

Report of the Sunrise Registrations Sub Team

The Sunrise Registrations Sub Team held its first meeting on 14 April 2017, and held a total of 9 meetings. The Sub Team was tasked with refining Charter questions relevant to the review of Sunrise Registrations, in addition to identifying data that may be helpful to the GNSO Review of all RPMs in all gTLDs PDP Working Group in answering the questions. These questions can be found in a document titled “Sunrise Claims General Charter Questions”, posted on the Sub Team wiki here: <https://community.icann.org/x/dM7Raw>.

The need to refine these questions was largely due to the fact that they were added to the Working Group Charter as a result of direct input by the ICANN community. All questions suggested by the community were added to the Charter without revision, refinement or discrimination prior to the GNSO Council adoption of the Charter in its 9 March 2016 [resolution](#). The Sub Team’s suggested revisions include language to eliminate bias to any one stakeholder’s interests whenever possible and not to be suggestive of a specific answer.

Throughout the course of its work, the Sub Team went through 3 major iterations of refining the questions, which included consolidation of several questions when it deemed it appropriate to do so. This included several questions that were meant to address RPMs generally, but were adjusted to be answered by the Working Group in the Sunrise Registrations context.

In its final deliverable to the full Working Group, the Sub Team created a table listing both, the original Charter questions alongside the proposed, refined versions. The table also includes comments made on the questions by Sub Team members during the process, explaining the rationale behind some of the decisions to amend the questions. This table should provide a clear enough picture to the full Working Group, and any community member who elects to examine it, regarding the decisions of Sub Team.

Furthermore, during the course of its work, the Sub Team determined that certain terms should be defined; both to assist the Sub Team in proceeding with its mandate with a common understanding of these terms, as well as to

provide clarity to Working Group members reviewing the Sub Team’s final report. These terms are “reserved names,” “premium names” and “premium pricing.”

The proposed definitions are as follows:

Reserved names: second level domain names that are withheld from registration per written agreement between the registry and ICANN. (See Section 2.6 and Specification 5 in the base Registry Agreement.)

Premium names: second level domain names that are offered for registration that, in the determination of the registry, are more desirable for the purchaser.

Premium pricing: second level domain names that are offered for registration, that in the determination of the registry are more desirable for the purchaser, and will command a price that is higher than a non-premium name.

Finally, the Sub Team has identified data (and in some cases, possible sources for the data), which may be of assistance to the full Working Group when attempting to answer the Charter questions during the process to review Sunrise Registrations. In keeping with the instructions provided to it by the Working Group, the Sub Team did not attempt to collect the data, nor address the questions in any substantive manner.

For more details, all action items, notes, recordings and transcripts as well as meeting documents and materials have been published on the Sub Team meeting wiki pages found here: <https://community.icann.org/x/oMrRAw>

The following table outlines the refinements to the original Charter questions made by the Sunrise Registrations Sub Team:

<u>Original Charter Questions</u>		<u>Sub Team Recommendations</u>	<u>Proposed Notes or Alternative Wording</u>	<u>Comments/ Discussion</u>
<u>From the Working Group Charter</u>			Preamble: Is the Sunrise Period serving its intended purpose? Is it having unintended effects? Is the TMCH Provider requiring appropriate forms of “use” (if not, how can this corrected)? Have abuses of the Sunrise Period been documented by Trademark owners? Have abuses of the Sunrise Period been documented by Registrants? [Original Q1, 7, 14, 16, 18, 19 and 22]	
1	Should the availability of Sunrise registrations only for “identical matches” (e.g. without extra generic text) be reviewed?	Q1, 7, 14, 16, 18, 19 and 22	1 Is the identical match process of the Sunrise Period serving its intended purpose? Is it having any unintended consequences? Should the availability of Sunrise registrations only for identical matches be reviewed? If the matching process is expanded, how can	Note ongoing WG discussion on expanding “identical match” standard to the Claims Service - should this be considered for Sunrise too, and for what aspects of expansion (e.g. plurals, typos, mark + keyword and/or

