

**I C A N N**  
**POLICY FORUM**

**65**

**MARRAKECH**

24-27 June 2019



# Working Session of the GNSO Review of All Rights Protection Mechanisms in gTLDs PDP Working Group



Thursday, 27 June 2019

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# Introduction

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- ⦿ This two-phased PDP was launched in February 2016; GNSO Council approved the WG charter in March 2016
- ⦿ The WG has completed preliminary review of: 1) Trademark Post-Delegation Dispute Resolution Procedure (TM-PDDRP), 2) structure and operations of the Trademark Clearinghouse (TMCH); 3) Uniform Rapid Suspension (URS) dispute resolution procedure
- ⦿ ICANN Org commissioned Analysis Group, Inc. to develop and administer Sunrise & Claims surveys in collaboration with the Data Sub Team; survey period: 6 September - 5 October 2018
- ⦿ Sunrise and Trademark Claims Sub Teams analyzed the survey data, previously collected data, and additional sources to see if/how they help answer the Sunrise and Trademark Claims charter questions
- ⦿ At ICANN64 the Sub Teams reported on the results of their data review
- ⦿ At ICANN65 the Sub Teams will report on their development of answers to charter questions and preliminary recommendations & review of individual proposals

# Timeline Overview



- Chartered in March 2016 to conduct a two-phased PDP
- Phase 1 – RPMs applicable to gTLDs launched under the 2012 New gTLD Program:
  - TM-PDDRP
  - TMCH
  - Sunrise and Trademark Claims offered through the TMCH
  - URS dispute resolution procedure
- Phase 2 – UDRP (an ICANN Consensus Policy since 1999)
- Aiming to complete Phase 1 by mid-to-late April 2020

# Trademark Claims Sub Team Update

# Overall Status

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- ⦿ Discussed five (5) Agreed Trademark Claims Charter Questions and reviewed five (5) Individual Proposals. The standard for accepting answers and proposals was whether they had gained 'wide support.'
- ⦿ Completed discussions, which took place during meetings and via discussion threads on the mailing list
- ⦿ Reviewed the draft language for proposed answers, preliminary recommendations, and proposed questions for community input
- ⦿ There was not wide support in the Sub Team for any of the individual proposals
- ⦿ In ICANN65, completed the review of the draft language and provided final input; finalized the determination on the individual proposals

| Question 1   | Proposed Answers  |
|--|---|
| <p><b>Q1:</b> <i>Is the Trademark Claims service having its intended effect?</i></p>   | <p>The Sub Team could determine that the service is at least “possibly” having its intended effect.</p>   |
| <p><b>Q1(a):</b> <i>Is the Trademark Claims service having its intended effect of deterring bad-faith registrations and providing Claims Notice to domain name applicants?</i></p> | <p>The Sub Team could determine that the service is at least “possibly” having its intended effect. The Sub Team could not determine the extent of deterrence that occurred, if any.</p>  |
| <p><b>Q1(b):</b> <i>Is the Trademark Claims service having any unintended consequences, such as deterring good-faith domain name applications?</i></p>                             | <p>The Sub Team generally agreed that the Trademark Claims service may possibly have unintended consequences, such as deterring good-faith domain name applications. The Sub Team could not determine the extent of deterrence that occurred, if any.</p> |

### Preliminary Recommendation

The Trademark Claims Sub Team recommends that the language of the Trademark Claims Notice be revised, in accordance with the Implementation Guidance outlined in the Sub Team’s recommendations for Question 3 (below). This recommendation aims to help enhance the intended effect of the Trademark Claims Notice by improving the understanding of recipients, while decreasing any unintended effects of deterring good-faith domain name applications.



