

#1

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Tuesday, March 26, 2019 4:06:18 AM
Last Modified: Tuesday, March 26, 2019 4:12:30 AM
Time Spent: 00:06:12

Page 1

Q1 Proponent's Full Name If this proposal is jointly developed by more than one Working Group member, please write the full names of all proponents involved.

George Kirikos

Q2 Does your recommendation address Sunrise, Trademark Claims, or both? **Both**

Q3 What type of recommendation are you proposing? Other (please specify):
Elimination of policies

Q4 What recommendation are you proposing? Please be succinct as well as substantially specific and not general in nature. One proposal for one recommendation only.

Both the TM Claims Notices and Sunrise procedures should be eliminated as mandatory policies for all subsequent new gTLDs.

Q5 What is your rationale for the proposal? (250 words max)

The entire premise which led to the adoption of the additional RPMs in new gTLDs (beyond the longstanding UDRP) was the prediction that there would be massive cybersquatting in new gTLDs with billions of dollars in costs for trademark owners, due to the enormous number of new domain name registrations that were anticipated. Those predictions were made in the absence of actual data. However, we now know that those predicted risks were incorrect and exaggerated. The additional RPMs were disproportionate to the actual risk in the most recent round of new gTLDs. Furthermore, they would be even more disproportionate for future rounds of new gTLDs, given the most desirable extensions have already been applied for in past rounds (the "leftover" or "long tail" extensions would tend to be even less popular niches).

Just as one would not buy a \$500,000 security system to protect a painting worth \$100, ICANN should not require mandatory RPMs that are disproportionate to the actual risks, and whose benefits, accruing to a narrow group of stakeholders, are outweighed by the costs imposed on other stakeholders and by gaming.

Furthermore, sunrise represents an expansion of "rights" for TM holders, relative to their actual rights in trademark law. As such, sunrise should never have existed in the first place.

Q6 What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max) Such evidence may be information developed by the Sub Teams or documented in other sources.

Costs predictions for TM owners: <https://www.govinfo.gov/content/pkg/CHRG-112shrg74251/html/CHRG-112shrg74251.htm> (Senate hearing).

Repeatedly slashed estimates: <http://domainincite.com/23047-icann-slashes-new-gtld-income-forecast-again> and <http://domainincite.com/18191-icann-slashes-new-gtld-revenues-by-57-forecasts-renewals-at-25-to-50>

93.7% abandonment (p. 16, 17-18, Table 4) in AG report, combined with 113.2 million download requests (p. 8), suggests large negative impacts on registrars/registries and public). 113,338 non-disputed registrations, 346 disputed, and 1,696,862 abandoned registrations (p. 18) [p. 7 of <https://docs.google.com/document/d/1xldqJc89FkVStHuceMBeShWVWD0JRD185FY5ZUjySLo/edit>] Top strings, as per the AG report Table 1 (pp. 8-9) are common words with many legitimate non-infringing uses.

AG survey: F60-61 and G63-64 of the Registries&Registrars tab demonstrate that Claims should be shortened or eliminated entirely (outweighing those who want it to be longer), and not extended, due to the negative impacts experienced (Registry-Q26 tab, cells B8-14, in Registries&Registrars tab, cell G74), and tab Registry-Q28). Elimination or shortening of Claims felt to have no impact on cybersquatting (Registry Q28 tab, cells B5-7, B9-11). [page 1 of https://docs.google.com/document/d/1hvt63HvVdNdYIZxKVMXHq3fIEFxfnweT0F3ZXsJU_Q8/edit]

99% reduction in sunrise utilization compared to past, see: <https://mm.icann.org/pipermail/gnso-rpm-wg/2017-August/002323.html> (and resulting thread). AG report (p.3) , reduced need for trademark holders to utilize sunrise. 0.3% dispute rate (pp 16, 18). Registries less convinced sunrise helps TM owners (p. 65). Low sunrise interest compared to past (p. 66). [page 1 of https://docs.google.com/document/d/1FMnziYZo0vZdgLVS89wtCQ4Cb5J9tkM_D17r7eCGEMU/edit]

Sunrise gaming: https://docs.google.com/document/d/1PSjuohvTGkXbmK5eNGSEi_R0qw6Gvl3Hv3MtpK83tuc/edit and <https://mm.icann.org/pipermail/gnso-rpm-wg/2019-February/003651.html>

Q7 In respect to which particular agreed Sunrise and/or Trademark Claims Charter Question(s) is your proposal relevant? (250 words max) A full list of agreed Sunrise Charter Questions can be downloaded here: <https://goo.gl/knQa2p> A full list of agreed Trademark Claims Charter Questions can be downloaded here: <https://goo.gl/FeAJpa>

TM Claims: Q1, Q2, Q3,
Sunrise: Preamble, 5(b)

Q8 Does the data reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

Yes, these are overarching questions, as to whether these policies should survive our review. The evidence indicates that they should be eliminated.

Q9 If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

Already discussed above in some detail, although the thrust of all the evidence taken in its entirety, when weighted appropriately, supports this proposal.

#2

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Tuesday, March 26, 2019 4:43:13 AM
Last Modified: Tuesday, March 26, 2019 4:47:55 AM
Time Spent: 00:04:42

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Q1 Proponent's Full Name If this proposal is jointly developed by more than one Working Group member, please write the full names of all proponents involved.

George Kirikos

Q2 Does your recommendation address Sunrise, Trademark Claims, or both? **Sunrise only**

Q3 What type of recommendation are you proposing? Other (please specify):
Both a policy and operational fix.

Q4 What recommendation are you proposing? Please be succinct as well as substantially specific and not general in nature. One proposal for one recommendation only.

