



Re: Comments on “New gTLD Program: Trademark Clearinghouse Explanatory Memorandum: Implementing the Matching Rules”

Please find below our suggestions for improvements to ICANN’s implementation of matching rules:

- We believe that ICANN and the Clearinghouse are capable of providing “matching data” for labels that go beyond an exact match of a Clearinghouse-deposited mark.

This could include plurals, “marks contained” or mark+keyword, and common typos. (This principle has been applied, e.g., to more recent TLD launches such as .ASIA.) Appropriate limitations could include labels corresponding to recovered, defensively-held domain names.

This would facilitate both IP Claims and any “blocking” mechanisms (whether the latter is encouraged by ICANN or provided directly by registries adopting best-practices).¹

We believe that suggestions that allowing labels to go beyond exact matches will be over-inclusive (i.e., that they would create false positives) are a red herring. The ICANN community has numerous qualified policy and technical-savvy individuals and organizations, whom we believe would be capable of devising appropriately-tailored and scalable principles governing such labels, and of taking these forward in a manner that balanced registrant protections with trademark owners’ enforcement concerns.

- It would be inappropriate for the Clearinghouse to charge mark owners an increasing fee based on the number of special character-created exact matches requested, at least not without public evidence outlining the rationale for such fees. (This should be an aspect of the Clearinghouse’s operations that should be readily scalable and technically efficient, i.e., we believe that any burden to the Clearinghouse to address this should be de minimis.)
- ICANN’s should consider initiating discussion on allowing for matching rules to account for characters beyond the two examples listed in the AGB and Explanatory Materials (“@” and “&”). (This is supported by the Final Report of the IRT which described non-exclusive a list of such “special characters” in more detail, and should be readily addressed at a technical level.)

¹ As ICANN stakeholders would be aware, a range of “name-spinning” technologies already exist, and are used by ICANN-accredited registrars to suggest domain name variations to registrants; names registered subsequent to such suggestions may be used for legitimate, or infringing purposes.

We would also support the opening of a public comment period on ICANN's 13 April 2012 Draft Implementation Model (which, along with the AGB, is the principle document underlying the present Explanatory Memorandum).

We also understand there is ongoing discussion on a proposed alternative Clearinghouse/Sunrise/IP Claims model. We look forward to ICANN's clarification on the relationship of this proposal to the current Draft Implementation Model and the present Explanatory Memorandum.

Thank you for your consideration of the above suggestions; please do not hesitate to contact us if we can be of further assistance.

Yours sincerely,

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