

	<u>TRADEMARK CLEARINGHOUSE</u>	<u>Strawman Proposal</u>	<u>ICANN Default Proposal</u>	<u>Notes</u>
1	<b>Name</b>	Trademark Clearinghouse	Trademark Clearinghouse	Consensus
2	<b>Function of Clearinghouse</b>	Separate Validation from Database Functions, but left as implementation detail on whether can be the same provider	Two providers, each global, one charged with database administration (including IP claims and sunrise services), one with data validation	Consensus
		Must utilize regional Marks Validation Service Providers (VSP) (whether directly or through sub-contractors) to be able to take advantage of local experts in the nuances of the trademark rights in question	One organization to provide validation services	Consensus
		Registry to connect with just one centralized database	One centralized database	Consensus
		TC database is not required to be separate from the database that the Provider may use to provide ancillary services that are not mandatory. Implementation detail for Staff to evaluate monopoly and anti-competitive concerns related to providing ancillary, non-mandated services.		Consensus? Concerns raised that it should be separate from any other database maintained by the Provider
		Submission (Entry Point) to Database to be regional entities or one entity (provided that can demonstrate it can accommodate language/currency/cultural issues globally), but the trademark holder only submits to one of them if it has multiple registrations covering many regions. If multiple entities used, ICANN to host information page describing how to locate regional submission points	n/a	Consensus

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3	<b>Relationship with ICANN</b>	VSP to adhere to rigorous Standards/requirements under contract with ICANN (not an accreditation like WIPO for UDRPs but more like a registrar accreditation agreement)	ICANN to provide some oversight or quality assurance through agreement with minimal requirements	Consensus
		Centralized Database to have formal contract with ICANN, including SLAs, 7x24x365 support, data escrow, etc. Contract to include indemnification by Service Provider for errors such as false positives for participants, such as Registries, ICANN and Registrars.	ICANN to provide some oversight or quality assurance through agreement with minimal requirements, to include data escrow and transfer of data upon termination requirements	Consensus
4	<b>Marks Eligible for Inclusion</b>	Nationally Registered Marks, from all jurisdictions, including countries where there is no substantive evaluation, and no common law rights except for court validated common law marks (with appropriate fees for validation).	Nationally registered marks and common law rights	Some Consensus, but concerns of including countries where there is no substantive evaluation
		identical match' means that the domain name consists of the complete and identical; TC can provide, as a separate service, "marks contained" but use by the registry is not mandatory		Some Consensus.

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		textual elements of the Mark. In this regard: (a) spaces contained within a mark that are either replaced by hyphens (and vice versa) or omitted, (b) only certain special characters contained within a trademark are spelt out with appropriate words describing it ( @ and &.), (c) punctuation or special characters contained within a mark that are unable to be used in a second-level domain name may either be (i) omitted or (ii) replaced by spaces, hyphens or underscores and still be considered identical matches, and (d) no plural and no "marks contained" would qualify for inclusion. Database to be structured to allow registry to expand coverage to include "marks contained" although use of this expanded version would be voluntary, not mandatory.		
5	<b>Mandatory Pre-Launch Use of the Trademark Clearinghouse</b>	Mandatory use to support pre-launch of a registry for either a sunrise process or a IP Claims Service (no requirement that a registry use both); Sunrise registrations should allow for specialized gTLDs to restrict eligibility for sunrise registrations to fit the purpose of the registry (example, .shoe could restrict sunrise to only trademark registrations in class of goods and services related to shoes). No requirement of use by existing registries since the mandatory use is only for pre-launch activities.	same	Some Consensus, noting minority position that protection of common law rights should be a best practice

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6	<b>Voluntary Pre-Launch Use of the Trademark Clearinghouse</b>	Voluntary use by registries of database to support common law rights, including "marks contained," for pre-launch protections. No bar on TC to offer ancillary services, such as common law rights database to registries. Recommendation that it would be beneficial for trademark holders to go to one place.		Consensus
7	<b>Voluntary Use of the Trademark Clearinghouse Post-Launch</b>	Voluntary use as a pre-registration process for URS; no requirement that the TC be used to support post-launch IP Claims;		Consensus
		TC may provide post launch IP Claims Service as a separate nonexclusive service, with implementation details left to Staff to address possible monopoly and competition concerns (such as making information available to competitors); Report to indicate that registries should consider providing post launch IP Claims protection for common law rights if it fits the registry's purpose.		Some Consensus, but possible minority position that there be a best practice to use IP Claims Post Launch.
8	<b>Required Elements of IP Claims Notice</b>	Clear notice that (i) the registrant may proceed to register the domain name if does not believe will infringe on third party rights, or plans to use for a non-commercial, or fair use, (ii) clear description of the goods and services, the jurisdictions registered, registration numbers, the date of first use, date of registration, (iii) provides either the actual Clearinghouse Data in the notice, or if feasible, a link to the Clearinghouse Data and if applicable the national registry database, and (iv) indicates that the registrant should consider consulting an attorney to understand his rights;	n/a	Draft IP Claims Notice being circulated for comments

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9	<b>Effect of Filing with the Clearinghouse</b>	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	n/a	Consensus
10	<b>Costs of Operating Clearinghouse</b>	Costs should be completely borne by the parties utilizing the services ( ie, brand holders, registries)		Consensus