



Alternate Trademark Clearinghouse Proposal

October 9, 2012



Introduction

- » Late 2011: Trademark Implementation Assistance Group (IAG) established.
- » Jan. 2012: Final Applicant Guidebook posted
- » April 2012: ICANN posts summary of Input from IAG and draft implementation model.
- » June 2012: ICANN announces selection of Deloitte and IBM as TMCH providers with Preliminary Cost model.
- » July 2012: TMCH-Tech list formed to discuss implementation issues.
- » August 2012: Forum on Technical Implementation Issues.
- » Sept. 2012: Community developed alternate models released for comment.
- » Sept. 25, 2012: ICANN posts next version of TMCH Requirements document for comment. No mention of alternate proposed models.



Development of Alternate TMCH Proposals

- » ARI / Neustar submit initial draft of alternate proposals on June 20, 2012.
- » Comments received from other registries and registrars and extensive discussion in Brussels at technical implementation forum.
 - » Overwhelming support from the technical providers of >90% of the new gTLD applications on alternate models as opposed to ICANN implementation models.
- » ARI, Neustar, Verisign & Demand Media worked on revised version of alternate models based on feedback.
- » 9/26/12: Release of Alternate TMCH Models to community.

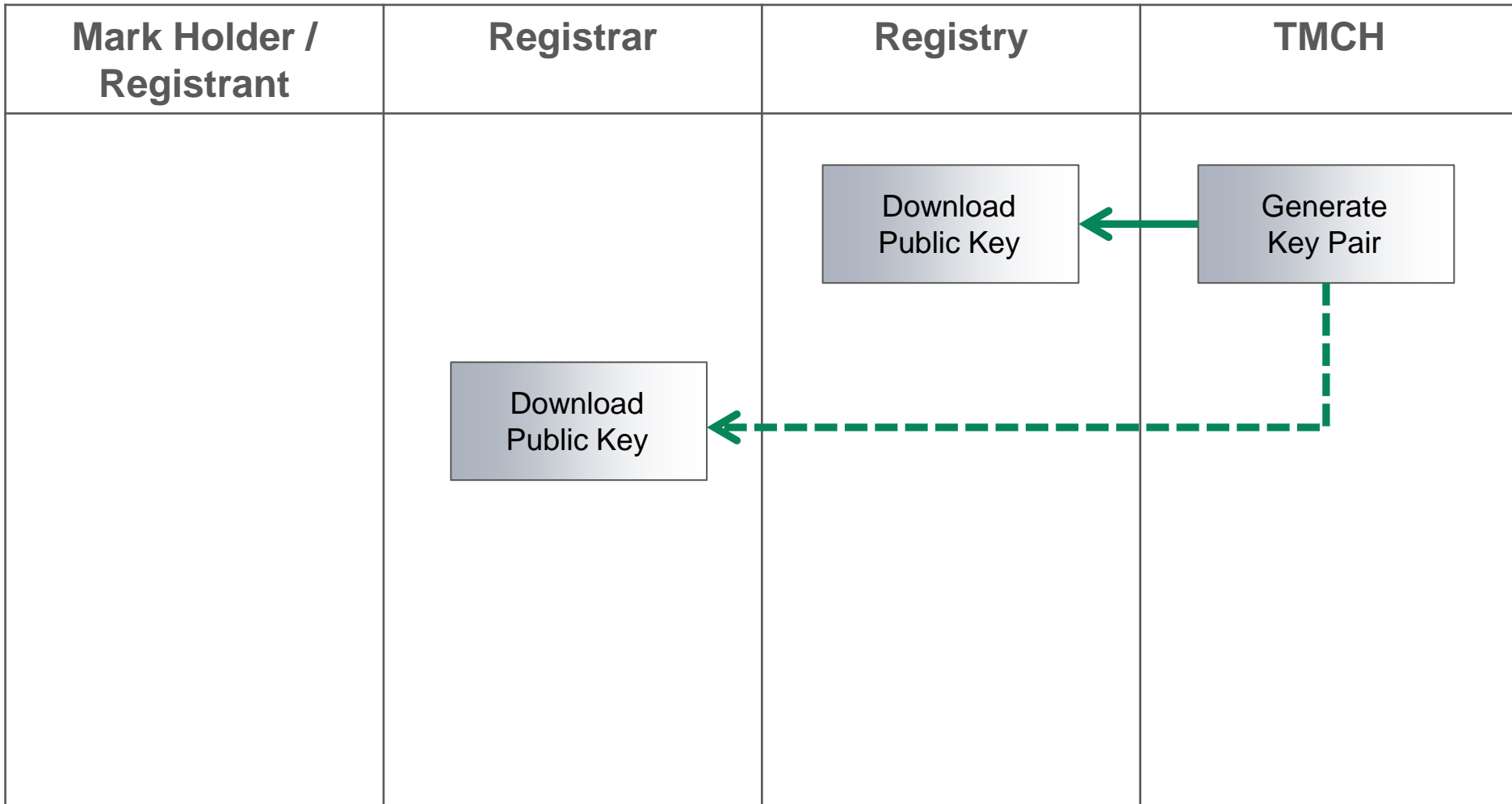
Issues with ICANN-Proposed Sunrise Model

