner the .sucks registry operated its Sunrise and that "it may well very well be that stronger rights protection mechanisms or amendments to the registry agreement are needed to ensure IP rights holders are adequately protected."	2b response as submitted: We have identified multiple systematic abuses of the Sunrise by new gTLD registries. In many cases, the abuse of Sunrise has the net effect of reducing the efficacy of the RPM, leading to increased levels of domain registration abuse, consumer confusion, and a reduction in consumer trust in the DNS. Additionally, Sunrise abuse also imposes significant external costs on right holders to the detriment of ICANN's New gTLD Program. Some primary forms of Sunrise abuse include: (1) the withholding, reservation or self-allocation of trademark-corresponding domains with the intent of circumventing or discouraging the use of the Sunrise Period; and (2) discriminatory pricing practices designed to leverage the need for defensive Sunrise registrations, including the excessive and exorbitant pricing of Sunrise domains with the intent of targeting trademark owners either specifically, or as a general class of registrants. The following non-exhaustive list of resources provide documentation of Sunrise abuse: 1) ICANN's Competition, Consumer Trust, and Consumer Choice Review Team Final Report, see page 131 of the report. 2) The Panel Report of ICANN's Public Interest Commitment Dispute Resolution Procedure (PICDRP).
Sunrise Question #3 The Working Group recommends that public comment be sought on questions #3a-d from Registry Operators. The Working Group asks Registry Operators to be specific about which process(es) (i.e., ALP, OLP, and/or DP) they	Aimed at Registry Operators		

2.5 Trademark Claims Service Preliminary Recommendations and Community

Preliminary Recommendation	Question Seeking Community Input	Volunteer(s)	Proposed Response	Comments/notes
<p>Trademark Claims Recommendation #1</p> <p>The Working Group recommends that the language of the Trademark Claims Notice be revised, in accordance with the Implementation Guidance outlined below. This recommendation aims to help enhance the intended effect of the Trademark Claims Notice by improving the understanding of recipients, while decreasing any unintended effects of deterring good-faith domain name applications.</p> <p>The Working Group recommends that the Trademark Claims Notice be revised to reflect more specific information about the trademark(s) for which it is being issued, and to more effectively communicate the meaning and implications of the Claims Notice (e.g., outlining possible legal consequences or describing what actions potential registrants may be able to take, following receipt of a notice).</p>	<p>Trademark Claims Question #1</p> <p>1a-1. Have you identified any inadequacies or shortcomings of the Claims Notice?</p> <p>1a-2. If so, what are they?</p> <p>1b. Do you have suggestions on how to improve the Claims Notice in order to address the inadequacies or shortcomings?</p>	<p>Michael (SP edit)</p>	<p>Trademark Claims Recommendation #1</p> <p>Support Recommendation concept with minor change</p> <p>The IPC does not believe there is evidence that there have been "unintended effects of deterring good-faith domain name applications". This reference in the first paragraph should therefore be amended to refer to "decreasing any possibility of deterring good faith registrations".</p> <p>IPC would revise the recommendation to more specifically note that either ICANN Org or an IRT tasked with implementing these proposals should solicit and consider input from resources that are expert in communicating complex issues relating to intellectual property to general public as part of its consideration of revision of the Claims notice language.</p> <p>In this regard, IPC believes that it is important to note that the Claims notice was co-written during the implementation phase for the 2012 Round. While it is therefore appropriate, at this point, to review and seek to improve the Claims notice to address any lessons learned to date, any future redraft will undoubtedly still result in a notice which is the result of compromise.</p> <p>1a-1. [N/A]</p> <p>1a-2. [N/A]</p> <p>1b. Members of the Intellectual Property Constituency who are members of the GNSO Rights Protection Mechanism Review PDP did work with other members of the PDP to draft possible revisions to the standard American Trademark Claims Notice. However, they stopped this effort when it became clear that making such revisions would require more time and close focus in that was possible in the PDP, and would be better handled by the Implementation Review Team implementing the actions recommended by the PDP or a team formed for that goal. At the same time, however, that draft prepared during the PDP discussions that might be used as a starting point for developing a more clear.</p>	<p>Following discussion, group decided we should not criticise the Claims notice as vague, difficult to understand, etc, in case of knock-on impact on subsequent cases.</p>
<p>Trademark Claims Recommendation #2</p> <p>The Working Group recommends that delivery of the Trademark Claims Notice be both in English as well as the language of the registration agreement. In this regard, the Working Group recommends:</p> <ul style="list-style-type: none"> · Changing the relevant language in the current Trademark Clearinghouse Rights Protection Mechanism Requirements⁹ on this topic (Section 3.3.1.2) to "...registrars MUST provide the Claims Notice in English and in the language of the registration agreement." · The Claims Notice should include a link to a webpage on the ICANN org website containing translations of the Claims Notice in all six UN languages. 		<p>Michael (SP edit)</p>	<p>Trademark Claims Recommendation #2</p> <p>Support Recommendation concept with minor change</p> <p>IPC believes that Trademark Claims Notices can only effectively fulfill their intended function of notifying domain name applicants of potential conflicts with trademarks if they are clear and are understood. We therefore believe that reasonable steps should be taken to ensure that applicants understand the notice. We believe requiring that notices be provided in the languages of domain name registration agreements is a reasonable and necessary step to ensure that they are understood and enable applicants to knowledgeably determine the action they wish to take in response to the notice.</p> <p>The final bullet should be amended "The Claims Notice must include..."</p>	<p>[Phil - proposed addition: It is likely easier for registrars to deliver a single notice, containing the recommended hyperlink to translations in all official United Nations languages. The mandate to issue the Claims Notice in "the language of the registration agreement" may prove impractical in jurisdictions where registrars do not use one of the six United Nations languages. Susan - comment: is this actually a problem if the Rr is the one sending the Claims notice?]</p> <p>Discussed and concluded that since the Rr translates they have control over the language of the registration agreement and would not use a language which is onerous for them</p>