If the sunrise procedures are retained (a separate proposal calls for its elimination), then all details of any trademark relied upon to secure a sunrise registration shall be made public, in order to permit utilization of the SDRP. Details should include all information provided to the TMCH (e.g. country, registration number, TM registration date, TM owner, goods and services, etc.). Without limiting an implementation review team, such publication might be implemented by making it public at the source (the TMCH) or via the WHOIS (which had been done in the past).

Q5 What is your rationale for the proposal? (250 words max)

Answer to Q2 of Deloitte April 2017 Response to followup questions says that third parties are only informed of a record in the TMCH through the claims notice which is presented prior to registration, stating the Mark name, Registrant, Registrant Contact, Jurisdiction and goods and services. But, think this through. If a third party actually attempted to register a domain name that was already taken in sunrise, they would just see that the domain name was already registered, and thus a claims notice which provides all the data that is required to challenge the mark WOULD NOT BE GENERATED!! This points to a major bug in the system.

Let's be more specific. Someone has "EXAMPLE" in the TMCH, and registers EXAMPLE.TLD in the .TLD sunrise. A third party who also wanted "EXAMPLE.TLD" tries to register "EXAMPLE" in general availability, but sees that it's taken. That attempted registration does not generate a claims notice which reveals the Mark Name, Registrant, Registrant Contact, Jurisdiction and Goods and Services, i.e. all the data required to make a challenge.

There has been little or no utilization of the SDRP, despite evidence of gaming of sunrises, suggesting that this lack of information acts as a barrier to use of the procedure.

Q6 What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max) Such evidence may be information developed by the Sub Teams or documented in other sources.

Deloitte April 2017 Response to followup questions, Q2.

<https://domainnamewire.com/2014/01/30/trademark-claims-notice/> (sample claims notice)

<https://www.idownloadblog.com/2017/07/31/apple-trademark-filings-sleuts/>

As Kathy Kleiman noted "Donuts has never used the sunrise dispute policy across hundreds of gTLDs and thousands of Sunrise registrations (data in response). Ditto for PIR. The change that is needed is that the TMCH be opened for view. The Sunrise Dispute Resolution Policies were premised on the openness off the TMCH database and the ability to review and then challenge trademark owners who misuse the Sunrise. SDRPs cannot serve the purpose for which they were created if third parties cannot review the TMCH entries (as original rules allowed). This gives pretty clear answers to a,b and c above." [compilation of Registry Responses (13 Dec 2016) - Ques A, p 1-2.]

[all previously discussed in the Sunrise sub team, see pp. 2-3 of

https://docs.google.com/document/d/15sQKDNohg3Cp6i35U9NKo3r1R_-fxjLHm4D7antNGtA/edit]

Q7 In respect to which particular agreed Sunrise and/or Trademark Claims Charter Question(s) is your proposal relevant? (250 words max) A full list of agreed Sunrise Charter Questions can be downloaded here:

<https://goo.gl/knQa2p> A full list of agreed Trademark Claims Charter Questions can be downloaded here:

<https://goo.gl/FeAJpa>

Sunrise Q6.

Q8 Does the data reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

Yes, see above.

Q9 If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

Already addressed above.

#3

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Tuesday, March 26, 2019 5:04:39 AM
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Time Spent: 00:04:41

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Q1 Proponent's Full Name If this proposal is jointly developed by more than one Working Group member, please write the full names of all proponents involved.

George Kirikos

Q2 Does your recommendation address Sunrise, Trademark Claims, or both? **Sunrise only**

Q3 What type of recommendation are you proposing? Other (please specify):
Both a policy and operational fix

Q4 What recommendation are you proposing? Please be succinct as well as substantially specific and not general in nature. One proposal for one recommendation only.

If the sunrise procedure is retained (a separate proposal calls for its elimination), then the Uniregistry "Sunrise Registration Anti-Hijack Provisions" shall be made standard for all future TLDs, as per Section III of:

<https://www.uniregistry.link/wp-content/uploads/2015/07/Acceptable-Use-Policy-and-Terms-of-Service-2017.pdf>

"1. Registered Names obtained in accordance with the Sunrise registration process shall be solely registered to the qualified applicant thereof who is the owner of the trade or service mark registration on the basis of which the Sunrise registration was allocated. Such Registered Names shall be restricted from transfer to any other registrant, absent submission to the Registry of evidence of assignment, license or other authorized acquisition of rights in the underlying trade or service mark giving rise to Sunrise qualification, and shall remain subject to the provisions of the Sunrise Challenge Policy.

2. Registered Names obtained in accordance with the Sunrise registration shall not be maintained using a privacy or proxy registration service."

Q5 What is your rationale for the proposal? (250 words max)

This is a proposal that would reduce gaming of the sunrise process, as there would be a permanent linkage between the underlying trademark with any domain name(s) acquired in sunrises. The opportunities for resale of a sunrise-registered domain name would be reduced accordingly.

Q6 What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max) Such evidence may be information developed by the Sub Teams or documented in other sources.

Uniregistry clauses: <https://www.uniregistry.link/wp-content/uploads/2015/07/Acceptable-Use-Policy-and-Terms-of-Service-2017.pdf>
(Section III)

Sunrise gaming:

https://docs.google.com/document/d/1PSjuohvTGkXbmK5eNGSEi_R0qw6GvI3Hv3MtpK83tuc/edit

<https://mm.icann.org/pipermail/gnso-rpm-wg/2019-February/003651.html>

<https://mm.icann.org/pipermail/gnso-rpm-sunrise/2019-January/000161.html>

Q7 In respect to which particular agreed Sunrise and/or Trademark Claims Charter Question(s) is your proposal relevant? (250 words max) A full list of agreed Sunrise Charter Questions can be downloaded here:

<https://goo.gl/knQa2p> A full list of agreed Trademark Claims Charter Questions can be downloaded here:

<https://goo.gl/FeAJpa>

Sunrise Preamble.

