

# Sunrise Sub Team Update

# Overall Status

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- ⦿ Discussed twelve (12) Agreed Sunrise Charter Questions and reviewed ten (10) Individual Proposals. The standard for accepting answers and proposals was whether they had gained ‘wide support.’
- ⦿ Completed discussions, which took place during meetings and via discussion threads on the mailing list
- ⦿ Reviewed the draft language for proposed answers, preliminary recommendations, and proposed questions for community input
- ⦿ There was not wide support in the Sub Team for any of the individual proposals, except for part of Individual Proposal #11
- ⦿ In ICANN65, completed the review of the draft language and provided final input; finalized the determination on the individual proposals

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## High-Level Summary of Current Status

The following slides briefly summarize the current status of the Sub Team's work. The full text of any proposed response is in the Status Check document.

Preamble Question	Summary of Proposed Answers
<b>Preamble Q(a):</b> Is the Sunrise Period serving its intended purpose?	No Agreement
<b>Preamble Q(b):</b> Is it having unintended effects?	No Agreement
<b>Preamble Q(c):</b> Is the TMCH Provider requiring appropriate forms of “use” (if not, how can this corrected)?	Generally, yes.
<b>Preamble Q(d):</b> Interpreted as : “Have abuses of the Sunrise Period by trademark owners been documented?”	No conclusion.
<b>Preamble Q(e):</b> Interpreted as: “Have abuses of the Sunrise Period by Registrants been documented?”	No conclusion.
<b>Preamble Q(f):</b> Interpreted as: “Have abuses of the Sunrise Period by Registries and Registrars been documented?”	No conclusion.

### Proposed Questions for Community Input

1. The Sunrise Sub Team recommends that public comment be sought on whether the Sunrise Period is serving its intended purpose. Public commenters should provide evidence and analysis to support their views.
2. The Sunrise Sub Team recommends that public comment be sought on whether the Sunrise Period is having unintended effects. Public commenters should provide evidence and analysis to support their views.

Question 1	Summary of Proposed Answers
<p><b>Q1(a):</b> <i>Should the availability of Sunrise registrations only for identical matches be reviewed?</i></p>	<p>Generally agreed that this should not be reviewed.</p>
<p><b>Q1(b):</b> <i>If the matching process is expanded, how can Registrant free expression and fair use rights be protected and balanced against trademark rights?</i></p>	<p>The Sub Team generally agreed that the matching process should not be expanded.</p>

**Preliminary Recommendation:**

The Sunrise Sub Team recommends that the current availability of Sunrise registrations only for identical matches should be maintained, and the matching process should not be expanded.

Question 2	Summary of Proposed Answers
<p><b>Q2:</b> <i>Threshold: Is Registry pricing within the scope of the RPM WG or ICANN's review?</i></p>	<p>Diverging opinions.</p> <p>Some Sub Team members pointed to RA/RAA statements that registry pricing is not within the scope of the RPM WG due to the picket fence. Specifically, sections 1.4.1 of appropriate specifications in RA and RAA specify that Consensus Policies shall not prescribe or limit the price of Registry Services and Registrar Services. Other Sub Team members had concerns regarding interplay of Registry pricing with RPMs obligations (see proposed answer to Q2(a)-(b)).</p>
<p><b>Q2(a):</b> <i>Do Registry Sunrise or Premium Name pricing practices unfairly limit the ability of trademark owners to participate during Sunrise?</i></p>	<p>Generally agreed that Registry Sunrise or Premium Name pricing practices have limited the ability of some trademark owners to participate during Sunrise. Sub Team is aware of cases where the Registry Operator practices unfairly limited the ability of some trademark owners to participate during Sunrise, when pricing set for the trademark owners was exponentially higher than other Sunrise pricing or General Availability pricing.</p>
<p><b>Q2(b):</b> <i>If so, how extensive is this problem?</i></p>	<p>Problem seems sufficiently extensive that it may require a recommendation to address it, although data is limited. The Sub Team also noted that pricing is outside the picket fence.</p>

### Preliminary Recommendation

The Sunrise Sub Team recommends that the Registry Agreement include a provision stating that a Registry Operator shall not operate its TLD in such a way as to have the effect of circumventing the mandatory RPMs imposed by ICANN or restricting brand owners' reasonable use of the Sunrise rights protection mechanism.

