

**Priority:** N3

**Issue:** Dispute Resolution

**Description:** Disputes of various types may arise during the operation of the Trademark Clearinghouse. Processes should be in place to address these in a fair and efficient manner.

**Business**

**Requirements:**

- (1) Focus resources on addressing the most likely types of disputes
- (2) Ensure that disputes are decided on an impartial basis
- (3) Ensure that dispute resolution processes are not burdensome to use
- (4) Avoid imposing a role for the clearinghouse that is inconsistent with the role agreed upon by the community

**Sunrise Dispute Resolution**

The text in the Applicant Guidebook provides for challenges to a sunrise registration based on at least the following four grounds:

- (i) At the time the challenged domain name was registered, the registrant did not hold a trademark registration of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty;
- (ii) The domain name is not identical to the mark on which the registrant based its Sunrise registration;
- (iii) The trademark registration on which the registrant based its Sunrise registration is not of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty; or
- (iv) The trademark registration on which the domain name registrant based its Sunrise registration did not issue on or before the effective date of the Registry Agreement and was not applied for on or before ICANN announced the applications received.

It is also noted that the Trademark Clearinghouse will hear challenges.

**Additional Types of Disputes**

Additional types of disputes are possible concerning the Clearinghouse processes. Any dispute resolution mechanisms should concern Clearinghouse processes themselves, rather than determinations on the underlying rights. In some cases, this might resemble more of a reconsideration or appeal process rather than a dispute resolution model.

The Clearinghouse should not be a venue for deciding legal claims.

A list of some types of scenarios is included below, with possible mechanisms for resolution:

Relevant action	Basis of dispute	Initiated by	Mechanism
Recording data in Clearinghouse	Record was accepted in error, due to faulty authentication or validation	Third party	Clearinghouse review/appeal process
Recording data in Clearinghouse	Record was denied in error	Rightsholder	Clearinghouse review/appeal process
Sunrise	Sunrise registration was permitted in error	Third party or other rightsholder	Sunrise Dispute Resolution process
Sunrise	Sunrise registration was denied in error	Rightsholder	Registry process
Sunrise	Dispute over allocation between more than 1 qualified sunrise registrant for same name	Rightsholder	Registry process
Sunrise	Notice of sunrise registration not sent to rightsholder	Rightsholder	Dependent on party with responsibility for sending notice
TM Claims	Notice sent to domain name applicant in error	Rightsholder or domain name applicant	Dependent on party with responsibility for sending notice
TM Claims	Notice not sent to domain name applicant	Rightsholder or domain name applicant	Dependent on party with responsibility for sending notice
TM Claims	Notice of registration not sent to rightsholder	Rightsholder	Dependent on party with responsibility for sending notice

### Questions for Discussion

1. What types of disputes, if any, are foreseen but not captured in this framework?
2. What entity should administer the sunrise dispute resolution processes?