

Sunrise Sub Team Recommendations for RPM PDP Working Group Discussion

[Status Check - Draft as of 07 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 discussions during meetings. Green text are excerpts from the discussion threads. 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). Based on staff's preliminary assessment, open items are highlighted after the Sub Team has done the first pass of the draft text. Sub Team Co-Chairs will review the Sub Team's deliberation and publish their designation of closed discussion and discussion that should remain open. Sub Team members will have the opportunity to provide input to the Sub Team Co-Chairs' designation.

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. **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
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Table 1: Status of Sub Team Deliberation

Question	Overall Status	Open Item
Preamble Q	Draft text not reviewed	-
Q1	Sub Team reviewed draft text on 29 May, staff revised proposed answers and preliminary recommendations incorporating input from Sub Team	None
Q2	Sub Team reviewed draft text on 29 May, staff revised proposed answers and preliminary recommendations incorporating input from Sub Team	None
Q3	Sub Team reviewed draft text on 5 June, staff revised proposed answers incorporating input from Sub Team, Sub Team did not discuss preliminary recommendations in detail	Preliminary recommendations, if any
Q4	Sub Team reviewed draft text on 5 June, Sub Team did not propose answer to Q4(d), staff revised the other proposed answers incorporating input from Sub Team	Proposed answer to Q4(d)
Q5(a)	Sub Team reviewed draft text 5 June, Sub Team had no comment on proposed answers and preliminary recommendation	None
Q5(b)	Draft text not discussed	-
Q6	Sub Team reviewed draft text on 5 June, Sub Team did not discuss proposed answers and preliminary recommendations in detail	Proposed answers to all Q6 sub questions; preliminary recommendations, if any

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Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
Q7	Draft text not reviewed	-
Q8	Draft text not reviewed	-
Q9	Draft text not reviewed	-
Q10	Draft text not reviewed	-
Q11	Draft text not reviewed	-
Q12	Draft text not reviewed	-

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

PREAMBLE QUESTION		
Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
<p>Preamble Q(a): <i>Is the Sunrise Period serving its intended purpose?</i></p> <p>Proposed Answer: The Sub Team has differing opinions on whether the Sunrise Period is serving its intended purpose, as well as disagreement about what the intended purpose is.</p>		<p>The Sunrise Sub Team recommends that public comment be sought on the two schools of thought on whether Sunrise Period is serving its intended purpose (not only support or lack of support but, particularly, any analysis):</p> <ol style="list-style-type: none"> 1. The Sunrise Period assumes that a TM

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<p>--</p> <p>The Sub Team disagrees on whether the Sunrise Period is serving its intended purpose. There are primarily two schools of thought on this.</p>		<p>holder’s rights are more valuable than another customer’s and extends trademark rights beyond those granted by relevant laws – it should be discontinued, or, at a minimum, optional.</p> <p>2. The Sunrise Period was part of a balanced system designed to offset the disproportionate cost of cybersquatting that the new gTLD program would create and, while it’s imperfect, it does appear to be serving its intended purpose.</p>
<p>Preamble Q(b): <i>Is it having unintended effects?</i></p> <p>Proposed Answer: Some Sub Team members believe that the Sunrise Period is having unintended effects, including:</p> <ul style="list-style-type: none"> ● The extent to which dictionary words/common terms are already subject to registration in the US and the broad scope of registration within the TMCH creates potential gaming opportunities during Sunrise. ● Sunrise expands the applicability of trademark rules and creates new rights. ● High cost for Sunrise registrations for 		<p>The Sunrise Sub Team recommends that public comment be sought on the two schools of thought on whether the Sunrise Period is having unintended effects (not only support or lack of support but, particularly, any analysis):</p> <p>1. Some imperfections or pain points from Sunrise include: perceived “price gouging” by registries and registrars, confusion about why some TMCH marks were unavailable during sunrise, confusion related to tracking multiple Sunrise periods for many launching TLDs and inadequate protections because of “exact match” requirements.</p>

