# In Depth Overview of Sunrise Period |
## 21 September 2016

In depth overview of TM Claims Notice |  28 September 2016

# Sunrise Registrations through the TMCH

## Overview:

- The Sunrise Period is a pre-launch phase providing trademark owners whose trademarks have been validated by the TMCH with an opportunity to register domain names in a New gTLD (i.e. a gTLD delegated under the 2012 New gTLD Program) before registration is generally available to the public.
- The Sunrise Period is mandatory in all New gTLDs.
- The Sunrise Period required for each New gTLD is *a minimum period of at least 30 days.* During this time, TM owners with trademarks validated by the TMCH have an advance opportunity to register domain names corresponding to their trademarks before registration in that New gTLD is generally available to the public.

# Minimum mandatory Sunrise Periods for All New gTLDs

A New gTLD Registry Operator is responsible for executing the Sunrise Period according to certain Technical Requirements (http://newgtlds.icann.org/en/about/trademark-clearinghouse/rpm-requirements-14may14-en.pdf).

**Key Points:**
- ⊙ "Sunrise registration" means the act of a trademark owner with a trademark in the TMCH registering a domain name during the Sunrise Period.
- ⊙ All Sunrise registrations must be based on a valid Signed Mark Data (SMD) file – this is a token demonstrating that minimum eligibility for Sunrise has been verified by the TMCH
- ⊙ Registries <u>may</u> also establish other restrictions as specified in the Technical Requirements e.g.:
  - ➢ *Trademark date restrictions*
  - ➢ *Trademark class of goods/services*
  - ➢ *Community-based registration restrictions*

# Minimum mandatory Sunrise Periods for All New gTLDs

**Key Points continued:**

- ⊙ Registries <u>must</u> also have a **Sunrise Dispute Resolution Policy,** for example see [Donuts's Sunrise and DPML Dispute Resolution Policy](#) or [Uniregistry's Sunrise Challenge Dispute Resolution Policy](#)

- ⊙ All **Sunrise registration** must be based on a valid **Signed Mark Data (SMD) file** – the SMD file is a token demonstrating that minimum eligibility requirements for Sunrise have been verified by the Trademark Clearinghouse. The SMD file must be used by the Trademark holder to apply to a Registrar for a Domain Name during the Sunrise Period

- ⊙ From time to time, IBM (responsible for Technical Functions of the TMCH Database) circulates a '**Revoked SMD List**' to notify Registrars when an SMD file has been compromised or when a record is removed from the TMCH Database by Verification Provider (Deloitte).

**New gTLD Registries must recognize and honor all word marks validated by the TMCH and maintained in the TMCH Database (i.e. the trademarks have gone through the verification process discussed last week). These are trademarks:**

(i) That are nationally or regionally registered and for which proof of use – which can be a declaration and a single specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse; or

(ii) that have been court-validated; or

(iii) that are specifically protected by a statute or treaty currently in effect and that was in effect on or before 26 June 2008.

**Start-Date Sunrise:**

- Registry must provide the service for a minimum of thirty (30) calendar days prior to General Registration and must provide thirty (30) calendar days' notice prior to the start of the Sunrise period

**End-Date Sunrise:**

- Registry has no advance notice requirement but must provide the service for a minimum of sixty (60) calendar days prior to General Registration, and must not use a time-based allocation method (e.g., first come, first served)

- The majority of new gTLD registries appear to have offered End-Date Sunrise periods
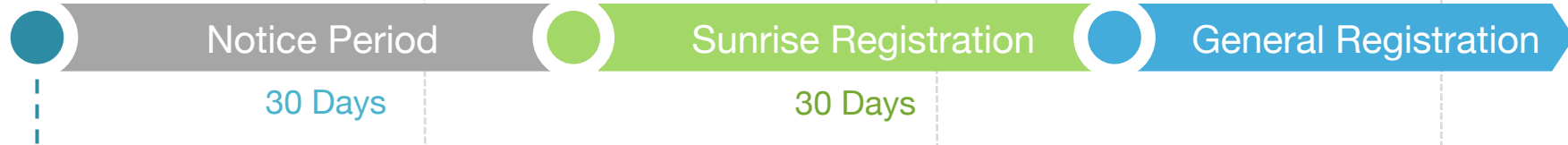
A regularly updated calendar of Sunrise start dates for all New gTLDs is maintained at *http://edit.trademark-clearinghouse.com/gtld-calendar?field_gtld_info_status_tid[0]=192&field_gtld_info_status_tid[1]=189*

# Sunrise Registration

## Sunrise > Start-Date vs. End-Date

**Start-Date Sunrise**

Trademark-related domains registered on first come, first served (or other) basis

| | Notice Period | Sunrise Registration | General Registration |
|---|---|---|---|

