

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 7:

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

(b) How prevalent is this as a problem?

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	Maybe	a	<p>In the answer to Q3 of the January 2017 Deloitte responses to initial questions from TMCH Data Gathering Sub Team, it says "Once the trademark information and Proof of Use is verified, the users obtain access to their SMD file." I'm not sure how to interpret that, but it seems to imply that it's a one-time access (doesn't use plural for "SMD file") of a static file. We'd need to do more research, but if that file isn't time limited (like a SSL certificate, for example, which is time-limited), then it might be able to be used despite it being canceled or revoked.[perhaps the registry operators in our sub team might know more, i.e. whether a new SMD file needs to be generated for each sunrise or not, one that can only be used for a specific TLD in question, then that would be different]</p> <p>In the answer to Q7, the onus is on the (former) trademark owner (i.e. customer of</p>	January 2017 Deloitte responses to initial questions from TMCH Data Gathering Sub Team, Q3, Q7, Q19

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			<p>the TMCH) to tell Deloitte that a mark has been cancelled. So, there appears to be a window (before the annual validation) where a trademark owner who doesn't tell Deloitte about the cancellation of the mark can still use the system.</p> <p>Also, even the fields in the claims notice are insufficient to actually locate the trademark in all jurisdictions. We can see a sample notice at: https://domainnamewire.com/2014/01/30/trademark-claims-notice/ and you'll note that it doesn't include the registration number of the trademark, or its creation date. I'm not 100% sure, but I believe some national trademark databases aren't online, or aren't searchable. See: https://www.idownloadblog.com/2017/07/31/apple-trademark-filings-sleuts/ for more, where it says that "Apple, Google and others register product names in foreign countries without searchable trademark databases, which include Trinidad and Tobago, Barbados, Peru and Jamaica." There might also be multiple trademarks in a given jurisdiction by a company in the same goods and services for the same terms (e.g. different figurative marks for different logos, etc.) and so one wouldn't be able to identify with certainty which one was the basis for the TMCH recordal in order to use the SDRP effectively.</p> <p>Thus, if third parties can't easily check whether a mark has been revoked, the system is open for abuse if one has to rely on the user of the TMCH to declare it themselves.</p> <p>In the answer to Q19, Deloitte also says that "each change" (in contact information or trademark information) revokes the SMD file, which seems to imply that if a user didn't change the contact info or trademark, it's still valid (i.e. isn't generated for each new sunrise, etc as theorized above).</p>	

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			On page 18 of the ICANN61 transcript, Kristine Dorrain mentions the "little tricky situation" where a cancelled mark might still be used ("SMD file could conceivably work even if the mark underlying isn't valid.")	ICANN61 transcript, page 18
Griffin Barnett	Yes	(a) – (b)	<p>RO Responses:</p> <ul style="list-style-type: none"> - The checks and safeguards implemented by the TMCH prevent any SMD files from being issued to non-qualified parties. <p>Deloitte Responses:</p> <ul style="list-style-type: none"> - Please note that there are numerous reasons why a SMD file is revoked. A SMD file, as requested by the community, contains the trademark information and the contact information. This entails that each change revokes the current SMD file and a new SMD file is generated. In addition, a user can opt out of the sunrise services at any time which revokes the current SMD file as well as the fact that the information of trademark record is no longer accurate. Consequently, we do not keep track of the reasons why a SMD file is revoked as this is technically linked to the different stages and interactions with the Trademark Clearinghouse. Due to this and the mere fact that this was never imposed by the community, the validity of a SMD file is not a reason for dispute with the TMCH. <p>Deloitte Further Responses:</p> <ul style="list-style-type: none"> - When a trademark holder informs the TMCH that a mark has been 	Listed in Prior Column

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			<p>cancelled the mark will be deactivated and the Sunrise and Claims services will be cancelled within 24 hours.</p> <p>In short, SMD files cannot be used to make Sunrise registrations if cancelled or revoked; this doesn't seem like a prevalent issue.</p>	
David McAuley	No		This 'no' refers to AG Independent Review of TMCH and follow-ups	
Sub Team Discussion			<ul style="list-style-type: none"> George K: TMCH clients need to tell Deloitte that their marks have been canceled. 	
David McAuley	No		INTA Cost Impact Survey	
David McAuley	Only inferentially		The Data ST Mtg w Jon N. transcript has discussion of SMD at pages 3-6 in context of DPML rather than Sunrise. Also at pages 16 – 18 a discussion of SMD validity.	

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