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<p>some TLDs prevents trademark owners from utilizing the Sunrise Period.</p> <ul style="list-style-type: none"> • There is a chilling effect on legitimate registrants. • There are issues of operating approved launch programs and qualified launch programs as they intersect with the Sunrise Period. <p>--</p> <p>The Sub Team disagrees on whether the Sunrise Period has had unintended effects. We generally agree it's imperfect, but for different reasons. There are primarily two schools of thought on this.</p>		<p>2. Other imperfections or pain points from Sunrise include: Perceived "gaming" -- the TMCH contains some marks of dubious authenticity and several words with both TM and dictionary meanings – the TMCH is a string comparison tool and cannot consider potential non-infringing uses. The instrument is too blunt.</p> <p>An additional question relates to the balanced system. Is the fact that "both sides are dissatisfied" indicative of a successful outcome?</p>
<p>Preamble Q(c): <i>Is the TMCH Provider requiring appropriate forms of "use" (if not, how can this corrected)?</i></p> <p>Proposed Answer: The Sub Team generally found the TMCH was properly validating "use" according to the rules.</p>		<p>The Sunrise Sub Team recommends that public comment be sought on the following question:</p> <ul style="list-style-type: none"> • Are the rules regarding the appropriate forms of "use" required by TMCH Providers sufficient?
<p>Preamble Q(d): <i>Have abuses of the Sunrise Period been documented by trademark owners?</i></p> <p>Proposed Answer: The Sub Team interprets</p>		<p>The Sunrise Sub Team recommends that public comment be sought on the following questions:</p> <ul style="list-style-type: none"> • How much "gaming" of the system is tolerable?

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<p>this question to refer to abuses BY the named type of party.</p> <p>We found evidence that a few TMCH entries, though they complied with the rules, appeared to have been registered solely for the purpose of entering the TMCH and getting first access to valuable dictionary words.</p>		<ul style="list-style-type: none"> Have you seen evidence of such “gaming” that is so egregious as to warrant complex rule changes?
<p>Preamble Q(e): <i>Have abuses of the Sunrise Period been documented by Registrants?</i></p> <p>Proposed Answer: The Sub Team interprets this question to refer to abuses BY the named type of party.</p> <p>Registrants are trademark owners during Sunrise, so see answers to Preamble Q(d). Arguably, the issue pointed out above is actually an abuse by “registrants” since the purpose is to obtain a mark simply to enter the field sooner, not to enforce trademark rights.</p>		<p>The Sunrise Sub Team recommends that public comment be sought on the abuses of the Sunrise Period by Registrants, particularly related to the magnitude of the problem.</p>
<p>Preamble Q(f): <i>Have abuses of the Sunrise Period been documented by Registries and Registrars?</i></p>		<p>The Sunrise Sub Team recommends that public comment be sought on the following question:</p>

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<p>Proposed Answer: The Sub Team interprets this question to refer to abuses BY the named type of party.</p> <p>Some members point to Sunrise pricing and opaque reserved name lists as “gaming” of Sunrise and believe some registry/registrar practices circumvented the Sunrise period.</p>		<ul style="list-style-type: none"> Keeping in mind the “picket fence” (i.e., Contractual restrictions regarding what aspects of registry operations ICANN can and cannot regulate), what suggestions do you have for preserving not just the letter, but the spirit of the Sunrise Period?
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QUESTION 1

Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
<p>Q1(a): <i>Should the availability of Sunrise registrations only for identical matches be reviewed?</i></p> <p>Proposed Answer: The availability of Sunrise registrations only for identical matches should not be reviewed.</p>	<p>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.</p> <p>The Sub Team Co-Chairs suggested that the RPM PDP WG Co-Chairs and the Sub Team Co-Chairs respond to the SubPro PDP, thanking them for the suggestion of exploring</p>	
<p>Q1(b): <i>If the matching process is expanded, how can Registrant free expression and fair</i></p>		

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<p><i>use rights be protected and balanced against trademark rights?</i></p> <p>Proposed Answer: The matching process should not be expanded.</p>	<p>extending Sunrise and Claims services to domains that are exact matches of dot-span¹ trademarks registered in the TMCH, confirming that the issue was discussed. SubPro PDP WG’s suggestion is similar to Individual Proposal #9. The Sub Team Co-Chairs determined that Individual Proposal #9 did not receive “wide support” from the Sunrise Sub Team necessary to become either a Sub Team preliminary recommendation or a formulation of questions for inclusion in the Initial Report.</p>	
QUESTION 2		
Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
<p>Q2 Threshold: <i>Is Registry pricing within the scope of the RPM WG or ICANN's review?</i></p> <p>Proposed Answer: The Sub Team has differing opinions on whether the registry pricing is within the scope of the RPM PDP WG. Some Sub Team members point to the Registry Agreements that state that registry pricing is</p>		

¹ The SubPro PDP WG uses the term dot-span trademarks to refer to instances where the entire domain name, including the TLD, is an exact match of a registered trademark. For instance, for a TMCH entry for WALMART the brand owner would be permitted to register both walm.art and walmart.art during the Sunrise period for .art, and would receive claims notifications for either registration.

