

Proposed Answer	Preliminary Recommendation
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## [Status Check] Sunrise Sub Team Recommendations for RPM PDP Working Group Discussion

Table 1 of this document consolidates, for Working Group discussion, the Sunrise Sub Team’s proposed answers and preliminary recommendations in relation to each agreed Sunrise charter question. It also reflects how preliminary recommendations corresponds to the proposed answers to specific sub questions. Table 2 includes a snapshot of the results of the review of all individual proposals received from Working Group members. For more details and additional context, please refer to the Sunrise Sub Team’s Summary Table and the Sub Team’s weekly progress reports.

**NOTE:** The orange text in the preliminary recommendation column are “tentative”. They are either potential amendment to preliminary recommendations as a possible result of the Sub Team discussions related to Individual Proposals OR initial ideas/proposals the Sub Team is discussing. The final document to be submitted to the full WG will only include preliminary recommendations that the Sub Team has agreed on.

Table 1: Proposed Answers to Agreed Charter Questions & Preliminary Recommendations

PREAMBLE QUESTION	
Proposed Answer	Preliminary Recommendation
<p><b>Preamble Q(a):</b> <i>Is the Sunrise Period serving its intended purpose?</i></p> <p><b>Proposed Answer:</b></p>	
<p><b>Preamble Q(b):</b> <i>Is it having unintended effects?</i></p> <p><b>Proposed Answer:</b></p>	
<p><b>Preamble Q(c):</b> <i>Is the TMCH Provider requiring appropriate forms of</i></p>	

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<p><i>“use” (if not, how can this corrected)?</i></p> <p><b>Proposed Answer:</b></p>	
<p><b>Preamble Q(d):</b> <i>Have abuses of the Sunrise Period been documented by trademark owners?</i></p> <p><b>Proposed Answer:</b></p>	
<p><b>Preamble Q(e):</b> <i>Have abuses of the Sunrise Period been documented by Registrants?</i></p> <p><b>Proposed Answer:</b></p>	
<p><b>Preamble Q(f):</b> <i>Have abuses of the Sunrise Period been documented by Registries and Registrars?</i></p> <p><b>Proposed Answer:</b></p>	
<p><b>QUESTION 1</b></p>	
Proposed Answer	Preliminary Recommendation
<p><b>Q1(a):</b> <i>Should the availability of Sunrise registrations only for identical matches be reviewed?</i></p> <p><b>Proposed Answer:</b> 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 SubPro PDP WG suggested that the RPM PDP WG could explore extending Sunrise and Claims services to domains that are exact</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>	

Commented [1]: Preliminary Recommendation - any revision based on review of Individual Proposal #9?

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<p><b>Proposed Answer:</b> The matching process should not be expanded.</p>	<p>matches of dot-span<sup>1</sup> trademarks registered in the Trademark Clearinghouse.</p> <p>SubPro PDP WG’s suggestion is similar to Individual Proposal #9 (“Spanning the Dot” proposal), which states:</p> <p style="padding-left: 20px;">Sunrise services shall include protection for trademarks with the terminal portion of the trademark string (and plurals) corresponding to [TLD], thereby facilitating the registration of second-level names in .[TLD] truncated prior to such terminal portion – i.e. in which the trademark “spans the dot”. To be eligible the trademark owner must be the holder of a corresponding TMCH entry with the terminal portion of the trademark string (and plurals) corresponding to [TLD (and plurals or conjugate forms where indicated in the TLD application)].</p> <p>The Sub Team Co-Chairs determined that Individual Proposal #9 did not receive “wide support” from the Sunrise Sub Team necessary to become a Sub Team preliminary recommendation for inclusion in the Initial Report. Furthermore, 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 referral and confirming that the issue was discussed.</p> <p>Despite the lack of wide support, the proponent of Individual Proposal #9 requested, via the Discussion Thread, that the proposal still be posted for Public Comment in the Initial report, but not as a Policy Recommendation. In addition to posting the proposal for public comment, the proponent requested that the Initial Report includes a set of questions to solicit feedback on the policy/operational issues</p>
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<sup>1</sup> 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>that may arise with the implementation of a Spanning the Dot Sunrise.</p> <p>One Sub Team member suggested revisions to the Proposal by adding the condition that it does not cause violation of RA, ICANN policies (list of ICANN reserved names), local laws, or policies of the Registry, or cause danger to the security or stability of the Internet.</p> <p>Another Sub Team member suggested that the dot-span trademark issue be raised during Phase 2 of the RPM PDP.</p>
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**QUESTION 2**