| Question 2  | Proposed Answers  |
|---|---|
| <p><b>Q2(a):</b> <i>Should the Claims period be extended - if so, for how long (up to permanently)?</i></p> | <p>The Sub Team generally agreed that where there is a mandatory Claims period (see proposed answer to Q2(d)), it should not be extended. However, the Sub Team generally agreed that registries should have a certain degree of flexibility, based on a suitable business model, with the option to extend the Claims Period.</p>  |
| <p><b>Q2(b):</b> <i>Should the Claims period be shortened?</i></p>  | <p>The Sub Team generally agreed that where there is a mandatory Claims Period (see proposed answer to Q2(d)), it should not be shortened.</p>  |
| <p><b>Q2(c):</b> <i>Should the Claims period be mandatory?</i></p>  | <p>The Sub Team generally agreed that where there is a Claims period, it should be mandatory (see proposed answer to Q2(d)). However, the Sub Team generally agreed that registries should have a certain degree of flexibility to create a suitable business model in providing the Claims Service, provided this does not involve shortening the mandatory Claims Period.</p> |

### Preliminary Recommendation

The Trademark Claims Sub Team recommends, in general, that the current requirement for a mandatory Claims Period be maintained, including for the minimum initial 90-day period when a TLD opens for general registration.

## Question 2, Cont.

## Proposed Answers

**Q2(d):** *Should any TLDs be exempt from the Claims RPM and if so, which ones and why?*

Some Sub Team members believe that some future TLDs should be exempt from the Claims RPM. The Sub Team agreed that public comment should be sought on whether there is a use case for exempting a TLD from the requirement of a mandatory Claims Period due to the particular nature of the TLD.

**Q2(e):** *Should the proof of use requirements for Sunrise be extended to include the issuance of TMCH notices?*

The Sub Team had diverging opinions on whether the proof of use requirements for Sunrise should be extended to include the issuance of TMCH notices.

**Proposed Questions for Community Input are currently under discussion in the Sub Team.**

### Question 3

### Proposed Answers

**Q3(a):** *Does the Trademark Claims Notice to domain name applicants meet its intended purpose?*

The Sub Team generally agreed that the Trademark Claims Notice generally meets its intended purpose of notifying prospective domain name registrants that the applied-for domain name matches at least one trademark in the Trademark Clearinghouse. However, the Sub Team also recognized the inadequacies and shortcomings of the Trademark Claims Notice as set out in the proposed answers to Q3(a)(i)-(iii).

#### Preliminary Recommendation

The Trademark Claims Sub Team recommends that the Trademark Claims Notice be revised to reflect more specific information about the trademark(s) for which it is being issued, and to more effectively communicate the meaning and implications of the Claims Notice (e.g., outlining possible legal consequences or describing what actions potential registrants may be able to take following receipt of a notice). The Trademark Claims Sub Team recommends, accordingly, that the current version of the Claims Notice be revised to maintain brevity, improve user-friendliness, and provide additional relevant information or links to multilingual external resources that can aid prospective registrants in understanding the Claims Notice and its implications. To assist the Implementation Review Team (IRT) that will be formed to implement recommendations from this PDP in redrafting the Claims Notice, the Trademark Claims Sub Team has developed the following Implementation Guidance: The Claims Notice must be clearly comprehensible to a layperson unfamiliar with trademark law; A suggestion was made that ICANN org consider partnering with external resources that have already indicated an interest in helping redraft the Claims Notice (e.g., AUIP clinic).

### Question 3, Cont.

### Proposed Answers

**Q3(a)(i):** *If not, is it intimidating, hard to understand, or otherwise inadequate? If inadequate, how can it be improved?*

The Sub Team generally agreed that for some of the actual and potential registrant respondents, the Claims Notice is intimidating, hard to understand, or otherwise inadequate. The Sub Team made preliminary recommendations to improve the Claims Notice, and also sought community input to address its inadequacy.