1. ICANN's model proposes use of obscure sunrise codes
 - » Implies that Trademark Owners have to get a unique code for each mark in each TLD (100 marks for 1000 TLDs = 100,000 Sunrise Codes).
 - » Complicates ability to provide support – registries and/or registrars unable to diagnose or resolve issues without TMCH involvement.
2. No access to trademark information for registries
 - » Registries looking at additional criteria have to re-engage with TMCH - increasing costs
 - » Must rely on TMCH for registry eligibility requirements – creates legal liability issues.
3. Inability for Registry to publish Sunrise information in WHOIS.
4. More burdensome for registries to store all Sunrise codes regardless of how small/large the registries will be (increases costs).

Alternate Sunrise Proposal

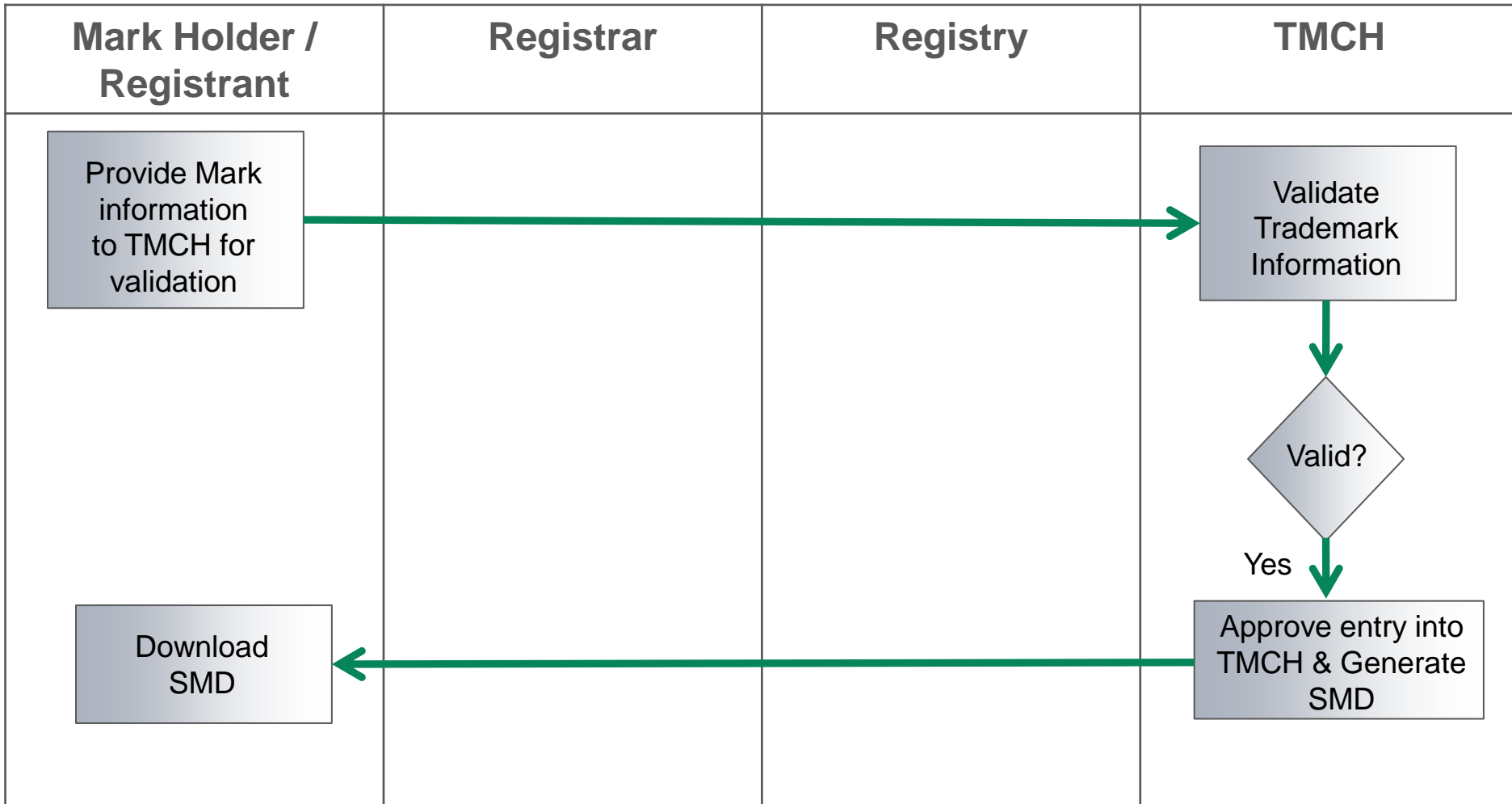
- » Uses PKI encryption/certificates as opposed to Sunrise Codes.
 - » 1 certificate (Signed Mark Data - SMD) per mark regardless of number of TLDs applied for.
- » TM Owner (or its agent) downloads certificate from TMCH once mark is validated and authenticated. Certificate has TMCH “signature” on it.
- » TM Owner (or its agent) uploads applicable certificate from TMCH when providing registrar with domain name registration information.
- » Registry verifies “signature” on certificate, with known “signature” of TMCH.
- » Registry provided access to all information in the certificate (which TM owner voluntarily provided to Registry).
 - » Registry is NOT provided with any other information from the TMCH or any information related to marks for which no Sunrise Application was received.
- » Registry allocates the domain name and notifies TMCH so that it can notify other TM owners with matching marks.