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<p><b>Q2 Threshold:</b> <i>Is Registry pricing within the scope of the RPM WG or ICANN's review?</i></p> <p><b>Proposed Answer:</b> The Sub Team has differing opinions on whether the registry pricing is within the scope of the RPM PDP WG; some Sub Team members stated firmly that registry pricing is not within the scope of the RPM WG.</p> <p>Registry pricing may be within the scope of another ICANN Working Group's review.</p>	
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<p><b>Q2(a):</b> <i>Does Registry Sunrise or Premium Name pricing practices unfairly limit the ability of trademark owners to participate during Sunrise?</i></p>	<p>The Sunrise Sub Team suggests that the RPM PDP WG communicate the pricing concerns that have been identified to the SubPro PDP WG, and ask the SubPro PDP WG for their views regarding pricing discrimination referenced in the Registry Agreement (e.g.,</p>
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<p><b>Proposed Answer:</b> Registry Sunrise or Premium Name<sup>2</sup> pricing practices, in general, limit the ability of trademark owners to participate during Sunrise. However, based on the limited data and due to subjectivity concerns, the Sub Team could not determine whether Premium Name pricing practices “unfairly” limit the ability of trademark owners to participate during Sunrise.</p>	<p>Specification 11, Sections 2.10c, 3c). Information and insight from the SubPro PDP WG may assist the RPM PDP WG in developing a potential policy recommendation on this topic.</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>
<p><b>Q2(b):</b> <i>If so, how extensive is this problem?</i></p> <p><b>Proposed Answer:</b> 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**

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<p><b>Q3(a):</b> <i>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?</i></p> <p><b>Proposed Answer:</b> ICANN Org should establish a uniform mechanism</p>	<p>The Sunrise Sub Team recommends that ICANN Org establish a uniform mechanism to allow trademark owners to challenge a Registry Operator’s determination that a second level name is a “Premium Name” or “Reserved Name”.</p>
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**Commented [3]:** Preliminary Recommendations - Not Completed

Review of Proposal #10 - Not Completed

Review of Proposal #11 - Not Completed

<sup>2</sup> **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>that allows trademark owners to challenge a determination by a Registry Operator that a second level name is a "Premium Name" or a "Reserved Name"<sup>3</sup> during the Sunrise Period.</p> <p><b>Q3(b):</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><b>Proposed Answer:</b> ICANN Org should require Registry Operators 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.</p>	<p>The Sunrise Sub Team recommends, further, that the following Implementation Guidance guide the Implementation Review Team (IRT), which will be created to implement approved policy recommendations from this PDP:</p> <ul style="list-style-type: none"> <li>• The mechanism could be a component of an enhanced Sunrise Dispute Resolution Procedure (SDRP), where the challenger brings the issue to the Registry Operator first via a formal process within the registry, with the possibility of an appeal to a neutral third party if the initial direct registry interaction does not result in the desired outcome for the challenger.</li> <li>• If the challenger ultimately prevails, the Registry Operator would be required to change the designation of the domain name at issue such that it is no longer identified as a "Premium Name" or a "Reserved Name" and becomes available for registration by the challenger.</li> <li>• As part of the proposed challenge mechanism, a defense, or ground for denying the challenge, should be that the registry must continue designating a certain name as "reserved" to comply with other ICANN policies or applicable law or due to other reasonable justifications.</li> <li>• The IRT should consider building carve-outs/caveats to the suggested challenge mechanism. The challenge mechanism is not an absolute/automatic challenge; it should include the legitimate grounds for the Premium Name designation or Reserved Name status. <i>A Sub Team member suggested that the distinction between fanciful/famous marks and generic words needs to be taken into account when the challenge mechanism is being developed.</i></li> <li>• To avoid overcomplication, the IRT should consider restricting the</li> </ul>

<sup>3</sup> **Reserved Name:** second level domain names that are withheld from registration per written agreement between the registry and ICANN. (See Section 2.6 and Specification 5 in the base Registry Agreement.)

