

**Independent Review of Trademark Clearinghouse (TMCH) Services
Draft Report**

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I. Executive Summary

The Trademark Clearinghouse (“TMCH”) was established in March 2013 and serves as central repository for information to be authenticated, stored, and disseminated, pertaining to the rights of trademark holders in ICANN’s New Generic Top-Level Domain (“new gTLD”) program. Analysis Group was commissioned by ICANN to undertake an independent review of TMCH services based on the Governmental Advisory Committee (“GAC”) recommendation in May 2011 that a comprehensive, post-launch review be performed.¹ The purpose of this review is not to make policy recommendations, but to assess the strengths and weaknesses of the TMCH services in conjunction with the specified areas for review proposed by the GAC.² Specifically, our review is focused on the TMCH matching criteria, as well as the Claims Service and Sunrise Services (described in more detail below).³

This review is informed by an analysis of TMCH and third-party data sources, as well as interviews and surveys of TMCH stakeholders. Although it is possible that the Claims Service and matching criteria may help deter rights-infringing registrations that are exact matches to trademark strings recorded in the TMCH, it is also possible that some good-faith registrations are being deterred by the current Claims Service system, which may be detrimental to the registration activity of non-trademark-holder domain registrants. Limitations of our data do not allow us to definitively conclude whether Claims Service notifications have a deterrent effect on either type of registration activity.

In addition, extending the Claims Service period or expanding the matching criteria used for triggering Claims Service notifications may be of limited benefit to trademark holders and may be associated with costs incurred by other stakeholder groups, such as registries, registrars, and non-trademark-holder domain registrants. Although our data do not permit us to perform a cost-benefit analysis of extending the Claims Service or expanding the matching criteria, the tradeoffs felt by different stakeholder groups should be considered when weighing those policy decisions. The effectiveness of Claims Service notifications depends on how many registration attempts are being made. We find that registration activity declines after the 90-day Claims Service period ends, so any additional months added to the Claims Service period will likely have diminishing value. We also find that trademark holders infrequently dispute registrations that are variations of trademark strings. Given the low dispute rates, an expansion of the matching criteria may bring little benefit to trademark holders and only harm non-trademark-holder domain registrants, who may be deterred from registering trademark string variations that would otherwise not be considered a trademark infringement by trademark holders or authorities who make such determinations. Lastly, we find that although trademark holders expressed valuing the Sunrise period through questionnaire feedback and many trademark holders apply for Sunrise eligibility by submitting proof of use when recording their marks in the TMCH, many trademark holders do not utilize the period. This could be due to the expense of Sunrise registrations or because other protections of the TMCH services, such as the Claims Service, reduce the need for trademark holders to utilize Sunrise registrations.

¹ The full text of the GAC recommendation is available in Appendix A and can also be found on the ICANN website at <https://archive.icann.org/en/topics/new-gtlds/gac-comments-new-gtlds-26may11-en.pdf>.

² The GAC suggested an examination of whether the matching criteria could be expanded to include non-exact matches and the effect of extending the Claims Service period.

³ The TMCH also provides dispute resolution services, but those services are not a focus of this review.