Alternate Sunrise Flow



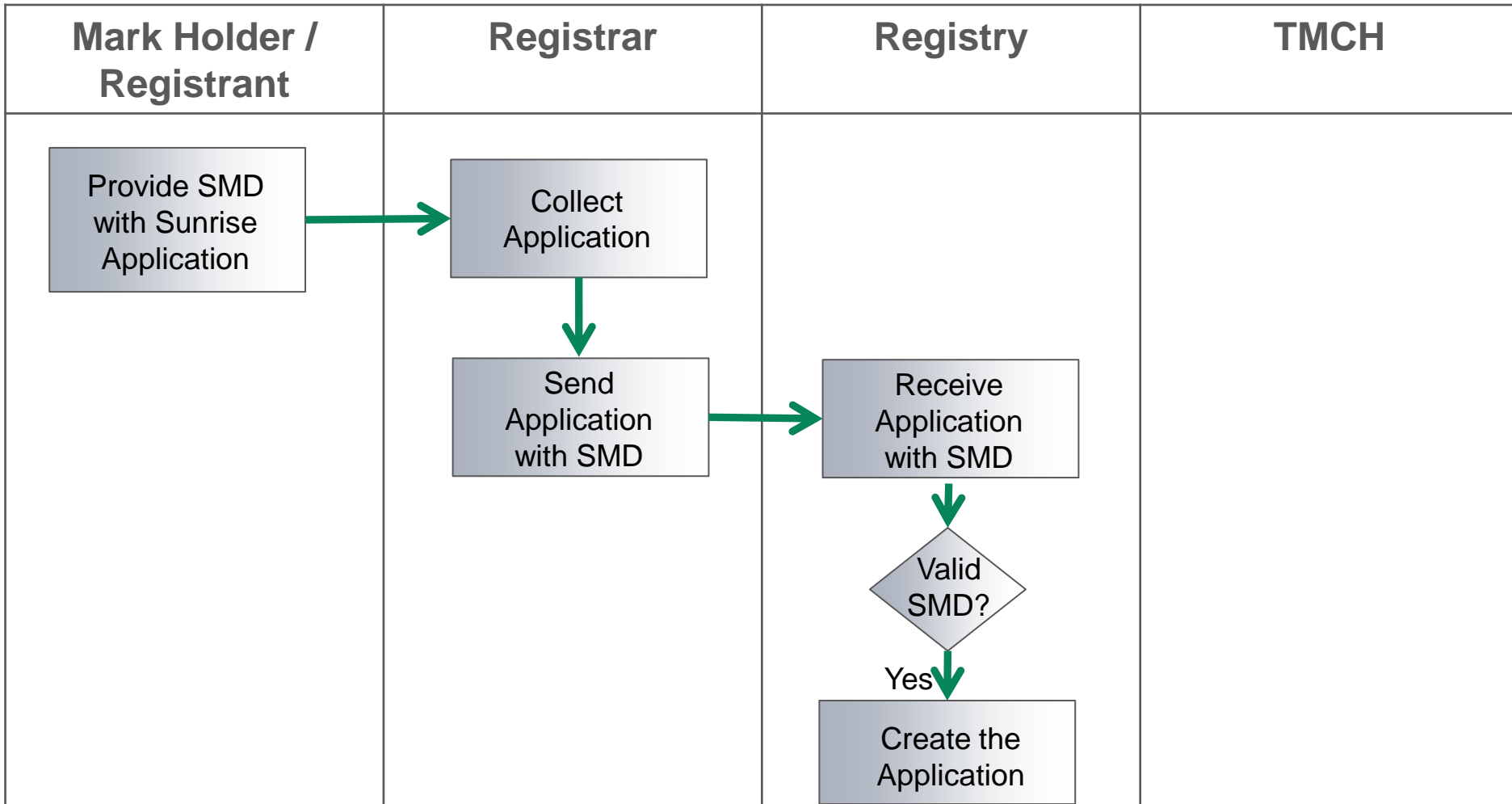
Step 1 – Distribution of Public Key

Alternate Sunrise Flow



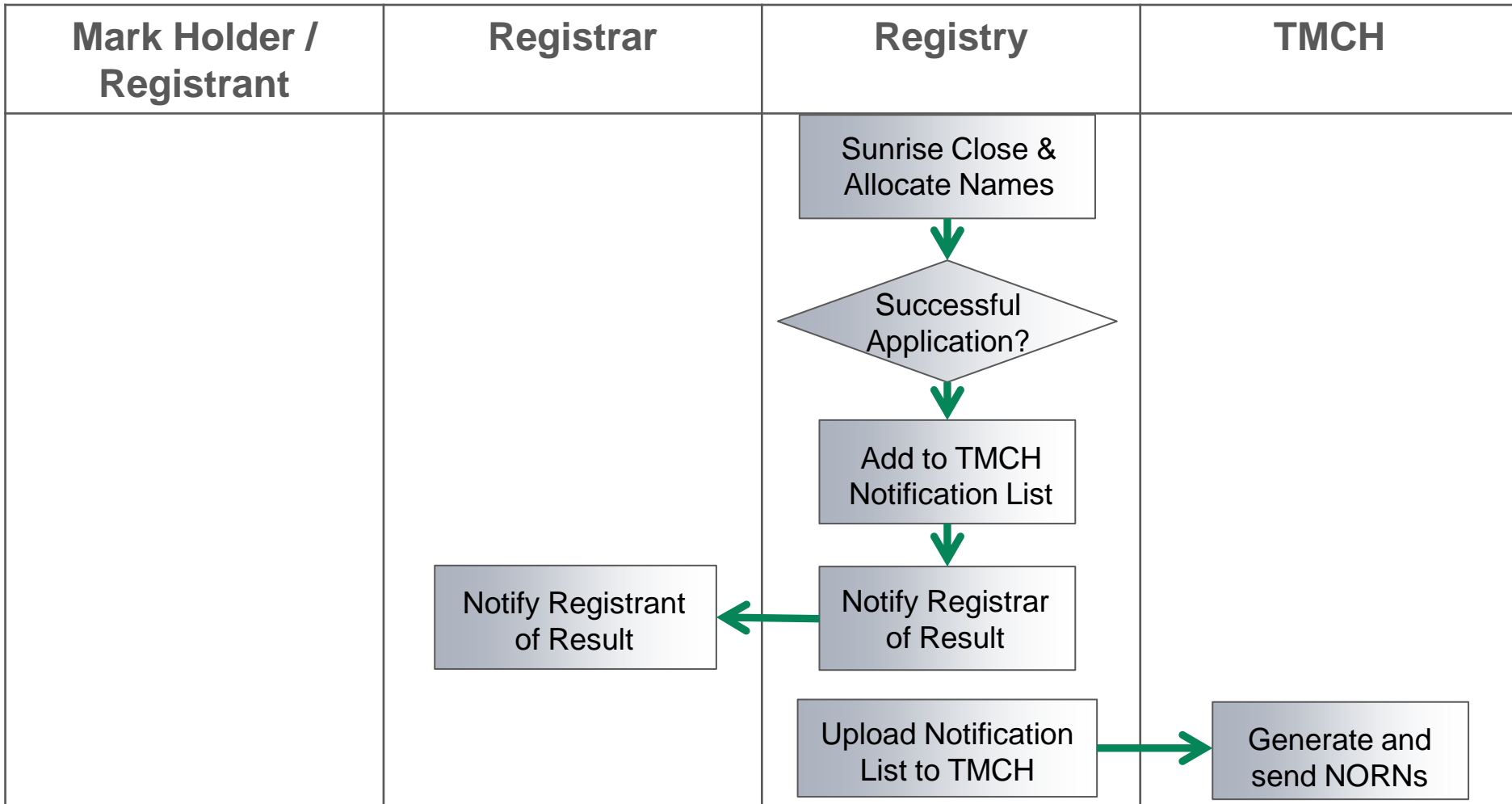
Step 2 – Mark Holder gets information into TMCH

Alternate Sunrise Flow



Step 3 – Mark Holder applies to TLD during Sunrise

Alternate Sunrise Flow



Step 4 – Allocation of Names

Alternate Sunrise - Benefits

- » Reduced complexity to ICANN Model
- » Allows the Registry to see trademark information of the applicant (and only the applicant) for:
 - » Customer support purposes;
 - » Allocation;
 - » Additional eligibility requirements;
 - » Incorporation in the Registry WHOIS.
- » For registries, it allows the use of a simple standard EPP extension (decreasing costs).
- » Leverage well known industry of PKI for providing trust with no need for replicating data in highly distributed environment (security best practice)
- » Certificate can also be used for other purposes including potentially for URS (pending community input as part of URS process).



