SUMMARY OF RATIONALE FOR AND SCOPE OF RPM WORKING GROUP DATA REQUEST
14 September 2017

1. **What is the rationale for the RPM Working Group submitting a data request to the Council now?**

As part of implementation of the 2015 GNSO Data & Metrics for Policy Making (DMPM) Working Group's recommendations, a metrics decision tree and request form were added to the GNSO Operating Procedures, to encourage PDP Working Groups to send information and requests about data collection tasks needed for policy development to the Council. Our Working Group's data request is consistent with those unanimously adopted recommendations. While we are the first Working Group to submit such a request, this will likely become a commonplace procedure.

The RPM Working Group has concluded, through extensive background work done by two Sub Teams focused on sunrise registrations and trademark claims notices, followed by in-depth deliberations at Working Group level, that little comprehensive quantitative data, qualitative analysis and other evidence on the effectiveness of the RPMs exist. This situation exists because data collection was not built into the new gTLD program to assist any subsequent review.

In order to discharge its Chartered tasks from the GNSO Council[1], which specifically includes reviewing the collective as well as individual effectiveness of the various RPMs that were developed by the ICANN community, the RPM Working Group needs to first compile and then analyze the relevant data. Failing to do so will leave any recommendations made by the Working Group subject to substantial criticism for failing to be based upon potentially available data.

In addition, the Competition, Consumer Protection & Consumer Trust (CCT) Review Team has noted that the need for data on this topic is "pivotal" and is necessary "to fully inform the community on the impact of ICANN's New gTLD Program on the cost and effort required to protect trademarks in the Domain Name System"[2], so failing to undertake this proposed effort would also be at variance with CCT advice.

As this will be the first time that the RPMs are comprehensively reviewed by the community, the Working Group believes that data on Sunrise registrations, Claims Notices, and URS/UDRP proceedings should be gathered in a systematic and cohesive fashion to inform this first review, as well as provide the material for building a framework for any future reviews.

2. **Why is the data request so extensive?**

As noted above, no comprehensive data gathering has been done to date for the RPMs. Previous studies, including the recent Analysis Group report on the TMCH and the 2015 Staff RPM Paper, studied limited data and up to a certain point in time only, and did not address the same Charter questions that

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[1] The PDP Charter states that one fundamental purpose of the review is to "create a framework for consistent and uniform reviews of these mechanisms in the future". It also specifies that the Working Group should first "assess the effectiveness of the relevant RPM(s), for which the Working Group should seek the input of experienced online dispute resolution providers and other subject matter experts, as may be appropriate." The full text of the Charter as adopted by the GNSO Council can be viewed at https://gnso.icann.org/en/drafts/rpm-charter-15mar16-en.pdf.

[2] See the CCT Review Team's Draft Report of March 2017: https://www.icann.org/news/announcement-2-2017-03-07-en. The Final Report is expected before the end of 2017.

the Working Group is required to answer. In view of the CCT Review Team's note that such data is critical, as well as the recommendations of our dedicated subteams, the Working Group believes that it is important to not only gather the up to date data, but to do it in such a way as to build a blueprint/form for continued collection of the data in order to inform any future reviews. The Working Group believes that ultimately it will be necessary to collect this data so as to perform a data-driven model of policy making, especially in terms of creating a workable framework for future RPM reviews.

3. What happens if the Council doesn't approve the request?

The Working Group will continue its data gathering efforts with the assistance of staff as best able. However, without resources to pay for professional survey design and targeted outreach, it is quite likely that little meaningful data will be obtained on which policy recommendations can be based. The Working Group and ICANN staff are not trained experts in survey design or marketing. In addition, it is necessary to clarify if there will be budget resources available for third-party contractors to perform specific specialized research or other services.

4. What happens if the Council approves the request, or part of it?

As the Council does not have or control a budget, the next step following approval of the Motion would be to forward the request to ICANN Organization, to try to get the estimated sum allocated as soon as possible. Assuming the resource request is approved, contractors (such as professional survey designers) will be sought. This will necessarily add some time to the data gathering process, especially as the actual survey questions will then need to be drafted and run through Working Group approval (any questions posed in the Data Request are preliminary and may need to be reframed with expert assistance).

Staff has advised the Working Group that a detailed analysis of actual resource costs, and a full inventory of the data that ICANN already has or that can obtain from ready sources, will need to be performed following submission of an approved request to the ICANN organization. If the ICANN organization does not approve the full funding requested it will be necessary to prioritize the proposed data gathering based upon several criteria.

