

ICANN TMCH: The haunted Trademark Clearance House

 By [Naseem Javed](#)

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When the fantasy of a universal trademark clearance house was floated in the name of protecting existing trademark owners by the opposing lobbies against the global domain name expansion, particularly the gTLD programs, the domain name industry and [ICANN](#) quickly accepted the idea. A universal trademark clearance house is perhaps a greatest idea but in reality a fantasy.

Today, at ICANN, the best minds are teamed-up and struggling to get the TMHC - Trademark Clearance House constructed. Currently all the energies are mostly focused on the flow of information and technical procedures to make the system work. Like setting up the rooms and doing plumbing, heating, and air-conditioning. Eventually, upon completion, the house will look great, but it will be totally unliveable, because the flow of water and electricity was never approved. So will this become a haunted and abandoned house or what? Let's go granular.

Key facts:

ICANN's field of operations are global, gTLD from its inception is global but there is no such thing as harmonised global data on trademarks. Why it isn't so, another topic, another day? Just hold the thought.

The current TMCH structure is based on trademark owners submitting their ownership data but the voluntary data submission will also never work. Every trademark file will have its unique format and issues, every owner will have their own story. Unless the users of TMCH are proficient in trademark procedures the domain name trade will have to stay far away from rendering any opinion on availability, suitability or registrability of any name in question. So will this create thunderous mushroom clouds of new trademark litigations and will the domain industry become the new faces on the witness stands?

Furthermore, for every name in question, the black and white rules of name clearance will not work; unlike the popular electronic domain name availability based on direct hit will no longer work on TMCH issues. Less than 1% of trademarks are solid and clear - the rest are in grey areas. Grey areas are where trademarks are constantly engaged in some sort of dispute for being identical, or closely or deceptively similar.

The real questions are what will happen if the TMCH were to fail in its performance? Will the TMCH be blamed or the trademark data; will it be the ICANN and gTLDs or the trademark procedures or finally the trademark owners with not so accurate data? "Your Honour, the learned counsel misled my client Honey Boo Boo with Acme Registry allowing Honey BiBi domain over Honey Bubba..." Order, order, order...

No simple answers

What will happen if, based on the current model, the TMHC project were to be abandoned by ICANN? Will it cause the agencies and TM professionals of the world to launch massive campaigns against gTLD all over again? Are there any miraculous happenings left that will bring the magic and make the TMCH work and the end users happy? There are no simple answers. The silent world of business is crushed under the weight of an endless struggle towards name ownership. ICANN will have to take much bolder positions on the usage of gTLDs and, moreover, create a global forum with bold and open dialogue on global naming complexities, the future of domain naming, trademarks, and the practicalities of global name branding.

Incidentally, ICANN is now in the centre of the trademark and global naming procedural storm. The role of ICANN is far greater than just "assigned names and numbers" as it has already crossed into global domain name management and started influencing the name ownership and protections procedures. However, ICANN is not a threat to the global trademark procedures but rather an alliance to protect name ownership. But this once again depends on whose point of view? The storm is only getting bigger.

The work on TMCH must continue but the debate on its form and usage must take a different path.

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