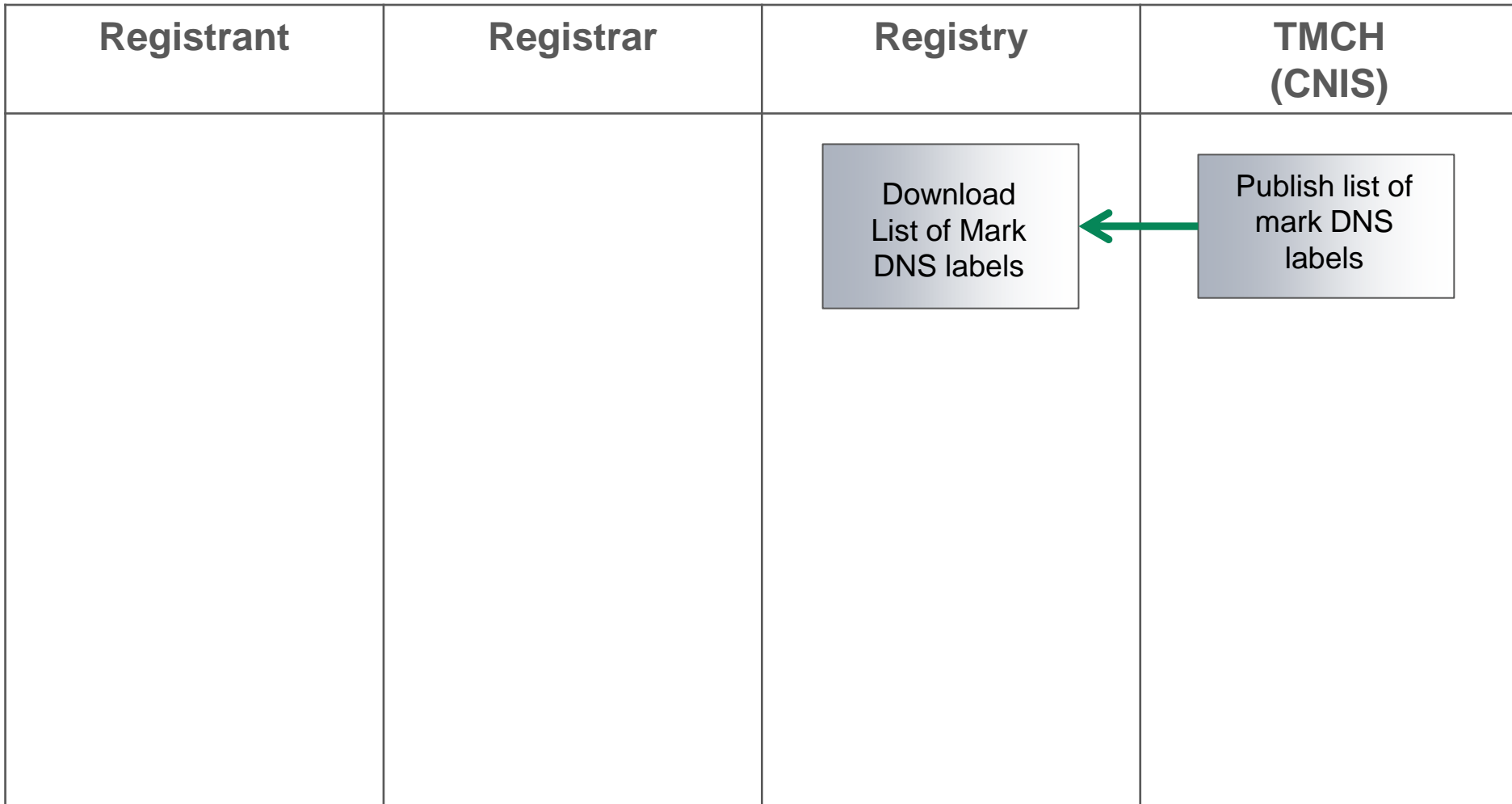
Issues with ICANN-Proposed Trademark Claims Process

- » ICANN Decentralized Model - involves sending entire TMCH database to every registry.
- » Unnecessary burden placed on TMCH and registries to replicate data for every entry in the TMCH.
 - » Registries managing multiple TLDs will have to store multiple copies of the database.
 - » Involves the storage and maintenance of large data sets.
- » Encrypted data is easily decrypted and can be easily data mined by registrars and registrants across any launching TLD – Data not secure.
- » Unnecessary and obscure encryption of data – customer support issues.
- » Risks and issues with use of “stale” data.
- » Proposed Model only considers first-come, first-served model and seemingly ignores models that have a contention resolution process.

