**Proposal for Collection of Data Relevant to a Review of the Sunrise RPM**

**(Draft – 1 August 2017)**

This document is a proposal from the RPM Working Group Co-Chairs that describes various methods and approaches that can be used to collect the data as recommended by the Sunrise Sub Team. It is being presented to the full Working Group for its review and feedback.

**Preliminary Note:**

In preparing this proposal, the Co-Chairs agreed that it is very likely that some of the data sought by the Working Group will need to be collected with the aid of professional surveyors and other qualified third parties. Obtaining budget approval and other resources for such external assistance requires submission of a request to the GNSO Council[[1]](#footnote-1). In addition, requests relating to data gathered from ICANN’s Contracted Parties must comply with the principles developed by the GNSO’s Data & Metrics for Policy Making (DMPM) Working Group.

The non-exhaustive DMPM Principles governing requests for and usage of data collected from ICANN’s Contracted Parties are that these[[2]](#footnote-2):

* Should be non-discriminatory among registrars/registries and data providers listed should also be treated as confidential
* Should clearly state the purpose for which the data and/or metrics will be used
* Should maintain the confidentiality of the data and/or metrics unless otherwise agreed
* Should be anonymized and aggregated, unless otherwise agreed
* Should provide adequate safeguards to protect against unauthorized access or disclosure, consistent with ICANN’s policy development process
* Should consider whether the data can be collected directly by ICANN or indirectly (i.e., collected and processed by an independent third-party)
* Should not include retail and wholesale pricing to be used in consensus policy development (refer to Registry & Registrar agreements)
* Should involve special when Personally Identifiable Information (PII) data is involved
* Should store data for only so long as may be required for the specified policy development effort, and should be destroyed upon completion
* Should have a unilateral opt out for data source owners, where data does not have contractual obligations, if they determine that the data is sensitive

In addition, the DMPM Working Group developed a [Metrics Request Decision Tree](https://community.icann.org/download/attachments/49358271/DMPM_Metrics_Request_DecisionTree_InitialReport.pdf?version=1&modificationDate=1437863851034&api=v2)[[3]](#footnote-3) that was intended to guide a requesting Working Group’s understanding as to the availability and considerations for potential sources of data where these are not be publicly available

**Proposals & Comments for Data Collection Correlated to Specific Sunrise Registrations Charter Questions**

This section of the proposal lists the refined Charter questions specific to Sunrise Registrations followed by sources identified for possible data collection, suggested methodologies and additional comments.

With the exception of the factual data published on ICANN’s New gTLD Startup Page (which is publicly available data), all the other data that has been identified for collection is external to ICANN. Some of these are to be collected from ICANN’s Contracted Parties, and some may not be considered publicly available data. Under the GNSO Working Group Guidelines, the Working Group will need to use the Metrics Request Decision Tree developed by the DMPM Working Group to assist with its preparation of any request to the GNSO Council for third party data collection

**Question 2:**

* Does Registry Sunrise or Premium Name pricing practices unfairly limit the ability of trademark owners to participate during Sunrise?
* If so, how extensive is this problem?

|  |  |  |
| --- | --- | --- |
| **Source** | **Possible approach/methodology** | **Comments** |
| 1. International Trademark Association (INTA) Survey – external to ICANN  * This 2017 impact survey of INTA members requested that they report their costs of trademark enforcement relative to domain registrations in new gTLDs over a two-year period (2015 – 2017), including:   + Both in-house and outside legal fees   + Filing fees   + Investigation costs   + Total costs, including benefits, of personnel responsible for these activities. | ICANN staff (possibly working with INTA and Sunrise Sub Team members) to analyze survey results to:   * Report findings to the Working Group * Identify possible gaps or need for additional/follow up information that can be sought from INTA members participating in this Working Group | This can be done immediately  Findings should also be analyzed along with the upcoming Final Report from the CCT-RT (due Aug/Sept 2017), as the INTA survey results have been shared with the CCT-RT as well |
| 1. Anecdotal evidence from TM owners | Survey   * Need to first develop appropriate survey questions * Need to decide if professional assistance is required to design and/or carry out survey (as opposed to merely desirable – NOTE: If results are to be anonymized, does this mean ICANN staff should not conduct the survey?) | Consider first seeking feedback from TM owners/advisors participating in the PDP as to the feasibility and possible scope of such a survey  If professional assistance is needed, the WG Co-Chairs will need also to submit a detailed request (with estimated costs) to the GNSO Council |
| 1. Anecdotal evidence from registry operators | Survey   * Same considerations as for a TM owner survey (above) * Additional consideration as to whether to combine this survey with other survey suggestions for the same stakeholders into a single “omnibus” survey | If professional assistance is needed, the WG Co-Chairs will need also to submit a detailed request (with estimated costs) to GNSO Council  If several surveys are to be done of registry operators (for the different Charter questions) rather than a single “omnibus”, consider which to prioritize so as to spread them out |
| 1. Sunrise pricing information to be collected from registry operators | Request information from all new gTLD registry operators who offered a Sunrise Period?   * List of registry operators available at ICANN’s new gTLD Startup Page (<https://newgtlds.icann.org/en/program-status/sunrise-claims-periods)>; however, this is only a starting point as the pricing information will still need to be collected from each registry operator * Information can be gathered by ICANN staff | Will a sampling of registry operators (as opposed to all registries who did a Sunrise) be sufficient? This can substantially reduce the work and time involved |

