Sunrise Sub Team Recommendations for RPM PDP Working Group Discussion

[Status Check - Draft as of 18 June 2019]

NOTE: All colored text are Sub Team deliberations, which are tentative and will be removed from this document when it is final. **Grey text are Sub Team discussions.** **Blue text are excerpts from Sunrise Q8/Q12 Google Doc.** **Red text are staff notes.**

Table 1 is a snapshot of the overall status of the Sunrise Sub Team's deliberation on each agreed charter question and development of proposed answers, preliminary recommendations (if any), and proposed questions for community input (if any).

Table 2 aims to consolidate, in a clear and concise manner, the Sub Team's proposed answers, preliminary recommendations, and proposed questions for community input in relation to each agreed Sunrise charter question. **Sub Team Co-Chairs, in collaboration with staff, proposed the text. When finalized, this table will not include Sub Team discussions and deliberations.** All colored text are Sub Team deliberations, which are tentative and will be removed from this document and stored in the Sub Team's Summary Table.

Table 3 is a snapshot, based on Sub Team Co-Chairs' preliminary assessment, of the results of the review of all individual proposals received from Working Group members. Details and additional context are contained in the Sub Team's Summary Table and the Sub Team's weekly progress reports.

Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input

Table 1: Status of Sub Team Deliberation

Question	**Overall Status**	**Open Item**
Preamble Q	Draft text (proposed by ST Co-Chairs and Staff) not reviewed	-
Q1	Sub Team reviewed draft text on 29 May, ST Co-Chairs and staff revised proposed answers and preliminary recommendations incorporating input from the Sub Team	None
Q2	Sub Team reviewed draft text on 29 May, ST Co-Chairs and staff revised proposed answers and preliminary recommendations incorporating input from the Sub Team	None
Q3	Sub Team reviewed draft text on 5 June, ST Co-Chairs and staff revised proposed answers incorporating input from the Sub Team	None
Q4	Sub Team reviewed draft text on 5 June, ST Co-Chairs and staff revised proposed answers incorporating input from the Sub Team	None
Q5(a)	Sub Team reviewed draft text 5 June, Sub Team had no comment, ST Co-Chairs and staff revised proposed answers and preliminary recommendations	None
Q5(b)	Draft text (proposed by ST Co-Chairs and Staff) not discussed	-
Q6	Sub Team reviewed draft text on 5 June and 12 June, ST Co-Chairs and staff revised proposed answers incorporating input from the Sub Team	None

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Q7	Draft text (proposed by ST Co-Chairs and Staff) not reviewed	-
Q8	Draft text (proposed by ST Co-Chairs and Staff) not reviewed; draft questions for community input (proposed by Kristine and Maxim) not reviewed	-
Q9	Draft text (proposed by ST Co-Chairs and Staff) not reviewed	-
Q10	Draft text (proposed by ST Co-Chairs and Staff) not reviewed	-
Q11	Draft text (proposed by ST Co-Chairs and Staff) not reviewed	-
Q12	Draft text (proposed by ST Co-Chairs and Staff) not reviewed; draft questions for community input (proposed by Kristine and Maxim) not reviewed	-

Table 2: Proposed Answers, Preliminary Recommendations & Proposed Questions for Community Input

PREAMBLE QUESTION		
Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
Preamble Q(a): *Is the Sunrise Period serving its intended purpose?* **Proposed Answer:** The Sub Team disagreed on whether the Sunrise Period is serving its intended purpose. There are two primary		The Sunrise Sub Team recommends that public comment be sought on whether the Sunrise Period is serving its intended purpose. Public commenters should provide evidence and analysis to support their views. The Sub Team noted that the intended purpose for

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Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
opinions: 1) Yes, it is serving its intended purpose. 2) No, it is not serving its intended purpose.		Sunrise service is as follows: Sunrise services allow trademark holders an advance opportunity to register domain names corresponding to their marks before names are generally available to the public.[1]
Preamble Q(b): *Is it having unintended effects?* **Proposed Answer:** The Sub Team had widely diverging opinions on whether the Sunrise Period is having unintended effects.		The Sunrise Sub Team recommends that public comment be sought on whether the Sunrise Period is having unintended effects. Public commenters should provide evidence and analysis to support their views.
Preamble Q(c): *Is the TMCH Provider requiring appropriate forms of "use" (if not, how can this corrected)?* **Proposed Answer:** The Sub Team generally agreed that the TMCH Provider is requiring appropriate forms of "use".		
Preamble Q(d): *Have abuses of the Sunrise Period been documented by trademark owners?* **Proposed Answer:** The Sub Team interpreted		