Q8 Does the data reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

Yes.

Q9 If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

Already addressed above.

#4

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Tuesday, March 26, 2019 5:23:56 AM
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Page 1

Q1 Proponent's Full Name If this proposal is jointly developed by more than one Working Group member, please write the full names of all proponents involved.

George Kirikos

Q2 Does your recommendation address Sunrise, Trademark Claims, or both? **Sunrise only**

Q3 What type of recommendation are you proposing? Other (please specify):
Both policy and operational
fix

Q4 What recommendation are you proposing? Please be succinct as well as substantially specific and not general in nature. One proposal for one recommendation only.

If the sunrise procedure is retained (a separate proposal calls for its elimination), then the Uniregistry "Substantive Ineligibility" clause be included as a minimum standard for SDRP disputes, as per clause 2.1.2. of:

<https://www.uniregistry.link/wp-content/uploads/2015/07/SEPRP.pdf>

"2.1.2. Substantive Ineligibility

i. Token use or Non-use: The trademark registration on which the domain name registrant based its Sunrise registration is not the subject of actual and substantial use in commerce in the issuing jurisdiction on which the TMCH entry is based, or has been unused in such jurisdiction for a sufficient period to constitute abandonment thereof in such jurisdiction; or

ii. Pretextual Sunrise Registration: The domain name is otherwise a non-exclusive and generically applicable term having a primary meaning in relation to goods or services other than those for which the trade or service mark was obtained; and the domain name is not used or under demonstrable preparation for use, or held to prevent infringing use, by the registrant in connection with the goods and/or services on which the subject trademark registration is based. The following circumstances in particular shall, without limitation, constitute evidence of Pretextual Sunrise Registration:

(a) The registrant's use, licensing or offer of licensing of use of the domain name for the primary purpose of exploiting such non-trademark primary meaning; or

(b) Circumstances indicating a pattern by the Registrant or in concert with others, of Sunrise Registrations based on formal claims of trade or service mark rights in alleged marks which are otherwise non-exclusive and generically applicable terms having a primary meaning in relation to goods or services other than those for which the trade or service mark was obtained; and

(c) As an aggravating factor in connection with any of the circumstances above, whether the term in question is particularly generically applicable in connection with the TLD in which the Sunrise Registration was made."

Q5 What is your rationale for the proposal? (250 words max)

This is a proposal that would reduce gaming of the sunrise process, and also facilitate successful SDRP challenges for token use, non-use, and "pretextual" sunrise registrations. By adopting these best practices as a minimum standard, the deleterious effects of sunrise gaming would be reduced.

Q6 What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max) Such evidence may be information developed by the Sub Teams or documented in other sources.

Sunrise gaming: https://docs.google.com/document/d/1PSjuohvTGkXbmK5eNGSEi_R0qw6GvI3Hv3MtpK83tuc/edit
<https://mm.icann.org/pipermail/gnso-rpm-wg/2019-February/003651.html>
<https://mm.icann.org/pipermail/gnso-rpm-sunrise/2019-January/000161.html>

Uniregistry clause: <https://www.uniregistry.link/wp-content/uploads/2015/07/SEPRP.pdf> (see 2.1.2)

As Kathy Kleiman noted "Donuts has never used the sunrise dispute policy across hundreds of gTLDs and thousands of Sunrise registrations (data in response). Ditto for PIR. The change that is needed is that the TMCH be opened for view. The Sunrise Dispute Resolution Policies were premised on the openness off the TMCH database and the ability to review and then challenge trademark owners who misuse the Sunrise. SDRPs cannot serve the purpose for which they were created if third parties cannot review the TMCH entries (as original rules allowed). This gives pretty clear answers to a,b and c above." [compilation of Registry Responses (13 Dec 2016) - Ques A, p 1-2.]

[as previously discussed in the Sunrise sub team, see pp. 3 of

https://docs.google.com/document/d/15sQKDNohg3Cp6i35U9NKo3r1R_-fxjLHm4D7antNGtA/edit

] While Kathy was focused on the opening up of the TMCH, this also documents how the SDRP has had very limited usage, despite evidence of gaming.

Q7 In respect to which particular agreed Sunrise and/or Trademark Claims Charter Question(s) is your proposal relevant? (250 words max) A full list of agreed Sunrise Charter Questions can be downloaded here: <https://goo.gl/knQa2p> A full list of agreed Trademark Claims Charter Questions can be downloaded here: <https://goo.gl/FeAJpa>

Sunrise Preamble, Q6

Q8 Does the data reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

Yes.

Q9 If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

Already addressed above.

#5

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Tuesday, March 26, 2019 5:57:48 AM
Last Modified: Tuesday, March 26, 2019 6:00:35 AM
Time Spent: 00:02:46

Page 1

Q1 Proponent's Full Name If this proposal is jointly developed by more than one Working Group member, please write the full names of all proponents involved.

George Kirikos

Q2 Does your recommendation address Sunrise, Trademark Claims, or both? **Trademark Claims only**

Q3 What type of recommendation are you proposing? **Policy**

Q4 What recommendation are you proposing? Please be succinct as well as substantially specific and not general in nature. One proposal for one recommendation only.

If the TM Claims Notices are retained (a separate proposal calls for their elimination), then registrars shall be allowed to be compensated on a cost per impression (CPM) basis for the display of the mandatory notices.