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	<p>challenge mechanism to unique non-dictionary trademarks that are recorded in the Trademark Clearinghouse, and/or consider placing a numeric limit on the number of Reserved Names challenged by a trademark owner.</p> <ul style="list-style-type: none"> <li>• The IRT should consider modeling the challenge mechanism after the Passive Holding doctrine developed in Uniform Domain Name Dispute Resolution Policy (UDRP) jurisprudence, with clear definitions to prevent potential misinterpretation by the panelists.</li> </ul> <p>The Sunrise Sub Team suggests that the RPM PDP WG refer the following question to the SubPro PDP WG: “Would it be feasible to recommend that the names recorded in the TMCH either cannot be designated premium or can be designated premium at a certain price ceiling, as an exception to ICANN’s position about pricing?”</p> <p>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>
<p><b>Q3(c):</b> What concerns might be raised by either or both of these requirements?</p> <p><b>Proposed Answer:</b> One Sub Team member noted that Registry Operators may be concerned that any change to the Reserved list will affect their ability to run the required real-time platforms. This 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. The Sub Team member also noted that Registry Operators may have concerns about gaming by trademark owners and the number of challenges brought by multiple trademark owners that</p>	<p>Staff Note: As of 22 May 2019, some Sub Team members have raised concerns regarding the preliminary recommendation for establishing a uniform challenge mechanism (see above). These Sub Team members suggested some initial ideas/concepts/proposals to address these concerns, including an “alternative” model to a formal challenge mechanism (see below):</p> <ol style="list-style-type: none"> <li>1) One Sub Team member suggested that Registries should be able to verify the identity of trademark owners who file a challenge against a Premium Name or Reserved Name or who apply to use the release mechanism on the basis that their marks are recorded in the TMCH as well as the existence of the relevant trademarks.</li> </ol>

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<p>registries may have difficulty handling.</p> <p>Another Sub Team member noted the concern that the suggested challenge mechanism may be of little/infrequent use due to the subjectivity, complications, and expense, as well as potentially fewer domain name applications in the next round of TLDs.</p>	<p>2) One Sub Team member suggested that additional appropriate safeguards should be developed, so that registry operators will have clear guidelines to ascertain that they are dealing with enquiries from legitimate trademark owners who have recorded trademarks in the TMCH and who are seeking to register a domain name during an applicable Sunrise period to protect their business/interests.</p> <p>3) Two Sub Team members suggested that a less formal challenge mechanism should be created to allow trademark holders, who have recorded marks in the TMCH, to contact registry operators directly about the designation of a Premium Name or Reserved Name. As a “best practice”, registries should have clearly defined contact information/contact persons to facilitate the communication between registries and trademark owners. Input from ICANN Compliance should be sought regarding whether any existing language in the Registry Agreement could enable Compliance to get involved when trademark owners would like to challenge the designation of a Premium Name or Reserved Name.</p> <p>4) One Sub Team members suggested that the existing mechanisms, such as PDDRP, may be modified to address Registry Operator abuse issues. Those issues include Registry Operator setting its pricing at a level, compared to general availability pricing, which has the effect of undermining brand owner access to the Sunrise.</p>
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**Commented [4]:** Staff Note: the Sub Team members who proposed the less formal challenge mechanism have been asked to flesh out the details of their recommendation and circulate in the Discussion Thread.

**QUESTION 4**

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<p><b>Q4(a):</b> Are Registry Operator Reserved Names practices unfairly limiting participation in Sunrise by trademark owners?</p>	<p>Staff Note: 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>
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**Commented [5]:** Answer to Q4(c), Q4(d) - Not Completed  
Preliminary Recommendation - Not Completed