**Q3(a)(ii):** *Does it inform domain name applicants of the scope and limitations of trademark holders' rights? If not, how can it be improved?*

Some Sub Team members believe that the Claims Notice does not adequately inform domain name applicants of the scope and limitations of trademark holders' rights (e.g., lack of identifying details of the trademark, issues with figurative/design marks). The Sub Team made preliminary recommendations to improve the Claims Notice, and also sought community input to address its inadequacy.

### Question 3, Cont.

### Proposed Answers

**Q3(a)(iii):** *Are translations of the Trademark Claims Notice effective in informing domain name applicants of the scope and limitation of trademark holders' rights?*

The Sub Team generally agreed that the current requirement on translations of the Trademark Claims Notice does not seem effective in informing domain name applicants of the scope and limitation of trademark holders' rights. The current requirement states: "The Claims Notice MUST be provided by the registrar to the potential domain name registrant in English and SHOULD be provided by the registrar to the potential domain name registrant in the language of the registration agreement".

#### **Preliminary Recommendation**

The Trademark Claims Sub Team recommends that delivery of the Trademark Claims Notice be both in English as well as the language of the registration agreement. In this regard, the Trademark Claims Sub Team recommends changing the relevant language in the current Trademark Clearinghouse Requirements on this topic to "...registrars MUST provide the Claims Notice in English and in the language of the registration agreement."

The Trademark Claims Sub Team also recommends that, where feasible, the Claims Notice include links on the ICANN org website to translations of the Claims Notice in all six UN languages.

### Question 3, Cont.

### Proposed Answers

**Q3(b):** *Should Claims Notifications only be sent to registrants who complete domain name registrations, as opposed to those who are attempting to register domain names that are matches to entries in the TMCH?*

The Sub Team generally agreed that when there is a Claims Period and the issuance of a Claims Notice is required (see proposed answer to Q2(d)), the Claims Notice should be sent to potential registrants, who are attempting to register domain names that are matches to entries in the TMCH, at some point before the domain name registration is completed.

#### **Preliminary Recommendation**

The Trademark Claims Sub Team recommends that the current requirement for only sending the Claims Notice before a registration is completed be maintained.

The Trademark Claims Sub Team also recognizes that there may be operational issues with presenting the Claims Notice to registrants who pre-registered domain names, due to the current 48-hour expiration period of the Claims Notice.

The Trademark Claims Sub Team therefore recommends that the Implementation Review Team consider ways in which ICANN org can work with registrars to address this implementation issue.

| Question 4  | Proposed Answers   |
|---|--|
| <p><b>Q4:</b> <i>Is the exact match requirement for Trademark Claims serving the intended purposes of the Trademark Claims RPM? In conducting this analysis, recall that IDNs and Latin-based words with accents and umlauts are currently not serviced or recognized by many registries.</i></p> | <p>The Sub Team had widely diverging opinions on whether the exact match requirement is serving the intended purposes of the Trademark Claims RPM.</p>   |
| <p><b>Q4(a):</b> <i>What is the evidence of harm under the existing system?</i></p>   | <p>The Sub Team had widely diverging opinions on whether there is evidence of harm under the existing system of exact match.</p>   |
| <p><b>Q4(b):</b> <i>Should the matching criteria for Notices be expanded?</i></p>   | <p>The Sub Team had widely diverging opinions on whether the matching criteria for the Claims Notice should be expanded.</p>   |
| <p><b>Q4(b)(i):</b> <i>Should the marks in the TMCH be the basis for an expansion of matches for the purpose of providing a broader range of claims notices?</i></p>  | <p>The Sub Team generally agreed that if the matching criteria for the Claims Notice were to be expanded, the marks in the TMCH should be the basis for an expansion of matches for the purpose of providing a broader range of Claims Notice.</p> |

## Question 4, Cont.

## Summary of Proposed Answers

**Q4(b)(ii):** *What results (including unintended consequences) might each suggested form of expansion of matching criteria have?*

The Sub Team had diverging opinions on the need to expand the matching criteria, the suggested forms of expansion were not examined in detail and as such, the Sub Team did not flush out the possible results of such suggestions.