<p>Trademark Claims Recommendation #3</p> <p>The Working Group recommends that the current requirement for only sending the Claims Notice before a registration is completed be maintained.</p> <p>The Working Group also recognizes that there may be operational issues with presenting the Claims Notice to registrants who pre-registered domain names, due to the current 48-hour expiration period of the Claims Notice.</p> <p>The Working Group therefore recommends that the Implementation Review Team consider ways in which ICANN org can work with registrars to address this implementation issue.</p>		Michael (SP edit)	<p>Trademark Claims Recommendation #3</p> <p>Support Recommendation as written</p> <p>The IPC agrees with both parts of this recommendation. If the IRT cannot identify a method by which the pre-sale implementation issue may be addressed whilst still meeting the requirement for the Claims notice to be presented and accepted before registration, then pre-sale of names will not be possible.</p>	
<p>Trademark Claims Recommendation #4</p> <p>The Working Group recommends, in general, that the current requirement for a mandatory Claims Period be maintained, including the minimum initial 90-day period when a TLD opens for general registration.</p>	<p>Trademark Claims Question #2</p> <p>2a. Is there a use case for exempting a gTLD that is approved in subsequent expansion rounds from the requirement of a mandatory Claims Period due to the particular nature of that gTLD? Such type of gTLD might include: (i) "highly regulated" TLDs that have stringent requirements for registering entities, on the order of .bank; and/or (ii) "Dot Brand" TLDs whose proposed registration model demonstrates that the use of a Trademark Claims Service is unnecessary.</p> <p>2b. If the Working Group recommends exemption language, what are the appropriate guardrails ICANN should use when granting the exception (e.g. Single-registrant? Highly-regulated or manually hand-registered domains? Something else?)?</p>	Susan	<p>Support Recommendation concept with minor change</p> <p>Although many IPC members favor a longer claims process, ideally one that runs indefinitely, we can accept as a compromise that: the claims period continues to be mandatory for all TLDs except dotBrands (see response to Claims Q#2); that it should operate for a minimum of 90 days from the start of the TLD's general availability (GA) and that this be a minimum requirement.</p> <p>There is a potential ambiguity in the recommendation, where a TLD commences one or a series of Limited Registration Periods for specific classes of registrants after the Sunrise but before General Availability. The current RPMs Requirements make it clear that Trademark Claims must operate throughout such LRP(s) and then continue for the first 90 days of GA. This current requirement is unchanged by TM Claims Recommendation #4</p>	
<p>Trademark Claims Recommendation #5</p> <p>The Working Group recommends that the current requirement for a mandatory Claims Period should continue to be uniform for all types of gTLDs in subsequent rounds, including for the minimum initial 90-day period when a TLD opens for general registration.</p>		Susan	<p>Significant change required</p> <p>The IPC supports the principle of Claims being uniform for all TLD types except dotBrands (see response to Claims Q#2)</p> <p>Q2a</p> <p>dotBrand TLDs subject to Specification 13 should be exempted from the mandatory Claims requirements. The IPC does not believe that the Claims Service has proved to be valuable for this particular group of TLDs. Because of the contractual restrictions in Spec 13 all second level names will remain in the ownership of the brand owner registry operator or its close connections (associate companies, trademark licensees). In those circumstances registration of third party trademarks in a manner that would lead to trademark infringement or constitute bad faith is much less likely. Where that does happen, the recourse would likely be to go direct to the brand owner registry operator.</p> <p>If there are real concerns that this might disadvantage some trademark owners who have recorded their marks in the TMCH, perhaps a compromise would be to allow trademark owners to opt out of the Claims service just with respect to dotBrands.</p> <p>Q2b</p> <p>See comments above - this should be restricted just to Spec 13 dotBrands</p>	

<p>Trademark Claims Recommendation #6</p> <p>In the absence of wide support for a change to the status quo, the Working Group recommends that the current exact matching criteria for the Claims Notice be maintained.</p>		<p>Scott (SP edits)</p>	<p>Do not support</p> <p>While the IPC supports exact matching, a significant number of claims in URS and UDRP proceedings involve disputed domain names where the complainant's mark is incorporated into the disputed domain name in its entirety. For the purposes of Trademark Claims the IPC therefore strongly supports expanding matching to also include "mark plus" and "mark-contained" variations (such as plurals), as selected by the brand owner. We believe this important in terms of deterring bad faith registrations that rely on variants and not exact matches of a TMCH-recorded mark and to enhance the ability of TMCH-recorded mark owners to more robustly monitor new registrations for possible infringement and bad faith registration/use. The risk of false positives generated through this approach could be minimized by the selection of sensible variants which relate to the business of the brand owner, and overcome through additional language in Claims Notices to registrants explaining the possibility of false positives and to evaluate their registration with this in mind. Brand owners receiving such false positive notices would be able to easily disregard them.</p> <p>We encourage the Working Group to reconsider this section of the recommendation with this in mind, and would urge the Working Group to instead adopt a recommendation supporting expanded matching for TM Claims to include "mark contained" variations.</p>	
<p>2.4 Trademark Post-Delegation Dispute Resolution Procedure Preliminary</p>				
<p>Preliminary Recommendation</p>				
<p>TM-PDDRP Recommendation #1</p> <p>The Working Group recommends that Rule 3(g) of the Trademark Post-Delegation Dispute Resolution Procedure (TM-PDDRP) Rules be modified, to provide expressly that multiple disputes filed by unrelated entities against a Registry Operator¹¹ may be initially submitted as a joint Complaint, or may, at the discretion of the Panel, be consolidated upon request.</p> <p>This recommendation is intended to clarify the fact that the TM-PDDRP permits the joint filing of a Complaint and the consolidation of Complaints by several trademark owners, even if these are unrelated entities, against a Registry Operator in the case where: (a) that Registry Operator has engaged in conduct that has affected the Complainants' rights in a similar fashion; and (b) it will be equitable and procedurally efficient to permit the consolidation.</p> <p>To the extent that a TM-PDDRP Provider's current Supplemental Rules¹² may not permit the filing of a joint Complaint or the consolidation of several Complaints, the Working Group further recommends that those Providers amend their Supplemental Rules accordingly.