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):

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

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George Kirikos	Yes*	a	[my usual disclaimer for Yes with an asterisk, given limited number of responses and other statistical issues] 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	Dec 2016 - Registry Operator Responses to Initial Survey from TMCH Data

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			additional 891 during LRP, showing that to some degree, brand holders are utilizing the sunrise periods.	Gathering Subteam, pages 1-2
		c	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.	January 2017 Deloitte responses to initial questions from TMCH Data Gathering Sub Team, Question 15, 20
		d	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TMCH disputes from third parties" relating to incorrectly accepting a trademark record, or that a trademark record is no longer valid.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]	
		c	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).	Deloitte TMCH Report, March 2013 - February 2017, points 2.2.1.4, 2.2.1.5,
		c	Deloitte documents in their answer to question 1 of their April 2017 response to	

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		d	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. 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). General Note: It's important to understand, as per: https://www.fr.com/news/dont-be-confused-about-whether-your-trademark-is-used/ "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." 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."	Deloitte April 2017 Response to followup questions, answers to Questions 1, 6

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			We've seen this before, in the EU sunrise. Recall: https://eu.adr.eu/adr/decisions/decision.php?dispute_id=3147 http://eu.adr.eu/adr/decisions/decision.php?dispute_id=2438 with registered trademarks for "ASK" and "AUTOTRADER" for "plectrums", i.e. guitar picks https://en.wikipedia.org/wiki/Plectrum 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." The fact that the TMCH database is not open to public inspection and research keeps sham recordals hidden from scrutiny.	
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. "It is correct that the Trademark Clearinghouse database is not publically available and therefore third parties cannot retrieve information regarding what trademark records are recorded in the TMCH."	FOLLOW UP QUESTIONS FOR DELOITTE 5 Dec 2017, Q2, p.s
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?	COMPILATION OF REGISTRY

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			--- Sub Team Comments: ● Kathy K: Documents shed light on the question, specifically (a) and (b) with respect to unintended consequences. Donuts (compilation of registry responses) -- use of the SMD file. ● Claudio: need to look at all new gTLDs launched. If we look at each individual TLD we might get the wrong impression (on number of Sunrise registrations) need to look across the entire universe. ● George K: If the number of Sunrise registrations are low it seems like there wasn't the expansion that was expected. ● Susan P: There are inconsistency in terms of assumption when interpreting the data. Better to review all data sources first before jumping into assumptions/conclusions.	RESPONSES, (13 Dec 2016), cited in other sunrise ques sections, QA, p.1-2.
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 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	COMPILATION OF REGISTRY RESPONSES TO QUESTIONS DEVELOPED BY THE TMCH DATA GATHERING SUB TEAM (as

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			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.	of 13 December 2016), Ques B, p.3-5.
Griffin Barnett	Yes	(a) – (c)	RO Responses: - PIR registered 35 domains on average for .ngo and .ong, Donuts registered 125 sunrise names on average per TLD, and AFNIC registered 796 sunrise domains for .paris, showing that to some degree, brand holders are utilizing the sunrise periods. - Donuts: We did have a handful of registrants wanting to participate in Sunrise but they were not able to get their SMD file in time. Deloitte Responses - In the event that a specific trademark record does not meet the requirements the trademark record will not receive any services, such as sunrise services or trademark claims services and receives the status "invalid". - The number of invalid trademark records is on average 8% of the total number of mark records submitted to the Clearinghouse. - at this moment an average 4% of the active TMCH records are not sunrise eligible. We have not received any complaints regarding the sunrise eligibility requirements and our verification process. Deloitte Report - 2.2.1.1 Number submitted to TMCH · Total = 42 051 2.2.1.2 Number	Listed in Prior Column