**Question 4:**

* Are Registry Operator reserved names practices unfairly limiting participation in Sunrise by trademark holders?
* Should Section 1.3.3 of Specification 1 of the Registry Agreement be modified to address these concerns?
* 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?
* 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 this requirement?

|  |  |  |
| --- | --- | --- |
| **Source** | **Possible approach/methodology** | **Comments** |
| 1. Anecdotal data from different stakeholders, including registries | * Need to first specify which stakeholders (besides registries) to be contacted for information * Use survey format?   Note - If a survey is used for registry operators, consider if this is to be part of the same survey (see above under Question 2) | In addition or alternatively, can similar input be sought via soliciting feedback directly from specific stakeholder groups, given that these questions are more prescriptive in nature? If so, this can be combined with the SO/AC request under Question 5 (below)  Co-Chairs will need to submit request to GNSO Council if professional assistance is used for a survey |
| 1. Registries in jurisdictions that prohibit the publication of specific words/strings (example: profane language) should especially be sought for input. | * Need to first determine and agree on what those jurisdictions and registries are in the first place * Survey format? (Presumably this will be a different survey from the one sent to all registry operators, per above; but similar considerations as to anonymizing the results remain applicable here) | Co-Chairs will need to submit request to GNSO Council if professional assistance is used for a survey |

**Question 5:**

(a) Does the current 30-day minimum for a Sunrise Period serve its intended purpose, particularly in view of the fact that many registry operators actually ran a 60-day Sunrise Period?

* 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?
* Are there any benefits observed when the Sunrise Period is extended beyond 30 days?
* Are there any disadvantages?

(b) In light of evidence gathered above, should the Sunrise Period continue to be mandatory or become optional?

* Should the WG consider returning to the original recommendations from the IRT and STI 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)?

|  |  |  |
| --- | --- | --- |
| **Source** | **Possible approach/methodology** | **Comments** |
| 1. SO/AC outreach | * Survey or direct solicitation (e.g. following the PDP requirement of early outreach)? | This can be done immediately if it is via direct SO/AC outreach (following an agreed draft of the outreach letter) |
| 1. Outreach to public interest groups and trade assocations | * Need to identify the groups * Survey format likely to be easier for respondents (especially those with little experience with ICANN PDPs) * Survey can be conducted by ICANN staff | This can be done immediately following agreement on which groups to approach |
| 1. Registries and registrars for anecdotal evidence |  | This can be covered via the SO/AC outreach noted above |
| 1. Articles resulting from investigative reporting on domains registered during Sunrise that have been noted to have an impact on free expression, fair use, and the ability of registrants to register domains | * Need to first identify more specific sources (reporters and publications) * Articles (once sources are identified) can be collated by ICANN staff | This can be done immediately following agreement on which sources to use |

**Question 8:**

LRP , ALP , QLP – 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?
* What aspects of the LRP are in need of review?

|  |  |  |
| --- | --- | --- |
| **Source** | **Possible approach/methodology** | **Comments** |
| 1. ICANN New gTLD Startup Page | * Information can be compiled by ICANN staff | Note that information is limited only to listing the registry that ran a ALP, QLP and LRP and the relevant dates  The information can be compiled immediately for further analysis |
| 1. Anecdotal data from registry operators | * Survey or direct outreach to RySG * If survey, will this be part of the “omnibus” survey noted above? * If direct outreach, this can be covered by the outreach letter noted in Question 5 (above) | Note comments made at ICANN59 about .madrid being the only registry that ran a ALP, and additional comments about difficulties with the ALP approval process. |

**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)?

|  |  |  |
| --- | --- | --- |
| **Source** | **Possible approach/methodology** | **Comments** |
| 1. Ask IDN gTLD registries for the number of Sunrise Registrations they had | * This can be done by ICANN staff | Will there be any business confidentiality issues? |

**Question 12:**

Question: Should Sunrise Registrations have priority over other registrations under specialized gTLDs? Should there be a different rule for some registries, such as specialized gTLDs (e.g. community or geo TLDs), based on their published registration/eligibility policies? Examples include POLICE.PARIS and POLICE.NYC for geo-TLDs, and WINDOWS.CONSTRUCTION for specialized gTLDs

|  |  |  |
| --- | --- | --- |
| **Source** | **Possible approach/methodology** | **Comments** |
| 1. Anecdotal evidence from registries | * Direct outreach given the prescriptive nature of the question? | This can be covered by the SO/AC outreach letter (see above) |
| 1. Industry blogs and forums e.g. domaining.com; Name Pros, DN Forum | * The information can be collected by ICANN staff, once sources are confirmed | Need to specify any additional sources |

**Original Charter Question 21 (No rewording – referred to full WG):**

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 RPMs?

|  |  |  |
| --- | --- | --- |
| **Source** | **Possible approach/methodology** | **Comments** |
| 1. Anecdotal evidence (e.g. from the INTA Survey) | * This can be added to the analysis under Question 2 | Is there a need to add this question to any survey to be done of TM/brand owners (e.g. as is recommended for Question 2, above)? |

1. The Metrics Request Form developed by the DMPM Working Group was incorporated into the GNSO Operating Procedures as Section 4.5 of the GNSO Working Group Guidelines: <https://gnso.icann.org/en/council/annex-1-gnso-wg-guidelines-01sep16-en.pdf>. [↑](#footnote-ref-1)
2. See Pages 17-18 of the DMPM Working Group’s [Final Report](https://gnso.icann.org/en/issues/dmpm-final-09oct15-en.pdf) (dated October 2015). [↑](#footnote-ref-2)
3. See Annex B of the DMPM Final Report. [↑](#footnote-ref-3)