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<p>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).</p>		
<p>Q2(a): <i>Does Registry Sunrise or Premium Name pricing practices unfairly limit the ability of trademark owners to participate during Sunrise?</i></p> <p>Proposed Answer: Registry Sunrise or Premium Name² pricing practices have limited the ability of some trademark owners to participate during Sunrise. The Sub Team is aware of cases that the Registry Operator practices unfairly limit the ability of some trademark owners to participate during</p>	<p>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.</p>	

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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<p>Sunrise, when pricing set for the trademark owners is exponentially higher than other Sunrise pricing or General Availability pricing.</p>		
<p>Q2(b): <i>If so, how extensive is this problem?</i></p> <p>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. The Sub Team made a recommendation relating to the situation where, as a result of a Registry Operator’s way of operating its TLD such that it circumvents the mandatory RPMs, brand owners will be more likely to seek enforcement via the Public Interest Commitments Dispute Resolution Procedure (PIC DRP) instead of relying on ICANN’s Contractual Compliance department.</p>		
QUESTION 3		
Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
<p>Q3(a): <i>Should Registry Operators be required to create a mechanism that allows trademark</i></p>	<p>As of 22 May 2019, the Sunrise Sub Team has not yet developed a preliminary</p>	

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<p><i>owners to challenge the determination that a second level name is a Premium Name or Reserved Name?</i></p> <p>Proposed Answer: The Sub Team has differing opinions on whether Registry 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.</p> <p>The Sub Team notes 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. Hence, the Sub Team has difficulty answering this question without conflating the issues.</p> <p>Q3(b): <i>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?</i></p> <p>Proposed Answer: Since there was no wide support for a challenge mechanism, the Sub</p>	<p>recommendation, but has discussed some initial ideas/concepts/proposals (see below).</p> <p>1) The Sunrise Sub Team suggests that the RPM PDP WG refer the following question to the SubPro PDP WG: “Will it be feasible to recommend that the names recorded in the TMCH either cannot be placed in the premium category or can be placed in the premium category at a certain price ceiling, as an exception to ICANN’s position about pricing?”</p> <p>2) The Sunrise Sub Team recommends that, as a best practice, Registry Operators consider maintaining consistency of Sunrise pricing for the duration of the Sunrise registration period in a TLD.</p>	

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<p>Team did not consider this question in detail.</p>		
<p>Q3(c): <i>What concerns might be raised by either or both of these requirements?</i></p> <p>Proposed Answer: Sub Team members noted the following concerns:</p> <ul style="list-style-type: none"> ● Any change to the Reserved list will interfere with Registry Operators’ ability to operate their business, their confidentiality, and their ability to run the required real-time platforms. ● Any challenge mechanism may subsequently result in unpredictable consequences, including: violating applicable law/ICANN policies, raising security and stability concerns, undermining Spec 11, or rendering reserved GEO TLDs ineffective. ● There are no guardrails protecting Registry Operators against gaming/abuses by trademark owners using the challenge mechanisms. ● Registries may have difficulty handling the number of challenges brought by multiple trademark owners. ● The challenge mechanism may be of little/infrequent use due to subjectivity, 	<p>One Sub Team members suggested that the existing mechanisms, such as TM-PDDRP, may be modified to address Registry Operator abuse issues. The proponent explained that TM-PDDRP may be the best mechanism to address such issues, as there are arbitrators that review the business practices of registries/registrars and it has a loser pay model, which provides some guard rails against abuse by trademark owners. The review of TM-PDDRP has not been completely finished, so there is an opportunity to revisit it and see where it intersects with other RPMs.</p> <p>Some other Sub Team members commented that TM-PDDRP is meant to address systemic problems and not isolated instances. Circumvention of the RPM by registries is not really a registration abuse issue dealt by TM-PDDRP.</p>	

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<p>complications, and expense, as well as potentially fewer domain name applications in the next round of TLDs.</p> <ul style="list-style-type: none"> • Reserved name is the only method to reserve domain names for municipal governments and entities, and they shall not be challenged by trademark owners. • Registrants are not direct customers of registries, so such challenge mechanism would be difficult to implement. 		
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QUESTION 4

Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
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<p>Q4(a): <i>Are Registry Operator Reserved Names practices unfairly limiting participation in Sunrise by trademark owners?</i></p> <p>Proposed Answer: Some Registry Operators' Reserved Names practices may be limiting participation in Sunrise by trademark owners. However, based on the limited data, the Sub Team could neither determine whether the Reserved Names practices "unfairly" limit trademark owners, nor pinpoint the scope of the problem. The Sub Team noted that Registry Operators reserve names for good</p>		
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<p>faith/legitimate reasons (e.g., legal requirements, prevent cybersquatting) and they have the freedom to create a suitable business model in operating the Sunrise Period. Reserved Names is the only method for municipal governments and entities to reserve domain names.</p>		
<p>Q4(b): <i>Should Section 1.3.3 of Specification 1 of the Registry Agreement be modified to address these concerns?</i></p> <p>Proposed Answer: Section 1.3.3 of Specification 1 of the Registry Agreement should not be modified to address these concerns as modification to ICANN’s contracts is not within the scope of this PDP.</p>		
<p>Q4(c): <i>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?</i></p> <p>Proposed Answer: The Sub Team has differing opinions on whether Registry Operators should be required to publish their Reserved Names lists.</p>		

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<p>Sub Team members noted several registry concerns if Registry Operators were required to publish their Reserved Names lists; see proposed answer to Q3(c).</p>		
<p>Q4(d): <i>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?</i></p> <p>Proposed Answer: [Staff Note: The Sub Team did not discuss this question]</p>		
QUESTION 5(a)		
Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
<p>Q5(a): <i>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?</i></p> <p>Proposed Answer: The current 30-day minimum for a Start Date Sunrise Period may</p>	<p>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.</p>	

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<p>be serving its intended purpose.</p>		
<p>Q5(a)(i): <i>Are there any unintended results?</i></p> <p>Proposed Answer: There are unintended results caused by the large number of new gTLDs that have been delegated, and that may be delegated in future rounds. When many TLDs are launched simultaneously for the Start Date Sunrise for 30 days, it creates administrative and resource challenges for trademark owners, as claims by trademark owners are processed on a first-come-first-served basis. These concurrent launches of new gTLDs negatively affect the ability of trademark owners to make informed decisions regarding which, and how many, trademarks or domain names should be registered during the Sunrise Period in any specific gTLD, for the purposes of brand and consumer protection.</p> <p>Nevertheless, the 30 days of advance notice before the launch of a Start Date Sunrise may help mitigate the administrative burdens on the trademark owners.</p>		
<p>Q5(a)(ii): <i>Does the ability of Registry</i></p>		

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<p><i>Operators to expand their Sunrise Periods create uniformity concerns that should be addressed by this WG?</i></p> <p>Proposed Answer: The ability of Registry Operators to expand their Sunrise Periods does not create uniformity concerns that should be addressed by this WG. There is benefit for registries to make their own decisions in carrying out either the End Date Sunrise or the Start Date Sunrise.</p>		
<p>Q5(a)(iii): <i>Are there any benefits observed when the Sunrise Period is extended beyond 30 days?</i></p> <p>Proposed Answer: There are benefits observed when the Sunrise Period is extended beyond 30 days. Most Registry Operators have already run a 60-day End Date Sunrise. It provides more time for trademark owners to decide whether to participate in the Sunrise Period.</p>		
<p>Q5(a)(iv): <i>Are there any disadvantages?</i></p> <p>Proposed Answer: There are disadvantages when the Sunrise Period is extended beyond</p>		

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<p>30 days, including the 60-day End Date Sunrise. It may cost more for trademark owners to participate in the End Date Sunrise as an auction will be conducted if there is more than one claim for the same domain. Auctions may also cause legal violations in certain jurisdictions. If the Sunrise Period is extended beyond 60 days, many medium and small TLDs may be negatively impacted due to the costs associated with managing the Sunrise Period. Consequently, security and stability issues may arise if those registries go out of business. In addition, there may be market confusion and administrative hurdles associated with extending the Sunrise Period, as well as further delays for general availability.</p>		
<p>QUESTION 5(b)</p>		
Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
<p>Q5(b): <i>In light of evidence gathered above, should the Sunrise Period continue to be mandatory or become optional?</i></p> <p>Proposed Answer: The Sub Team has differing opinions on whether the Sunrise Period</p>		

