Instructions:

This table was built to assist the Sunrise Data Review Sub Team in its analysis as to whether, and how, the previously collected Sunrise data (between December 2016 and March 2018) answer each of the final agreed Charter questions.

- In the **Sunrise Tab** of the analysis tool, Staff have included excerpts, as well as the relevant page/slide reference, from the previously collected data that staff believe may assist in answering the final agreed Charter questions. Summaries of the excerpts are included in Column B.
- The excerpts cited by Staff are nonexclusive; Sub Team members are welcome to download and reference the actual documents, linked from the **Source Tab,** to cite relevant information that may help answer the final agreed Charter questions.
- When providing input, please note the source name and page/slide number of the previously collected data.

Sunrise Charter Question 1

(a) Should the availability of Sunrise registrations only for identical matches be reviewed?

(b) If the matching process is expanded, how can Registrant free expression and fair use rights be protected and balanced against trademark rights?

Sub Team Member Name	Do the previously collected data help answer this Sunrise Charter Question?	If yes, which sub question(s) do the survey results assist?	How do the data assist (e.g. "Information X in document Y demonstrate Z")?	Source Name & Page/Slide Reference
George Kirikos	Yes*	a	[my usual disclaimer for Yes with an asterisk, given limited number of responses and other statistical issues] Section 2.3.1 of the Deloitte TMCH Report (March 2013 - February 2017) stated there were 209 cases of abused labels, with 375 abused labels in total, compared to 38,172 successfully verified records. This would suggest limited current usage of "expanded match" via those abused labels. Same stats in answer to Q16 of January 2017 document. According to sections 2.1.1 and 2.1.2, there were 28,549 total verified trademark	Deloitte TMCH Report, March 2013 - February 2017, section 2.3.1, 2.2.1.2, 2.1.1, 2.1.2 January 2017 Deloitte

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			records, and 57,393 total number of domain names/labels derived from those trademark records, imply that there is already a "doubling" (expansion) of the matches, compared to a strict 1:1 ratio.	responses to initial questions from TMCH Data Gathering Sub Team, Q16
Kathy	I think so	a	Deep in an early questionnaire, Deloitte wrote: "We have not received any complaints regarding the sunrise eligibility requirements and our verification process."	QUESTIONS ... TO THE TRADEMARK CLEARINGHOUSE PROVIDER Updated as of 5 December 2016, Ques 15
Kathy	Maybe	a	It is possible for the identical matches in Sunrise to be narrowed -- to a way corresponding to the gTLD (e.g., restricted registration gTLDs like .BANK and .ATTORNEY). Interestingly, Deloitte indicates that just such capability has been built into the TMCH database. "Upon request of the community, the SMD-file was designed in such a way that the Registry Operator had at all times the necessary information to limit registration by	Above, Ques 17

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			goods and services themselves. As such the TMCH has not been involved in the management or decisions in relation to any restrictions implemented by the Registry Operator."	
Kathy	Worth noting	a	Impact of design mark acceptance into the TMCH likely has huge implications, even for identical matches in Sunrise. I'll cut and paste the answer from Deloitte in its follow-up answers, Ques 6, bullet 2: Deloitte responds: "These are mentioned in the TMCH guidelines: For those marks that to do not exclusively consist of letters, words, numerals or special characters, the verification agents will verify the trademark name based upon the image on the trademark certificate. In the event that there is any doubt about the order in which the characters appear, the description provided by the Trademark office will prevail. In the event no des cription is provided, such Trademark records will be allocated to a Deloitte internal team of specialists with thorough knowledge of both national and regional trademark law who will conduct independent research on how the trademark is used, e.g. check website, or they may request that the trademark holder or agent provide additional documentary evidence on how the Trademark is used."	FOLLOW UP QUESTIONS FOR DELOITTE FROM THE GNSO'S REVIEW OF ALL RIGHTS PROTECTION MECHANISMS (RPM) REVIEW POLICY DEVELOPMEN T PROCESS WORKING GROUP Updated 5 March 2017, Ques 6
Griffin Barnett	Yes	(a)	Deloitte Report: - 2.3.1 # of Abused labels · Cases: 209 · Labels: 375 [abused labels are non-exact	Listed in Prior Column