**Q4(b)(iii):** *What balance should be adhered to in striving to deter bad-faith registrations but not good-faith domain name applications?*

The Sub Team believes that the exact match criteria has already struck the current balance of deterring bad-faith registrations but not good-faith domain name applications.

The Sub Team believes that the current balance can be enhanced by a well-crafted Claims Notice that appropriately notifies prospective registrants about a potential problem with their chosen domain name, employs clear/concise/informative language, and avoids a potential overflow of false positives.



| Question 4, Cont.   | Proposed Answers   |
|---|--|
| <b>Q4(b)(iv):</b> <i>What is the resulting list of non-exact match criteria recommended by the WG, if any?</i>  | The Sub Team did not recommended the concept much less developed a proposed list of non-exact match criteria.            |
| <b>Q4(c):</b> <i>What is the feasibility of implementation for each form of expanded matches?</i>   | The Sub Team team had diverging opinions on the advisability much less the feasibility of implementing expanded matches. |
| <b>Q4(d)(i):</b> <i>If an expansion of matches solution were to be implemented, should the existing TM Claims Notice be amended? If so, how?</i>                | Since the Sub Team did not agree on the expansion of matches, the Sub Team did not consider this question in detail.     |
| <b>Q4(d)(ii):</b> <i>If an expansion of matches solution were to be implemented, should the Claim period differ for exact matches versus non-exact matches?</i> | Since the Sub Team did not agree on the expansion of matches, the Sub Team did not consider this question in detail.     |

### Proposed Questions for Community Input

The Sub Team does not recommend expanding the matching criteria for the Claims Notice due to diverging opinions among its members. Nevertheless, the Sub Team recommends that public comment be sought on the following questions:

1. Should the matching criteria for the Claims Notice be expanded?
2. If so, what should the non-exact match criteria consist of? Please provide specific proposals with detailed rationale and supporting evidence/data. In the absence of clear evidence/data to make a change to the matching criteria, the status quo of exact match shall be maintained.

## Question 5

## Proposed Answers

**Q5:** *Should the Trademark Claims period continue to be uniform for all types of gTLDs in subsequent rounds?*

The Sub Team generally agreed that where the Registry Operator has not obtained an exception (see proposed answer to Q2(d)), the Trademark Claims period, including for the minimum initial 90-day period when a TLD opens for general registration, should continue to be uniform for all types of gTLDs in subsequent rounds. In addition, the Sub Team generally agreed that registries should have a certain degree of flexibility, based on a suitable business model, with the option to extend the Claims Period.

### Preliminary Recommendation

The Trademark Claims Sub Team recommends that where the Registry Operator has not obtained an exemption (see proposed answer to Q2(d)), the current requirement for a mandatory Claims Period should continue to be uniform for all types of gTLDs in subsequent rounds, including for the minimum initial 90-day period when a TLD opens for general registration.

# Sunrise Sub Team Update

# Overall Status

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- ⦿ Discussed twelve (12) Agreed Sunrise Charter Questions and reviewed ten (10) Individual Proposals. The standard for accepting answers and proposals was whether they had gained ‘wide support.’
- ⦿ Completed discussions, which took place during meetings and via discussion threads on the mailing list
- ⦿ Reviewed the draft language for proposed answers, preliminary recommendations, and proposed questions for community input
- ⦿ There was not wide support in the Sub Team for any of the individual proposals, except for part of Individual Proposal #11
- ⦿ In ICANN65, completed the review of the draft language and provided final input; finalized the determination on the individual proposals

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## High-Level Summary of Current Status

The following slides briefly summarize the current status of the Sub Team's work. The full text of any proposed response is in the Status Check document.

