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**COMPLETE**

**Collector:** Web Link 1 (Web Link)  
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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.

Mitch Stoltz

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

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

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**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.

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**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>

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**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).

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**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.

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**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.