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<p>should continue to be mandatory or should become optional.</p>		
<p>Q5(b)(i): <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?</i></p> <p>Proposed Answer: Since the Sub Team has differing opinions on whether the Sunrise Period should continue to be mandatory or should become optional, the Sub Team did not consider this question in detail.</p>		
<p>Q5(b)(ii): <i>In considering mandatory vs optional, should Registry Operators be allowed to choose between Sunrise and Claims (that is, make ONE mandatory)?</i></p> <p>Proposed Answer: The Sub Team has differing opinions on whether Registry Operators should be allowed to choose between Sunrise and Claims.</p>		
QUESTION 6		
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<p>Q6(a): <i>What are Sunrise Dispute Resolution Policies (SDRPs), and are any changes needed?</i></p> <p>Proposed Answer: According to the Section 6.2.2 and 6.2.4 of Module 5 of the Applicant Guidebook, SDRP is a mechanism that a Registry Operator must provide to resolve disputes regarding its registration of Sunrise Registrations. It allows challenges to Sunrise Registrations related to Registry Operator’s Allocation and registration policies, including on the grounds that the domain name that was registered does not match the Trademark Record on which the Sunrise-Eligible Rights Holder based its Sunrise Registration. Registry Operators must provide prompt notice of the outcome of an SDRP proceeding to the affected parties. To the extent applicable, ICANN must use commercially reasonable efforts to ensure that the TMCH Sunrise and Claims Operator cooperates with Registry Operator in effectuating Registry Operator’s SDRP.</p> <p>The Sub Team recognized that it is not within the scope of the RPM PDP WG to recommend changes to any customizable portions of the</p>	<p>As of 22 May 2019, the Sunrise Sub Team has not yet developed a preliminary recommendation, but has discussed some initial ideas/concepts/proposals (see below).</p> <p>1) One Sub Team member suggested that Registry Operators should not be required to include the following three grounds in the Applicant Guidebook [Section 6.2.4 (i), (ii), (iii)] in their SDRPs, as Registry Operators do not have access to the information in the TMCH to make substantive decisions:</p> <ul style="list-style-type: none"> i. At 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; 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; and iv. the trademark registration on which the domain name registrant based its Sunrise registration did not issue on or before the date specified by the Registry 	

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<p>SDRPs that Registry Operators should determine on their own. However, some Sub Team members believe that changes to the minimum standards for SDRPs are needed.</p> <p>One Sub Team member commented that whether any changes are needed depends on the Sub Team review of Individual Proposals #2 and #4, as well as the discussion of initial ideas/proposals in the orange text to the right.</p> <p>--</p> <p>According to the Section 6.2.2 and 6.2.4 of Module 5 of the Applicant Guidebook, “Trademark Clearinghouse” section, SDRP is a mechanism that a Registry Operator must provide to resolve disputes regarding its registration of Sunrise Registrations. It allows challenges to Sunrise Registrations related to Registry Operator’s Allocation and registration policies, if:</p> <p>(i) at 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</p>	<p>in its Sunrise Criteria, if one was specified.</p> <p>2) One Sub Team member suggested that Registry Operators should publish all the domain names registered during their Sunrise Period at the end of the period. This will assist challengers to identify/search trademarks registered during the Sunrise period and inform their decision on whether to bring an SDRP challenge. One Sub Team member commented that challengers will still not be able to gain sufficient information about the trademark to determine whether the challenge will meet the ground of an SDRP. Another Sub Team member mentioned the difficulty to implement the suggestion as Registry zone files are updated daily.</p> <p>3) One Sub Team member suggested that Registry Operators should be required to publish all SDRP decisions, which will then be aggregated in a central location to facilitate search/analysis. One Sub Team member opposed this suggestion.</p> <p>4) One Sub Team member proposed that the TMCH should allow a legitimate challenger,</p>	

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Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
<p>been court-validated or protected by statute or treaty;</p> <p>(ii) the domain name is not identical to the mark on which the registrant based its Sunrise registration;</p> <p>(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</p> <p>(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.</p>	<p>who has the standing to file an SDRP, to have single-shot access to a trademark record in the TMCH for the purpose of determining whether an SDRP challenge will be well-grounded. Another Sub Team member suggested morphing the Individual Proposal #2 into this proposal.</p> <p>The proponent of this idea provided further details via the discussion thread:</p> <ul style="list-style-type: none"> • A party (can be either commercial or noncommercial) who meets one of the following three criteria should be allowed to submit to the Trademark Clearinghouse a request for data of a single, specific mark: <ol style="list-style-type: none"> a. A party associated with a business, organization or individual having the same or a similar name to the domain name registered during the Sunrise Period; b. An association or organization representing its members or affiliates which include that business, organization or individual with the same or a similar name or an acronym; or c. Someone with strong proof of 	
<p>Q6(b): Are SDRPs serving the purpose(s) for which they were created?</p> <p>Proposed Answer: The Sub Team had difficulty determining whether SDRPs are serving the purpose(s) for which they were created, as each TLD has its own SDRP and there is hardly any data or analysis of the</p>		

