

## Report of the Sunrise Registrations Sub Team Updated as of 27 July 2017

The Sunrise Registrations Sub Team held its first meeting on 14 April 2017, and held a total of 9 meetings. The Sub Team was tasked with refining Charter questions relevant to the review of Sunrise Registrations, in addition to identifying data that may be helpful to the GNSO Review of all RPMs in all gTLDs PDP Working Group in answering the questions. These questions can be found in a document titled “Sunrise Claims General Charter Questions”, posted on the Sub Team wiki here: <https://community.icann.org/x/dM7Raw>.

The need to refine these questions was largely due to the fact that they were added to the Working Group Charter as a result of direct input by the ICANN community. All questions suggested by the community were added to the Charter without revision, refinement or discrimination prior to the GNSO Council adoption of the Charter in its 9 March 2016 [resolution](#). The Sub Team’s suggested revisions include language to eliminate bias to any one stakeholder’s interests whenever possible and not to be suggestive of a specific answer.

Throughout the course of its work, the Sub Team went through 3 major iterations of refining the questions, which included consolidation of several questions when it deemed it appropriate to do so. This included several questions that were meant to address RPMs generally, but were adjusted to be answered by the Working Group in the Sunrise Registrations context.

In its final deliverable to the full Working Group, the Sub Team created a table listing both, the original Charter questions alongside the proposed, refined versions. The table also includes comments made on the questions by Sub Team members during the process, explaining the rationale behind some of the decisions to amend the questions. This table should provide a clear enough picture to the full Working Group, and any community member who elects to examine it, regarding the decisions of Sub Team.

Furthermore, during the course of its work, the Sub Team determined that certain terms should be defined; both to assist the Sub Team in proceeding with its mandate with a common understanding of these terms, as well as to provide clarity to Working Group members reviewing the Sub Team’s final report. These terms are “reserved names,” “premium names” and “premium pricing.”

The proposed definitions are as follows:

- **Reserved Names:** second level domain names that are withheld from registration per written agreement between the registry and ICANN. (See Section 2.6 and Specification 5 in the base Registry Agreement.)
- **Premium Names:** second level domain names that are offered for registration that, in the determination of the registry, are more desirable for the purchaser.
- **Premium Pricing:** [Pricing of second level domain names that are determined by the registry as Premium Names.
- **Standard Pricing:** [Pricing of second level domain names at the General Availability stage that is not Premium Pricing, including without limitation renewal pricing that is not Premium Pricing]

Finally, the Sub Team has identified data (and in some cases, possible sources for the data), which may be of assistance to the full Working Group when attempting to answer the Charter questions during the process to review Sunrise Registrations. In keeping with the instructions provided to it by the Working Group, the Sub Team did not attempt to collect the data, nor address the questions in any substantive manner.

For more details, all action items, notes, recordings and transcripts as well as meeting documents and materials have been published on the Sub Team meeting wiki pages found here: <https://community.icann.org/x/oMrRAw>

**Comment [MW1]:** James Bladel:  
- add definition for “Standard Pricing” (i.e. pricing at the General Availability stage that is not Premium Pricing”  
- Note two levels of pricing: initial pricing and then renewal. because something could be a premium at purchase but then renew at a standard rate or could have a premium renewal

**Comment [MW2R1]:** Definition added (see 4<sup>th</sup> bullet point) for WG review

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**Comment [MW3]:** AC chat suggestion: wording seems odd; shouldn’t it just be “higher prices charged for Premium Names”?