[1] See https://newgtlds.icann.org/en/about/trademark-clearinghouse/faqs

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Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
this question as follows: "Have abuses of the Sunrise Period by trademark owners been documented?" The Sub Team came to no conclusion.		
Preamble Q(e): *Have abuses of the Sunrise Period been documented by Registrants?* **Proposed Answer:** The Sub Team interpreted this question as follows: "Have abuses of the Sunrise Period by Registrants been documented?" The Sub Team came to no conclusion.		
Preamble Q(f): *Have abuses of the Sunrise Period been documented by Registries and Registrars?* **Proposed Answer:** The Sub Team interpreted this question as follows: "Have abuses of the Sunrise Period by Registries and Registrars been documented?" The Sub Team came to no conclusion.		
QUESTION 1		
Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input

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Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
Q1(a): *Should the availability of Sunrise registrations only for identical matches be reviewed?* **Proposed Answer:** The Sub Team generally agreed that the availability of Sunrise registrations only for identical matches should not be reviewed.	The Sunrise Sub Team recommends that the current availability of Sunrise registrations only for identical matches should be maintained, and the matching process should not be expanded.	
Q1(b): *If the matching process is expanded, how can Registrant free expression and fair use rights be protected and balanced against trademark rights?* **Proposed Answer:** The Sub Team generally agreed that the matching process should not be expanded.		
QUESTION 2		
Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
Q2 Threshold: *Is Registry pricing within the scope of the RPM WG or ICANN's review?* **Proposed Answer:** The Sub Team had diverging opinions on whether registry pricing is within the scope of the RPM PDP WG.		

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Some Sub Team members pointed to the Registry Agreements that state that registry pricing is not within the scope of the RPM WG due to the picket fence. Specifically, Section 1.4.1 of the Registry Agreement and Section 1.4.1 of the Registrar Accreditation Agreement respectively specify that Consensus Policies shall not prescribe or limit the price of Registry Services and Registrar Services. However, some Sub Team members expressed concerns about the interplay of Registry pricing with RPMs obligations, which are discussed further in the proposed answer to Q2(a)-(b).		
Q2(a): *Does Registry Sunrise or Premium Name pricing practices unfairly limit the ability of trademark owners to participate during Sunrise?* **Proposed Answer:** The Sub Team generally agreed that Registry Sunrise or Premium Name[2] pricing practices have limited the ability of some trademark owners to participate during Sunrise. The Sub Team is	The Sunrise Sub Team recommends that the Registry Agreement include a provision stating that a Registry Operator shall not operate its TLD in such a way as to have the effect of circumventing the mandatory RPMs imposed by ICANN or restricting brand owners' reasonable use of the Sunrise rights protection mechanism. [STAFF NOTE: check the Registry Agreement and see where this recommendation can be applied]	

[2] **Premium Name**: second level domain names that are offered for registration that, in the determination of the registry, are more desirable for the purchaser. **Premium Pricing**: second level domain names that are offered for registration, that in the determination of the registry are more desirable for the purchaser, and will command a price that is higher than a non-premium name.

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aware of cases where the Registry Operator practices unfairly limited the ability of some trademark owners to participate during Sunrise, when pricing set for the trademark owners was exponentially higher than other Sunrise pricing or General Availability pricing. ***Q2(b):*** *If so, how extensive is this problem?* **Proposed Answer:** The Sub Team noted this problem seems sufficiently extensive that it may require a recommendation to address it, although the data is limited. The Sub Team also noted that pricing is outside the picket fence.		
QUESTION 3		
Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
Q3(a): *Should Registry Operators be required to create a mechanism that allows trademark owners to challenge the determination that a second level name is a Premium Name or Reserved Name?* **Proposed Answer:** The Sub Team had diverging opinions on whether Registry		

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Operators should be required to create a mechanism that allows trademark owners to challenge the determination that a second level name is a Premium Name or Reserved Name. The Sub Team noted that this question covers both Premium Names and Reserved Names, which are very different. Premium Names are not clearly defined, as a Registry Operator can have multiple pricing tiers.		
Q3(b): *Additionally, should Registry Operators be required to create a release mechanism in the event that a Premium Name or Reserved Name is challenged successfully, so that the trademark owner can register that name during the Sunrise Period?* **Proposed Answer:** Since there was no wide support for a challenge mechanism within the Sub Team, the Sub Team did not consider this question.		
Q3(c): *What concerns might be raised by either or both of these requirements?* **Proposed Answer:** Some Sub Team members		

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Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
noted some possible concerns, but there were no wide support within the Sub Team for those concerns. Hence the Sub Team did not develop an answer to this question.		
QUESTION 4		
Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
Q4(a): *Are Registry Operator Reserved Names practices unfairly limiting participation in Sunrise by trademark owners?* **Proposed Answer:** Some Sub Team members believe that certain Registry Operators' Reserved Names practices may be unfairly limiting participation in Sunrise by trademark owners, but the Sub Team did not come to a conclusion on this point.		
Q4(b): *Should Section 1.3.3 of Specification 1 of the Registry Agreement be modified to address these concerns?* **Proposed Answer:** The Sub Team did not agree that there are concerns that should be addressed with regard to Section 1.3.3..		

