



Donuts Inc. Comments on the Independent Review of Trademark Clearinghouse Services Draft Report

Donuts Inc. appreciates the opportunity to comment on the Independent Review of Trademark Clearinghouse Services Draft Report.

We commend the Analysis Group for producing a strong report that is well balanced and involves a thorough analysis of the Trademark Clearinghouse (TMCH) rights protection mechanism (RPM). The report is data-driven and employs a wide range of inputs reflecting all relevant stakeholders. Where necessary, the report indicates where a conclusion was unavailable due to incomplete data or methodology limitations.

Findings

Several of the findings align with our experiences with the TMCH:

Claims

We strongly concur with this finding:

...extending the Claims Service or expanding the matching criteria used for triggering Claims Service notifications may be of limited benefit to trademark holders and will be associated with costs felt by other stakeholder groups, such as registries, registrars, and non-trademark-holder domain registrants. All stakeholder groups would be affected by a change in the Claims Service and matching criteria.

Of interest is the methodology used to determine the success of the Claims service. The following describes the limitations of the data available and the methodology used:

...due to limitations of the data (discussed in more detail below), our analyses of the data require an assumption that each download is associated with a registration attempt (and was not downloaded by a registrar for a purpose unrelated to domain name registrations).

And:

In conversations with IBM, we learned that downloads in the Claims Service data are an imperfect measure of Claims Service notifications. In particular, the measure would be perfect if every download from the TMDB was associated with a domain name registration attempt. However, registrars may download records from the TMDB, even when no registration attempt has been made and can download multiple records at one time.

The number of downloads of claims notifications cannot be used to measure the impact or effect of the Claims service. In order to truly measure the impact and success of the Claims service, registrars would have to track the number of claims *presented* to customers.

Particularly, an examination of ten most commonly downloaded trademark strings (see table from report) shows such a close range in the number of downloads that it is difficult to believe the count could possibly represent organic registrant requests for those terms.

String	Download Count	Trademark Holder(s)
smart	15,198	
forex	14,823	
hotel	14,690	
one	14,205	
love	13,912	
cloud	13,821	
nyc	13,622	
london	13,343	
abc	13,331	
luxury	13,125	

Matching Criteria

Additionally, we strongly agree with this finding:

We find no clear evidence that expanding the matching criteria will outweigh the potential costs of doing so. Registration activity by trademark holders and third-party registrants is disproportionately centered around exact matches of trademark strings rather than variations of trademark strings. Additionally, our results indicate that trademark holders file very few disputes.

Sunrise

The report states:

Use of the Sunrise period can be interpreted as a sign that trademark holders value the ability to register domain names matching their trademarks in a new gTLD before the general availability period...

And:

*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.** (emphasis added)*

Donuts concurs with these statements.

Conclusion

This report supports the Implementation Recommendations Team's (IRT) position that either a Sunrise or a Claims period (not necessarily both) were sufficient for rights protection. The report does not demonstrate that both in concurrence are significantly beneficial to mark holders or are worthy of cost and operational burdens born by stakeholders; it further predicates that TMCH services should not be expanded beyond the current framework for future rounds. Donuts agrees with that finding and believes the industry should be permitted to choose between Sunrise and Claims, but not be further mandated to provide both.

Thank you for the opportunity to comment on this important matter.