Q5 What is your rationale for the proposal? (250 words max)

Normally, a registrar would charge a 3rd party a fee to display a message at checkout time (for example, an offer from Microsoft for an Office 365 subscription). Those messages are revenue generating. However, the mandatory TM claims notices do not generate revenue, and instead lead to a 93.7% abandonment rate for domain name registrations, causing a loss of revenues. This proposal seeks to rectify that situation, by charging a CPM to the trademark owner for the delivery of its message on the registrar's website.

Furthermore, we know that some terms in the TMCH are requested more than others. Currently, a frequently requested term such as "HOTEL" or "LOVE" (both in the top 10 most frequently downloaded trademark strings) bears the same costs as an infrequently requested term (e.g. a hypothetical TMCH entry for "JANE DOE KITCHEN SUPPLIES"). By shifting the costs from the less frequently searched records to the more frequently searched records, there is greater balance in the system.

Q6 What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max) Such evidence may be information developed by the Sub Teams or documented in other sources.

93.7% abandonment (p. 16, 17-18, Table 4) in AG report, combined with 113.2 million download requests (p. 8), suggests large negative impacts on registrars/registries and public). 113,338 non-disputed registrations, 346 disputed, and 1,696,862 abandoned registrations (p. 18) [p. 7 of <https://docs.google.com/document/d/1xldqJc89FkVStHuceMBeShWVWD0JRD185FY5ZUjySLo/edit>]

Top strings, as per the AG report Table 1 (pp. 8-9) are common words with many legitimate non-infringing uses.

Q7 In respect to which particular agreed Sunrise and/or Trademark Claims Charter Question(s) is your proposal relevant? (250 words max) A full list of agreed Sunrise Charter Questions can be downloaded here: <https://goo.gl/knQa2p> A full list of agreed Trademark Claims Charter Questions can be downloaded here: <https://goo.gl/FeAJpa>

TM Claims Q1

Q8 Does the data reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

Yes.

Q9 If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

Already addressed above.

#6

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Tuesday, March 26, 2019 6:16:43 AM
Last Modified: Tuesday, March 26, 2019 6:19:14 AM
Time Spent: 00:02:30

Page 1

Q1 Proponent's Full Name If this proposal is jointly developed by more than one Working Group member, please write the full names of all proponents involved.

George Kirikos

Q2 Does your recommendation address Sunrise, Trademark Claims, or both? **Trademark Claims only**

Q3 What type of recommendation are you proposing? **Operational Fix**

Q4 What recommendation are you proposing? Please be succinct as well as substantially specific and not general in nature. One proposal for one recommendation only.

If the TM Claims Notices are retained (a separate proposal calls for their elimination), then ICANN shall provide open source software in the top 5 programming languages used by registrars to assist in integration of the TM Claims notices with registrar systems.

Q5 What is your rationale for the proposal? (250 words max)

Currently, some registrars have not implemented the TM Claims notices, due to the implementation costs. This proposal seeks to lower the compliance and technical burden on these registrars (especially smaller registrars and new entrants) by having sample code provided for them at no cost.

Q6 What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max) Such evidence may be information developed by the Sub Teams or documented in other sources.

Tab Registry-Q26 of the TMCH Sunrise & Trademark Claims Survey Results (12 December 2018)
<https://docs.google.com/spreadsheets/d/1aBw-dW2gBzvBfhUgl3u6ShWIPZt0yyNF-Vs1qmUuljg/edit#gid=872290217> documents the current burden upon registrars.

Q7 In respect to which particular agreed Sunrise and/or Trademark Claims Charter Question(s) is your proposal relevant? (250 words max) A full list of agreed Sunrise Charter Questions can be downloaded here: <https://goo.gl/knQa2p> A full list of agreed Trademark Claims Charter Questions can be downloaded here: <https://goo.gl/FeAJpa>

TM Claims Q1 (lack of universal implementation by registrars can be considered an "unintended consequence")

Q8 Does the data reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

Yes.

Q9 If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

Already addressed above.

#7

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Wednesday, March 27, 2019 1:39:41 AM
Last Modified: Wednesday, March 27, 2019 2:12:16 AM
Time Spent: 00:32:34

Page 1

Q1 Proponent's Full Name If this proposal is jointly developed by more than one Working Group member, please write the full names of all proponents involved.

Scott Harlan

Q2 Does your recommendation address Sunrise, Trademark Claims, or both? **Sunrise only**

Q3 What type of recommendation are you proposing? **Operational Fix**

Q4 What recommendation are you proposing? Please be succinct as well as substantially specific and not general in nature. One proposal for one recommendation only.

A 90-day notice period should be required ahead of Sunrise launch, where information necessary for Sunrise participants to make registration decisions is specified and easily accessible (through public portal or provided to contracted registrars.) This would include inter alia registration eligibility, pricing, and reserved name status. The notice requirement would then be reset for any names released from a reserved name list.

Q5 What is your rationale for the proposal? (250 words max)

One of the major factors that made the Sunrise procedure ineffective was the imperfect and untimely information that registry operators provided to registrars / potential Sunrise applicants. This was exacerbated by the frequent and overlapping Sunrise launches. Often, necessary and specific Sunrise registration information was not delivered before the Sunrise period, and often near the close or even sometimes after the Sunrise period. Without sufficient information about eligibility, price, and availability of Sunrise names, decisions cannot be timely made rendering the Sunrise process often ineffective.

Q6 What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max) Such evidence may be information developed by the Sub Teams or documented in other sources.

Apple was a frequent Sunrise participant. The evidence is from our personal experience navigating the Sunrise periods from the last round of new gTLDs.