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			matches added to TMCH for purposes of Claims, but could show a need for expanded Sunrise matching for non-exact matches]	
Greg Shatan	Unlikely	a	The statement "Our data also do not provide quantifiable information on the costs and benefits associated with the present state of the TMCH services, nor the potential costs and benefits of expanding or altering the way the services function, making concrete cost-benefit analyses outside the scope of this report" demonstrates that the Analysis Group TMCH Review will likely be of limited utility in answering this question.	Analysis Group TMCH Review, p. 2
Greg Shatan	No	a	The statement "In addition, extending the Claims Service period or expanding the matching criteria used for triggering Claims Service notifications may be of limited benefit to trademark holders and may be associated with costs incurred by other stakeholder groups, such as registries, registrars, and non-trademark-holder domain registrants. Although our data do not permit us to perform a cost-benefit analysis of extending the Claims Service or expanding the matching criteria, the tradeoffs felt by different stakeholder groups should be considered when weighing those policy decision" is of limited use, since it relates to Claims and not to Sunrise	Analysis Group TMCH Review, p. 3
Greg Shatan	Not really	a	The statement "We also find that trademark holders infrequently dispute registrations that are variations of trademark strings. Given the low dispute rates, an expansion of the matching criteria may bring little benefit to trademark holders and only harm non-trademark-holder domain registrants, who may be deterred from registering trademark string variations that would otherwise not be considered a	Analysis Group TMCH Review, p. 3

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			trademark infringement by trademark holders or authorities who make such determinations" is of limited utility, as it does not relate to use of non-exact matches in Sunrise	
Greg Shatan	Probably not	a	This section of the report discusses in detail their attempt to consider the effect of expanding matching crtieria to non-exact matches. However, the discussion seems far more relevant to Claims than it does to Sunrise.	Analysis Group TMCH Survey, p. 26-33
David McAuley	somewhat	(a)	See Matching Criteria Feedback in 'summary' section (Appendix I) of AG Review	AG Ind. Review, Appendix I, pages 66-67
Michael Karanicolas	Yes	a	The Analysis Group discussed this issue under TM Claims, and it appears to apply analogously here: "We also find that trademark holders infrequently dispute registrations that are variations of trademark strings. To the extent that dispute rates are low because trademark holders do not consider string variations to be trademark-infringing, an expansion of the matching criteria may bring little benefit to trademark holders and only harm non-trademark-holder domain registrants, who may be deterred from registering trademark string variations that would otherwise not be considered a trademark infringement by trademark holders." "We also find that trademark holders infrequently dispute registrations that are variations of trademark strings. Given the low dispute rates, an expansion of the matching criteria may bring little benefit to trademark holders and only harm	Analysis Group Revised TMCH Report p. 37-38, and p. 3

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			non-trademark-holder domain registrants, who may be deterred from registering trademark string variations that would otherwise not be considered a trademark infringement by trademark holders or authorities who make such determinations."	
Greg Shatan	Yes	a	Discussion of methodology	AGTR, 25-6
Greg Shatan	Somewhat	a	Data indicate clear findings: "We find no clear evidence that expanding the matching criteria will outweigh the potential costs of doing so. Registration activity by trademark holders and third-party registrants is disproportionately centered around exact matches of trademark strings rather than variations of trademark strings. Additionally, our results indicate that trademark holders file very few disputes using the URS or UDRP. If trademark holders value domains that are variations of their trademarks but are unable to monitor the registration of these domains, then expanding the matching criteria may be useful. However, if many trademark holders already utilize registration monitoring services other than the TMCH, it is unlikely that expanding the matching criteria will yield much benefit." This last part is inapplicable to Sunrise "Expanding the matching criteria may also be associated with increased costs for other stakeholder groups to develop and support systems to handle expanded matching criteria. Responses to our questionnaires indicate that registries and registrars will face costs associated with implementing additional matching criteria. These additional named costs include additional staffing resources and computing infrastructure necessary to develop and support the expanded rights protection mechanisms: additional criteria will require additional programming, computing	AGTR,28-9

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			facilities, and staff to support and maintain the more complex system. Questionnaires also indicate that, to the extent that expanded criteria generate more Claims Service notifications, law firms and trademark holders will need to dedicate more resources to reviewing notifications, which is costly."	
Gr Shatan	Yes	a	Trademark owners, TMCH agents, and law firms felt limited by Sunrise registrations being forced to be exact string matches of registered trademarks. It was suggested that previously abused labels be allowed to participate in the Sunrise period.	AGTM, 65
Greg Shatan	Yes	a	Limitation of exact matches: Registrars, registries, trademark owners, TMCH agents, and law firms all felt that the criteria should be expanded. o Some concern was expressed by registries, registrars, and trademark owners about the cost associated with implementing additional match criteria. Suggestions for expanded criteria: (see document)	66
Sub Team Comments			● George K: Page 3 -- cost to registrars/registries on expanded matches. -- On not-exact match item -- how much it will affect systems.	
David McAuley	No		INTA Cost Impact Survey	

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