It is important to note that many of the data development tasks listed in Attachment 2 of the Request Form do not require additional funding and are included only to provide Council with an understanding of the broad scope of our data gathering efforts. Only the surveys listed in categories 1-6, and the potential use of a contractor in regard to non-exact matches and trademark claims listed in category 8, would be supported by the requested funding. The other seven categories are or will be handled by ICANN staff and do not require Council approval to proceed.

5. How long will all this take? What impact will there be on the PDP timeline?

The data gathering – especially as concerns the hiring and working with a professional survey designer and other contractors – will add some additional time to the Working Group's timeline, but that is counterbalanced by the probability that its recommendations will be grounded in verified data and therefore stronger. It is not unrealistic to assume that this will mean the Working Group can only complete Phase One of this two-phased PDP (i.e. reviewing the RPMs developed for the 2012 New gTLD Program round) by mid/late June 2018 at the earliest.

Working Group activities will not be suspended while the proposed surveys are designed, disseminated, and analyzed. During that time period we can readily proceed to consideration of URS-related Charter questions, for which we do not presently anticipate any similar need to gather additional quantitative data (because data on the number of URS cases brought at various dispute resolution providers, the domains involved, and the case disposition are already available and being analyzed by ICANN staff, and additional qualitative analysis can be performed by staff and WG members). This ability to use the survey "downtime" to address the URS will substantially mitigate the impact of the data gathering on our overall time line.

The WG is maintaining liaison with the Subsequent Procedures PDP Working Group, and the revised estimate above would see our Final Report delivered just a few months after its, if it is able to maintain its current timeline. We see no reason why the development of this needed data should result in any substantial delay of the opening of a subsequent round of new gTLDs, as that application and review process can commence while Phase One of our work is being completed.

6. What is the actual data that the Working Group hopes to gather?

For anecdotal evidence concerning Sunrise and/or Premium Name pricing, the use of Reserved Names, IDN gTLDs, deployment of any Launch Period, and the overall effect of the Sunrise or Claims RPMs on registries, registrars, brand owners and registrants (Note: the fact that some data may be anecdotal does not mean that it is not important to the Working Group's task, and such data can be the basis of related policy recommendations):

1. Survey of New gTLD Registry Operators
2. Survey of Registrars
3. Survey of Trademark & Brand Owners
4. Survey of Domain Name Registrants
5. Survey of Potential Registrants
6. Survey of public interest groups and trade associations
7. Quantitative and qualitative research on the above-noted topics
8. Compilation of investigative journalists' and other media reports as well as coverage from industry blogs and publications

For quantitative data concerning the Sunrise and Claims RPMs:

9. List of gTLDs with their applicable Sunrise and Claims periods
10. List of gTLDs that had Approved Launch Programs, Qualified Launch Programs and/or Limited Registration Periods
11. List of IDN gTLDs that conducted a Sunrise Period
12. Compilation of data and conclusions from the Analysis Group's report on the Trademark Clearinghouse
13. Compilation of INTA Cost Impact Study results
14. Compilation of all URS and UDRP cases arising under the 2012 New gTLD Program (including domains in dispute and outcomes)
15. Compilation and comparison of WHOIS records of new gTLD registrations with UDRP/URS cases, and anonymized, aggregated data from the TMCH Providers on which disputed domains generated Claims Notices and which did not
16. Contractors to assist with aggregate and anonymize the data

Again, it must be emphasized that all these data needs and potential data sources were identified by dedicated Working Group sub-teams that believed that such data could be obtained and was critical to the making of informed policy recommendations, as well as consistent with CCT recommendations.

Additional Background:

- In October 2015, the GNSO Council adopted all the consensus recommendations from the Data & Metrics for Policy Making (DMPM) Working Group, which (among others) included recommendations for a uniform Data & Metrics Request Form, to be used by Working Groups when submitting data requests to the GNSO Council: https://gnso.icann.org/en/council/resolutions#20151021-1.

- The DMPM Request Form was therefore incorporated into the GNSO Working Group Guidelines, in Section 4.5: https://gnso.icann.org/en/council/annex-1-gnso-wg-guidelines-01sep16-en.pdf.

- The DMPM Working Group also developed specific principles that should be complied with when a Working Group seeks data from ICANN's Contracted Parties (see pp. 17-18 of the DMPM Final Report: https://gnso.icann.org/en/issues/dmpm-final-09oct15-en.pdf).