Q7 In respect to which particular agreed Sunrise and/or Trademark Claims Charter Question(s) is your proposal relevant? (250 words max) A full list of agreed Sunrise Charter Questions can be downloaded here: <https://goo.gl/knQa2p> A full list of agreed Trademark Claims Charter Questions can be downloaded here: <https://goo.gl/FeAJpa>

It is relevant to Q1, Q2, Q3, Q4, and Q5.

Q8 Does the data reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

Yes, there is data that the Sunrise procedures as implemented dampened the ability of potential Sunrise applicants to participate effectively.

Q9 If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

Already addressed.

#8

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Wednesday, March 27, 2019 6:27:16 AM
Last Modified: Thursday, March 28, 2019 3:29:06 AM
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Page 1

Q1 Proponent's Full Name If this proposal is jointly developed by more than one Working Group member, please write the full names of all proponents involved.

Mitch Stoltz

Q2 Does your recommendation address Sunrise, Trademark Claims, or both? **Sunrise only**

Q3 What type of recommendation are you proposing? **Policy**

Q4 What recommendation are you proposing? Please be succinct as well as substantially specific and not general in nature. One proposal for one recommendation only.

Eliminate the Sunrise Registration Period as a mandatory policy for new gTLDs.

Q5 What is your rationale for the proposal? (250 words max)

Under domestic law, anyone may use a word or phrase for non-commercial purposes, notwithstanding that the word or phrase may also be a trademark. Sunrise registration, however, allows rightsholders whose marks are in the Trademark Clearinghouse to preclude the use of words or phrases as domain names in the new gTLDs by other uses for non-trademark purposes.

This overreach is compounded by 1) the inclusion of design marks in the Trademark Clearinghouse, even though the holders of such marks generally have no legal claim to the words embedded in a design mark when they are separated from the design; 2) the inclusion of generic terms such as "the", "hotel", "luxury", "smart", "one", "love", and "flower", effectively allowing a rightsholder to lock up domains unrelated to any good or service they sell; and 3) the secrecy of the Trademark Clearinghouse, which prevents meaningful public accountability for use of this powerful mechanism.

Noncommercial registrants are being denied the right to register and use domain names even though domestic trademark law, and other laws safeguarding freedom of expression, give those registrants an equal right to register those domain names on a first-come, first-served basis.

Elimination of the Sunrise requirement is the simplest way to address these problems. The impact on rightsholders would be minimal, as Sunrise registrations are not widely used. Legitimate claims could be more simply and efficiently handled through curative mechanisms such as the UDRP.

Q6 What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max) Such evidence may be information developed by the Sub Teams or documented in other sources.

Registration in the Sunrise period of common words, in domains unrelated to the good or service sold by the trademark holder:

- "How one guy games new gTLD sunrise periods," DomainIncite, <http://domainincite.com/16492-how-one-guy-games-new-gtld-sunrise-periods>
- "Fake Trademarks Stealing Generic Domains in New gTLD Sunrises," <https://onlinedomain.com/2014/04/15/legal/fake-trademarks-stealing-generic-domains-in-new-gtld-sunrises/> (sunrise registration of "cloud," "social," "build," "guru," "online," "vacation," "discount," etc. in numerous gTLDs)
- "The Trademark Clearinghouse Worked So Well One Company Got 24 new gTLD using the Famous Trademark 'The'", <https://www.thedomains.com/2017/02/01/the-trademark-clearinghouse-worked-so-well-one-company-got-24-new-gtld-using-the-famous-trademark-the/>.
- "How Common Words like Pizza, Money, and Shopping ended up in the Trademark Clearinghouse for new TLDs," <https://domainnamewire.com/2014/02/10/how-common-words-like-pizza-money-and-shopping-ended-up-in-the-trademark-clearinghouse-for-new-tlds/>
- "The Numbers are in! Donuts sunrises typically get 100+ domains, but they also got gamed," <https://domainnamewire.com/2014/01/30/the-numbers-are-in-donuts-sunrises-typically-get-100-domains-but-they-also-got-gamed/> ("[T]he new Trademark Clearinghouse is full of marks of questionable quality."
- "How did RetailMeNot Get 849 .CODES Domains in Sunrise Without Any Trademarks?" <https://onlinedomain.com/2014/08/19/domain-extensions/new-gtlds/how-did-retailmenot-got-849-codes-domains-in-sunrise-without-any-trademarks/>
- "Are We Running Out of Trademarks? An Empirical Study of Trademark Depletion and Congestion," <https://harvardlawreview.org/2018/02/are-we-running-out-of-trademarks/>

Inclusion of design marks in the TMCH:

Responses to Follow-Up Questions for Deloitte (5 March 2017) (stating that Deloitte, the TMCH operator, does not distinguish between word and design marks in the Clearinghouse).

Secrecy of the TMCH:

See discussion thread at <https://mm.icann.org/pipermail/gnso-rpm-wg/2017-April/001461.html>

Q7 In respect to which particular agreed Sunrise and/or Trademark Claims Charter Question(s) is your proposal relevant? (250 words max) A full list of agreed Sunrise Charter Questions can be downloaded here: <https://goo.gl/knQa2p> A full list of agreed Trademark Claims Charter Questions can be downloaded here: <https://goo.gl/FeAJpa>

Sunrise Charter Questions Preamble and Question 5(b).

Q8 Does the data reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

Yes. The data show numerous overreaches and abuses within the Sunrise RPM.

Q9 If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

Please see above.

#9

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Thursday, March 28, 2019 4:28:29 AM
Last Modified: Thursday, March 28, 2019 5:52:19 AM
Time Spent: 01:23:49

Page 1

Q1 Proponent's Full Name If this proposal is jointly developed by more than one Working Group member, please write the full names of all proponents involved.