		And (A1)(A18)		Registrant free expression and fair use rights be protected and balanced against trademark rights? (Q1)(Q18)	“mark contains”)?
2	Is the notion of “premium names” relevant to a review of RPMs, and, if so, should it be defined across all gTLDs?		2	<p>Threshold question: Is Registry pricing within the scope of the RPM WG or ICANN's review?</p> <p>Is there evidence that Registry sunrise or premium name pricing limits Trademark Owners’ ability to participate during Sunrise? If so, how extensive is this problem? (Reworded Q2, Q8 and Q15 batched)</p>	<p>Rewording intended as refocus on possibly-diminished access to the TMCH as a result.</p> <p>Sub Team to develop proposed definitions for:</p> <ul style="list-style-type: none"> - Premium Names (as distinguished from Reserved Names) - Premium Pricing during Sunrise

3	Following from Question 2, should there be a mechanism to challenge whether a domain is a 'premium name'?	Recommend keeping this question.	3	Should Registries be required to create a mechanism to allow Trademark Owners in the TMCH to challenge a Premium Name for the purpose of requiring its release so that the trademark owner can register it during the Sunrise Period, and what concerns might be raised by that requirement? (Q3)	
4	Should there be a specific policy about the reservation and release of "reserved names" (e.g. modification of Section 1.3.3 of Specification 1 of the current Registry Agreement)?	Batched Q4, Q5, Q6	4	<p>Are Registry Operator reserved names practices effectively reducing the availability of Sunrise for trademark holders? Should Section 1.3.3 of Specification 1 of the Registry Agreement be modified to address these concerns? (Q4)</p> <p>Charter question suggestion 1: Should Registry Operators be required to publish their reserved names lists -- what Registry concerns would be</p>	The original question seemed to be a "solution in search of a problem" - rewording suggested to focus the discussion on the actual problem.

				<p>raised by that publication, and what problem(s) would it solve? (Q5)</p> <p>Charter question suggestion 2: Should Registries be required to provide Trademark Owners in the TMCH notice and the opportunity to register the domain name should the Registry release it – what Registry concerns would be raised by that requirement? (Q6)</p>	
5	Should there be a public, centralized list of all reserved trademarks for any given Sunrise period?	<p>Batched with questions 4 and 6</p> <p>Question 5 slightly reworded</p>			<p>Rewording follows Sub Team discussion of the various types of reserved names different registry operators may have, and the practicality of the original Charter question vs the reworded version.</p>

6	Should holders of Trademark Clearinghouse-verified trademarks be given first refusal once a reserved name is released?	Reworded and batched with questions 4 and 5			<p>Edited to make clear what “first refusal” is intended to mean.</p> <p><i>Goal of this proceeding was never to create “rights.” Alternate wording “option” or “opportunity”</i></p>
7	Should Sunrise Periods continue to be mandatory? If so, should the current requirements apply or should they be more uniform, such as a 60-day end-date period?	Batched with question 9 and reworded	5	<p>(a) Does the current 30 day minimum for a Sunrise Period serve its intended purpose? Are there any unintended results? Does the ability of Registry Operators to expand their Sunrise Periods create uniformity concerns that should be addressed by this WG? (Q7) Are there any benefits observed when the Sunrise Period is extended beyond 30 days? Are there any disadvantages?</p> <p>(b) In light of evidence gathered above, should the Sunrise Period continue to be</p>	<p>Reworded to align with discussions elsewhere in the WG/Sub Teams regarding what the intended effect of each RPM was, and whether (as implemented) it meets that objective.</p> <p><i>Putting back in the purpose of original question: looking at time period of Sunrise</i></p>

				<p>mandatory or become optional? Should the WG consider returning to the original recommendation of Sunrise Period OR Trademark Claims in light of other concerns including freedom of expression and fair use? In considering mandatory vs optional, should Registry Operators be allowed to choose between Sunrise and Claims (that is, make ONE mandatory)? (Q7)(Q18)</p>	<p><i>and whether Sunrise should be mandatory at all?</i></p>
8	<p>Whether and how to develop a mechanism by which trademark owners can challenge Sunrise pricing practices that flout the purpose of Sunrise.</p>			<p>DELETED due to batching</p>	<p>No specific reference to rationale for Sunrise found in IRT or STI reports, but relevant observations were noted from other documents (e.g. WIPO 2005 report on IP considerations in new gTLDs).</p>

9	Whether more can be done to improve transparency and communication about various Sunrise procedures.		6	What are Sunrise Dispute Resolution Policies (SDRPs) and are any changes needed? Issues that WG might evaluate include: are SDRPs serving the purpose for which they were created? If not, should they be better publicized, better used or changed?	
<u>From early Working Group and community discussions</u>					
10	How often are SMD files compromised and have to be revoked? How prevalent is this as a problem?	Question reworded	7	Can SMD files be used for Sunrise Period registrations after they have been canceled or revoked? How prevalent is this as a problem?	Is this question still needed, given the documentation and information circulated (including Deloitte explanations) on how SMD files work?