</p> <p>For the avoidance of doubt, the Working Group notes that:</p> <ol style="list-style-type: none"> 1. The filing of a joint Complaint or consolidation is to be permitted only where: (i) the Complaints relate to the same conduct by the Registry Operator, at the top or the second level of the same gTLD for all Complaints; and (ii) all the trademark owners have satisfied the Threshold Review criteria specified in Article 9 of the TM-PDDRP¹³; and 2. This recommendation is intended to apply to two distinct situations: one where several trademark owners join together to file a single Complaint, and the other where several trademark owners each file a separate Complaint but request that these be consolidated into a single Complaint after filing. 	<p>Volunteer(s)</p> <p>Claudio</p>	<p>Support the recommendation as written</p> <p>Many in the IPC are of the view that, given the applicable standard of proof, it is implicit that an action may be brought collectively by multiple unrelated entities and/or that where separate actions have been commenced it may be appropriate for them to be consolidated on request of those complainants. However, since the procedure is somewhat ambiguous on this point we strongly support clarification.</p> <p>The TM-PDDRP has been under-utilized and the proposed recommendation addresses some of the challenges and reasons that may have discouraged use of the RPM. Since a complainant in the TM-PDDRP carries the burden of establishing that the registry has engaged in a pattern or practice of specific bad faith intent to profit from trademark infringement in the gTLD, it is only logical to permit consolidation of complainants in one proceeding since in most cases the registry's prohibitive conduct pertains to multiple trademark owners.</p> <p>Moreover, there is likely to be a need to aggregate documentary evidence held by brand owners to demonstrate the bad-faith pattern of behavior by the registry operator. In addition, if multiple complaints have been brought separately to address the same illicit conduct of the registry, consolidation of plaintiffs would minimize waste of resources on all parties and streamline the adjudicative process.</p> <p>The IPC is aware that a minority of Registry Operators are circumventing RPMs by targeting brand owners with exorbitant prices for sunrise and reserved names. While we recognize and support the limitations on ICANN's ability to regulate price, ICANN can ensure that RPMs sufficiently protect brand owner rights.</p> <p>The TM-PDDRP was written to prevent Registry Operators from taking unfair advantage of trademark owners. Fortunately, other ICANN policies and AGB terms have prevented many of the harms the TM-PDDRP was designed to address. As a result, the TM-PDDRP is not regularly used. However, new issues like price gouging (that was not considered as part of the original TM-PDDRP) are consistent with the premise for creating the procedure.</p>		
<p>Next Steps</p>				
<p>General Overarching Charter Questions</p>				
		<p>Volunteer(s)</p>	<p>Proposed Response</p>	

<p>#1</p>	<p>Q1. Do the RPMs collectively fulfil the objectives for their creation, namely "to provide trademark holders with either preventative or curative protections against cybersquatting and other abusive uses of their legally-recognized trademarks? In other words, have all the RPMs, in the aggregate, been sufficient to meet their objectives or do new or additional mechanisms, or changes to existing RPMs, need to be developed?</p>	<p>Paul (edit SP)</p>	<p>This answer is applicable only to the Phase 1 RPMs, since we have not yet conducted Phase 2.</p> <p>Do the RPMs collectively fulfil the objectives for their creation, namely "to provide trademark holders with either preventative or curative protections against cybersquatting and other abusive uses of their legally-recognized trademarks? - No</p> <p>In other words, have all the RPMs, in the aggregate, been sufficient to meet their objectives? - No</p> <p>Or do new or additional mechanisms, or changes to existing RPMs, need to be developed? - Yes</p> <p>The Phase 1 RPMs collectively provide trademark holders with some "...curative protections against cybersquatting." They do not, however, provide for protections "against ...other abusive uses of their legally-recognized trademarks."</p> <p>Additionally, they do not provide "preventative...protections against cybersquatting and other abusive uses of their legally-recognized trademarks." Although the Sunrise and TM Claims are referred-to as "preventative mechanisms " they are not truly preventative since they merely consist, respectively, of an opportunity to register an identical-match name oneself, at a price, and a notice to a registrant before they proceed to register about the existence of trademark rights, but no prohibition on registration. In the absence of the Globally Protected Marks List proposed by the IRT, but not adopted, there is no truly preventative mechanism.</p> <p>Further, as the data shows, cybersquatting and other abuses are rampant in the last round of new gTLDs, so any preventative aspects of the Phase 1 RPMs appear to be inadequate.</p>	
<p>#2</p>	<p>Q2a. Should any of the New gTLD Program RPMs (such as the URS), like the UDRP, be Consensus Policies applicable to all gTLDs? Q2b. If so, what are the transitional issues that would have to be dealt with as a consequence?</p>	<p>Susan</p>	<p>Q2a Yes, the URS and TM PDDRP should be a consensus policy applicable to all gTLDs. Experience of both mechanisms in relation to new gTLDs has demonstrated that they have not been used disproportionately. The TM PDDRP has yet to be used, and the URS, whilst used relatively sparingly compared to the UDRP, does remain a mechanism which is a valuable complement to the UDRP, for cases where the facts make it appropriate. With one of the aims of the introduction of new gTLDs being to enhance competition in the space, and with most legacy TLDs now voluntarily having adopted the TM PDDRP and URS, it is no longer appropriate to treat some TLDs differently in this regard.</p> <p>In our view the Trademark Claims process (and consequently the TMCH) should also become consensus policy. Although this is primarily a launch-phase process, and therefore the Claims period operating for the first 90 days of General Availability would not apply to a TLD which is already launched, the RPMs Requirements do also require that a Claims process operate where names are later taken off a reserved list by the Registry. This aspect of the Claims process would still be applicable to a legacy TLD.</p> <p>Q2b The IPC does not foresee any significant transitional issues. Numerous legacy TLDs have voluntarily adopted the TMPDDRP and URS without any particular transitional arrangements identified in their registry agreements, and without reported issues arising.</p>	
<p>#3</p>	<p>Q3a. Will changes to one RPM need to be offset by concomitant changes to the others? Q3b. If so, to what extent?</p>	<p>Paul</p>	<p>This question is difficult to decipher. Concomitant changes are changes that accompany or flow naturally from an underlying change. This question appears to imply that offsetting changes may be necessary. The two concepts are not natural partners. However, assuming <i>arguendo</i> that the question was meant to ask "Will changes to one RPM lead to the need for concomitant changes to the others, the answer is "maybe." However, the Phase 1 RPMs are very distinct from each other, as opposed to the Phase 2 RPMS (substantive aspects of the URS and all aspects of the UDRP), so we anticipate that there will be little to no need for concomitant, or naturally accompanying, changes resulting from changes to one or more of the Phase 1 RPMs.</p>	