Claudio DiGangi

Q2 Does your recommendation address Sunrise, Trademark Claims, or both? **Sunrise only**

Q3 What type of recommendation are you proposing? **Policy**

Q4 What recommendation are you proposing? Please be succinct as well as substantially specific and not general in nature. One proposal for one recommendation only.

The recommendation is based on elements of an ICANN Approved Launch Plan for the Uniregistry (Registry Operator), available at: <https://www.icann.org/sites/default/files/tlds/tattoo/tattoo-launch-policy-09dec13-en.pdf>

More specifically the recommendation is:

"Sunrise services shall include protection for trademarks where the terminal portion of the trademark string corresponds to [TLD] may register second-level names in .[TLD] truncated prior to such terminal portion – i.e. in which the trademark “spans the dot”."

"To be eligible to submit this Registration Request, an Applicant must:

- 1) be the registrant of a corresponding TMCH entry, and the domain name sought must correspond to the entire eligible text of the TMCH entry in accordance with the applicable TMCH requirements.
- 2) The qualified second-level string must terminate in [TLD (and plurals or conjugate forms where indicated in the TLD application)."

One example is: a mark for JOES TATTOOS can be registered during Sunrise as even though there is not an exact match correspondence.

Q5 What is your rationale for the proposal? (250 words max)

- * With the broad expansion of gTLDs, new opportunities have arisen for second-level registration abuse. Trademark owners are now required to protect their rights across a broader landscape, resulting in increased social costs and increased risks of consumer harm.
 - * The rationale for the proposal is to ensure the adequate protection of trademarks in new gTLDs and to reduce the level of external social costs imposed by the New gTLD Program in the form of registration abuse and defensive registrations.
 - * The type of second-level registration described in this proposal is fully consistent with, and further promotes, the overall purpose of the Sunrise Period.
 - * As equally important, this proposal does not create "new rights" in the online context, but simply provides a more direct and effective means to protect trademarks within the New gTLD Program.
 - * The main substantive elements of this proposal have been reviewed and approved by ICANN, as consisting of a portion of a TLD operator's Approved Launch Plan.
-

Q6 What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max) Such evidence may be information developed by the Sub Teams or documented in other sources.

* Evidence that supports the proposal includes:

- 1) the relevant number of defensive registrations in new gTLDs;
 - 2) the respective level of external costs imposed by the New gTLD Program, including trademark enforcement costs which correspond to the level of registration abuse in new gTLDs based on trademark misappropriation.
-

Q7 In respect to which particular agreed Sunrise and/or Trademark Claims Charter Question(s) is your proposal relevant? (250 words max) A full list of agreed Sunrise Charter Questions can be downloaded here: <https://goo.gl/knQa2p> A full list of agreed Trademark Claims Charter Questions can be downloaded here: <https://goo.gl/FeAJpa>

Is the Sunrise Period serving its intended purpose?

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

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

Are Limited Registration Periods in need of review vis a vis the Sunrise Period? Approved Launch Programs? Qualified Launch programs?

Q8 Does the data reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

Yes, with regards to data which reflects the level of registration abuse, and the level of external social costs imposed by the expansion of gTLDs, including trademark rights enforcement and the amount of defensive registrations in new gTLDs.

Q9 If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

Addressed above.

#10

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Thursday, March 28, 2019 5:57:12 AM
Last Modified: Thursday, March 28, 2019 6:02:51 AM
Time Spent: 00:05:39

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Q1 Proponent's Full Name If this proposal is jointly developed by more than one Working Group member, please write the full names of all proponents involved.

Susan Payne

Q2 Does your recommendation address Sunrise, Trademark Claims, or both? **Sunrise only**

Q3 What type of recommendation are you proposing? **Policy**

Q4 What recommendation are you proposing? Please be succinct as well as substantially specific and not general in nature. One proposal for one recommendation only.

A procedure for trademark owners to challenge the designation of a domain name as premium.

Q5 What is your rationale for the proposal? (250 words max)

There are charter questions covering this topic - therefore it is already a task for the subteam to consider this issue and no individual proposal ought to be necessary. Nevertheless, the interplay between individual proposals and the work of the subteams is extremely unclear.

Many trade mark owners, who have recorded their trademark in the TMCH, have reported that when they have attempted to register a matching domain in a TLD they have been notified that the domain is a premium one for which they must pay a significantly higher price than that of a general, non-premium domain (irrespective of whether they applied a higher price generally during the sunrise). There may be some circumstances where the brand has another meaning, such as a dictionary meaning which, within the context of the specific TLD, would justify this premium status. Frequently this is not the case. The brand is either one which has no dictionary meaning, or, in the context of the TLD in question it is the brand value which appears to be driving the premium pricing.

A procedure should be developed which enables a brand owner to challenge this designation as a premium name (and thus the pricing) and, in order to allow that procedure to play out the domain name should be placed on hold and not sold elsewhere until the dispute procedure has concluded.

Ideally such a procedure would be an independent one, but if not, then a mandated challenge process operated by RO (akin to SDRP).

Q6 What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max) Such evidence may be information developed by the Sub Teams or documented in other sources.