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Q4(c): *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?* **Proposed Answer:** The Sub Team had diverging opinions on whether Registry Operators should be required to publish their Reserved Names lists. Some Sub Team members noted several possible registry concerns if Registry Operators were required to publish their Reserved Names lists. Other Sub Team members discussed possible problems that the publication of the Reserved Names lists could solve.		
Q4(d): *Should Registry Operators be required to provide trademark owners in the TMCH notice, and the opportunity to register, the domain name should the Registry Operator release it – what Registry concerns would be raised by this requirement?* **Proposed Answer:** The Sub Team did not		

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Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
discuss this question due to the consideration that it is more appropriate for the TMCH discussion and it is not within the scope of Sunrise concerns.		
QUESTION 5(a)		
Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
Q5(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?* **Proposed Answer:** The Sub Team generally agreed that the current 30-day minimum for a Start Date Sunrise Period appears to be serving its intended purpose.	The Sunrise Sub Team recommends, in general, that the current requirement for the Sunrise Period be maintained, including for 30-day minimum period for a Start Date Sunrise and the 60-day minimum period for an End Date Sunrise.	
Q5(a)(i): *Are there any unintended results?* **Proposed Answer:** Some Sub Team members believe that there are unintended results, such as complications when many TLDs are launched simultaneously for the Start Date Sunrise for 30 days. Other Sub Team members believe that the 30-day advance		

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Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
notice before the launch of a Start Date Sunrise may help mitigate the administrative burdens on the trademark owners.		
Q5(a)(ii): *Does the ability of Registry Operators to expand their Sunrise Periods create uniformity concerns that should be addressed by this WG?* **Proposed Answer:** The Sub Team generally agreed that the ability of Registry Operators to expand their Sunrise Periods does not create uniformity concerns that should be addressed by this WG.		
Q5(a)(iii): *Are there any benefits observed when the Sunrise Period is extended beyond 30 days?* **Proposed Answer:** The Sub Team generally agreed that there are benefits observed when the Sunrise Period is extended beyond 30 days, and noted that most Registry Operators have already run a 60-day End Date Sunrise. Extending beyond 30 days provides more time for trademark owners to decide whether to participate in the Sunrise Period.		

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Q5(a)(iv): *Are there any disadvantages?* **Proposed Answer:** Some Sub Team members believe that there are disadvantages when the Sunrise Period is extended beyond 30 days, but the Sub Team did not come to a conclusion on this point.		
QUESTION 5(b)		
Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
Q5(b): *In light of evidence gathered above, should the Sunrise Period continue to be mandatory or become optional?* **Proposed Answer:** The Sub Team had widely diverging opinions on whether the Sunrise Period should continue to be mandatory or should become optional.	The Sunrise Sub Team recommends that the mandatory Sunrise Period should be maintained.	
Q5(b)(i): *Should the WG consider returning to the original recommendation from the IRT and STI of Sunrise Period OR Trademark Claims in light of other concerns, including freedom of expression and fair use?* **Proposed Answer:** The Sub Team considered		

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this question but did not reach a conclusion.		
Q5(b)(ii): *In considering mandatory vs optional, should Registry Operators be allowed to choose between Sunrise and Claims (that is, make ONE mandatory)?* **Proposed Answer:** The Sub Team considered this question but did not reach a conclusion.		
QUESTION 6		
Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
Q6(a): *What are Sunrise Dispute Resolution Policies (SDRPs), and are any changes needed?* **Proposed Answer:** The Sub Team noted that SDRPs are explained in the Section 6.2.2 and 6.2.4 of Module 5 of the Applicant Guidebook. The Sub Team generally recognized that it is not within the scope of the RPM PDP WG to recommend changes to any Registry Operator specific SDRPs. The Sub Team had widely diverging opinions on whether any changes,		