<p>Additional Overarching Charter Questions</p>				

<p>#1</p>	<p>Q1. Do the RPMs adequately address issues of registrant protection (such as freedom of expression and fair use)?</p>	<p>Paul (GN edits)</p>	<p>This response is limited to the Phase 1 RPMs. Again, the question is difficult to decipher. The Phase 1 RPMs do not specifically mention registrant protections such as freedom of expression or fair use. Also, the concepts of "freedom of expression" and "fair use" are not concepts that exist in all societies and the question itself seems somewhat provincial. That said, there is nothing in the Phase 1 RPMs that prohibit a registrant's freedom of expression or fair use to the extent that such freedoms exist under the laws of the jurisdiction in which the registrant finds itself. To the extent that this question implies that this PDP process should result in freedom of expression and fair use rights for registrants in jurisdictions where such freedoms and rights do not exist, we believe that ICANN is not in a position to become a transnational legislature and we believe that such activity would be, inherently, out of scope.</p> <p>at being all said, the issues of fair use and freedom of expression are already encapsulated in the RPMs, such as the URS, through the concepts of <i>bona fide</i> use and legitimate interests in a domain name registered. Much jurisprudence has arisen around the context of freedom of expression and fair use and Panelists are often asked to consider these issues as defenses raised by a Respondent in UDRP and URS proceedings. At this point, there is over 20 years of UDRP jurisprudence and many rulings that have considered fair use and freedom of expression and determined the contours of such defenses (and which have in a number of instances ruled in favor of registrants based on such concepts). See, e.g., , Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0") at Section 2 and 3. The URS, which considers the same elements as a UDRP, but with a different burden of proof, relies on such past jurisprudence and thus there are established protections for registrants based on fair use and freedom of expression.</p> <p>As to whether the other RPMs address registrant protection, again the protection that is afforded is through the jurisprudence that has defined the concepts of fair use and freedom of expression in relation to a domain name registration. It should also be noted that the RPMs do not prevent freedom of expression or fair use as a registrant can always express his or her views or pursue a fair use initiative by</p>	<p><i>Response submitted to meet word count: Response limited to P1 RPMs. RPMs do not specifically mention registrant protections such as FOE or fair use, and these are not concepts that exist in all societies so question seems somewhat provincial. There is nothing in the P1 RPMs that prohibit a registrant's FOE or fair use to the extent that these exist under the laws of the jurisdiction of the registrant. To the extent that this question implies that this PDP process should result in FOE and fair use rights for registrants in jurisdictions where they do not exist, ICANN is not in a position to become a transnational legislature, such activity is, inherently, out of scope. That being all said, fair use and FOE are already encapsulated in the RPMs, such as the URS, through concepts of bona fide use and legitimate interests in a domain name registered. Jurisprudence has arisen around the context of FOE and fair use and Panelists consider these issues as defenses raised in UDRP and URS. Over 20 years of UDRP jurisprudence and many rulings have considered these concepts and determined the contours of such defenses (which have ruled in favor of registrants). See WIPO Overview 3.0. URS, which considers same elements as</i></p>
<p>#2</p>	<p>Q2. Is the recent and strong ICANN work seeking to understand and incorporate Human Rights into the policy considerations of ICANN relevant to the UDRP or any of the RPMs?</p>	<p>Susan</p>	<p>Since the review of the UDRP forms phase two of the RPMs PDP it is not appropriate for the WG to seek to answer this overarching question in relation to the UDRP yet.</p> <p>When considering Human Rights issues in this context it is important to also take into consideration that the Universal Declaration on Human Rights recognises that "everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author". It is also important to bear in mind that the US law interpretation of free speech in the context of trade marks is not universal.</p> <p>To the extent that principles of human rights are relevant here, these are already taken into consideration as part of the balancing exercise that resulted in the development of the RPMs. For example:</p> <ul style="list-style-type: none"> - the URS requires a demonstration not just that the complainant has rights in the relevant name, but also that the registrant has no legitimate right or interest in the domain name, and that it was registered and is being used in bad faith. The procedure includes a non-exhaustive list of circumstances that may demonstrate bad faith, but also various facts that can refute bad faith and other defences for a registrant. - the sunrise period provides a priority registration window for a brand owner, but this is of limited duration, applies only to domains exactly-matching the brand owner's trade mark rights, only where the brand owner has also recorded their trade mark in the TMCH together with evidence of use, and comes at a price. - the trademark claims serves as a notice to a registrant of the existence of a trade mark recorded in the TMCH, in order to assist them in making an informed decision whether to proceed, but does not prevent the registration of the domain. <p>See also our comments on Additional Overarching Charter Q #1</p>	

#3	Q3. How can costs be lowered so end users can easily access RPMs?	Susan	<p>The cost to a brand owner of accessing these RPMs is in the aggregate. The best way to lower the cost is to create an environment where cybersquatting is discouraged, rather than encouraged. The following would all play a part in this:</p> <ul style="list-style-type: none"> - Irrespective of any loser-pays penalty which may be developed more generally, build in a penalty for a registrant who has received a claims notice, proceeds to register and subsequently loses a URS or UDRP proceeding; - Implement a mechanism to address some of the more egregious behaviours seen from a minority of registry operators during the 2012 round - see our responses in respect of Sunrise Recommendation #2 and #3. - A cap on sunrise prices, relative to GA prices, would also serve to lower costs for end users; - Adopt an holistic approach to the funding of URS (and UDRP) proceedings, which sees operating costs of the dispute resolution providers borne by the contracted parties who benefit from sale of names, proportionately to their "use" of these services - the funds for which could be an incremental fractional increase on the cost of a name. The Nominet DRS would be a useful model to study; - ensure that brand owner access to registrant data is cost-effective. Challenges in accessing this data have significantly increased the cost of utilising dispute processes post-GDPR. 	