Proposed Answer	Preliminary Recommendation
<p><b>Proposed Answer:</b> Some Registry Operators’ Reserved Names practices may be limiting participation in Sunrise by trademark owners. However, based on the limited data and due to subjectivity concerns, 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 do reserve names for good faith/legitimate interests (e.g., legal requirements, prevent cybersquatting).</p>	<p>1) One Sub Team member proposed implementing an obligatory Public Interest Commitment or other contractual provision that the registry is not to act in a manner calculated to circumvent the RPMs, which has the effect of undermining brand owner access to the Sunrise [See Individual Proposal #11].</p> <p>Per the Sub Team member, more implementation guidance of this PIC still needs to be developed, but generally, such mechanism:</p> <ul style="list-style-type: none"> <li>• Will enable trademark owners to take action themselves under the PICDRP, rather than being reliant on ICANN Compliance to enforce the contract.</li> <li>• Will allow a panel to assess Registry Operators’ practices of reserving names matching trademarks during the Sunrise Period in order to release them later when the Sunrise has ended (whether or not at a premium price).</li> <li>• Should recognize the legitimate interest in various types of Reserved Names, but it is not necessary to develop a comprehensive list of examples of legitimate Reserved Names.</li> <li>• Should not be triggered unless there is an “extensive pattern” by certain Registry Operator which reserves names including fanciful marks and other types of marks.</li> </ul> <p>While this proposal received support from several Sub Team members, one Sub Team member noted the concerns about the potential subjectivity of the mechanism and the time needed to develop a formal process that adjudicates on various issues/standards. The same Sub Team member also noted the concerns that such mechanism may not be used frequently in the next round of new gTLDs, as generic words may not be registered in a large scale. Another Sub Team member strongly objected this</p>
<p><b>Q4(b):</b> Should Section 1.3.3 of Specification 1 of the Registry Agreement be modified to address these concerns?</p> <p><b>Proposed Answer:</b> 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><b>Q4(c):</b> 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?</p> <p><b>Proposed Answer:</b> The Sub Team has differing opinions on whether Registry Operators should be required to publish their Reserved Names lists.</p> <p>Some Sub Team members believe that Registry Operators should not be required to publish their Reserved Names lists. Registry concerns that may be raised include:</p> <ul style="list-style-type: none"> <li>• The publication of Reserved Names lists is not possible due to potential legal violations (e.g., reserved profane words) and security risks.</li> <li>• The publication of Reserved Names lists will reveal the confidential business plans of the Registry Operators.</li> </ul>	

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<p> <ul style="list-style-type: none"> <li>The publication will cause many “practical problems”, as the Reserved Names lists vary from TLD to TLD, have a large volume (especially for geoTLDs and generic terms), and are not static.</li> </ul> </p> <p>The Sub Team noted that some Registry Operators already allow a potential registrant to check whether a name is reserved via WHOIS. Registry Operators are unable to check with the TMCH to verify registered trademarks.</p> <p>Some Sub Team members believe that Registry Operators should be required to publish their Reserved Names lists in order to facilitate the registration process during the Sunrise Period. They believe Registry Operators should at least inform registrants about why a mark is not available for Sunrise registration (e.g., whether it has already been registered by a third party or is on the Reserved Names list).</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><b>Proposed Answer:</b></p>	<p>proposal due to concerns with the GAC involvement.</p> <p>2) Two Sub Team members supported creating a “questioning/query mechanism” to allow trademark holders, who have registered marks in the TMCH, to contact the registry operators directly about the designation of a Reserved Name. The Sub Team members have been asked to provide more details regarding their proposal.</p> <p>3) One Sub Team member proposed to review existing Sunrise Dispute Resolution Policy that addresses the Reserved Names issues.</p> <p>4) Via the Discussion Thread, one Sub Team proposed a process that (1) restricts disclosure of reserved names and TMCH records to the TMCH operator and the trademark owner and/or their agent; and (2) provides transparency on the status of trademark-matching reserved labels, which have been reserved from registration. That Sub Team member proposed the following:</p> <ul style="list-style-type: none"> <li>If the Registry Operator chooses to reserve any names from registration that are not required to be reserved under the Registry's agreement with ICANN, then the Registry operator MUST create a "Reserved Names List" prior to the commencement of its Sunrise Period, which includes any such labels reserved by the Registry.</li> <li>The Registry Operator MUST send its Reserved Names List to the TMCH Operator prior to the commencement of its Sunrise Period.</li> <li>The TMCH Operator MUST identify if any reserved names on the Reserved Names List match existing Trademark Records in the TMCH;</li> <li>If any reserved names on the Reserved Names List match existing TMCH Trademark Records, then the TMCH Operator MUST send a notification of the match ("Reserved Name Match") to the trademark owner of record (and/or their representative) as listed</li> </ul>

