

**Instructions:**

This table was built to assist the Sunrise Data Review Sub Team in its analysis as to whether, and how, the previously collected Sunrise data (between December 2016 and March 2018) answer each of the final agreed Charter questions.

- In the **Sunrise Tab** of the [analysis tool](#), Staff have included excerpts, as well as the relevant page/slide reference, from the previously collected data that staff believe may assist in answering the final agreed Charter questions. Summaries of the excerpts are included in Column B.
- The excerpts cited by Staff are nonexclusive; Sub Team members are welcome to download and reference the actual documents, linked from the **Source Tab**, to cite relevant information that may help answer the final agreed Charter questions.
- When providing input, please note the source name and page/slide number of the previously collected data.

**Sunrise Preamble Charter Question** (Preamble - intended as “level setting” questions by the Sunrise Charter Questions Sub Team):

**(a) Is the Sunrise Period serving its intended purpose?**

**(b) Is it having unintended effects?**

**(c) Is the TMCH Provider requiring appropriate forms of “use” (if not, how can this corrected)?**

**(d) Have abuses of the Sunrise Period been documented by trademark owners?**

**(e) Have abuses of the Sunrise Period been documented by Registrants?**

**(f) Have abuses of the Sunrise Period been documented by Registries and Registrars?**

Sub Team Member Name	Do the previously collected data help answer this Sunrise Charter Question?	If yes, which sub question(s) do the data assist?	How do the data assist (e.g. “Information X in document Y demonstrate Z”)?	Source Name & Page/Slide Reference
George Kirikos	Yes*	a	<p>[my usual disclaimer for Yes with an asterisk, given limited number of responses and other statistical issues]</p> <p>Pages 1-2 of the the Dec 2016 Registry Operator Responses to Initial Survey from TMCH Data Gathering Subteam have some stats showing [a] PIR registered 35 domains on average for .ngo and .ong, [b] Donuts registered 125 sunrise names on average per TLD, and [c] AFNIC registered 796 sunrise domains for .paris, and an</p>	Dec 2016 - Registry Operator Responses to Initial Survey from TMCH Data

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		c	<p>additional 891 during LRP, showing that to some degree, brand holders are utilizing the sunrise periods.</p> <p>According to the answer to Q15 of the January 2017 Deloitte responses to initial questions from TMCH Data Gathering Sub Team, 4% of the active TMCH records are not sunrise eligible (i.e. 96% are sunrise eligible), implying Deloitte is accepting the “proof of use” 96% of the time.</p>	<p>Gathering Subteam, pages 1-2</p> <p>January 2017 Deloitte responses to initial questions from TMCH Data Gathering Sub Team, Question 15, 20</p> <p>Deloitte TMCH Report, March 2013 - February 2017, points 2.2.1.4, 2.2.1.5,</p>
		d	<p>According to the answer to Q20, “the TMCH has not received any formal TMCH disputes from third parties” relating to incorrectly accepting a trademark record, or that a trademark record is no longer valid. [this data point might be interpreted in different ways, e.g. there was no abuse by markholders, or that the dispute mechanism was such that it was pointless to invoke it, and so it was never used]</p>	
		c	<p>Points 2.2.1.4 and 2.2.1.5 of the Deloitte TMCH Report (March 2013 - February 2017) has supporting data for the 4% figure of TMCh records that are not sunrise eligible (1,321 unsuccessful vs. 27,228 successful).</p>	
		c	<p>Deloitte documents in their answer to question 1 of their April 2017 response to</p>	