4.1 Individual Proposals for Uniform Rapid Suspension System (URS)				
		Volunteer(s)	Notes	
<p>URS Individual Proposal #1 URS Paragraph 6 says: 6.2 In either case, the Provider shall provide Notice of Default via email to the Complainant and Registrant, and via mail and fax to Registrant. During the Default period, the Registrant will be prohibited from changing content found on the site to argue that it is now a legitimate use and will also be prohibited from changing the Whois information.</p> <p>Option 1: Amend to delete "During the Default period, the Registrant will be prohibited from changing content found on the site to argue that it is now a legitimate use and will also be prohibited from changing the Whois information." and move this text to the section in the policy that indicates how bad faith may be proven (i.e. these behaviors may be used by the Examiner to find bad faith).</p> <p>Option 2: Just delete the "During the Default period" text. [Note, there is no Default period defined here or anywhere - the case goes to the Examiner.]</p>		Cynthia	<p>Support Proposal As Written</p> <p>The IPC supports the prohibition against changing Whois records & website content for domain names subject to URS proceedings. At best such changes muddy the facts, and at worst attempt to hide illicit activity.</p> <p>The Registry lock, which is applied when a URS is filed, prevents changes to the Whois so Proposal 1 codifies an existing function envisioned, but not provisioned, when the URS was first implemented.</p> <p>Option 1 provides the only remedy for changes made to content during URS proceedings (specifically, use as an indication of bad faith) since neither Registries nor Registrars have the ability to prevent content updates.</p> <p>NOTE: As "Default period" is not defined in the URS policy, the IPC supports adding that definition.</p>	
<p>URS Individual Proposal #2 Legal requirements should be moved from the technical document "URS High Level Technical Requirements for Registries and Registrars" to another document (URS Procedure or URS Rules).</p> <p>The concerning "legal requirements" language is as follows: 4. Registry-Registrar Agreement: • The Registry Operator MUST specify in the Registry-Registrar Agreement for the Registry Operator's TLD that the Registrar MUST accept and process payments for the renewal of a domain name by a URS Complainant in cases where the URS Complainant prevailed. • The Registry Operator MUST specify in the Registry-Registrar Agreement for the Registry Operator's TLD that the</p>		Susan	<p>Support the proposal</p> <p>The IPC agrees that section 4 "Registry-Registrar Agreement" set out in the "URS High Level Technical Requirements for Registries and Registrars" does not specifically relate to technical matters, as might be expected from the name of the document, and agrees with the proponent that this might cause the requirements to be overlooked. Since this is a matter for the registry operator to address directly with its registrars, however, on balance we believe the best way to address this is to change the name of the document to "URS High Level Requirements for Registries and Registrars" rather than moving this text to the Procedure or Rules.</p>	
<p>URS Individual Proposal #3 Revise URS Policy Paragraph 10 to reflect the following new provisions: 10.3 There shall be an option for a successful or unsuccessful Complainant to extend the registration period for one additional year at commercial rates.</p>		Cynthia	<p>Support Proposal As Written</p> <p>The IPC agrees that Complainants and Registrants should be able to renew the registrations of domains subject to URS action so that these domains do not expire during the process or during the following period where a decision may be appealed.</p>	
<p>URS Individual Proposal #6</p> <p>The recommendation is to permit multiple unrelated Complainants to bring a single Complaint jointly against a single domain name registrant (or related registrants) who has registered multiple domain names, by deleting the following procedural element within Section 1.1.3 of the URS Procedure:</p>		Scott (SP edit)	<p>IPC supports the deletion of the identified text, which would give the URS panel a discretion to allow unrelated complainants to bring a single action. Currently, that discretion has been removed. This does not mean that a consolidated action will always be appropriate.</p> <p>If multiple complainants can file jointly, it would seem appropriate that this be reflected in the complain fee - perhaps even that each complainant pays its own separate fee.</p>	
<p>URS Individual Proposal #11 The Response Fee threshold should be lowered from 15 domain names to 3, because this is sufficient to demonstrate a clear pattern by the registrant based on relevant URS precedent. In cases where the named Respondent is ultimately determined not to be the actual registrant of all the domain names in the Complaint, the fee would only apply if the registrant is confirmed for 3 or more of the listed domain names; otherwise, no such fee would apply.</p>		Georges	<p>The IPC supports the proposal with the modification that the threshold should be 5 domain names and not 3. The current requirement of 15 or more domain names rarely occurs and so the provision has a limited impact. Situations involving 5 domain names based on a Complainant's mark typically have been found to support a clear pattern by a registrant. Five domain names strikes a more realistic balance between the rights of brand owners and those of Respondents who register multiple domain names based on an identifier. It also makes the provision more meaningful and can help to deter bad actors.</p>	

<p>URS Individual Proposal #13 The losing Respondent cannot re-register the same domain name once it is no longer suspended.</p>	Russ	Support Proposal as written	
<p>URS Individual Proposal #15 The URS should be amended to include express provisions (beyond the mention of a "pattern of conduct" in URS Procedure paragraph 1.2.6.3(b)) which provide additional penalties for "repeat offenders" and "high-volume cybersquatting."</p> <p>The definition of a "repeat offender" should be any domain name registrant who loses two or more separate URS proceedings. The definition of "high-volume cybersquatting" should be any URS proceeding where the Complainant prevails against a single Respondent in a Complaint involving 10 or more domain names.</p> <p>Once either of these standards are established, the penalties should include (i) a requirement that the registrant deposit funds into an escrow account, or provide an equivalent authorization on a credit card, with each new domain registration (such funds could be dispersed to prevailing Complainants in future domain name disputes against that registrant as part of a "loser pays" system), and (ii) a universal blocking of all domain registrations for a set period for the registrant (i.e. "blacklisting" the registrant on a temporary basis). There may be other possible enhanced penalties that would also be appropriate.</p> <p>Such requirements could be included in updated URS Rules, made enforceable against Registrars via parallel updates to the RAA and domain name registration agreements of individual Registrars. These obligations would be enforceable by ICANN Compliance.</p>	Russ (SP minor edit)	<p>Support Proposal</p> <p>The IPC agrees with the intent behind this proposal, which recognizes the need to step up our community efforts to block the very bad actors responsible for most of DNS abuse.</p> <p>Q1: Is the proposed definition of "repeat offender" in this Proposal appropriate? Yes</p> <p>Q2: Is the proposed definition of "high-volume cybersquatting" in this Proposal appropriate? Yes</p> <p>Q3: How feasible would it be to implement this Proposal? The suggested penalties for "repeat offenders" and "high volume cybersquatters" include "(i) a requirement that the registrant deposit funds into an escrow account, or provide an equivalent authorization on a credit card, with each new domain registration (such funds could be dispersed to prevailing Complainants in future domain name disputes against that registrant as part of a "loser pays" system), and (ii) a universal blocking of all domain registrations for a set period for the registrant (i.e. "blacklisting" the registrant on a temporary basis)." The blacklisting of the registrant should be readily feasible. However, getting a registrant to provide a credit card or deposit funds into an escrow account for each domain, may be more difficult to implement.</p>	