### Question 3

### Summary of Proposed Answers

**Q3(a):** *Should Registry Operators be required to create a mechanism that allows trademark owners to challenge the determination that a second level name is a Premium Name or Reserved Name?*

Diverging opinions.

**Q3(b):** *Additionally, should Registry Operators be required to create a release mechanism in the event that a Premium Name or Reserved Name is challenged successfully, so that the trademark owner can register that name during the Sunrise Period?*

No wide support for a challenge mechanism so Sub Team did not consider this question.

### Question 3, Cont.

### Summary of Proposed Answers

**Q3(c):** *What concerns might be raised by either or both of these requirements?*

Some Sub Team members noted some possible concerns, but there were no wide support within the Sub Team for those concerns.  
The Sub Team did not develop an answer to this question.



Question 4	Summary of Proposed Answers
<p><b>Q4(a):</b> <i>Are Registry Operator Reserved Names practices unfairly limiting participation in Sunrise by trademark owners</i></p>	<p>Some Sub Team members believe this to be the case.</p>
<p><b>Q4(b):</b> <i>Should Section 1.3.3 of Specification 1 of the Registry Agreement be modified to address these concerns?</i></p>	<p>No agreement that there were concerns that should be addressed with regard to Section 1.3.3.</p>
<p><b>Q4(c):</b> <i>Should Registry Operators be required to publish their Reserved Names lists -- what Registry concerns would be raised by that publication, and what problem(s) would it solve?</i></p>	<p>Diverging opinions. Some Sub Team members noted several possible registry concerns with publication. Other Sub Team members discussed possible problems that publication of Reserved Names lists may resolve.</p>
<p><b>Q4(d):</b> <i>Should Registry Operators be required to provide trademark owners in the TMCH notice, and the opportunity to register, the domain name should the Registry Operator release it – what Registry concerns would be raised by this requirement?</i></p>	<p>Not discussed. More appropriate for the TMCH discussion and not within the scope of Sunrise concerns.</p>

Question 5	Summary of Proposed Answers
<p><b>Q5(a):</b> <i>Does the current 30-day minimum for a Sunrise Period serve its intended purpose, particularly in view of the fact that many Registry Operators actually ran a 60-day Sunrise Period?</i></p>	<p>Generally agreed that the current 30-day minimum appears to serve its intended purpose.</p>
<p><b>Q5(a)(i):</b> <i>Are there any unintended results?</i></p>	<p>Some Sub Team members believe there are, such as complications when many TLDs are launched simultaneously for the Start Date Sunrise for 30 days.</p> <p>Others believe that the 30-day advance notice before the launch of a Start Date Sunrise may help mitigate the administrative burdens on the trademark owners.</p>
<p><b>Q5(a)(ii):</b> <i>Does the ability of Registry Operators to expand their Sunrise Periods create uniformity concerns that should be addressed by this WG?</i></p>	<p>Generally agreed that this does not create uniformity concerns that should be addressed by this WG.</p>
<p><b>Q5(a)(iii):</b> <i>Are there any benefits observed when the Sunrise Period is extended beyond 30 days?</i></p>	<p>Generally agreed that there are benefits observed, and noted that most Registry Operators have run a 60-day End Date Sunrise. Extending beyond 30 days provides more time for trademark owners to decide whether to participate.</p>

Question 5, Cont.	Summary of Proposed Answers
<b>Q5(a)(iv):</b> <i>Are there any disadvantages?</i>	Some Sub Team members believe that there are disadvantages when the Sunrise Period is extended beyond 30 days.
<b>Q5(b):</b> <i>In light of evidence gathered above, should the Sunrise Period continue to be mandatory or become optional?</i>	The Sub Team had widely diverging opinions.
<b>Q5(b)(i):</b> <i>Should the WG consider returning to the original recommendation from the IRT and STI of Sunrise Period OR Trademark Claims in light of other concerns, including freedom of expression and fair use?</i>	The Sub Team considered this question but did not reach a conclusion.
<b>Q5(b)(ii):</b> <i>In considering mandatory vs optional, should Registry Operators be allowed to choose between Sunrise and Claims (that is, make ONE mandatory)?</i>	The Sub Team considered this question but did not reach a conclusion.