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Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
<p>SDRP decisions across all new gTLD.</p> <p>Some Sub Team members believe that, in general, SDRPs do not seem to serve the purpose(s) for which they were created. One Sub Team member believes that SDRPs seem obsolete because the TMCH already has a mechanism to challenge the underlying trademark record of a Sunrise registration. Another Sub Team member believes that the limited access to the TMCH and the lack of trademark information to identify whether a complaint is well-grounded makes it difficult to challenge a registration via the SDRP.</p> <p>Nevertheless, one Sub Team member believes that the SDRPs are generally serving the purpose(s) for which they were created despite their low usage.</p> <p>--</p> <p>The SDRPs could be much better serving the purposes for which they were created.</p>	<p>inaccuracy during Sunrise registrations.</p> <ul style="list-style-type: none"> The submission shall state the mark in question, the registration domain name involved, and a good faith reason why the domain name may not have been entitled to registration during the Sunrise Period. The TMCH will then provide the mark's (or marks') records including: country of registration, registration number, registration date, TM owner, description of goods and services, or basis of the mark(s) being protected by statute or treaty/country. The TMCH will provided this information within a short period of time (e.g., 3 business days) to allow the filer to proceed forward with a Sunrise Challenge if warranted (as this is a tight timeline). <p>One Sub Team member supported this proposal with the following rationale:</p> <ul style="list-style-type: none"> It addresses the lack of transparency of the TMCH with a narrow step forward. It is impractical to expect domain 	

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Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
	<p>name applicants to individually research various databases to find out which trademark has been registered.</p> <p>Some Sub Team members expressed concerns with the following rationale:</p> <ul style="list-style-type: none"> • The proposal may open potential gaming opportunities for illegitimate requesters to see what trademarks have been registered. The TMCH may not be able to effectively evaluate the “standing” of the requester of utilizing the trademark as part of his/her business. The business name of the requester must be an identical match in order to have standing for the request. • Marks registered in the TMCH are sensitive information and are part of the brand strategy, and they are not meant to be disclosed. • It is “cruel” to put the responsibility on the TMCH to determine which trademark information can be revealed which cannot. <p>The proponent may provide an update</p>	

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Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
	<p>version of the proposal after incorporating input from the Sub Team members that expressed concerns.</p> <p>5) The SubPro PDP WG recommends that ICANN adjust the terms of the SDRP such that a registry could treat dot-span trademarks as exact-matches when making SDPR determinations.</p>	
<p>Q6(c): <i>If not, should they be better publicized, better used or changed?</i></p> <p>Proposed Answer: One Sub Team member commented that whether SDRPs should be better publicized is contingent on whether they are serving the purpose(s) for which they were created. However, it is not harmful for Registry Operators to periodically remind registrants of the existence of SDRPs.</p> <p>One Sub Team member believes that it is not within the scope of the RPM PDP WG to recommend how SDRPs can be better used. It is up to the Registry Operators and challengers to decide.</p>	<p>As of 05 June 2019, the Sunrise Sub Team has not yet developed a preliminary recommendation, but has discussed the idea that Registry Operators should periodically remind registrants of the existence of SDRPs.</p> <p>--</p> <p>One Sub Team member, via the discussion thread, proposed the following language for the preliminary recommendation:</p> <p>The Sunrise Sub Team devoted considerable discussion to “fixes” of the SDRP, and received a number of proposals. The Sunrise Sub Team recommends the following:</p> <p>1) Registry Operators should publish the information of trademarks recorded in the</p>	

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Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
	<p>TMCH for all domain names registered during their Sunrise Period at the end of the period. This will assist challengers to identify/search trademarks registered during the Sunrise period and inform their decision on whether to bring an SDRP challenge.</p> <p>2) Registry Operators should be required to publish all SDRP decisions, which will then be aggregated in a central location to facilitate search/analysis.</p> <p>3) The TMCH should allow a legitimate challenger, one with standing to file an SDRP (e.g., a party associated with a business, organization or individual having the same or a similar name to the domain name; an association or organization representing its members or affiliates which include businesses, organizations or individuals with the same or a similar name; or a party with strong proof of inaccuracy during Sunrise registrations) to have “single-shot access” to a trademark recorded in the TMCH for the purpose of determining whether an SDRP challenge would be well-grounded. The TMCH shall provide information including: country of registration, registration number,</p>	