<p>URS Individual Proposal #16 The URS should allow for additional remedies such as a "right of first refusal" to register the domain name in question once the suspension period ends or the ability of the Complainant to obtain additional extensions of the suspension period.</p>	John	<p>Support Recommendation as written. IPC would also support the Rationale.</p> <p>It has been suggested that this would be too complex to implement. The IPC disagrees. It is a relatively simple matter to provide one party (the successful complainant) with a time-limited opportunity to secure the name before it becomes available for re-registration more generally. That time-limited opportunity could even be communicated in advance, as part of the URS outcome, making it the responsibility of the trademark owner to diarise and exercise the right.</p>	<p>I am not sure we need to, but we could provide additional data, perhaps, in support of the rationale (from the INTA survey likely)</p> <p>Group comfortable not adding data</p>
<p>URS Individual Proposal #22 The URS should incorporate a "loser pays" model.</p>	John	<p>Support Recommendation concept with minor change. Criticism of a loser pays model have focused around two practical issues: (1) determination of said fees without a hearing, and (2) collection of fees. The IPC supports that concept of a set costs being awarded to the prevailing party. For instance, in a European Union Trademark opposition, the prevailing party may be awarded up to EUR 300. If the prevailing party is the complainant, then fees should be collected by the Registrar of record, including a reasonable reimbursement to the Registrar for its role in the proceeding and implementation of the decision. If the prevailing party is the registrant, then fees should be collected by the dispute resolution provider. A reasonable fee shall also be paid to as reimbursement to the Registrar for its role in the proceeding.</p>	
<p>URS Individual Proposal #26 Revise Paragraph 7 of the URS Policy to reflect the following additional provisions: 7.4 Each Provider shall publish their roster of Examiners who are retained to preside over URS cases specifically and identify how often each one has been appointed with a link to their respective decisions.</p>	Scott	<p>IPC does not support this Proposal because it would create an undue and redundant administrative burden on dispute resolution providers. Each provider already provides a searchable database of its roster of panelists and a searchable database of decisions that includes the ability to search by panelist name.</p> <p>If this were adopted, then the obligations on Providers must not be made so burdensome and/or restrictive as to how they must be implemented that they make the URS less attractive to Providers to operate than it already is.</p>	
<p>URS Individual Proposal #27 Revise URS Rule 6 to reflect the following new provision: 6(a) Each Provider shall maintain and publish a publicly available list of Examiners and their qualifications by way of publishing a current curriculum vitae updated on a regular basis.</p>	Scott	<p>We do not support this proposal. Dispute resolution service providers already provide a searchable database of panelists that includes a resume/CV. The question of updating frequency should be left to the providers and panelists to determine by contract. The database updates their decision history so whether they have updated their professional profile for a promotion or relocation seems less relevant.</p> <p>If there were to be an enhanced requirement then the obligations on Providers must not be made so burdensome/restrictive that they make the URS less attractive to the Providers to operate than it already is.</p>	

<p>URS Individual Proposal #28 Revise URS Rue 6 to add the following provision:</p> <p>6(c) Each Provider shall ensure compliance with the Panelist Conflict of Interest Policy</p> <p>The "Conflict of Interest Policy" should be developed by the Working Group and applied to all providers</p>	Georges	<p>The IPC opposes this proposal.</p> <p>The Providers already have a conflict policy in place and require Panelists to disclose potential conflicts. Having the working group come up with a conflict policy will end up being difficult and, in the end, could result with a policy that is so onerous or unworkable (and beyond normal conflict rules) that it will be difficult to get Panelists to sign up and/or will risk the possibility of a number of frivolous collateral challenges on alleged conflict violations. For the overwhelming majority of cases, the existing policies work as Panelists are asked per Rule 6(b) to disclose potential conflicts and to sign a declaration to that effect. Many Panelists are attorneys and are under ethical obligations already with regards to conflicts. It should also be noted that under Rule 6(b) a Provider has the ability to remove a Panelist that ultimately has a conflict. While the rules do not expressly say that a party can challenge a Panelist on the grounds of a conflict, the language of the rule implies that any new information can be provided in that regard with the words "new circumstances arise." The rules therefore allow for a challenge of a Panelist if one believes there is a conflict, which should be a sufficient safeguard.</p>	<p>delete parts in red, and note them for internal information:</p> <p>GN - The conflict issue is a bit of a red herring and has, to date, only involved a small handful of matters in which a Panelist failed to disclose a potential conflict - not sure we should say this. I would also note that even if the WG were to come up with a policy, there would still be the risk that a Panelist does not properly disclose a potential conflict. Consequently, even having a further policy will not prevent the occasional situation of an undisclosed conflict by a Panelist.</p>
<p>URS Individual Proposal #29 All URS decisions shall be published in a standardized machine-readable XML format, to complement existing formats of decisions.</p>	Cynthia	<p>Significant Change Required</p> <p>The IPC supports the objectives of providing URS decisions in an XML format making that information machine readable to facilitate transparency & research. However, Providers have made it clear that implementing the proposal would pose a significant burden (both financially and in disruption of workflow) even if applied only to cases going forward. Additionally, as this is a low profit margin service, Providers offer the possibility that implementation of the proposal could push one or more of the three Providers currently offering the service to discontinue it.</p> <p>The cost to Providers makes this proposal untenable. If, however, ICANN were able to negotiate a mutually agreeable arrangement with Providers to defray a some or all of these costs through programs like the Open Data Initiative, the IPC would support making all URS data available in the XML format.</p>	
<p>URS Individual Proposal #31 For the sole purpose of assuring that this subject is included in the Initial Report for the solicitation of public comment, I am proposing that the Working Group put out for Public Comment the issue of whether the URS should become an ICANN Consensus Policy.</p>	Susan	<p>Yes, the URS should be a consensus policy applicable to all gTLDs. Experience of the URS in relation to new gTLDs has demonstrated that it has not been used disproportionately. The URS, whilst used relatively sparingly compared to the UDRP, does remain a mechanism which is a valuable complement to the UDRP, for cases where the facts make it appropriate. With one of the aims of the introduction of new gTLDs being to enhance competition in the space, and with most legacy TLDs now voluntarily having adopted the URS, it is no longer appropriate to treat some TLDs differently in this regard.</p>	
