Action Items:

1. Information from Jon Nevitt, Donuts: Review information it obtained from Donuts during ICANN61.

2. Need for Data in relation to the Additional Marketplace RPMs – Start next meeting with Question 2 re: what information on the aspects of the operation of the TMCH is available and where can it be found (see below): 1) Include this with questions to the TMCH, along with other questions from Berry. But this needs to be rephrased. 2) Start with this at the next meeting. Have as reference what we have previously asked them and links to related materials.

Notes:

1. Discussion with Jon Nevitt, Donuts

Question 3: Are registry operators relying on the results of the TMCH validation services, or accessing the TMCH database, to provide Additional Marketplace RPMs, and, if so, in what ways? Is there language in the current adopted TMCH policy or related documents that expressly permits, prohibits or otherwise addresses such use by registry operators? Are registry operators able to provide the same or similar Additional Marketplace RPMs without relying on the TMCH validation services or access to the TMCH database? Will there be an increase in costs? If so, what will this be to stakeholders along the value chain (i.e. brand owners, registries, registrars, other registrants)?

- Donuts relies on the results of TMCH services (does not access the TMCH database).
- Don't have to rely on an SMD could just rely on a trademark. The SMD was easier.

Question: Any thought of tying the blocking to correlate to the domain name? Answer: No different than a registration. Between registering a Sunrise for one or blocking across all our TLDs. Primarily and economic advantage? Answer: Yes. Lower cost way to register a name with a name not resolving.

Question: did you contemplate moving those who are blocking…Answer: Trademark holders should register the names that they want and use. If you are in shoes you should register anything related and then block the rest.

Question 4: What are each registry operator's rules for each type of Additional Marketplace RPM it offers (noting that some new gTLD registry operators offer more than one version of a Protected Marks List service)?
• Where a trademark holder uses a Protected Marks List service (e.g. a blocking service) for one class of goods or services, are they able to block another rights-holder who holds the same trademark, but for a different class(es) of goods or services?
• What do registry operators impose as a condition for using Protected Marks List (e.g. blocking) services? For example, do they all use the valid SMD File contained in the TMCH database?
• How much and what manner of use does each registry operator make of data from the TMCH [or the trademark holder] in providing its Additional Marketplace RPMs?

Question: Any other rules or hoops that BRAND owners have to go through? Answer: The rules speak for themselves.

"Where a trademark holder uses a Protected Marks List service (e.g. a blocking service) for one class of goods or services, are they able to block another rights-holder who holds the same trademark, but for a different class(es) of goods or services?" Answer: The answer is no. We said DPML is to protect trademark holders against cybersquatting. If someone else comes in and wants to use the name we can override, but we've seen very few of these.

Question: Does the override go just through the sunrise service, or for the life? Answer: For the life.

"What do registry operators impose as a condition for using Protected Marks List (e.g. blocking) services? For example, do they all use the valid SMD File contained in the TMCH database?"

Mary Wong: <COMMENT> From staff (if permitted) - can Jon clarify that overrides are permitted for DPML but not DPML Plus (without TM owner consent)?> Answer: That is correct.

Question: Rebecca L Tushnet: Does the TM owner need an SMD file or will a valid national registration do? Answer: Yes, you need an SMD file.

Question: Rebecca L Tushnet: This was a while back: it was how the override was initiated. When the block is encountered, does the TM owner get a message "you can override this by doing X" and then do they do it directly? Who's the they in that sentence? That is, who calls the provider? Answer: Would be a good question for registrars.

Question: What about non-commercial uses? Answer: You would follow the same procedure. Could see it on WHOIS that it is protected by a block.

Mary Wong: To add to the "need for SMD file and TMCH validation" requirement, the same is true for the Minds & Machines MPML (which has now been integrated into the TMCH's R-REx service). Which means that all the Additional Voluntary RPMs this team is looking at require a TMCH validated entry/SMD file.

From the chat:

George Kirikos: http://whois.domaintools.com/apple.plumbing

George Kirikos: "The registration of this domain is restricted, as it is currently protected by a DPML Block. Additional information can be found at http://www.donuts.domains/what-we-do/brand-protection."

George Kirikos: That's an example of one.

"How much and what manner of use does each registry operator make of data from the TMCH [or the trademark holder] in providing its Additional Marketplace RPMs?" <u>Answer</u>: Uses the SMD file.

<u>Question</u>: Does the SMD file have an expiration date? (i.e. a data field within the SMD file)
<u>Answer</u>: An SMD file has a not before and not after date embedded in it.

2. Questions re: Need for data in relation to the Additional Marketplace RPMs.

Question 5: For [for registrars who are asked by registry to operate an extended Trademark Claims Service] registry operators that extended the Trademark Claims Service beyond the required 90 days, what has been their experience in terms of exact matches generated beyond the mandatory period? For example, in terms of registration volume and numbers of exact matches?

- Staff have provided some summary data. There are 30 TLDs that have 91 days. There are 347 that have yet to post data on the micro site. See the summary data: https://community.icann.org/download/attachments/79438928/Current%20AddlMktplace%20RPMs%20-%20summary%20%26%20sources%20-%2021%20Sept%20_ICANN61.pdf?version=1&modificationDate=1520695237000&api=v2
- Mary Wong: For Spec 13 brands, you can see that there's no close dates from the list here: https://newgtlds.icann.org/en/program-status/sunrise-claims-periods

List of backend providers: Only available if they have listed it in their application, but we can find out who those providers are. As to who gets the notice on the extension – it goes to Deloitte as well – are the using the ICANN version of the TMCH or for extended claims are they failing to the other system. Ask Deloitte – separate system and if the notice going to the brand owner and the provider?

<u>Two questions</u>: 1) Who is getting the notification and 2) which TMCH system is being used for these indefinite claims?

<u>Question included in the RFP survey questions</u>**:** Look at the list of TLDs that have indefinite of trademark names and group them by registry service providers and then reach out to them to see if this is part of their practice.

Question 4, first bullet point (rephrased): Have you been blocked from registering a second level domain name matching your registered trademark in any of the gTLDs launched under the 2012

New gTLD Program? Answer: If you have a registration you are blocked from registering. If you have DPML Plus you could be overridden. Are we going to include this question to Trademark Owners? It's the same with any Sunrise registration. If a name is considered premium in the Donuts DPML it would not be blocked. If we made the second level term "love" a premium name then it would not be blocked by a DPML in that TLD. Impact is the same – you can't register it if it's registered or if it's blocked.

Question 5: For registrars who operated an extended Trademark Claims Service (i.e. beyond the required 90 days), what has been their experience in terms of exact matches generated beyond the mandatory period? For example, in terms of registration volume and numbers of exact matches?

<u>Add a note</u>: Not offering DPML as a contract with TMCH, but using the SMD file as it is meant to be used.

Question 2: What information on the following aspects of the operation of the TMCH is available and where can it be found?
a) Ancillary services offered by the TMCH which are not mandated by the ICANN RPMs, including but not limited to:
i. the post-90 days' ongoing notification service; and
ii. other services in support of registry-specific offerings
b) With whom and under what arrangements does the TMCH share data, and for what non-mandated RPMs purposes?

Action Item: 1) Include this with questions to the TMCH, along with other questions from Berry. But this needs to be rephrased. 2) Start with this at the next meeting. Have as reference what we have previously asked them and links to related materials.

Question 6: What role does the TMCH Provider (front-end) play in "servicing" the Additional Marketplace RPMs? For example:
• What services do you provide to ICANN Registry Operators?
• Does the TMCH use any data from the Clearinghouse to provide
these services? If so, please explain.
• How are you compensated for the provision of these services?