

**Instructions:**

This table was built to assist the Sunrise Data Review Sub Team in its analysis as to whether, and how, the Analysis Group survey results answer each of the final agreed Charter questions.

Clarifying Note: This agreed Charter Question was not directly included in Analysis Group’s development of the surveys. It is nevertheless included in the Sub Team review as the survey results may be relevant to answering the agreed Charter Question.

When providing input, please note the tab title and cell number (if applicable) as reflected in the [survey analysis tool](#).

**Sunrise Charter Question 9:**

**In light of the evidence gathered above, should the scope of Sunrise Registrations be limited to the categories of goods and services for which the trademark is actually registered and put in the Clearinghouse?**

| Sub Team Member Name | Do the survey results help answer Sunrise Charter Question 9? | How do the survey results assist (e.g. “Registries responses in tab/cell X demonstrate Y”)?  | Tab Title & Cell Number (if applicable)   |
|----------------------|---|--|---|
| George Kirikos       | Yes*  | <p>[asterisk with my usual disclaimer for “Yes”, given the statistical deficiencies in the survey]</p> <p>Cell F52 of the Registries &amp; Registrars tab, had a response mentioning that overly generic strings like ‘web’ interfered with the QLP (and presumably sunrises too), which suggests suggests scope limitations should be considered.</p> <p>Cell F53 of the Registries &amp; Registrars tab mentioned gaming concerns (in the context of Limited Registration Period, ALP and QLP, but presumably applicable to sunrises too).</p> <p>Cell G74 of the Registries &amp; Registrars tab includes responses that stated “disadvantaged those with legitimate interest in domain names for use in a different class”, mentioned “dictionary words” and “too many generic terms are in the TMCH”. While in the context of a claims question, these also apply to the sunrise (given these are terms in the TMCH).</p> | <p>Registries &amp; Registries tab, cells F52, F53, G74</p> <p>™ &amp; Brand Owners tab, cell F25</p> <p>™ Owner - Q10 tab, cell F6</p> <p>Actual &amp; Potential</p> |

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|                      |   | <p>Cell F25 of the <sup>TM</sup> &amp; Brand Owners tab had a response stating that they focused on those "relevant to the business and services". Cell F6 of the <sup>TM</sup> Owner - Q10 tab is consistent with this numerically ("New gTLD relates to business' goods or services" -- very important was most popular response).</p> <p>Cell E14 of the Actual &amp; Potential Registrants tab had a response of "The domain name was generic and the combination of my branch and the Nice classes the trademark is registered for do not match" documents there is legitimate competing demand for certain terms that are in the TMCH, but in different categories of goods/services.</p>  | Registrants tab, cell E14               |
| John McElwaine       | No  | With respect to Cell 53, I believe that the "gaming" was referring to not to gaming of the Sunrise, which cannot really be gamed form an eligibility perspective in a manner that a registry operator could address, but instead the registry operator is referring to gaming of its own QLP or founders system.   | 53                                      |
| Kristine Dorrain     | No  | Agree with John re: interpretation of RY/RR F53.   |   |
| Kristine Dorrain     | No  | I don't believe the data here really answer the survey question. The "scope of sunrise registration" as listed in the charter question necessarily implicates some 3Ps determination as to the target audience for a TLD. Where a TLD has no specific eligibility policies to limit who can register a domain name, the domain is usually considered to be open and generic. This questions presumes that someone, somewhere will be artificially restricting the TLD to a specific "purpose" or 'audience" based on that group's interpretation of the TLD's semantic meaning. It also doesn't draw a distinction between arbitrary/distinctive TMs and TMs that are a bit more descriptive. Because the question is flawed, I don't think the survey can help answer it. |   |
| Kathy                | Definitely  | It's a bit buried in the fine print, but we are seeing Registrar and Ry responses noting the dismay of their customers in response to "Too many generic terms in the TMCH".  | Ry/Rr Tab                               |

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|                     |     | <p>Here is the full quote: - Too many generic terms are in the TMCH. While every customer would understand why they can't order "microsoft.tld", terms like "credit", completely generic, are difficult to explain. Also common Surnames are an issue. For example Muller in germany is very popular, as soon as one Company registers the TM, then hundreds of thousands of Mullers are put off registering a domain name legitimately." (G74)</p> <p>We also see the example in the much-discussed ALP/QLP issue and the Ry comment about "web" -- - "There are some overly generic strings in the TMDB, like "web", that interfere with the ability to run a proper QLP."</p> <p>Both are pointing to the complaint we anticipated in 2009: that categories of goods and services in TM registration is one well-developed way, in the real world, that we protect the overlapping, highly differentiated use of words in noncommercial and commercial speech, and there was great worry about not creating similar protections in the TMCH rules. In this RPM WG, we have assembled a diverse group of experts who could "get these rules right" and resolve the clear problems noted above.</p> | G74 & F52 |
| Michael Karanicolas | Yes | <p>Just to add to what was noted above...</p> <p>While results are difficult to tease out, due to the structure of the survey, there is evidence that trademark holders are taking a broad "shotgun" approach to registration, which seems to support concerns that there is some gaming of the system going on. Only 4 of the respondents to Q8 reported having more than 50 marks recorded in the TMCH, while fully 12 reported registering more than 50 domain names during sunrise periods, including 3 who registered more than 500 according to Q9a. Only two respondents on Q8 reported registering more than 250 marks in the TMCH, which means that at least one of the respondents was registering at least 5 domains during sunrise for every single</p>  |           |

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|  |  | <p>registered mark.</p> <p>We know that the system is open to being gamed, due to the fact that trademarks registered anywhere are accepted as global word marks, and we know that a number of generic words have been included in the database. This additional information bolsters the case that the system has expanded the scope of trademark protection vastly beyond what might be permissible under domestic legal contexts.</p> <p>I would support, as a solution, a requirement that registrations in the TMCH should be confined to the categories where the mark owner does business, and applied on those grounds, with the Nice Classification as a potential guide for implementing this.</p> |  |
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