Examples submitted by working group members in October 2016 :

<https://community.icann.org/display/RARPMRIAGPWG/Additional+Documents+and+Materials+on+the+TM-PDDRP?preview=/61606586/62399692/Collated%20Examples%20of%20Perceived%20Registry%20Conduct%20within%20TM-PDDRP%20scope%20-%2017%20Oct%202016.pdf>

INTA Impact study; See in particular page 14, 48-50, 58:

<https://community.icann.org/display/RARPMRIAGPWG/Additional+Materials+on+Sunrise+and+Trademark+Claims?preview=/71602718/71602725/INTA%20Cost%20Impact%20Report%20revised%204-13-17%20v2.1.pdf>

Analysis Group Survey <https://drive.google.com/open?id=1uwNtzemdC65DWMcVkJ2HfWFIHyCvtJzqMgaarLn2nsM>

https://docs.google.com/document/d/1dxPbe4gApZO6USTfDI-xMp3lleS7hIxoX_0ad_xfl8/edit?usp=sharing

and previously collected data

https://docs.google.com/document/d/1k8SXCzRSzluqAVkTxYJL63qbBt_A8e9vZNdoKJp8tFc/edit?usp=sharing

https://docs.google.com/document/d/10npR7b_6WWJZ6J20583GNq2OLM4jBp-sS-Yeq564GwM/edit

Q7 In respect to which particular agreed Sunrise and/or Trademark Claims Charter Question(s) is your proposal relevant? (250 words max) A full list of agreed Sunrise Charter Questions can be downloaded here:

<https://goo.gl/knQa2p> A full list of agreed Trademark Claims Charter Questions can be downloaded here:

<https://goo.gl/FeAJpa>

Sunrise charter questions 2 and 3

Q8 Does the data reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

Yes - see above

Q9 If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

addressed above

#11

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Thursday, March 28, 2019 6:03:14 AM
Last Modified: Thursday, March 28, 2019 6:06:57 AM
Time Spent: 00:03:43

Page 1

Q1 Proponent's Full Name If this proposal is jointly developed by more than one Working Group member, please write the full names of all proponents involved.

Susan Payne

Q2 Does your recommendation address Sunrise, Trademark Claims, or both? **Both**

Q3 What type of recommendation are you proposing? **Policy**

Q4 What recommendation are you proposing? Please be succinct as well as substantially specific and not general in nature. One proposal for one recommendation only.

Implement an obligatory Public Interest Commitment or other contractual provision that the registry is not to act in a manner calculated to circumvent the RPMs, including not to set its pricing at a level, compared to general availability pricing, which has the effect of undermining brand owner access to the sunrise. If introduced as a PIC this would enable aggrieved third parties to take action themselves under the PICDRP, rather than being reliant on ICANN Compliance to enforce the contract.

Such a PIC could address practices such as the designating of well-known trademarks as premium names; setting the pricing for all sunrise names many multiples higher than the general availability pricing – at a level that could not reasonably be considered to reflect cost-recovery; and reserving names matching trademarks (ie withholding them from release) during the sunrise period in order to release them later when the sunrise has ended (whether or not at a premium price).

Q5 What is your rationale for the proposal? (250 words max)

There are charter questions covering this topic - therefore it is already a task for the subteam to consider this issue and no individual proposal ought to be necessary. Nevertheless, the interplay between individual proposals and the work of the subteams is extremely unclear.

Many trade mark owners, who have recorded their trademark in the TMCH, have reported that when they have attempted to register a matching domain in a TLD they have been notified that the domain is a premium one for which they must pay a significantly higher price than that of a general, non-premium domain (irrespective of whether they applied a higher price generally during the sunrise). There may be some circumstances where the brand has another meaning, such as a dictionary meaning which, within the context of the specific TLD, would justify this premium status. Frequently this is not the case. The brand is either one which has no dictionary meaning, or, in the context of the TLD in question it is the brand value which appears to be driving the premium pricing.

In other cases, whilst a specific brand owner may not have been targeted, some registries have set the pricing for all sunrise names many multiples higher than the general availability pricing – at a level that could not reasonably be considered to reflect cost-recovery.

Whilst ICANN cannot mandate specific prices in new gTLDs, nevertheless there is a point at which this serves to undermine the RPMs introduced to protect brand owners and their customers.

Q6 What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max) Such evidence may be information developed by the Sub Teams or documented in other sources.

Examples submitted by working group members in October 2016 :

<https://community.icann.org/display/RARPMRIAGPWG/Additional+Documents+and+Materials+on+the+TM-PDDRP?preview=/61606586/62399692/Collated%20Examples%20of%20Perceived%20Registry%20Conduct%20within%20TM-PDDRP%20scope%20-%202017%20Oct%202016.pdf>

INTA Impact study; See in particular page 14, 48-50, 58:

<https://community.icann.org/display/RARPMRIAGPWG/Additional+Materials+on+Sunrise+and+Trademark+Claims?preview=/71602718/71602725/INTA%20Cost%20Impact%20Report%20revised%204-13-17%20v2.1.pdf>

Analysis Group Survey <https://drive.google.com/open?id=1uwNtzemdC65DWMcVkJ2HfWFIHyCvtJzqMgaarLn2nsM>

https://docs.google.com/document/d/1dxPbe4gApZO6USTfDI-xMp3lIeS7hIxoX_0ad_xfl8/edit?usp=sharing

https://docs.google.com/document/d/1-rpRnMArtFoS8_6Sx99aBY3FAJRWhfyfPY-bc6CR6DI/edit

and previously collected data

https://docs.google.com/document/d/1k8SXcZRSzluqAVkTxYJL63qbBt_A8e9vZNdoKJp8tFc/edit?usp=sharing

https://docs.google.com/document/d/10npR7b_6WWJZ6J20583GNq2OLM4jBp-sS-Yeq564GwM/edit

<https://docs.google.com/document/d/1ecm9e0jiA6dPsUcACNIHOLgFD5tZPgU3PzF3WtDOdqY/edit>

Q7 In respect to which particular agreed Sunrise and/or Trademark Claims Charter Question(s) is your proposal relevant? (250 words max) A full list of agreed Sunrise Charter Questions can be downloaded here:

<https://goo.gl/knQa2p> A full list of agreed Trademark Claims Charter Questions can be downloaded here:

<https://goo.gl/FeAJpa>

Sunrise charter questions 2, 3 and 4

Q8 Does the data reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

Yes - see above

Q9 If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

Addressed above

#12

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Thursday, March 28, 2019 6:07:11 AM
Last Modified: Thursday, March 28, 2019 6:09:43 AM
Time Spent: 00:02:31

Page 1

Q1 Proponent's Full Name If this proposal is jointly developed by more than one Working Group member, please write the full names of all proponents involved.

