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COMPLETE

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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 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.