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	<p>in the TMCH.</p> <p>5) Via the Discussion Thread, one Sub Team member sent a proposal that provides notice to the trademark owner that their trademark-matching reserved label (that was previously reserved before Sunrise) has been un-reserved by the Registry after Sunrise, and before the string is potentially registered by a third-party:</p> <ul style="list-style-type: none"> <li>• If Registry Operator chooses to unreserve a label on their Reserved Names List after its Sunrise Period is over;</li> <li>• Then Registry Operator MUST notify the TMCH that those labels have been unreserved;</li> <li>• If the unreserved label matches an existing trademark record in the TMCH, then the TMCH Operator MUST notify the trademark owner (and/or their representatives) as listed in the TMCH, that the trademark-matching label has been un-reserved.</li> </ul>
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**QUESTION 5(a)**

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<p><b>Q5(a):</b> 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?</p> <p><b>Proposed Answer:</b> The current 30-day minimum for a Start Date Sunrise Period may be serving its intended purpose.</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> <p>To help address the negative unintended consequences when multiple new gTLDs are launched concurrently, one Sub Team member made a proposal via the Discussion Thread, which the Sub Team has not yet discussed.</p>
<p><b>Q5(a)(i):</b> Are there any unintended results?</p> <p><b>Proposed Answer:</b> 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</p>	<p>The proposal is a 15-day increase in the notification period designed by providing more time for trademark owners to make informed</p>

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Proposed Answer	Preliminary Recommendation
<p>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>decisions on protecting their consumers from registration abuse:</p> <ul style="list-style-type: none"> <li>● When more than five (5) new gTLDs are scheduled to launch currently (within the same 60-day calendar period) then the notification period for each gTLD will be extended to minimize the instability caused by multiple new gTLDs launching concurrently.</li> <li>● In these circumstances (when more than 5 new gTLDs are scheduled to launch over a 60-day calendar period): <ul style="list-style-type: none"> <li>○ For End Date Sunrise: the notification period must be at least 15 days before the start of the End Date Sunrise Period.</li> <li>○ For Start Date Sunrise: the notification period must be at least 45 days before the start of the Start Date Sunrise Period.</li> </ul> </li> </ul>
<p><b>Q5(a)(ii):</b> Does the ability of Registry Operators to expand their Sunrise Periods create uniformity concerns that should be addressed by this WG?</p> <p><b>Proposed Answer:</b> 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><b>Q5(a)(iii):</b> Are there any benefits observed when the Sunrise Period is extended beyond 30 days?</p> <p><b>Proposed Answer:</b> 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><b>Q5(a)(iv):</b> Are there any disadvantages?</p>	

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<p><b>Proposed Answer:</b> There are disadvantages when the Sunrise Period is extended beyond 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>	
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**QUESTION 5(b)**

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<p><b>Q5(b):</b> <i>In light of evidence gathered above, should the Sunrise Period continue to be mandatory or become optional?</i></p> <p><b>Proposed Answer:</b></p>	
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<p><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></p> <p><b>Proposed Answer:</b></p>	
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<p><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></p>	
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<b>Proposed Answer:</b>	
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**QUESTION 6**

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<p><b>Q6(a):</b> <i>What are Sunrise Dispute Resolution Policies (SDRPs), and are any changes needed?</i></p> <p><b>Proposed Answer:</b> 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 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</p>	<p>Staff Note: 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"> <li>i. At [the] time the challenged domain name was registered, the registrant did not hold a trademark registration of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty;</li> <li>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</li> <li>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 in its Sunrise Criteria, if one was specified.</li> </ul> <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</p>
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Commented [7]: Answers to Q6(a), Q6(b), Q6(c) - Not Completed