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Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
	<p>registration date, TM owner, description of goods and services, or basis of the mark(s) being protected by statute or treaty/country within a short period of time (e.g., 3 business days) to allow the filer to proceed forward with a Sunrise Challenge if warranted (as this is a tight timeline).</p> <p>4) ICANN should adjust the terms of the SDRP such that a registry could treat dot-span trademarks as exact-matches when making SDRP determinations.</p>	
QUESTION 7		
Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
<p>Q7(a): <i>Can SMD files be used for Sunrise Period registrations after they have been canceled or revoked?</i></p> <p>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.</p>	<p>The Sunrise Sub Team recommends that the current practice of using SMD files for Sunrise registrations should be maintained.</p>	

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Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
<p>Q7(b): <i>How prevalent is this as a problem?</i></p> <p>Proposed Answer: Based on the data, the problem does not seem to be prevalent. In addition, the Sub Team noted that there are existing mechanisms (e.g., the TMCH’s own challenge process, Section 1.2.3 of the SDRP) to challenge a trademark record on the basis that it no longer has valid trademark information associated with it.</p>		
QUESTION 8		
Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
<p>Q8(a): <i>Are Limited Registration Periods in need of review vis a vis the Sunrise Period? Approved Launch Programs? Qualified Launch Programs?</i></p> <p>Proposed Answer: The Sub Team does not have sufficient data to answer this question fully, especially with respect to whether the Limited Registration Periods are in need of</p>	<p>As of 22 May 2019, the Sunrise Sub Team has not yet developed a preliminary recommendation, but has discussed some initial ideas/concepts/proposals (see below) discussed during the Sub Team’s 15 May 2019 meeting.</p> <p>1) One Sub Team mentioned that Reserved Names should also be reviewed together with</p>	<p>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-JNL1Ra9KPKpTjLGjaZvjrlFDscsuMMic_OO4/edit?usp=sharing.</p> <p>The RPMs WG has received limited feedback that the rules for ALP and QLP do not</p>

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Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
<p>review.</p> <p>However, based on the existing data, the Approved Launch Programs seem to be in need of review. So far, only one ALP has been approved by ICANN Org, although a handful of Registry Operators have applied ALPs. There may be issues with regard to Registry Operators’ understanding of the ALP approval process. Problems with the ALP also negatively impact GEO TLD registrations.</p> <p>Based on the existing data, the Qualified Launch Programs are also in need of review. QLP is limited to domain name registration up to 100 items, which are not enough for a city, for example, to register its streets, monuments, historical sites, etc.</p> <p>Q8(b): <i>Are the ALP and QLP periods in need of review?</i></p> <p>Proposed Answer: The Sub Team does not have sufficient data to answer this question</p>	<p>the QLP and LRP.</p> <p>2) One Sub Team member suggested that the Sub Team should try to give a “shot” to define ALP, QLP, and LRP. Other members commented that they have already been well and broadly defined in the Trademark Claims Requirements <u>document</u>, which is incorporated by reference into Spec 7 of the Registry Agreement.</p>	<p>integrate smoothly with the concept of 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.</p> <ol style="list-style-type: none"> 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 <u>use</u> any, was the reason you did not take advantage of those programs related to how they integrate with

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.)

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Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
<p>fully.</p> <p>Q8(c): <i>What aspects of the LRP are in need of review?</i></p> <p>Proposed Answer: The Sub Team does not have sufficient data to answer this question fully.</p>		<p>sunrise? Were you able to achieve your goals in a different way?⁴</p> <p>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?</p> <p>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</p>

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
		<p>worth “holding up” another round for, or are the work-arounds tolerable)?</p> <p>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?</p> <p>--</p> <p>Some Sub Team members suggested that public comment be sought from Registry Operators (particularly the GEO Registries) on the following questions:</p> <ul style="list-style-type: none"> • Did you encounter any problems when you ran the LRP, as it intersects with the Sunrise Period? If so, please describe problems you have encountered. Do you have suggestions for improving the interaction between the Sunrise Period and the LRP? • Did you encounter any problems when you ran the ALP, as it intersects with the Sunrise Period? If so, please describe problems you have encountered. Do you have suggestions for improving the

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Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
		<p>interaction between the Sunrise Period and the ALP?</p> <ul style="list-style-type: none"> Did you encounter any problems when you ran the QLP, as it intersects with the Sunrise Period? If so, please describe problems you have encountered. Do you have suggestions for improving the interaction between the Sunrise Period and the QLP?
QUESTION 9		
Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
<p>Q9: <i>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?</i></p> <p>Proposed Answer: The Sub Team has differing 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.</p>	<p>As of 22 May 2019, the Sunrise Sub Team has not yet developed a preliminary recommendation, but has discussed the related Individual Proposal #9:</p> <p style="padding-left: 40px;">“Where a top level domain is suggestive of a particular category of good or service, such as .bike or .pizza, sunrise registrations should require proof by the mark holder of actively doing business in that specific category.”</p> <p>The Sub Team has divided opinions on this proposal.</p>	