11	Confirm that there is no data on how many LRP registrations were made available and in which registries - is there no data on additional voluntary mechanisms e.g. ALP?	Q11 & Q12 Also, see Q22 below	8	LRP ¹ , ALP ² , QLP ³ – Limited Registration Periods, Approved Launch Programs and Qualified Launch Programs. Are Limited Registration Periods in need of review vis a vis the Sunrise Period? Approved Launch Programs? Qualified Launch programs? Are the ALP and QLP periods in need of review? (Q11 and Q12).	<p>Kristine Dorrain: In my opinion, the only reason to look at QLP or ALP here is because the policies say QLP or ALP names cannot be in the TMCH. Which is the point Maxim is making, I think - that can be a problem for some TLDs, like geos.</p> <p>Maxim Alzoba: The reason to look at QLPs - is that it is defined in the Addendum to RPMs, and ALP is part of RPMs</p> <p>Maxim Alzoba: As wrote to the SubGroup before</p>
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¹ LRP: “Limited Registration Period” between the end of Sunrise and the start of General Availability with some registration restriction that limits domain names from being generally available to all registrants that are qualified to register domain names within the TLD.

² ALP: “Approved Launch Program” for which a registry operator has applied and been approved by ICANN to offer prior to Sunrise.

³ QLP: “Qualified Launch Program” under which a registry operator is able to offer up to 100 names to third parties prior to a Sunrise period, in order to promote its TLD.

					- the only GEO applicant dared for ALP, and they are ready to provide more in-depth info if required (I had a conversation with them during the GDD Summit in Madrid).
12	Are the ALP and QLP periods in need of review?	Question batched with Q11 above.			
13	Is it possible to expand the Charter questions to include some of the underlying TMCH questions concerning TM scope in the sunrise period? <i>(1) When the TM registered in the TMCH database is a generic or descriptive word, and sunrise is used</i>	This reworded question + Q18	9	In light of the evidence gathered above, should the scope of the Sunrise Period registration be limited only to gTLDs that are related to the category of goods and services in which the dictionary terms within the trademark are protected? (Reworded Q13)(Q18)	See also Q 22 below - the 2 need to be read/dealt with in conjunction.

	<p><i>for registering that mark as a domain name completely unrelated to the goods and service category of TM protection, is that fair for other/future/potential domain name registrants?</i></p> <p><i>(2) Should sunrise registrations be limited to the categories of goods and services of the TM?</i></p>				
14	<p>Is there any evidence of 'gaming' e.g. of registering a number of valuable trade mark names under the sunrise period of marks to which they do not have a traditional legal claim?</p>	<p>Sub Team agreed to park this question for now in view of ongoing WG discussions.</p>			<p><i>Gaming an intricate part, unfortunately, of Sunrise and has been raised in numerous discussions of WG and blog posts of reporters. Definitely a Sunrise issue. Now part of the</i></p>

					<i>big batched question in Q1.</i>
15	What is the relationship between premium pricing and trademark rights? To what extent do premium names correspond to registered trademarks?	Questions 2, 3, 8 and 15 batched and reworded into a single question		DELETED due to batching.	
16	Further explore "use" and the types of proof required by the TMCH	Earlier Google Doc comment on the possibility that this may be covered by the broader WG discussions on the TMCH	10	Explore use and the types of proof required by the TMCH when purchasing domains in the sunrise period	
<u>General Questions from the Working Group Charter (not related to any specific RPM)</u>					
17	Does Sunrise work for registrants and trademark holders in other scripts/languages,		11	How effectively can trademark holders who use non-English scripts/languages able to participate in sunrise	[New note to be added per Lori's suggested