<p>URS Individual Proposal #33 All current and future URS providers should be brought under formal fixed-term contract with ICANN, instead of the current arrangements (MOUs for URS providers). Those contracts should not have any presumptive renewal clauses.</p>	Russ	<p>No not Support</p> <p>We are unclear what the specific concern is that this proposal seeks to address. It seems to be based on a misconception that the MOUs are not enforceable, and appears to assume that an MOU could not be terminated for fault.</p>	<p>Russ requested guidance on this. Should we support this proposal (which came from George K)? Or is the response to Q1 the salient point - i.e. we support transparency of the existing arrangement with the Providers (MOU is not published, only a summary) and, if needed, the bolstering of provisions?</p>
<p>URS Individual Proposal #34 URS shall be amended to incorporate in full Rule #11 of the UDRP Rules regarding "Language of Proceedings", see: https://www.icann.org/resources/pages/udrp-rules-2015-03-11-en</p> <p>"(a) Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.</p> <p>(b) The Panel may order that any documents submitted in languages other than the language of the administrative proceeding be accompanied by a translation in whole or in part into the language of the administrative proceeding."</p>	Russ	<p>Support proposal as written</p> <p>The IPC supports this recommendation, which will strengthen access to the URS process by Respondents who do not speak English. The IPC believes the URS will function with greater efficiency and integrity if its processes are accessible to all members of this global community, and thus supports the removal of language barriers where possible.</p>	<p>Discussed and agreed not to support See note on URS R2 and R9. What is the preferred outcome?</p>
<p>URS Individual Proposal #36 Eliminate the existing post-default de novo review period and instead replace the current URS appeal filing period to 60 days, with the possibility of obtaining an additional 30 days to file a URS appeal as a matter of right, upon request within the initial 60 day filing period.</p>	Georges	<p>Support concept with changes</p> <p>The IPC would support eliminating the existing post-default de novo review period. However proposing to extend the appeal period to up to 90 days is disproportionate and does not reflect the intent of the URS to provide swift resolution of disputes. It would be more appropriate to allow 30 days for an appeal with the possibility of an additional 30 days for good cause, provided the request is received within the initial 30 day appeal period.</p>	
<p>4.1 TMCH Individual Proposals</p>			

	Volunteer(s)	Notes	
<p>TMCH Individual Proposal #1 The TMCH should be responsible for educating rights-holders, domain name registrants and potential registrants about the services it provides.</p>		<p>TMCH Individual Proposal #1</p> <p>Support Proposal as written</p> <p>IPC agrees that it is important that rights holders, domain name registrants, and potential registrants and applicants understand the role of the Trademark Clearinghouse. While the TMCH should have the primary responsibility of disseminating information, conducting webinars and other types of training, and addressing questions about its role, we believe that ICANN Org and the IRT should participate with TMCH to develop these materials and programs.</p> <p>In addition, IPC believes that training and educational materials should be developed to increase awareness and understanding of other aspects of the New gTLD program and the various Rights Protection Mechanisms and guidelines developed as part of the New gTLD and the UDRP</p> <p>TMCH Individual Proposal #1 Q1 "Should education about the TMCH and its services be provided?" YES</p> <p>TMCH Individual Proposal #1 Q2 "If there should be education about the TMCH and its services, how and by whom should such education be provided?"</p> <p>As stated above, IPC agrees that there should be education about the purpose, programs, and procedures of the TMCH. We believe a number of resources should be used in this regard: printed materials, webinars, and outreach programs. These should be developed by TMCH in consultation with and with the aid of ICANN Org, IRT, and perhaps a working group formed for this purpose. We also that training and educational materials should be developed to increase awareness and understanding of other aspects of the New gTLD program and the various Rights Protection Mechanisms and guidelines developed as part of the New gTLD and the UDRP.</p>	
<p>TMCH Individual Proposal #2 (1 of 2 proposals concerning design marks) The TMCH Provider Deloitte should be required to comply with the TMCH rules limiting the acceptance of marks into the TMCH Database to "word marks".</p>	Michael	<p>TMCH Independent Proposal #2</p> <p>Do not support Proposal</p> <p>The IPC does not believe this statement is necessary or accurate. In fact, it believes that the use of the terms "word marks" and "design marks" in both the rules of the Applicant Guidebook, and in the description of TMCH proposals #2 and #3 is incorrect and misleading. First, we do not support this proposal to the extent that it relates to so-called "design marks" which include both design elements and alphanumeric or textual elements. We believe Deloitte has generally appropriately accepted for registration not only plain text trademarks but also the undisclaimed textural portion of marks which include stylized lettering or designs. In fact, as discussed below, IPC believes that the requirements for registration of trademarks with the TMCH should be revised and clarified to permit the registration of the textural portions of registered trademarks that include stylized lettering or design elements.</p> <p>In this regard, we point out that the terms "design marks" and "word marks" are both misused in the proposal – "design marks" for not only marks that consist only of a design, but also composite marks, figurative marks, stylized text marks, and "any similar combination of characters and design"; and "word marks" for "plain text marks".</p>	
<p>TMCH Individual Proposal #3 (2 of 2 proposals concerning design marks)</p> <p>1. Section 3.2 of the Applicant Guidebook be revised to use the term "text marks" rather than "word marks." "Text marks" would be defined to consist of:</p> <p>a. Marks consisting of text only, including marks where the text is portrayed in color, in a typeface (or typefaces), in a logo form, in a fanciful manner, and/or otherwise portrayed in a stylized fashion, as well as "standard character" marks.</p> <p>b. Marks consisting of text in combination with design elements or devices, sometimes referred to as, e.g., composite marks or figurative marks, except for marks where the text portion of the mark is disclaimed in its entirety.</p> <p>2. Trademark Clearinghouse Guidelines should be revised as follows (new language in bold):</p> <p>An Applicant to the Trademark Clearinghouse must include in its application a sworn statement that the trademark</p>	Michael	<p>TMCH Individual Proposal #3</p> <p>Support Proposal as written</p> <p>Q1:</p> <p>We could only agree to Proposal #2, if the proposed change to AGB section 3.2, as discussed above (Individual Proposal #3) were adopted, and Proposal #2 were amended to change "word marks" to "text marks" as defined in Section 3.2.</p>	<p>[Do we have appropriate language from PI</p>

<p>TMCH Individual Proposal #4 (1 of 2 proposals concerning geographical indications)</p> <p>1. Geographical Indicators (GIs) may not be registered in the TMCH Database used for Sunrise or Trademark Claims under the theory that they are marks protected by statute/treaty. If they are not also eligible for the TMCH Database as trademarks, any GIs presently in the TMCH Database should be removed.</p> <p>2. "Other marks that constitute intellectual property" are not eligible for Sunrise or Trademark Claims. If and when the TMCH Provider adds ancillary databases covering "other marks," it should revise its public-facing materials to make this distinction clear.</p>	Paul	<p>We support this proposal as written with the minor clarification that any use of TMCH data by the TMCH Operator to provide any ancillary services must be with the express consent of the owner of the trademarks found in the TMCH and provided only to those parties. In other words, the TMCH Operator should not be allowed to monetize the TMCH data through sales to third parties without the data owner's consent and that such consent can be inferred from the data subject's purchase of the ancillary service from the TMCH Operator. This is consistent with reasonable application of principles of data protection law within the domain name context.</p>	