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Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
	<p>In light of the gaming concerns raised by Proposal #9, the Sub Team also discussed some initial ideas/concepts/proposals to discourage/eliminate gaming during Sunrise registration:</p> <ol style="list-style-type: none"> 1) Enhance Sunrise Dispute Resolution Policies 2) Tighten the eligibility to register a trademark in the TMCH 	
QUESTION 10		
Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
<p>Q10: <i>Explore use and the types of proof required by the TMCH when purchasing domains in the sunrise period.</i></p> <p>Proposed Answer: While the Sub Team recognized that this “question” has a genesis, the Sub Team has not formulated a response due to disagreement on what the question is asking.</p>	<p>As of 22 May 2019, the Sunrise Sub Team has not yet developed a preliminary recommendation, but has discussed some initial concepts/ideas/proposals (see below):</p> <ol style="list-style-type: none"> 1) Some Sub Team members suggested disposing of this question. They believe that it is not really a question, and the use and the types of proof that trademark owners submit to the TMCH to gain eligibility for participating in Sunrise have already been discussed in other contexts. One Sub Team member commented that this question seems to belong to the discussion about the 	

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Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
	<p>TMCH rather than Sunrise specifically</p> <p>2) Based on the data related to this question, one Sub Team member suggested that the proof of use should be expanded for all registrations in the TMCH. She believes that expanding the proof of use will help prevent gaming by registrants, trademark owners, and registries who take advantage of the TMCH (e.g., token used in the TMCH validation system seems to be an issue according to this Sub Team member).</p> <p>Some Sub Team members opposed this suggestion and commented that trademark owners are not required to submit proof of use to the TMCH to gain eligibility for Trademark Claims service, and many jurisdictions do not require proof of use at the time a registration is made. One Sub Team member mentioned this topic has already been addressed in Trademark Claims Sub Team and it is inappropriate for the Sunrise Sub Team to reopen it.</p>	
QUESTION 11		
Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input

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Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
<p>Q11(a): <i>How effectively can trademark holders who use non-English scripts/languages able to participate in Sunrise (including IDN Sunrises)?</i></p> <p>Proposed Answer: Trademark holders who use non-English scripts/languages cannot effectively participate in Sunrise due to factors such as the lack of support by TMCH for transliteration of the trademark and TMCH’s nonacceptance of non-Latin scripts (e.g., hyphens) in a trademark.</p>		<p>One Sub Team member suggested that public comment be sought from trademark holders who use non-English scripts/languages on questions such as:</p> <ul style="list-style-type: none"> • 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 enable trademark holders who use non-English scripts/languages to effectively participate in Sunrise?
<p>Q11(b): <i>Should any of them be further “internationalized” (such as in terms of service providers, languages served)?</i></p> <p>Proposed Answer: The Sub Team does not have sufficient data to answer this question fully.</p>		
QUESTION 12		
Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
<p>Q12(a): <i>Should Sunrise Registrations have priority over other registrations under</i></p>		<p>Kristine Dorrain and Maxim Alzoba provided suggested language for proposed questions</p>

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Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
<p><i>specialized gTLDs?</i></p> <p>Proposed Answer: The Sub Team does not have sufficient data to answer this question fully.</p> <hr/> <p>Q12(b): <i>Should there be a different rule for some registries, such as certain types of 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.</i></p> <p>Proposed Answer: The Sub Team does not have sufficient data to answer this question fully.</p> <p>One Sub Team member believes that it is not within the scope of the RPM PDP to intervene in the rules for registries of specialized gTLDs. He commented that there is no need for Sunrise registrations for those types of specialized TLDs unless they are dot-brand or highly regulated gTLDs.</p>		<p>via this Google Doc (c/p below): https://docs.google.com/document/d/1Y-ld2R-JNL1Ra9KPKpTjLGjaZvirIFDscsuMMic_OO4/edit?usp=sharing.</p> <p>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 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.</p> <ol style="list-style-type: none"> 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

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Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
		<p>suggested path to improvement. What was your work-around, if any?⁵</p> <p>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 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)?</p> <p>3. Did any registry operators intend⁶ 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</p>

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

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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Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
		during the first sunrise and trademark holders who had an identical trademark in the TMCH that was registered prior to Sunrise?

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 - It did not receive wide support from the Sunrise Sub Team for inclusion in the Initial Report.

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Proposed Answer	Preliminary Recommendation	Proposed Question for Community Input
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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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