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			successfully verified (including the expired trademark records) · Total = 38 172 2.2.1.3 Number unable to be verified · Total = 3 879 2.2.1.4 Number successfully verified to minimum sunrise eligibility · Total = 27 228 (excluding the expired trademark records) 2.2.1.5 Number that have successfully met basic verification and that requested, but did not meet minimum sunrise eligibility · Total = 1 321 2.2.1.6 Number that have been successfully verified that have become de-activated · Total = 93 2.2.1.7 Number that have been successfully verified with sunrise eligibility that have become de-activated · Total = 71 - 2.2.2.1 Number submitted to TMCH · Total = 41 937 2.2.2.2 Number successfully verified (including the expired trademark records) · Total = 38 093 2.2.2.3 Number unable to be verified (Incorrect or Invalid) · Total = 3 844 2.2.2.4 Number successfully verified to minimum sunrise eligibility · Total = 27 228 (excluding the expired trademark records) 2.2.2.5 Number that have successfully met basic verification and that requested, but did not meet minimum sunrise eligibility · Total = 1 249 Deloitte Follow-Up - When a trademark holder informs the TMCH that a mark has been cancelled the mark will be deactivated and the Sunrise and Claims services will be cancelled within 24 hours	
David McAuley	Possibly		Referring to AG Independent Review of TMCH - reading Appendix I may be helpful (pages 64-67 which are a summary of various responses including some responses by single entities - Appendix covers more than Sunrise (e.g., cl;aims, verification, etc))	

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Greg Shatan	To some extent	(a)	"Lastly, we find that although trademark holders expressed valuing the Sunrise period through questionnaire feedback and many trademark holders apply for Sunrise eligibility by submitting proof of use when recording their marks in the TMCH, many trademark holders do not utilize the period. This could be due to the expense of Sunrise registrations or because other protections of the TMCH services, such as the Claims Service, reduce the need for trademark holders to utilize Sunrise registrations."	Analysis Group TMCH Review, 3
Greg Shatan	To some extent	(a)	Discussion of frequency of use of Sun shows barriers to use: "This is consistent with feedback that we received in questionnaires, which indicated that the Sunrise period is a valuable opportunity to prevent cybersquatting but is also an expensive option. These results may also reflect a relationship between the usage of Sunrise registrations and the effectiveness of the Claims Service period or other services that trademark holders may use to protect their brands, such as global blocking programs." Other data may also show barriers, which in turn frustrate the purpose of Sunrise.	AGTR, 34
Greg Shatan	To some extent	(c)	"(c) Additional explanation requested for rejections or additional requested materials: A common comment across trademark owners, TMCH agents, and law firms was that it was difficult to understand the reason for rejection or why additional materials were requested for an application. Respondents felt that additional information would be helpful."	AGTR, 67

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Greg Shatan	To some extent	(d)	"False trademark registrations: A law firm suggested that some "trademark owners" purposefully register generic trademarks in order to register premier domains during the Sunrise period."	AGTR, 66
Susan Payne	Limited - Limations on Data	a, b	"We note that our data and analyses are descriptive in nature, and we are only able to draw conclusions regarding whether the results of the evaluation are consistent with what one would expect to see if the TMCH services were effective (or not) at helping to deter domain name abuse. Our data also do not quantify the costs and benefits associated with the present state of the TMCH services, nor the potential costs and benefits of expanding or altering the way the services function, making concrete cost-benefit analyses outside the scope of this report."	AG Review of TMCH, p6 IV Data
Susan Payne	To some extent - limitations on data	a, b, d	The most frequently downloaded TM strings in Claims Service Data. The fact that these "dictionary term" strings have been downloaded thousands of times suggests that they were not widely registered by the trademark owners in question during Sunrise (or they would not have been available during the claims period). Suggests lack of sunrise abuse in these cases. Likewqise the results on p34 that "19.9% of the trademark holders with trademark strings recorded in the TMCH who were eligible to make Sunrise period registrations ever did so. On average, only 7.2% of trademark holder registrations for domain names that match their trademark strings are made during Sunrise periods	AG Review of TMCH, p 8 - 9 Table 1; p34

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