	and should any of them be further “internationalized” (such as in terms of service providers, languages served)?			(including IDN sunrises), and should any of them be further “internationalized” (such as in terms of service providers, languages served)?	during subteam call]
18	Does Sunrise adequately address issues of registrant protection (such as freedom of expression and fair use?)				<i>KK: may want to lump in “abuse” as it impacts registrants, e.g., the registration in Sunrise of “the’s” and “M’s” that may deprive registrants of legitimate and important words and letters as domain names.</i>
19	Have there been perceived abuses of Sunrise that can be documented and how can these be addressed?				For general WG review (not specific to Sunrise). <i>Definitely a Sunrise issue</i>
20	Examine the protection of country names and				Currently under discussion by the full

	geographical indications, and generally of indications of source, within Sunrise				WG.
21	In the light of concrete cases (case law) and from the perspective of owners of protected signs and of marks, which are the identified deficits of the Sunrise?				For general WG review (not specific to Sunrise).
<u>Claims</u>					
22	Is the TMCH and the Sunrise Period allowing key domain names to be cherry-picked and removed from New gTLDs unrelated to those of the categories of goods and services of the trademark owner (e.g., allowing “Windows” to be removed from a future .CLEANING by	Question 22(reworded Q12) question + Q18 Sub Team agreed that this question belongs under Sunrise Registrations, not Claims. (note that the Claims Sub Team recommends	12	Are there certain registries that should not have a mandatory sunrise based on their published registration/eligibility policies? Examples include POLICE.PARIS and POLICE.NYC for geo-TLDs, and WINDOWS.CONSTRUCTION for specialized gTLDs	Moved from Claims Sub Team. KD Note: Special Purpose TLD is sort of a catch-all term for TLDs that generally have some sort of restrictions or eligibility criteria...it’s not an ICANN term and we’re open to other

	Microsoft)?	that this be referred to the full WG for an overarching discussion) Question was reworded to be more neutral		terminology.
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Proposed Data Requirements for Sunrise Registrations Charter Questions:

Original Charter Question 2 (Reworded Charter Question 2):

Question: Is there evidence that Registry sunrise or premium name pricing limits Trademark Owners' ability to participate during Sunrise? If so, how extensive is this problem?

Sources: INTA Survey and anecdotal evidence from Trademark holders and registries

Original Charter Question 5 (Reworded Charter Question 4):

Question: Should Registry Operators be required to publish their reserved names lists -- what Registry concerns would be raised by that publication, and what problem(s) would it solve?

Sources: Anecdotal data from different stakeholders, including registries. Registries that exist in jurisdictions that prohibit the publication of specific words/strings (example: profane language) should especially be sought for input.

Original Charter Question 11 (Reworded Charter Question 8):

Question: Are Limited Registration Periods in need of review vis a vis the Sunrise Period? Approved Launch Programs? Qualified Launch programs? Are the ALP and QLP periods in need of review?

Sources: TLD Startup Information page has data that can be mined, as well as anecdotal data from registries - .MADRID is the only registry known to the Sub Team that has used an ALP.

Original Charter Question 17 (Reworded Charter Question 11):

Question: How effectively can trademark holders who use non-English scripts/languages able to participate in sunrise (including IDN sunrises), and should any of them be further “internationalized” (such as in terms of service providers, languages served)?

Sources: Survey IDN gTLD Registries for the number of Sunrise Registrations that have taken place.

Original Charter Question 18 (No rewording):

Question: Does Sunrise adequately address issues of registrant protection (such as freedom of expression and fair use?)

Sources: Reach out to SO/ACs, Public interest groups and Trade Associations, registrars and registries for information (likely anecdotal evidence) - Review of articles, including investigative reporting articles, about the registration of domains in Sunrise Periods that have been noted to have an impact on free expression, fair use, and the ability of registrants to register domain names; possible additional questions for the Reporters on their research and findings.

Original Charter Question 21 (No rewording):

Question: In the light of concrete cases (case law) and from the perspective of owners of protected signs and of marks, which are the identified deficits of the Sunrise?

Sources: Anecdotal examples should be obtained. There may be some in the INTA study.

Original Charter Question 22 (Reworded Charter Question 12):

Question: Are there certain registries that should not have a mandatory sunrise based on their published registration/eligibility policies? Examples include POLICE.PARIS and POLICE.NYC for geo-TLDs, and WINDOWS.CONSTRUCTION for specialized gTLDs

Sources: Anecdotal evidence from registries.