**Comment [MW4R3]:** ACTION ITEM FROM 12 JULY: WG to refine definition per AC chat suggestion from Joburg

**Comment [MW5R3]:** Definition updated for WG review

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The following table outlines the refinements to the original Charter questions made by the Sunrise Registrations Sub Team:

<u>Refined Charter Questions</u>	<u>Comments remaining under WG discussion &amp; community suggestions from ICANN59</u>
<p>Preamble:</p> <ul style="list-style-type: none"> <li>• Is the Sunrise Period serving its intended purpose?</li> <li>• Is it having unintended effects?</li> <li>• Is the TMCH Provider requiring appropriate forms of “use” (if not, how can this corrected)?</li> <li>• Have abuses of the Sunrise Period been documented by trademark owners?</li> <li>• <u>Have abuses of the Sunrise Period been documented by Registrants?</u></li> <li>• <u>Have abuses of the Sunrise Period been documented by Registries and Registrars?</u></li> </ul> <p>[Original Q1, 7, 14, 16, 18, 19 and 22]</p>	
<p>1</p> <ul style="list-style-type: none"> <li>• Should the availability of Sunrise registrations only for identical matches be reviewed?</li> <li>• If the matching process is expanded, how can Registrant free expression and fair use rights be protected and balanced against trademark rights?</li> </ul> <p>(Q1)(Q18)</p>	<ul style="list-style-type: none"> <li>• Note ongoing WG discussion on expanding “identical match” standard to the Claims Service - should this be considered for Sunrise too, and for what aspects of expansion (e.g. plurals, typos, mark + keyword and/or “mark contains”)?</li> </ul>

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2	<ul style="list-style-type: none"> <li>• Threshold question: Is Registry pricing within the scope of the RPM WG or ICANN's review?</li> <li>• <u>Are Registry Sunrise or Premium Pricing practices unfairly limiting participation in Sunrise by trademark owners?</u> [ALTERNATIVE: <u>Are Registry Sunrise or Premium Pricing practices unfairly limiting the usefulness of Sunrise as a RPM?</u>]</li> <li>• If so, how extensive is this problem? (Q2)(Q8)(Q15)</li> </ul>	<ul style="list-style-type: none"> <li>• <u>Jeff Neuman: recommends that the threshold question be put to the Council</u></li> <li>• <u>Suggestion for second bullet (Amadeu, Denise, Kurt): reword along the lines of "Whether pricing is a deterrent to trademark owners?" Perhaps also add concept of abuse in relation to pricing practices (from Jon Nevett)</u></li> <li>• <u>Denise Michel recommends collecting data on pricing practices for Sunrise</u></li> </ul>
3	<ul style="list-style-type: none"> <li>• <u>Should Registry Operators be required to create a mechanism that allows trademark owners in the TMCH to challenge a Premium Name for the purpose of requiring its release so that the trademark owner can register it during the Sunrise Period, and what concerns might be raised by that requirement?</u> (Q3) [REPHRASED DRAFT QUESTION: <u>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? Additionally, should Registry Operators be required to create a release mechanism in the</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>Jon Nevett: Need to balance the various interests here, suggests including some sort of standard to review whether it was appropriate for a registry to put a specific name (e.g. police.[geoTLD] on a premium list. This should also be done for reserve lists (Jon, Susan Payne, Lori, Georges N.)</u></li> <li>• <u>Ben Anderson (AC Chat): Is differential pricing between sunrise &amp; open registrations impacting registrations?</u></li> <li>• <u>Paul Tattersfield (AC Chat): Is differential pricing between sunrise &amp; open registrations impacting registrations?</u></li> <li>• <u>Maxim Alzoba: We should not forget that</u></li> </ul>

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Comment [MW6]: Alternative phrasing from Michael Graham (12 July): "limiting the usefulness of Sunrise as a RPM"

Comment [MW7R6]: Alternative phrasing added for WG review

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Comment [MW8]: ACTION ITEM FROM 12 JULY – Question to be rephrased to clarify that it covers both premium and reserved names (since premium names can be reserved names as well), and to reconsider if intent of question is to ask only about a release mechanism