Alternate Trademark Claims Process

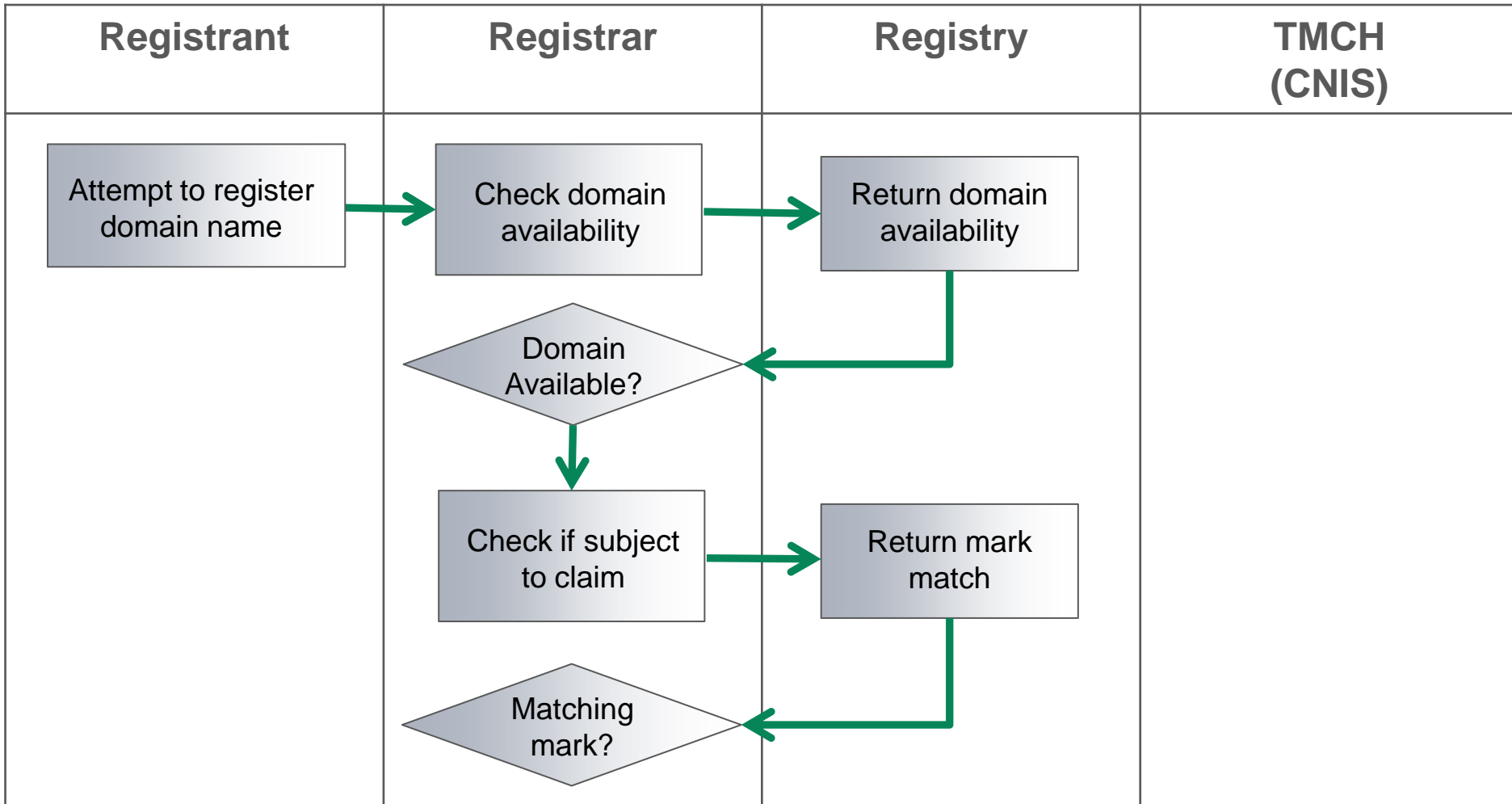
- » Centralized Model – Breaks down TM Claims into 2 parts.
 - » Does a claim exist for the matching domain name string?
 - » If yes, please send me the claims notice to display to the registrant.
- » TMCH publishes list of strings registered in the TMCH.
 - » Only involves the strings and NOT any other TM information.
- » Potential Registrant submits domain name application through Registrar
- » Registrar checks to see if domain name is available and whether it matches a claim (by comparing to TMCH published list of strings).
 - » If no, name is registered as normal.
 - » If yes, then registrar queries TMCH to get TM Claims data, downloads notice content from TMCH, and displays data to registrant. Registrant reads notice.
 - » If Registrant accepts the terms of the claim notice, name will be sent to registry to be created.
- » If registered, notice sent from Registry to TMCH to notify TM owners for matching strings.