Susan Payne

Q2 Does your recommendation address Sunrise, Trademark Claims, or both? **Trademark Claims only**

Q3 What type of recommendation are you proposing? **Policy**

Q4 What recommendation are you proposing? Please be succinct as well as substantially specific and not general in nature. One proposal for one recommendation only.

A permanent trademark claims process.

Q5 What is your rationale for the proposal? (250 words max)

There are charter questions covering this topic - therefore it is already a task for the subteam to consider this issue and no individual proposal ought to be necessary. Nevertheless, the interplay between individual proposals and the work of the subteams is extremely unclear.

Although the extended claims service offered by the TMCH allows trade mark holders to receive the Notice of Registered Names indefinitely, the Trademark Claims notices to potential registrants are generally stopped after the 90-day mandatory Trademark Claims period. In order to improve the effectiveness of the Trademark Claims as a deterrent to potential registrants, the Trademark Claims service should run indefinitely rather than for just the first 90 days of general registration.

Q6 What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max) Such evidence may be information developed by the Sub Teams or documented in other sources.

Data summary table

[https://community.icann.org/display/RARPMRIAGPWG/Documents%2C+drafts%2C+responses+RPM+WG+Sub+Team+for+Trademark+Claims+Data+Review?preview=/102138613/105384230/%5BClaims%20Summary%20Table%5D%20\(1%20March%202019\).pdf](https://community.icann.org/display/RARPMRIAGPWG/Documents%2C+drafts%2C+responses+RPM+WG+Sub+Team+for+Trademark+Claims+Data+Review?preview=/102138613/105384230/%5BClaims%20Summary%20Table%5D%20(1%20March%202019).pdf)

Q7 In respect to which particular agreed Sunrise and/or Trademark Claims Charter Question(s) is your proposal relevant? (250 words max) A full list of agreed Sunrise Charter Questions can be downloaded here: <https://goo.gl/knQa2p> A full list of agreed Trademark Claims Charter Questions can be downloaded here: <https://goo.gl/FeAJpa>

Claims charter question 2

Q8 Does the data reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

Yes - see above

Q9 If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

addressed above

#13

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Thursday, March 28, 2019 3:27:53 AM
Last Modified: Thursday, March 28, 2019 7:49:29 AM
Time Spent: 04:21:36

Page 1

Q1 Proponent's Full Name If this proposal is jointly developed by more than one Working Group member, please write the full names of all proponents involved.

Michael Karanicolas

Q2 Does your recommendation address Sunrise, Trademark Claims, or both? **Sunrise only**

Q3 What type of recommendation are you proposing? **Policy**

Q4 What recommendation are you proposing? Please be succinct as well as substantially specific and not general in nature. One proposal for one recommendation only.

Where a top level domain is suggestive of a particular category of good or service, such as .bike or .pizza, sunrise registrations should require proof by the mark holder of actively doing business in that specific category.

Q5 What is your rationale for the proposal? (250 words max)

Owning a trademark does not grant a monopoly over the use of a particular word. In general, protections are limited to the types of commerce where a brandowner is active – hence the coexistence of Delta faucets, Delta Airlines, Delta Bank, Delta Hotels, etc. If the TMCH is an expression of legitimate trademark rights, a similar distinction should follow in how marks are registered and applied in this context.

While a number of TLDs might be viewed as being categorically neutral, such as .blog or .inc, where a TLD suggests a particular good or service brand owners should not be allowed to take advantage of the sunrise unless they are commercially active in that space, in line with the fact that, in a traditional legal context, their trademark protections would be unlikely to bind vendors active in this space.

Q6 What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max) Such evidence may be information developed by the Sub Teams or documented in other sources.

Currently the system is open to abuse, allowing defensive sunrise registrations in gTLDs that are completely disconnected from a company's business, allowing for the exercise of protective rights that extend far beyond the actual protections offered under trademark law, and potentially preventing legitimate registrations. As a specific example, BMW, owner of a trademark over the common dictionary word "Mini", has used the sunrise to register a number of domains that are separate from their commercial activities, including mini.photo, mini.tattoo, mini.video, and mini.bike. I consider this last example to be particularly problematic, since not only does Mini not market any motorcycles, but because "minibikes" are a distinct category of product (defined on dictionary.com as "a small, lightweight motorcycle with a low frame and designed generally for off-highway use"). These are just a few examples I was able to manually find.

In addition, there is evidence that the system is being actively gamed, with the use of dummy trademarks to register dictionary words (see: <https://onlinedomain.com/2014/04/15/legal/fake-trademarks-stealing-generic-domains-in-new-gtld-sunrises/>). Requiring a proof of specific commercial activity would resolve these abusive practices.

Q7 In respect to which particular agreed Sunrise and/or Trademark Claims Charter Question(s) is your proposal relevant? (250 words max) A full list of agreed Sunrise Charter Questions can be downloaded here: <https://goo.gl/knQa2p> A full list of agreed Trademark Claims Charter Questions can be downloaded here: <https://goo.gl/FeAJpa>

Question 9 of the Sunrise charter.

Q8 Does the data reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

Yes – there are a number of articles submitted documenting abuses of the system, as noted in the responses to Q9, including those submitted by myself.

Q9 If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

See above.