<p>TMCH Individual Proposal #5 (2 of 2 proposals concerning geographical indications)</p> <p>1.0 The main database function of the TMCH is for trademarks, specifically: trademarks registered at the national or regional level; trademarks protected under common law which are confirmed by court decision(s); and trademarks protected under national or international laws by Statute or Treaty.</p> <p>1.1 The main database function of the TMCH shall be solely used for supporting the Mandatory RPMs, including TM Claims and Sunrise.</p>	Paul	<p>We support this proposal as written with the minor clarification that any use of TMCH data by the TMCH Operator to provide any ancillary services must be with the express consent of the owner of the trademarks found in the TMCH and provided only to those parties. In other words, the TMCH Operator should not be allowed to monetize the TMCH data through sales to third parties without the data owner's consent and that such consent can be inferred from the data subject's purchase of the ancillary service from the TMCH Operator. This is consistent with reasonable application of principles of data protection law within the domain name context.</p>	
<p>TMCH Individual Proposal #6</p> <p>The Trademark Clearinghouse database provider(s) should be contractually bound to maintain, at minimum, industry-standard levels of redundancy and uptime.</p>	Susan	<p>Support in principle</p> <p>This is not a topic on which the WG has spent any time, but clearly it is important for the TMCH to be readily accessible and operational, with minimal downtime, in order to meet its purpose of enabling brand owners to participate in the Sunrise and Claims.</p>	
<p>TMCH Individual Proposal #7</p> <p>In order to foster robust accountability, and in order to ease operational and commercial challenges flowing from a dearth of information about what is in the TMCH, the TMCH should transition from a closed database to an open and searchable database.</p>	Griffin	<p>Leave Blank</p> <p>Significant change required</p> <p>In general, we do not support a completely open and searchable TMCH database, as this could be easily exploited by savvy cybersquatters and other bad actors in a variety of ways, e.g. to identify gaps in TMCH records in order to register domain names that would be harder for trademark owners to detect and enforce against by avoiding exact matches of TMCH-recorded marks. That said, we recognize possible legitimate purposes for providing public access to TMCH records, e.g. to identify TMCH records that may be based on illegitimate trademark registrations acquired specifically to game the TMCH system (i.e. to provide prospective registrants early access to potentially valuable Sunrise domain name registrations). Accordingly, if adequate safeguards can be developed to mitigate and address misuse, in principle we could support a limited system for providing public access to TMCH records, perhaps through some kind of accredited access system akin to the Standardized System of Access and Disclosure ("SSAD") being developed in another ICANN policy development process.</p> <p>Phil -proposing we oppose outright: There is still no compelling reason why they would need to see what is in the TMCH database.</p>	<p>Do we put in a comment that says some support some oppose? Or leave blank since IPC does not have a single view?</p>
<p>Other Comments and Submissions</p>			
<p>Question</p>		<p>Proposed Response</p>	

<p>Are there any additional recommendations that you believe the Working Group should consider making? If yes, please provide details below.</p>	<p>Susan</p>	<p>The IPC is aware that a minority of Registry Operators are circumventing RPMs by targeting brand owners with exorbitant prices for sunrise and reserved names. While we recognize and support the limitations on ICANN's ability to regulate price, ICANN can ensure that RPMs sufficiently protect brand owner rights.</p> <p>The TM-PDDRP was written to prevent Registry Operators from taking unfair advantage of trademark owners. Fortunately, other ICANN policies and AGB terms have prevented many of the harms the TM-PDDRP was designed to address. As a result, the TM-PDDRP is not regularly used. However, new issues like price gouging (that was not considered as part of the original TM-PDDRP) are consistent with the premise for creating the procedure - helping guard against bad actor Registry Operators.</p> <p>We propose a few minor wording adjustments to allow brand owners to use the existing procedure to seek recourse against Registry Operators engaging in egregious pricing practices. We note several guardrails that will prevent over-reach:</p> <ol style="list-style-type: none"> 1. Higher prices alone are not de facto price gouging. Registries often charge slightly higher prices for Sunrise based on their costs. 2. Price gouging does not include listing an otherwise generic name at a higher price unless it is specifically targeted based on the TLD term (e.g., apple.computer vs. apple.food) 3. The policy can only be used against a Registry Operator that shows a pattern of bad faith behavior, not a few isolated incidents. 4. The system is loser-pays. 5. Compliance still must determine the appropriate remedy. 6. This change does not add any new rights, but merely proposes a new way to enforce the existing policies and procedures.
<p>Are there any other comments or issues you would like to raise pertaining to the Initial Report? If yes, please enter your comments here. If applicable, please specify the section or page number in the Initial Report to which your comments refer.</p>	<p>Susan</p>	<p>The adoption of an effective, timely and predictable mechanism for brand owners to obtain access to domain name registrant data, together with the need for that data to be accurate, goes to the heart of the effectiveness of the RPMs. Without consistent access to this information a brand owner is less able to:</p> <ul style="list-style-type: none"> - make an informed assessment as to whether a domain name registration for which they receive a NORN is problematic; - establish a registry operator's affirmative conduct for the purposes of the TM-PDDRP; - establish a pattern of bad faith registration for the purposes of the URS and UDRP; - determine whether a registrant may actually have a legitimate interest in using the particular domain, or other appropriate defence to a URS/UDRP. <p>The IPC notes that an explicit provision prohibiting registry operators from engaging in fraudulent or illegal activity, in a manner which would circumvent the RPMs, is also necessary, following determination by the FEEDBACK PICDRP Panel that no such prohibition exists. We understand that this is under consideration in the SubPro PDP, since such behaviour may go wider than circumventing the RPMs. If SubPro does not make such a recommendation this RPMs WG should address the issue.</p> <p>As a general comment, we find it disappointing that this RPMs PDP, after 4+ years of work, has largely resulted in recommendations on procedural issues and minor fixes, and that the Initial Report recommends no meaningful improvements for trademark owners to the existing mechanisms, nor any additional mechanisms. For example, when the RPMs were first developed a tapestry of mechanisms was proposed which included a Globally Protected Mark List (GPML), the only true preventative RPM. This was not adopted at the time, and it is disappointed that the manner in which the multistakeholder policy development process works means that this WG has never engaged in any real consideration to whether such a mechanism might be appropriate.</p>