Preliminary Recommendation - Not Completed

Review of Proposal #2 - Not Completed

Review of Proposal #4 - Not Completed

Proposed Answer	Preliminary Recommendation
<p>orange text to the right.</p> <p><b>Q6(b):</b> <i>Are SDRPs serving the purpose(s) for which they were created?</i></p> <p><b>Proposed Answer:</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.</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>decision on whether to bring an SDRP challenge. Another 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.</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.</p> <p>4) One Sub Team member proposed that the TMCH should allow a legitimate challenger, 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>5) One Sub Team member proposed that a party 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:</p> <ol style="list-style-type: none"> <li>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;</li> <li>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</li> <li>c. Someone with strong proof of inaccuracy during Sunrise registrations.</li> </ol> <p>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</p>

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	<p>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.</p> <p>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> <p>6) 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 SDRP determinations.</p>
<p><b>Q6(c):</b> <i>If not, should they be better publicized, better used or changed?</i></p> <p><b>Proposed Answer:</b> 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>The Sub Team recommends that Registry Operators should periodically remind registrants of the existence of SDRPs.</p>
<b>QUESTION 7</b>	
Proposed Answer	Preliminary Recommendation
<p><b>Q7(a):</b> <i>Can SMD files be used for Sunrise Period registrations after they have been canceled or revoked?</i></p> <p><b>Proposed Answer:</b> The Sub Team noted that after a SMD file or its underlying trademark record has been canceled or revoked, the SMD</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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file cannot be used for Sunrise Period registrations. However, theoretically, a SMD file might still work for an asynchronous short period of time due to the registry process.	
<b>Q7(b):</b> <i>How prevalent is this as a problem?</i>	
<b>Proposed Answer:</b> 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.	
<b>QUESTION 8</b>	
Proposed Answer	Preliminary Recommendation
<b>Q8(a):</b> <i>Are Limited Registration Periods in need of review vis a vis the Sunrise Period? Approved Launch Programs? Qualified Launch Programs?</i>	
<b>Q8(b):</b> <i>Are the ALP and QLP periods in need of review?</i>	
<b>Q8(c):</b> <i>What aspects of the LRP are in need of review?</i>	
<b>QUESTION 9</b>	
Proposed Answer	Preliminary Recommendation
<b>Q9:</b> <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</i>	

Proposed Answer	Preliminary Recommendation
Clearinghouse?	
<b>QUESTION 10</b>	
Proposed Answer	Preliminary Recommendation
<b>Q10:</b> Explore use and the types of proof required by the TMCH when purchasing domains in the sunrise period.	
<b>QUESTION 11</b>	
Proposed Answer	Preliminary Recommendation
<b>Q11(a):</b> How effectively can trademark holders who use non-English scripts/languages able to participate in Sunrise (including IDN Sunrises)?	
<b>Q11(b):</b> Should any of them be further “internationalized” (such as in terms of service providers, languages served)?	
<b>QUESTION 12</b>	
Proposed Answer	Preliminary Recommendation
<b>Q12(a):</b> Should Sunrise Registrations have priority over other registrations under specialized gTLDs?	
<b>Q12(b):</b> Should there be a different rule for some registries, such as certain types of specialized gTLDs (e.g. community or geo TLDs), based	

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<i>on their published registration/eligibility policies? Examples include POLICE.PARIS and POLICE.NYC for geo-TLDS, and WINDOWS.CONSTRUCTION for specialized gTLDs.</i>	

Table 2: Status of Individual Proposals Review

Proposal No.	Status
<a href="#">Proposal #1</a>	Review Not Started
<a href="#">Proposal #2</a>	Review Not Completed - It may affect the preliminary recommendations for the agreed Sunrise Charter Question 6.
<a href="#">Proposal #3</a>	Review Not Started
<a href="#">Proposal #4</a>	Review Not Completed - It may affect the preliminary recommendations for the agreed Sunrise Charter Question 6.
<a href="#">Proposal #7</a>	Review Not Started
<a href="#">Proposal #8</a>	Review Not Started
<a href="#">Proposal #9</a>	Review Completed - It did not receive wide support from the Sunrise Sub Team for inclusion in the Initial Report.
<a href="#">Proposal #10</a>	Review Not Completed - It may affect the preliminary recommendations for the agreed Sunrise Charter Question 3.
<a href="#">Proposal #11</a>	Review Not Completed - It may affect the preliminary recommendations for the agreed Sunrise Charter Question 3
<a href="#">Proposal #13</a>	Review Not Completed - It may affect the preliminary recommendations for the agreed Sunrise Charter Question 9