Alternate Trademark Claims Flow



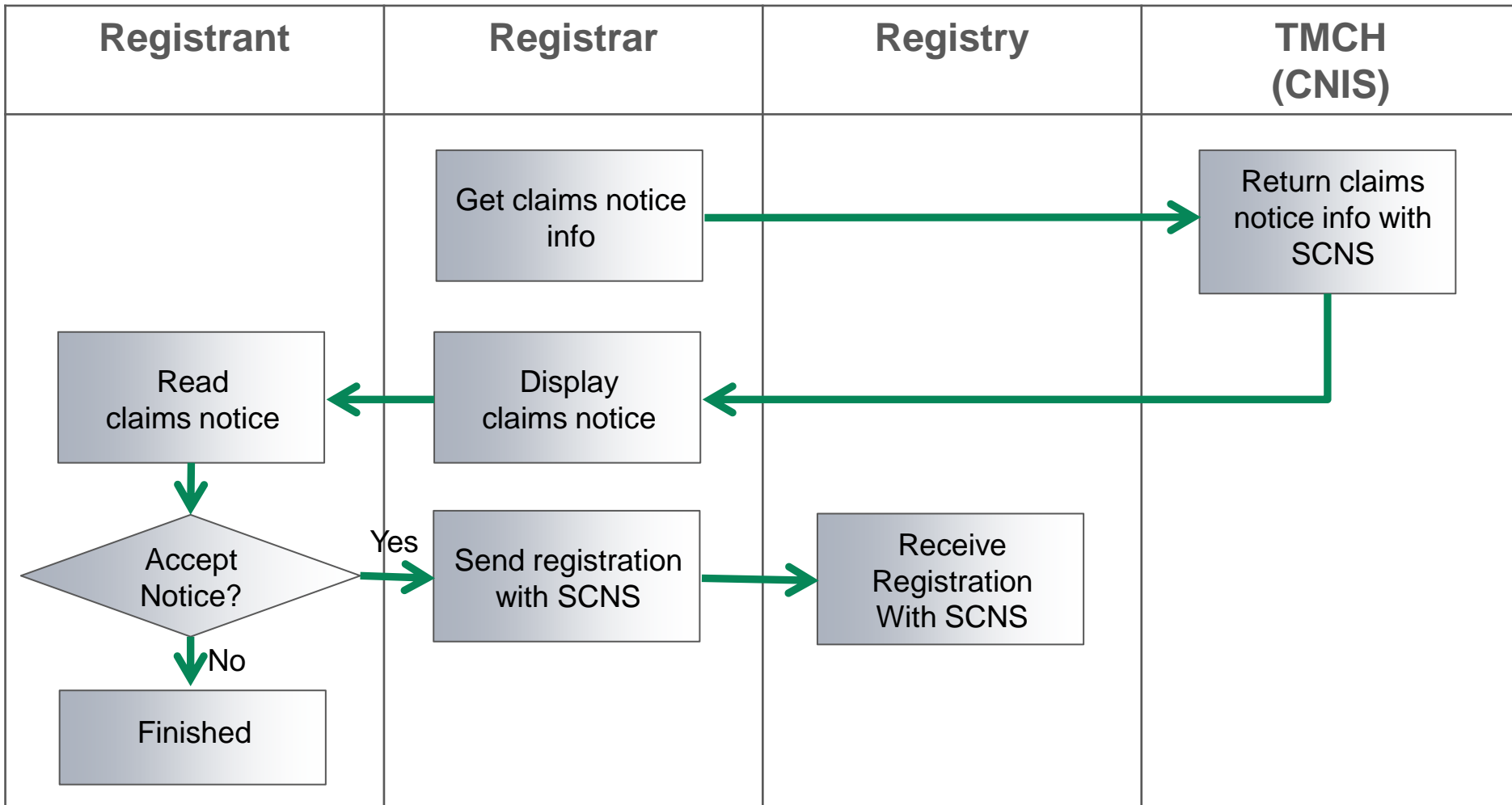
Step 1 – Distribution of Mark DNS Labels