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		d	<p>followup questions more about their “proof of use”, but it seems subject to gaming (e.g. doesn’t show that the product/service was actually ever used to generate revenues, e.g. labels, tags, containers, press release, signage, screen shots” seem open to abuse). In other words, evidence of use is not the same as “proof” of use.</p> <p>Deloitte’s answers to question 6 relate to different types of “design marks” which go further to this point of potential abuse of sunrise, by accepting marks that are not standard character claim marks (as per the USPTO standards).</p> <p>General Note: It’s important to understand, as per:</p> <p><a href="https://www.fr.com/news/dont-be-confused-about-whether-your-trademark-is-used/">https://www.fr.com/news/dont-be-confused-about-whether-your-trademark-is-used/</a></p> <p>"The Trademark Act now defines “use in commerce” as “the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark.”</p> <p>So, when I mention gaming of Deloitte's "proof of use", it's in that context. It can't be token or de minimis use. I doubt the various "HOTEL" / "HOTELS" marks that Deloitte accepted would stand up to any serious scrutiny, as it appears to me they were "made merely to reserve a right in a mark."</p>	Deloitte April 2017 Response to followup questions, answers to Questions 1, 6

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			<p>We've seen this before, in the EU sunrise. Recall:</p> <p><a href="https://eu.adr.eu/adr/decisions/decision.php?dispute_id=3147">https://eu.adr.eu/adr/decisions/decision.php?dispute_id=3147</a>  <a href="http://eu.adr.eu/adr/decisions/decision.php?dispute_id=2438">http://eu.adr.eu/adr/decisions/decision.php?dispute_id=2438</a></p> <p>with registered trademarks for "ASK" and "AUTOTRADER" for "plectrums", i.e. guitar picks</p> <p><a href="https://en.wikipedia.org/wiki/Plectrum">https://en.wikipedia.org/wiki/Plectrum</a></p> <p>I'm sure anyone could provide Deloitte with a "evidence of use" of a plectrum with "ASK" or "AUTOTRADER" or some other common dictionary term on it. While Deloitte would likely accept them for inclusion, few others would find that to be sufficient to demonstrate "bona fide use of a mark in the ordinary course of trade."</p> <p>The fact that the TMCH database is not open to public inspection and research keeps sham records hidden from scrutiny.</p>	
Kristine	yes	f	Donut’s response suggests that their service ensured no abuses of the sunrise	RY responses

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Dorrain			process.. PIR’s SDRP was never used. AFNIC notes two uses of its SDRP in 1687 Sunrise and LRP phases. This suggests registries did not observe sunrise abuses..	to Data subteam p 1-2
Kristine Dorrain	yes	d-f	I note that the sections George cited above are useful to review, but don’t agree that they point to abuses as the TMCH provider points out that the majority of their disputes were people who felt they did to enough to validate their marks and lost -so it’s possible brand owners could have submitted in good faith but just not met the bar.	
			Question from Kathy: Can the SDRP be used if the TMCH database is non-transparent. I think the SDRP may have been premised on the database’s initial state of openness. What would we need to propose in order to make the SDRP useable?	
Kathy	yes	b	Unintended effects include that the community, as a whole, cannot monitor the Sunrise process. Part of the premise of the GNSO Council and Board-Adopted rules was to provide Community oversight.	
Kathy	yes	a	Low rates of registration in Sunrise. Does this suggest that trademark owners do not need this service -- because they are not choosing to take advantage of it?	
Kathy	yes	f	Arguably, the “protected marks list” of Donuts and other registries is an abuse of Sunrise process. The Community as a whole rejected the “globally protected marks list” concept, and crafted/accepted instead the careful balance of the TMCH, Claims	COMPILATION OF REGISTRY RESPONSES TO

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			and Sunrise process emerged. The goal was to encourage a fair balance of the right of the trademark owners (and allow them to register in those gTLDs in Sunrise to which they are most attuned, and then allow the remainder of those domain names (dictionary words, first and last names, three letter acronyms, etc) to others. That’s the balance of free speech and trademark law; yet, where one trademark owner can use their SMD file, and private policies of registries, to register across all gTLDs of the registry (which are hundreds in the case of this registry), then the balance is no longer being preserved and the TMCH resources are being “abused,” namely misused for purposes far beyond those adopted by the ICANN Community and within the carefully-crafted balance that Community sought.	QUESTIONS DEVELOPED BY THE TMCH DATA GATHERING SUB TEAM (as of 13 December 2016)

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