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Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
deletions, or additions to the mandatory grounds are needed.		
Q6(b): *Are SDRPs serving the purpose(s) for which they were created?* **Proposed Answer:** The Sub Team had widely diverging opinions on whether SDRPs are serving the purpose(s) for which they were created.		
Q6(c): *If not, should they be better publicized, better used or changed?* **Proposed Answer:** Since the Sub Team had widely diverging opinions on whether SDRPs are serving the purpose(s) for which they were created, it did not consider this question.		
QUESTION 7		
Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
Q7(a): *Can SMD files be used for Sunrise Period registrations after they have been canceled or revoked?*		

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Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
Proposed Answer: The Sub Team noted that after a SMD file or its underlying trademark record has been canceled or revoked, the SMD file cannot be used for Sunrise Period registrations. However, theoretically, an SMD file might still work for an asynchronous short period of time due to the registry process.		
Q7(b): *How prevalent is this as a problem?* **Proposed Answer:** The Sub Team generally agreed that the problem does not seem to be prevalent.		
QUESTION 8		
Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
Q8(a): *Are Limited Registration Periods in need of review vis a vis the Sunrise Period? Approved Launch Programs? Qualified Launch Programs?* **Proposed Answer:** The Sub Team discussed this question but was unable to conclude whether the Limited Registration Periods, Approved Launch Programs, or Qualified Launch Programs are in need of review.		Kristine Dorrain and Maxim Alzoba provided suggested language for proposed questions via this Google Doc (c/p below): https://docs.google.com/document/d/1Y-ld2R-JNL1Ra9KPKpTjLGjaZvjrIFDscsuMMic_OO4/edit?usp=sharing. The RPMs WG has received limited feedback that the rules for ALP and QLP do not integrate smoothly with the concept of

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Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
Q8(b): *Are the ALP and QLP periods in need of review?* **Proposed Answer:** The Sub Team discussed this question but was unable to conclude whether ALP and QLP periods are in need of review.		Sunrise.[3] Notably, many registry operators did not use the ALP or QLP options and only a few used LRPs. In order to make a recommendation on this question, we are seeking the following guidance from registry operators. 1. If a registry operator did not attempt an ALP, QLP, or LRP, was the reason for not taking advantage of those programs related to how they integrate with sunrise? Were you able to achieve your goals in a different way (such as by combining any or all of these)? 2. If a registry operator did attempt an ALP, QLP, or LRP (or combination) but didn't successfully **use** any, was the reason you did not take advantage of those programs related to how they integrate with
Q8(c): *What aspects of the LRP are in need of review?* **Proposed Answer:** The Sub Team discussed this question but was unable to conclude what aspects of the LRP are in need of review.		

[3] For instance, some GEO TLDs struggled to ensure that words needed for operation of their TLD (ie. required by the governments that approved them) were all able to be allocated or reserved for later registration before sunrise. These words may have been recorded in the TMCH, but needed to be reserved to the governments (one example is "police" which is both a word for local law enforcement and a band. [STAFF NOTE: "THE POLICE" is a registered trademark for the band])

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Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
		sunrise? Were you able to achieve your goals in a different way?[4] 3. If a registry operator used a ALP, QLP, or LRP (or combination), did you experience any unanticipated trouble with integrating the sunrise period into your launch? Specifically, were you able to allocate all of the names you needed to allocate under those programs before the Sunrise Period? 4. For each issue you identify above, please also include a suggested mitigation path. What do you suggest the WG consider to help alleviate the pain points and make those programs more useful and functional, while still respecting the trademark protection goals of the Sunrise program? How important is it to make changes to these programs before another round (that is, are these issues

[4] For instance, some registry operators may have used the QLP 100 (RA 3.2) (plus IDN variants) in combination with registry-reserved names to obtain the names they needed. Did you do this? If so, were you able to reserve or allocate all the names you needed to?

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Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
		worth "holding up" another round for, or are the work-arounds tolerable)? 5. For non-registry operators, did you experience struggles with the way ALP, QLP, or LRPs (or a combination) integrated with Sunrise, either as registrar, as a brand owner, or as a domain name registrant?
QUESTION 9		
Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
Q9: *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?* **Proposed Answer:** The Sub Team had widely diverging opinions on whether the scope of Sunrise Registrations should be limited to the categories of goods and services for which the trademark is actually registered and put in the Clearinghouse.		