Comment [MW9R8]: Question rephrased for WG review

	<p>event that a Premium Name or Reserved Name is challenged successfully, so that the trademark owner can register that name during the Sunrise Period? What concerns might be raised by either or both of these requirements?</p>	<p>there is a thing called Picket Fence - basically it is a set of provisions in RA (Registry Agreements) &amp; RAA (Registrar Accreditation Agreements) that Consensus Policies should not "prescribe or limit the price of Registry Services;" - so even if our output comes to the state where there is an idea of price regulation it will have no power, even if it comes into Policy state - the same for Registrars: shall not "prescribe or limit the price of Registrar Services"</p>
4	<ul style="list-style-type: none"> <li>• Are Registry Operator's Reserved Names practices unfairly limiting participation in Sunrise by trademark owners?</li> <li>• Should Section 1.3.3 of Specification 1 of the Registry Agreement be modified to address these concerns? (Q4)</li> <li>• 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? (Q5)</li> <li>• Should Registry Operators be required to provide trademark owners in the TMCH notice, and the opportunity to register, the Reserved</li> </ul>	<ul style="list-style-type: none"> <li>• Maxim Alzoba: <ul style="list-style-type: none"> <li>- Cannot have a one-size-fits-all rule. For open and unrestricted TLDs, reserve names that match trademarks in the Trademark Clearinghouse should not be premium names ... For community-based TLDs, there may be a reason. For instance, using a Reserved Names list and then releasing the relevant domain name during LRP was the only way that Geo TLDs could provide the names to the relevant public services and city authorities (e.g. POLICE). Issues with the ALP &amp; QLP led Geo TLDs to use these</li> </ul> </li> </ul>

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Comment [MW10]: QUESTION FOR THE WG: If Michael Graham's alternative formulation for Q2 (above) is accepted, should the same change be made here?

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	<p><b>Name</b> should the Registry <b>Operator</b> release it – what Registry concerns would be raised by this requirement? (Q6)</p>	<p><b>Reserved Names lists</b></p>
<p>5</p>	<p>(a) Does the current 30-day minimum for a Sunrise Period serve its intended purpose, <u>particularly in view of the fact that many registry operators actually ran a 60-day Sunrise Period</u>?</p> <ul style="list-style-type: none"> <li>• Are there any unintended results?</li> <li>• Does the ability of Registry Operators to expand their Sunrise Periods create uniformity concerns that should be addressed by this WG? (Q7)</li> <li>• Are there any benefits observed when the Sunrise Period is extended beyond 30 days?</li> <li>• Are there any disadvantages?</li> </ul> <p>(b) In light of evidence gathered above, should the Sunrise Period continue to be mandatory or become optional?</p> <ul style="list-style-type: none"> <li>• Should the WG consider returning to the original recommendation <u>from the IRT and STI</u> of Sunrise Period OR Trademark Claims in light of other concerns, including freedom of expression and fair use?</li> <li>• In considering mandatory vs optional, should</li> </ul>	<ul style="list-style-type: none"> <li>• Reworded to align with discussions elsewhere in the WG/Sub Teams regarding what the intended effect of each RPM was, and whether (as implemented) it meets that objective.</li> </ul> <p><i>Comment: Putting back in the purpose of original question; looking at time period of Sunrise and whether Sunrise should be mandatory at all?</i></p>

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**Comment [MA11]:** my note about release of names of GEO tlds disappeared again. With the current structure of the AGB and RA Reserved names is the only method to deliver names to the city (via reserving it and releasing during the LRP to the city or wholly owned companies). Please do not remove example of POLICE, which is a public service, and in many cities is older than the TM of POLICE. this note is relevant to Q4, due to idea of special rights to TMCH registered TM owners on the release of the reserved names.