| Preamble Question   | Summary of Proposed Answers |
|---|-----------------------------|
| <b>Preamble Q(a):</b> Is the Sunrise Period serving its intended purpose?   | No Agreement                |
| <b>Preamble Q(b):</b> Is it having unintended effects?  | No Agreement                |
| <b>Preamble Q(c):</b> Is the TMCH Provider requiring appropriate forms of “use” (if not, how can this corrected)?       | Generally, yes.             |
| <b>Preamble Q(d):</b> Interpreted as : “Have abuses of the Sunrise Period by trademark owners been documented?”         | No conclusion.              |
| <b>Preamble Q(e):</b> Interpreted as: “Have abuses of the Sunrise Period by Registrants been documented?”               | No conclusion.              |
| <b>Preamble Q(f):</b> Interpreted as: “Have abuses of the Sunrise Period by Registries and Registrars been documented?” | No conclusion.              |

### Proposed Questions for Community Input

1. 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.
2. 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.

| Question 1  | Summary of Proposed Answers  |
|---|--|
| <p><b>Q1(a):</b> <i>Should the availability of Sunrise registrations only for identical matches be reviewed?</i></p>  | <p>Generally agreed that this should not be reviewed.</p>                              |
| <p><b>Q1(b):</b> <i>If the matching process is expanded, how can Registrant free expression and fair use rights be protected and balanced against trademark rights?</i></p> | <p>The Sub Team generally agreed that the matching process should not be expanded.</p> |

**Preliminary Recommendation:**

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.

| Question 2  | Summary of Proposed Answers  |
|---|--|
| <p><b>Q2:</b> <i>Threshold: Is Registry pricing within the scope of the RPM WG or ICANN's review?</i></p>   | <p>Diverging opinions.</p> <p>Some Sub Team members pointed to RA/RAA statements that registry pricing is not within the scope of the RPM WG due to the picket fence. Specifically, sections 1.4.1 of appropriate specifications in RA and RAA specify that Consensus Policies shall not prescribe or limit the price of Registry Services and Registrar Services. Other Sub Team members had concerns regarding interplay of Registry pricing with RPMs obligations (see proposed answer to Q2(a)-(b)).</p> |
| <p><b>Q2(a):</b> <i>Do Registry Sunrise or Premium Name pricing practices unfairly limit the ability of trademark owners to participate during Sunrise?</i></p> | <p>Generally agreed that Registry Sunrise or Premium Name pricing practices have limited the ability of some trademark owners to participate during Sunrise. Sub Team is 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.</p>  |
| <p><b>Q2(b):</b> <i>If so, how extensive is this problem?</i></p>   | <p>Problem seems sufficiently extensive that it may require a recommendation to address it, although data is limited. The Sub Team also noted that pricing is outside the picket fence.</p>  |

### Preliminary Recommendation

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.



### Question 3

### Summary of Proposed Answers

**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?*

Diverging opinions.

**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?*

No wide support for a challenge mechanism so Sub Team did not consider this question.

**Question 3, Cont.****Summary of Proposed Answers**

**Q3(c):** *What concerns might be raised by either or both of these requirements?*

Some Sub Team members noted some possible concerns, but there were no wide support within the Sub Team for those concerns.  
The Sub Team did not develop an answer to this question.

| Question 4   | Summary of Proposed Answers  |
|--|--|
| <p><b>Q4(a):</b> <i>Are Registry Operator Reserved Names practices unfairly limiting participation in Sunrise by trademark owners</i></p>  | <p>Some Sub Team members believe this to be the case.</p>  |
| <p><b>Q4(b):</b> <i>Should Section 1.3.3 of Specification 1 of the Registry Agreement be modified to address these concerns?</i></p>   | <p>No agreement that there were concerns that should be addressed with regard to Section 1.3.3.</p>  |
| <p><b>Q4(c):</b> <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>Diverging opinions.<br/>Some Sub Team members noted several possible registry concerns with publication.<br/>Other Sub Team members discussed possible problems that publication of Reserved Names lists may resolve.</p> |
| <p><b>Q4(d):</b> <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>Not discussed. More appropriate for the TMCH discussion and not within the scope of Sunrise concerns.</p>   |