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Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input

QUESTION 10		
Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
Q10: *Explore use and the types of proof required by the TMCH when purchasing domains in the sunrise period.* **Proposed Answer:** While the Sub Team recognized that this "question" has a genesis, the Sub Team did not formulate a response due to disagreement on what the question is asking.		
QUESTION 11		
Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
Q11(a): *How effectively can trademark holders who use non-English scripts/languages able to participate in Sunrise (including IDN Sunrises)?* **Proposed Answer:** Some Sub Team members believe that Trademark holders who use non-English scripts/languages generally cannot effectively participate in Sunrise.		One Sub Team member suggested that public comment be sought from trademark holders who use non-English scripts/languages on questions such as: ● Did you encounter any problems when you participated in Sunrise using non-English scripts/languages? ● If so, please describe problems you have encountered. ● Do you have suggestions on how to

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		enable trademark holders who use non-English scripts/languages to effectively participate in Sunrise?
Q11(b): *Should any of them be further "internationalized" (such as in terms of service providers, languages served)?* **Proposed Answer:** The Sub Team did not address this question as the question was unclear.		
QUESTION 12		
Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
Q12(a): *Should Sunrise Registrations have priority over other registrations under specialized gTLDs?* **Proposed Answer:** The Sub Team discussed this question but was unable to conclude whether Sunrise Registrations should have priority over other registrations under specialized gTLDs.		Kristine Dorrain and Maxim Alzoba provided suggested language for proposed questions via this Google Doc (c/p below): https://docs.google.com/document/d/1Y-ld2R-JNL1Ra9KPKpTjLGjaZvjrIFDscsuMMic_OO4/edit?usp=sharing. The RPMs WG has received information that the 2012 Applicant Guidebook did not foresee that some TLDs (specifically GeoTLDs, but perhaps others) might need more than 100 domain names to allocate prior to the
Q12(b): *Should there be a different rule for some registries, such as certain types of*		

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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) **Proposed Answer:** The Sub Team discussed this question but was unable to conclude whether there should be a different rule for some registries, such as certain types of specialized gTLDs, based on their published registration/eligibility policies.		launch of the TLD and prior to sunrise. For GeoTLDs, one example is the potential need to register city/county/office/official/etc. websites in advance of Sunrise (e.g. the business of the TLD may make it critical that POLICE.[geo] is allocated to the police department, not to the band). We have limited information about the impact of this situation and do not know how many (and to what extent) registry operators were affected. 1. If a registry operator had/has a business model that was in some way restrained by the 100-name limit for names registries can reserve under RA 3.2, please share your experience and suggested path to improvement. What was your work-around, if any?[5] 2. If the WG were to identify this as a key concern that required changes to way the sunrise period operates, are there other TLDs, besides GeoTLDs that did or will encounter the same problem? What

[5] For instance, if you withheld names from registration ("reserved" names), how well did that work?.

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		suggestions do you have for work-arounds or solutions that will not diminish the protections available from the Sunrise Period (balanced with the need to finish this work in a timely manner)? 3. Did any registry operators intend[6] to offer a special sunrise before the regular Sunrise that targeted local trademark owners?[7] If so, would you have validated the marks in some way? How would you have resolved conflicts between trademark holders that got their domains during the first sunrise and trademark holders who had an identical trademark in the TMCH that was registered prior to Sunrise?

[6] Prior to the implementation of Sunrise rules in the original AGB.
[7] For instance, would the ability to offer a special "pre-sunrise" sunrise solve any problems?

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Table 3: Status of Individual Proposals Review

Proposal No.	Status
Proposal #1	Review Completed - It did not receive wide support from the Sunrise Sub Team for inclusion in the Initial Report.
Proposal #2	Review Completed - It did not receive wide support from the Sunrise Sub Team for inclusion in the Initial Report.
Proposal #3	Review Completed - It did not receive wide support from the Sunrise Sub Team for inclusion in the Initial Report.
Proposal #4	Review Completed - It did not receive wide support from the Sunrise Sub Team for inclusion in the Initial Report.
Proposal #7	Review Completed - It did not receive wide support from the Sunrise Sub Team for inclusion in the Initial Report.
Proposal #8	Review Completed - It did not receive wide support from the Sunrise Sub Team for inclusion in the Initial Report.
Proposal #9	Review Completed - It did not receive wide support from the Sunrise Sub Team for inclusion in the Initial Report.
Proposal #10	Review Completed - It did not receive wide support from the Sunrise Sub Team for inclusion in the Initial Report.
Proposal #11	Review Completed - The part of the proposal regarding the implementation of an obligatory Public Interest Commitment did not receive wide support from the Sunrise Sub Team for inclusion in the Initial Report. However, the Sub Team generally agreed to adopt the language of part of the proposal regarding "other contractual provision that the registry is not to act in a manner calculated to circumvent the RPMs" as its preliminary recommendation related to Q2(a).
Proposal #13	Review Completed - It did not receive wide support from the Sunrise Sub Team for inclusion in the Initial Report.

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