	<b>Registry Operators be allowed to choose between Sunrise and Claims (that is, make ONE mandatory)? (Q7)(Q18)</b>	
6	<b>What are Sunrise Dispute Resolution Policies (SDRPs)<sup>1</sup> and are any changes needed?</b> <ul style="list-style-type: none"> <li>• <b>Issues that the WG might evaluate include: are SDRPs serving the purpose(s) for which they were created? If not, should they be better publicized, better used or changed?</b></li> </ul>	
7	<b>Can SMD files be used for Sunrise Period registrations after they have been canceled or revoked? How prevalent is this as a problem?</b>	<ul style="list-style-type: none"> <li>• <u>Is this question still needed, given the documentation and information circulated (including Deloitte explanations) on how SMD files work?</u></li> </ul>
8	<b><u>On</u> LRP<sup>1</sup>, ALP<sup>2</sup>, QLP<sup>3</sup> – Limited Registration Periods, Approved Launch Programs and Qualified Launch Programs:</b> <ul style="list-style-type: none"> <li>• <b>Are Limited Registration Periods in need of review vis a vis the Sunrise Period? Approved Launch Programs? Qualified Launch programs?</b></li> </ul>	<ul style="list-style-type: none"> <li>• <u>Kristine Dorrain: In my opinion, the only reason to look at QLP or ALP here is because the policies say QLP or ALP names cannot be in the TMCH. Which is the point Maxim is making, I think - that can be a problem for some TLDs, like geos.</u></li> </ul>

<sup>1</sup> LRP: “Limited Registration Period” between the end of Sunrise and the start of General Availability with some registration restriction that limits domain names from being generally available to all registrants that are qualified to register domain names within the TLD.

<sup>2</sup> ALP: “Approved Launch Program” for which a registry operator has applied and been approved by ICANN to offer prior to Sunrise.

<sup>3</sup> QLP: “Qualified Launch Program” under which a registry operator is able to offer up to 100 names to third parties prior to a Sunrise period, in order to promote its TLD.

	<ul style="list-style-type: none"> <li>• <u>Are the ALP and QLP periods in need of review?</u></li> <li>• <u>What aspects of the LRP are in need of review?</u> (Q11 and Q12).</li> </ul>	<ul style="list-style-type: none"> <li>• <u>Maxim Alzoba</u>: The reason to look at QLPs - is that it is defined in the Addendum to RPMs, and ALP is part of RPMs</li> <li>• <u>Maxim Alzoba</u>: As wrote to the SubGroup before - the only GEO applicant dared for ALP, and they are ready to provide more in-depth info if required (I had a conversation with them during the GDD Summit in Madrid).</li> <li>• <u>Suggested addition from AC chat: Whether other lawful rights in some jurisdictions like family names or non-registered used in trade marks were precluded from getting priority (as a result of ALP, QLP or LRP)</u></li> </ul>
9	<u>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?</u> (Reworded Q13)(Q18)	<ul style="list-style-type: none"> <li>• See also Q 12 below - the 2 need to be read/dealt with in conjunction.</li> <li>• <u>AC Chat suggestion: For geoTLDs, jurisdiction of the mark in question should be added as well</u></li> </ul>
10	Explore use and the types of proof required by the TMCH when purchasing domains in the sunrise period	
11	How effectively can trademark holders who use non-English scripts/languages participate in sunrise (including IDN sunrises), and should any of them be	<ul style="list-style-type: none"> <li>• <u>AC chat suggestion: Consider also whether TMCH implementation for IDNs followed the LGR rules, technical standards etc. (note</u></li> </ul>

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	further “internationalized” (such as in terms of service providers, languages served)?	<u>SSAC belief that this may not have been the case)</u>
12	<u>Should Sunrise Registrations have priority over other registrations under specialized gTLDs? 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.</u>	

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**PROPOSED DATA REQUIREMENTS FOR SUNRISE REGISTRATIONS CHARTER QUESTIONS:**

**Question 2:**

- Does Registry Sunrise or premium name pricing unfairly limit the ability of trademark owners to participate during Sunrise?
- If so, how extensive is this problem?

Sources: INTA Survey and anecdotal evidence from trademark holders and registries; [collect Sunrise pricing information](#)

**Question 4:**

- Are Registry Operator reserved names practices unfairly limiting participation in Sunrise by trademark holders?

- Should Section 1.3.3 of Specification 1 of the Registry Agreement be modified to address these concerns? (Q4)
- 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? (Q5)
- Should Registries be required to provide Trademark Owners in the TMCH notice, and the opportunity to register the domain name should the Registry release it – what Registry concerns would be raised by this requirement?

