

At-Large Initial Responses to Issues Raised By GNSO-STI

Main Issues	At-Large Position
Clearinghouse	Yes - More appropriate name than IP Clearinghouse
1. Separation into two parts: a) Receipt and Validation; b) Repository and Operational Services	Yes
2. Centralised Database for maintaining the TMs and providing Sunrise and IP Claim services to the Registries.	Yes. Note that the term IP Claims may be inappropriate, but is the term universally used in this context.
3. Centralized or Regional Marks Validation Service Providers (VSP)	<p>Regional validators have strong benefits. Regardless, the principle must be that it is essential that validators be knowledgeable with the issues of TM in the region in which they operate.</p> <p>Note that some decentralization, sub-contracts or local agents will always be needed to address TM registries which are not automated and online-accessible.</p>
4. Duplicate of # 1	Yes
5. VSP to adhere to minimum Standards/requirements under contract with ICANN	Regardless of whether VSP is under contract to ICANN or the Clearinghouse, ICANN must set the standards and adherence to such standards should be auditable.
6. Centralised Database to have contract with ICANN	Yes
7. Identical – Matches means:	<p>At-Large is still considering proposals similar to the IRT proposal of match factoring in space, dash, dot and other special characters.</p> <p>We would appreciate clarification of the condition where special characters may be "spelt out".</p> <p>We support visual similarity matching but not semantic or aural matching.</p> <p>We reject the concept of allowing singular/plural equivalence but would reconsider if it is described with more clarity (would mouse and mice or woman and women be equivalent; how would plural be factored in when using languages other than English).</p>

8. **Eligibility of Mark:**
- a) **Nationally Registered Mark** Yes
 - b) **Court Validated Mark (through final judgement)** Yes, but only IF database contains info on specific geographical and class boundaries, and is clearly marked as unregistered. Note that validation of such marks (including ensuring that there are no subsequent court orders) may require substantially more effort than registered marks and the Clearinghouse fees should be set accordingly.
9. **Post Launch IP Claims Service** Yes. IRT concluded that "it was unnecessary to extend the IP Claims Service post-launch because of the protections afforded by the URS that the IRT also recommends herein." We disagree, because it is far more effective to warn of a possible conflict before than to just take action after-the-fact. Moreover, prior warning will support any later URS/UDRP action.
10. **As clear information as possible on the IP Claims service so that the notice is a binding one** We support the message being as clear as possible. It is unclear how a notice can be "binding", but if the meaning is that the receipt of the notice be verifiable and usable in a later URS/UDRP action, we support this.
- NOTE: The language of the message MUST be in the same language as the rest of the registration interaction.
11. **It should be clearly stated in mandate of the TM Database that simply inclusion of a reviewed mark into the Database is not proof of any right nor does it confer any legal rights on the Rights Owner** Yes
- URS**
12. **Mandatory** Yes
13. **Purpose: Garden variety Cyber squatting with no genuine contestable issue, clear and convincing (clear-cut) cases of infringement** Yes
14. **De novo Appeal** Yes

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| Sanctions | Not as yet discussed in detail. |
| 15. Notice to Respondent should be clear | Yes |
| 16. Panellists / dispute resolution providers – randomised and no choice of which to be available to Complainant to avoid overzealous TM holder gaming. | Nice in theory. May be difficult to implement due to procedural differences, language, fees. The principle should be that the system be resistant to gaming and the selection of sympathetic panels. |
| 17. Notice time to be increased from 14 to 20 days | We support this; however, there is an overriding issue which has not been discussed. |

In the current proposal, the domain keeps resolving until the response period is up. This removes one of the key ways that a registrant may know that there is a URS pending if the various contact mechanisms have not proven successful.

At-Large suggests the following alternative which has the following characteristics:

- 1) a potentially harmful web site is taken down in MUCH less time than in the current URS proposal;
- 2) additional response time is provided for those who need it;
- 3) The probability that the URS "notice" can be acted upon by those operating in good faith is significantly increased.

Specifically, we suggest at the 14 day point, the domain name be redirected to a page stating that a URS has been filed and describing the action that the registrant must take. For a period of an additional 7 days, no further action be taken unless notice is received. If no notice is received by the end of the 7th day, a default is deemed to have occurred and the URS proceeds. If a response is received, the examination proceeds with the utmost speed.

The only downside to this process is that for cases where the registrant does not reply within 14 days and the URS ultimately fails, the web site is temporarily down. This should happen only in a very small number of cases.

NOTE: In addition to web site re-direction, e-mail should also be intercepted and a URS notice sent (similar to an out-of-office reply) to cover cases where the domain name is used only for e-mail.

18. **Modes of Notice through email, fax, hardcopy** Yes Note that the IRT chose to not use Fax or telephone. NOTE: The language of the notice must be in the language used when creating the registration.
- To quote a member of the At-large group supporting the STI initiative who lives in a non-English-speaking country *"My neighbour does not expect to receive e-mail in English. For him, if it is in English, it must be spam."*
19. **Upon a Successful Decision by a Complaint, option to transfer Domain Name for a fee** Yes, but unclear if this can be implemented and also overlaps with UDRP. But principle that a domain that has been found to be used inappropriately should not (potentially very soon) be available to do it again is a good one. Possible implementation: if no appeal after 90 days but before expiration, claimant may for a fee transfer domain. Claimant must also have ability to extend domain if about to expire.
20. **Complaint and Answer should be limited and as formulaic as possible:** Yes, but not too much reliance of formulaic as that could unreasonably constrain the information being supplied.
- Limited Complaint with website attachment; Limited Response with website attachment.** Need to better define "website attachment". Screen capture (how many?), Paper? Zipped files?
21. **Duplicate of # 19.** Yes
22. **Reviews of the URS at regular intervals** Yes, but need to set review criteria. How do we measure success or failure.
- More important, IF we see either abuse or some aspect not working, what is mechanism to quickly revise? Under normal ICANN processes, the only way to modify a policy is via a PDP which will typically take a long time even if all parties agree, or Board action if deemed an emergency. Nevertheless, a hard sunset date is unrealistic, especially if the GNSO has already started a PDP to replace this interim URS.

Clearinghouse - New

- 23 **Who pays for Clearinghouse** Options include TM owners, who benefit from the service; Registries, who do not have to fund a similar system themselves; and Registrars, who will use the system (implicitly or explicitly).