30 Days

30 Days

7 Nov 2013: ICANN receives TLD Startup Info

Sunrise Registration

60 Days

General Registration

**End-Date Sunrise**

Collect requests for allocating trademark-related domain names

Resolve conflicting trademark-related requests and allocate prior to General Registration

Nov 2013

Dec 2013

Jan 2014

**Additional flexibility for New gTLD Registries called "Limited Registration Periods** (LRP) are permitted on a voluntary basis:

- LRPs are intended to provide additional flexibility for registration of domain names to a closed group based on Sunrise-like periods <u>other than trademark rights;</u>

- LRPs must have registration restrictions limiting domain names from being generally available to all domain name registrants who may be otherwise qualified to register domain names within that New gTLD; and

- LRP registrations <u>must be subject to the Trademark Claims service.</u>

NOTE:
- No specific data is collected on the extent of deployment or usage of these additional voluntary mechanisms

# Additional *optional* early phase registration mechanisms

**Other flexibilities and voluntary mechanisms that may be deployed by New gTLD registry operators (note that no data is maintained as to the extent to which these are used):**

**Approved Launch Program service (ALP)**:

- Launched November 2013 – allows approved New gTLD Registries to offer additional registrations prior to Sunrise (not otherwise permitted if the registry operator does not apply specifically to conduct such a program)
    - See http://newgtlds.icann.org/en/about/trademark-clearinghouse/launch-application-process-12nov13-en.pdf for a description of the application process

**Qualified Launch Program service (QLP)**:

- Launched April 2014 – allows registries to register up to 100 domain names to third parties prior to Sunrise, for purposes of promoting the TLD, under certain conditions
    - See https://newgtlds.icann.org/en/program-status/sunrise-claims-periods for a listing of New gTLDs offering a QLP service

# Key terms and definitions (1)

- **"Identical matches"** means a domain name label is an identical match to the trademark, meaning that the label must consist of the complete and identical textual elements of the trademark in accordance with section 4.2.1 of the Clearinghouse Guidelines. For example, if the Trademark Holder's trademark is AB, then the domain name label that is applicable must be AB for it to be deemed an Identical Match. If the Trademark Holder's Trademark label is èé, than the identical label is èé and not ee.

- **"Premium names" – a** registry operator may reserve certain premium names for later release (after the Sunrise Period) at its sole discretion. Registry operators may classify generic terms as premium names, and, in that event, such names are not available for registration during the Sunrise period even if they are the subject of a trademark record.

- **"Reserved names"** - a registry operator may reserve a domain name from registration as allowed by Specification 9, Registry Operator Code of Conduct, Section 1(b), of the New gTLD Registry Agreement.

- **"Landrush"**- Land Rush is the commencement of the "go live" period of a new TLD launch where the registry begins accepting live domain registrations from registrants through registrars.

- **"Trademark Clearing House-verified trademarks"** means all marks accepted and verified by the TMCH. These will be accepted from (i) nationally or regionally or registered trademarks; (ii) court-validated marks; and (iii) marks protected by statute or treaty. The verified trademark data will support both trademark claims and sunrise services required for all new gTLDs. In addition, the Clearinghouse may accept and verify other types of marks upon the request of registries.

- **"Sunrise Period"** - a pre-launch phase providing trademark holders the opportunity to register domain names in a gTLD before registration is made generally available to the public.

- **"Sunrise pricing practices"** - the current TMCH fee structure includes Sunrise services for all new gTLD Sunrise periods, not just one.

- **"Sunrise process" -** A process in which owners of Legal Rights have the opportunity to register domain names before the Landrush process open to the public. Registries that used a Sunrise Process identified the Legal Rights on which a Sunrise Process registration could be based.

- Should the availability of Sunrise registrations only for "identical matches" (e.g. without extra generic text) be reviewed?

- Is the notion of "premium names" relevant to a review of RPMs, and, if so, should it be defined across all gTLDs?

- Following from Question 2, should there be a mechanism to challenge whether a domain is a 'premium name'?

- Should there be a specific policy about the reservation and release of "reserved names" (e.g. modification of Section 1.3.3 of Specification 1 of the current Registry Agreement)?

- Should there be a public, centralized list of all reserved trademarks for any given Sunrise period?

- Should holders of Trademark Clearing House-verified trademarks be given first refusal once a reserved name is released?

- Should Sunrise Periods continue to be mandatory? If so, should the current requirements apply or should they be more uniform, such as a 60-day end-date period?

- Whether and how to develop a mechanism by which trademark owners can challenge Sunrise pricing practices that flout the purpose of Sunrise.

- Whether more can be done to improve transparency and communication about various Sunrise procedures.

- How is the emerging discourse within the ICANN community on human rights issues relevant to this PDP?

Please examine the questions in the Charter.

What would you add or remove? What do you find duplicative? What might be grouped together? What might we examine first?

For future discussion: what data would you need to evaluate and analyze the answers to these questions?