| Question 5   | Summary of Proposed Answers   |
|--|---|
| <p><b>Q5(a):</b> <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>Generally agreed that the current 30-day minimum appears to serve its intended purpose.</p>  |
| <p><b>Q5(a)(i):</b> <i>Are there any unintended results?</i></p>   | <p>Some Sub Team members believe there are, such as complications when many TLDs are launched simultaneously for the Start Date Sunrise for 30 days.</p> <p>Others believe that the 30-day advance notice before the launch of a Start Date Sunrise may help mitigate the administrative burdens on the trademark owners.</p> |
| <p><b>Q5(a)(ii):</b> <i>Does the ability of Registry Operators to expand their Sunrise Periods create uniformity concerns that should be addressed by this WG?</i></p>   | <p>Generally agreed that this does not create uniformity concerns that should be addressed by this WG.</p>  |
| <p><b>Q5(a)(iii):</b> <i>Are there any benefits observed when the Sunrise Period is extended beyond 30 days?</i></p>   | <p>Generally agreed that there are benefits observed, and noted that most Registry Operators have run a 60-day End Date Sunrise. Extending beyond 30 days provides more time for trademark owners to decide whether to participate.</p>   |

| Question 5, Cont.  | Summary of Proposed Answers  |
|--|--|
| <b>Q5(a)(iv):</b> <i>Are there any disadvantages?</i>  | Some Sub Team members believe that there are disadvantages when the Sunrise Period is extended beyond 30 days. |
| <b>Q5(b):</b> <i>In light of evidence gathered above, should the Sunrise Period continue to be mandatory or become optional?</i>   | The Sub Team had widely diverging opinions.  |
| <b>Q5(b)(i):</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?</i> | The Sub Team considered this question but did not reach a conclusion.  |
| <b>Q5(b)(ii):</b> <i>In considering mandatory vs optional, should Registry Operators be allowed to choose between Sunrise and Claims (that is, make ONE mandatory)?</i>  | The Sub Team considered this question but did not reach a conclusion.  |

### Preliminary Recommendations:

1. 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.
2. The Sunrise Sub Team recommends that the mandatory Sunrise Period should be maintained.

## Question 6

## Summary of Proposed Answers

**Q6(a):** *What are Sunrise Dispute Resolution Policies (SDRPs), and are any changes needed?*

SDRPs are explained in the Section 6.2.2 and 6.2.4 of Module 5 of the Applicant Guidebook. Generally recognized it is not within the scope of the RPM PDP WG to recommend changes to any Registry Operator specific SDRPs. Widely diverging opinions on whether any changes, additions or deletions to the mandatory grounds are needed.

**Q6(b):** *Are SDRPs serving the purpose(s) for which they were created?*

Widely diverging opinions.

**Q6(c):** *If not, should they be better publicized, better used or changed?*

Since there were widely diverging opinions on 6(b), the Sub Team did not consider this question.

## Additional Proposed Answer – 6(a)

### Proposed Answer

According to the Section 6.2.2 and 6.2.4 of the Trademark Clearinghouse Model 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, on four non-exhaustive grounds, including on the grounds that the domain name that was registered does not identically match the Trademark Record on which the Sunrise-Eligible Rights Holder based its Sunrise Registration. In the time between when the AGB was written and the TMCH requirements were established, the TMCH dispute procedure was created. This procedure allows for challenges to the recordal of marks in the TMCH that underlie Sunrise Registrations. As a result two of AGB requirements for Registry Operator SDRPs are moot; and in any event the registry operator is not the best-placed party to adjudicate these challenges due to the fact that the registry operator is reliant on trademark eligibility information provided to it by the TMCH. We propose a resolution that codifies the current practice, with no changes.