Sources: Anecdotal data from different stakeholders, including registries. Registries that exist in jurisdictions that prohibit the publication of specific words/strings (example: profane language) should especially be sought for input.

**Question 5:**

- (a) 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?
- Are there any unintended results?
  - Does the ability of Registry Operators to expand their Sunrise Periods create uniformity concerns that should be addressed by this WG? (Q7)
  - Are there any benefits observed when the Sunrise Period is extended beyond 30 days?
  - Are there any disadvantages?
- (b) In light of evidence gathered above, should the Sunrise Period continue to be mandatory or become optional?
- 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?
  - In considering mandatory vs optional, should Registry Operators be allowed to choose between Sunrise and Claims (that is, make ONE mandatory)?

Sources: Reach out to SO/ACs, public interest groups and trade associations, registrars and registries for information (likely anecdotal evidence) - Review of articles, including investigative reporting articles, about the registration of domains in Sunrise Periods that have been noted to have an impact on free expression, fair use, and the ability of registrants to register domain names; possible additional questions for the Reporters on their research and findings.

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### Question 8:

LRP , ALP , QLP – Limited Registration Periods, Approved Launch Programs and Qualified Launch Programs:

- Are Limited Registration Periods in need of review vis a vis the Sunrise Period? Approved Launch Programs? Qualified Launch programs?
- Are the ALP and QLP periods in need of review?
- What aspects of the LRP are in need of review?

Sources: TLD Startup Information page has data that can be mined, as well as anecdotal data from registries - .MADRID is the only registry known to the Sub Team that has used an ALP. (Additional Note: Certain community members reported difficulties with the ALP approval process, which had seen a number of applications from community-based gTLD registries which considered Sunrise registrations as not being useful, e.g. because geographical terms and names of public authorities may not be trademarked. According to a community member (Amadeo Abril), out of eight ALP applications submitted that he knew of, only one was approved, partly because of the way the approval process was conducted by ICANN).

**Comment [MW12]:** See deleted comment (highlighted below) from Maxim Alzoba; and transcript from the Working Group’s session at ICANN59, at Pages 29-31: [https://schr.ws/hosted\\_files/icann59johannesburg2017/a3/Transcript%20RPMs%20in%20all%20gTLDs%2029%20June%20.pdf%20session%202.pdf](https://schr.ws/hosted_files/icann59johannesburg2017/a3/Transcript%20RPMs%20in%20all%20gTLDs%2029%20June%20.pdf%20session%202.pdf)

**Deleted:** According to CORE, it was the only applicant who decided to wait until ICANN gives approval to the particular ALP program, all other applicants (at least 6), who were represented by CORE decided to stop waiting for approval or rejection and to give up an attempt to apply for ALP (after almost one year spent in waiting for more and more questions)

### Question 11:

Question: How effectively can trademark holders who use non-English scripts/languages able to participate in sunrise (including IDN sunrises), and should any of them be further “internationalized” (such as in terms of service providers, languages served)?

Sources: Survey IDN gTLD Registries for the number of Sunrise Registrations that have taken place.

**Question 12:**

Question: Should Sunrise Registrations have priority over other registrations under specialized gTLDs? Should there be a different rule for some registries, [such as 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

Sources: Anecdotal evidence from registries.

Anecdotal evidence is generally available on domain name blogs (example: domiaining.com), as well as domain name forums (examples: Name Pros and DN Forum).

**Original Charter Question 21 (No rewording – referred to full WG):**

Question: In the light of concrete cases (case law) and from the perspective of owners of protected signs and of marks, which are the identified deficits of [RPMs](#)?

Sources: Anecdotal examples should be obtained. There may be some in the INTA study [\(Summary and presentation of results of INTA Cost Impact Report posted on WG wiki here \(under “Metrics, Reviews & External Reports”\)\)](#): <https://community.icann.org/x/OAusAw>.

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**Should these (or other) registries have slightly different rules, concerning how Sunrise works?**