**Preliminary Recommendations:**

1. The Sunrise Sub Team recommends, in general, that the current requirement for the Sunrise Period be maintained, including for 30-day minimum period for a Start Date Sunrise and the 60-day minimum period for an End Date Sunrise.
2. The Sunrise Sub Team recommends that the mandatory Sunrise Period should be maintained.

## Question 6

## Summary of Proposed Answers

**Q6(a):** *What are Sunrise Dispute Resolution Policies (SDRPs), and are any changes needed?*

SDRPs are explained in the Section 6.2.2 and 6.2.4 of Module 5 of the Applicant Guidebook. Generally recognized it is not within the scope of the RPM PDP WG to recommend changes to any Registry Operator specific SDRPs. Widely diverging opinions on whether any changes, additions or deletions to the mandatory grounds are needed.

**Q6(b):** *Are SDRPs serving the purpose(s) for which they were created?*

Widely diverging opinions.

**Q6(c):** *If not, should they be better publicized, better used or changed?*

Since there were widely diverging opinions on 6(b), the Sub Team did not consider this question.

## Additional Proposed Answer – 6(a)

### Proposed Answer

According to the Section 6.2.2 and 6.2.4 of the Trademark Clearinghouse Model of Module 5 of the Applicant Guidebook, SDRP is a mechanism that a Registry Operator must provide to resolve disputes regarding its registration of Sunrise Registrations. It allows challenges to Sunrise Registrations related to Registry Operator's Allocation and registration policies, on four non-exhaustive grounds, including on the grounds that the domain name that was registered does not identically match the Trademark Record on which the Sunrise-Eligible Rights Holder based its Sunrise Registration. In the time between when the AGB was written and the TMCH requirements were established, the TMCH dispute procedure was created. This procedure allows for challenges to the recordal of marks in the TMCH that underlie Sunrise Registrations. As a result two of AGB requirements for Registry Operator SDRPs are moot; and in any event the registry operator is not the best-placed party to adjudicate these challenges due to the fact that the registry operator is reliant on trademark eligibility information provided to it by the TMCH. We propose a resolution that codifies the current practice, with no changes.

## Additional Proposed Answers - 6(b) and (c)

### Proposed Answers

**6(b):** The Sub Team had difficulty determining whether SDRPs are serving the purpose(s) for which they were created, as each TLD has its own SDRP and there is hardly any data or analysis of the SDRP decisions across all new gTLD. Some sub team members have proposed a solution in Q6(a) that will eliminate the non-functional parts of the SDRP requirements and codify the current practice. Some Sub Team members believe that, in general, SDRPs do not seem to serve the purpose(s) for which they were created. Another Sub Team member believes that the limited access to the TMCH and the lack of trademark information to identify whether a complaint is well-grounded makes it difficult to challenge a registration via the SDRP. Nevertheless, one Sub Team member believes that the SDRPs are generally serving the purpose(s) for which they were created despite their low usage.

**6(c):** Some Sub Team members have proposed some useful changes in Q6(a). One Sub Team member commented that whether SDRPs should be better publicized is contingent on whether they are serving the purpose(s) for which they were created. However, it is not harmful for Registry Operators to periodically remind registrants of the existence of SDRPs. One Sub Team member believes that it is not within the scope of the RPM PDP WG to recommend how SDRPs can be better used. It is up to the Registry Operators and challengers to decide.