## Additional Proposed Answers - 6(b) and (c)

### Proposed Answers

**6(b):** 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 SDRP decisions across all new gTLD. Some sub team members have proposed a solution in Q6(a) that will eliminate the non-functional parts of the SDRP requirements and codify the current practice. Some Sub Team members believe that, in general, SDRPs do not seem to serve the purpose(s) for which they were created. 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. Nevertheless, one Sub Team member believes that the SDRPs are generally serving the purpose(s) for which they were created despite their low usage.

**6(c):** Some SubTeam members have proposed some useful changes in Q6(a). 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. 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.



# Additional Proposed Recommendation – Q6

## Preliminary Recommendations:

1. The Sub Team recommends that the next Applicant Guidebook be amended as follows:
2. We recommend: the new version of the AGB should include the TMCH dispute resolution procedure for challenging the validity of trademark records entered into the TMCH. This procedure is currently published at: <https://www.trademark-clearinghouse.com/dispute#3.3> [trademark-clearinghouse.com]. ICANN Org should ensure that its contract for the provision of TMCH services makes the operation of the TMCH dispute resolution procedure a requirement for the TMCH Provider.
3. We recommend: What is current AGB (Module 5) Trademark Clearinghouse Model, section 6.2.4 be amended to remove (i) and (iii).
4. We recommend: The AGB (Module 5) 6.2.4 be amended to include 6.2.6 – the Registry Operator will, upon receipt from the TMCH of a finding that a sunrise registration was based upon an invalid TMCH record (pursuant to a TMCH dispute resolution procedure), immediately cancel the domain name registration.

Note: Registry Operators should continue to have the option to offer a broader SDRP to include optional/additional Sunrise criteria as desired.

## Question 7

## Summary of Proposed Answers

**Q7(a):** *Can SMD files be used for Sunrise Period registrations after they have been canceled or revoked?*

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?*

Generally agreed that the problem does not seem prevalent.

| Question 8  | Summary of Proposed Answers  |
|---|--|
| <i>Q8(a): Are Limited Registration Periods in need of review vis a vis the Sunrise Period? Approved Launch Programs? Qualified Launch Programs?</i> | Question discussed, but unable to conclude whether the Limited Registration Periods, Approved Launch Programs, or Qualified Launch Programs are in need of review. |
| <i>Q8(b): Are the ALP and QLP periods in need of review?</i>  | Question discussed, but unable to conclude whether ALP and QLP periods are in need of review.  |
| <i>Q8(c): What aspects of the LRP are in need of review?</i>  | Question discussed, but unable to conclude what aspects of the LRP are in need of review.  |

**Proposed Questions for Community Input are currently under discussion in the Sub Team.**

## Question 9

*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?*

## Summary of Proposed Answers

Widely diverging opinions.

## Question 10

**Q10:** *Explore use and the types of proof required by the TMCH when purchasing domains in the sunrise period.*

## Summary of Proposed Answers

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

## Summary of Proposed Answers

**Q11(a):** *How effectively can trademark holders who use non-English scripts/languages able to participate in Sunrise (including IDN Sunrises)?*

Some Sub Team members believe that Trademark holders who use non-English scripts/languages cannot effectively participate in Sunrise.

**Q11(b):** *Should any of them be further “internationalized” (such as in terms of service providers, languages served)?*

The Sub Team did not address this question as the question was unclear.

**Proposed Questions for Community Input are currently under discussion in the Sub Team.**

| Question 12   | Summary of Proposed Answer                                   |
|---|--|
| <p><b>Q12(a):</b> <i>Should Sunrise Registrations have priority over other registrations under specialized gTLDs?</i></p>   | <p>Question discussed, but unable to reach a conclusion.</p> |
| <p><b>Q12(b):</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>Question discussed, but unable to reach a conclusion.</p> |

**Proposed Questions for Community Input are currently under discussion in the Sub Team.**

**Thank You and Questions**