Alternate Trademark Claims Flow



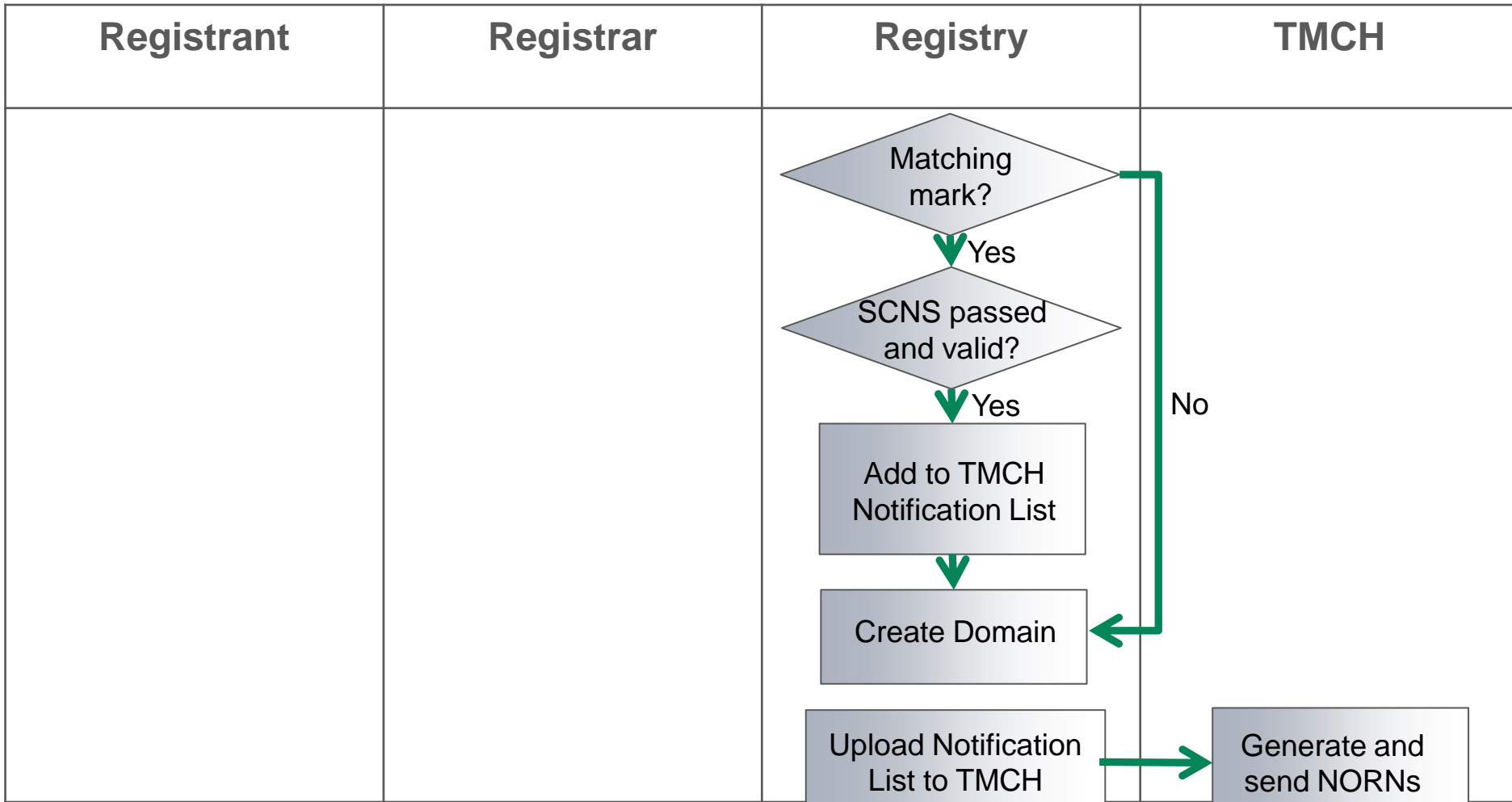
Step 2 – Registration of Names During Claims (Claims Check)

Alternate Trademark Claims Flow



Step 3 – Registration of Names During Claims (Claims Notice)

Alternate Trademark Claims Flow



Step 4 – Registration of names During Claims (Registration)



Alternate TM Claims - Benefits

- » Provides a realistic option for the TMCH to manage data mining based on various centralized protection mechanisms (e.g., rate limiting, authentication, etc.)
- » Does not involve sending entire database to Registries.
- » Technically efficient and simple to implement
- » System is auditable for dispute processes to ensure that notices were generated and made available to the registrant.
- » Accommodates multiple allocation mechanisms during landrush / general availability.

Alternate TM Claims – Increased Complexity for TMCH Providers

- » Requires TMCH to be highly available, redundant with strict SLAs for uptime and processing time.
 - » Puts TMCH in critical path for a limited percentage of registrations if a TM claim exists for a name.
 - » If TMCH is “down”, then registries will not be able to process a registration for domain names that match a TM in the TMCH.
- » We recommend TMCH follow standard requirements that gTLD Registries are required to follow:
 - » Data should be escrowed with reputable escrow provider;
 - » Redundant data centers to ensure robustness;
 - » Industry-standard business continuity plans;
 - » Strict SLAs with financial penalties.



Alternate TM Claims – Outstanding Issues

There are some issues we need feedback on.

1. How are claims to work during landrush style period where registrations are not on a first-come, first-served principal.
2. How long after retrieving a TM Claims notice is it allowed to be accepted for use in a domain name registration?
3. How long after accepting a TM Claims notice is that acceptance allowed to be used in a domain name registration without checking for updated data at the TMCH?
4. How do we deal with issues of “pre-registrations” that were accepted by registrars prior to TM Claims period.



Conclusion

- » Considering the decreased complexity, decreased cost, increased security, increased flexibility, and overwhelming support of the registry community, we are asking for your support with the alternate model.
- » ICANN currently has a public comment period underway with comments due on Oct. 15th; Reply period ends Nov. 7th. <http://www.icann.org/en/news/public-comment/tmch-docs-24sep12-en.htm>.
- » If you support the alternate models, please submit comments.