# Additional Preliminary Recommendations – Q6

## Preliminary Recommendations:

1. The Sub Team recommends that the next Applicant Guidebook be amended as follows:
2. We recommend: the new version of the AGB should include the TMCH dispute resolution procedure for challenging the validity of trademark records entered into the TMCH. This procedure is currently published at: <https://www.trademark-clearinghouse.com/dispute#3.3> [trademark-clearinghouse.com]. ICANN Org should ensure that its contract for the provision of TMCH services makes the operation of the TMCH dispute resolution procedure a requirement for the TMCH Provider.
3. We recommend: What is current AGB (Module 5) Trademark Clearinghouse Model, section 6.2.4 be amended to remove (i) and (iii).
4. We recommend: The AGB (Module 5) 6.2.4 be amended to include 6.2.6 – the Registry Operator will, upon receipt from the TMCH of a finding that a sunrise registration was based upon an invalid TMCH record (pursuant to a TMCH dispute resolution procedure), immediately cancel the domain name registration.

Note: Registry Operators should continue to have the option to offer a broader SDRP to include optional/additional Sunrise criteria as desired.

## Question 7

## Summary of Proposed Answers

**Q7(a):** *Can SMD files be used for Sunrise Period registrations after they have been canceled or revoked?*

The Sub Team noted that after a SMD file or its underlying trademark record has been canceled or revoked, the SMD file cannot be used for Sunrise Period registrations. However, theoretically, an SMD file might still work for an asynchronous short period of time due to the registry process.

**Q7(b):** *How prevalent is this as a problem?*

Generally agreed that the problem does not seem prevalent.



Question 8	Summary of Proposed Answers
<i>Q8(a): Are Limited Registration Periods in need of review vis a vis the Sunrise Period? Approved Launch Programs? Qualified Launch Programs?</i>	Question discussed, but unable to conclude whether the Limited Registration Periods, Approved Launch Programs, or Qualified Launch Programs are in need of review.
<i>Q8(b): Are the ALP and QLP periods in need of review?</i>	Question discussed, but unable to conclude whether ALP and QLP periods are in need of review.
<i>Q8(c): What aspects of the LRP are in need of review?</i>	Question discussed, but unable to conclude what aspects of the LRP are in need of review.

**Proposed Questions for Community Input are currently under discussion in the Sub Team.**

## Question 9

*Q9: In light of the evidence gathered above, should the scope of Sunrise Registrations be limited to the categories of goods and services for which the trademark is actually registered and put in the Clearinghouse?*

## Summary of Proposed Answers

Widely diverging opinions.

## Question 10

**Q10:** *Explore use and the types of proof required by the TMCH when purchasing domains in the sunrise period.*

## Summary of Proposed Answers

While the Sub Team recognized that this “question” has a genesis, the Sub Team did not formulate a response due to disagreement on what the question is asking.

## Question 11

## Summary of Proposed Answers

**Q11(a):** *How effectively can trademark holders who use non-English scripts/languages able to participate in Sunrise (including IDN Sunrises)?*

Some Sub Team members believe that Trademark holders who use non-English scripts/languages cannot effectively participate in Sunrise.

**Q11(b):** *Should any of them be further “internationalized” (such as in terms of service providers, languages served)?*

The Sub Team did not address this question as the question was unclear.

**Proposed Questions for Community Input are currently under discussion in the Sub Team.**

Question 12	Summary of Proposed Answer
<p><b>Q12(a):</b> <i>Should Sunrise Registrations have priority over other registrations under specialized gTLDs?</i></p>	<p>Question discussed, but unable to reach a conclusion.</p>
<p><b>Q12(b):</b> <i>Should there be a different rule for some registries, such as certain types of specialized gTLDs (e.g. community or geo TLDs), based on their published registration/eligibility policies? (Examples include POLICE.PARIS and POLICE.NYC for geo-TLDs, and WINDOWS.CONSTRUCTION for specialized gTLDs)</i></p>	<p>Question discussed, but unable to reach a conclusion.</p>

**Proposed Questions for Community Input are currently under discussion in the Sub Team.**

**Thank You and Questions**