

## Working Group Metrics Request Form

<b>Group Submitting Request:</b>	GNSO Review of All Rights Protection Mechanisms (RPMs) Policy Development Process (PDP) Working Group
<b>Request Date:</b>	[DD-MMM-YYYY]
<b>Policy or Issue being explored:</b>	<p>The Working Group has been tasked by the GNSO Council to review all RPMs developed by ICANN in a two-phased PDP. The PDP Charter notes that one fundamental purpose of this review is to “create a framework for consistent and uniform reviews of these mechanisms in the future”. It also specifies that the Working Group should first “assess the effectiveness of the relevant RPM(s), for which the Working Group should seek the input of experienced online dispute resolution providers and other subject matter experts, as may be appropriate.”</p> <p>In addition, the Competition, Consumer Protection &amp; Consumer Trust Review Team (CCT-RT) had noted in its Draft Report (published March 2017) that the need for data on this topic is “pivotal” and is necessary “to fully inform the community on the impact of ICANN’s New gTLD Program on the cost and effort required to protect trademarks in the Domain Name System”.</p> <p>This is the first time that the RPMs will have been subject to a policy review by the ICANN community.</p>
<b>Issue to be solved:</b>	<p>As none of the RPMs have been subject to review to date, no comprehensive, publicly available data currently exists that measures the effectiveness of any, some or all of them. In order for the Working Group to perform its review in any meaningful way, both quantitatively and qualitatively, it needs to collect data and input from a number of sources and stakeholders. These include ICANN Contracted Parties, domain name registrants, potential registrants, trademark and brand owners, service providers, and academic and other reporting channels.</p> <p>This exercise will be a massive data gathering effort whose broad sweep and complicated scope mean that the Working Group will need to rely on professional assistance (e.g. professional survey designers) to create survey questions that are clear and targeted appropriately, so as to generate as many useful responses as possible (including from outside the “usual” ICANN respondents). Assistance will likely also be needed for identifying, targeting and reaching a broad pool of respondents beyond the regular ICANN community.</p> <p>The collection and organization of the data requested by the Working Group will bolster ICANN’s data collection efforts related to the RPMs</p>

	to date, which have been ad-hoc and limited largely to community feedback and a small set of sources (e.g. specific topic studies, obligatory reports from Contracted Parties or contractors hired for specific projects, community comments).
<b>Data Requirements:</b>	Please see <u>Attachment 1</u> , which contains the list of Charter questions for which the Working Group is seeking professional assistance. The present request is limited to data that the Working Group has identified as critical to its current review of the Sunrise and Trademark Claims RPMs, during Phase One of this two-phased PDP.
<b>Responsible Team(s) or Data Source:</b>	Please see <u>Attachment 2</u> for the full list of data sources which the Working Group has identified, as well as proposed methodology for obtaining the data required.
<b>Expected Delivery Date:</b>	[DD-MMM-YYYY]
<b>Resource Estimation:</b>	<p><u>Financial resources:</u></p> <ul style="list-style-type: none"> <li>• funding for one or more professional survey designers, including assistance with identifying target groups and reaching potential respondents beyond regular ICANN community participants (e.g. domain name registrants, brand owners, potential registrants);</li> <li>• funding for research assistance (e.g. graduate law students);</li> <li>• funding for third party contractors for specific tasks as outlined in Attachment 2, #8</li> </ul> <p><u>Staff resources:</u></p> <ul style="list-style-type: none"> <li>• The size and scale of this exercise also means that the collation and facilitation, for Working Group analysis, of all the data and input will impact staff time and availability as well. The Working Group’s conservative estimate is that a minimum of several hundreds of staff hours will be required to complete the data gathering tasks.</li> </ul>
<b>Budget Considerations:</b>	<p>Minimum of US\$50,000 (estimated) for all the surveys to be designed, sent out and results collated</p> <p>Additional sum of US _____ (estimated) for third party contractors as specified in Attachment 2</p>

## **ATTACHMENT 1: LIST OF FINAL CHARTER QUESTIONS FOR THE SUNRISE & TRADEMARK CLAIMS RPMS FOR WHICH DATA IS BEING SOUGHT**

### **Question 2:**

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

### **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?
- 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?
- 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?

### **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?
- 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 recommendations 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)?

### **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?

### **Question 11:**

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)?

**Question 12:**

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

**LIST OF FINAL CHARTER QUESTIONS FOR TRADEMARK CLAIMS****Question 1:**

Is the Trademark Claims service having its intended effect? Consider the following questions specifically in the context both of a Claims Notice as well as a Notice of Registered Name:

- a) Is the Trademark Claims service having its intended effect of deterring bad-faith registrations and providing notice to domain name applicants?
- b) Is the Trademark Claims service having any unintended consequences, such as deterring good-faith domain name applications?

**Question 2:**

If the answers to 1.a. is “no” or 1.b. is “yes”, or if it could be better: What about the Trademark Claims Notice and/or the Notice of Registered Name should be adjusted, added or eliminated in order for it to have its intended effect, under each of the following questions?

- a) Should the Claims period be extended - if so, for how long (up to permanently)?
- b) Should the Claims period be shortened?
- c) Should the Claims period be mandatory?
- d) Should any TLDs be exempt from the Claims RPM and if so, which ones and why?
- e) Should the proof of use requirements for Sunrise be extended to include the issuance of TMCH notices?

**Question 3:**

(a) Does the Trademark Claims Notice to domain name applicants meet its intended purpose?

- i. If not, is it intimidating, hard to understand, or otherwise inadequate?
  - If inadequate, how can it be improved?
- ii. Does it inform domain name applicants of the scope and limitations of trademark holders' rights?
  - If not, how can it be improved?
- iii. Are translations of the Trademark Claims Notice effective in informing domain name applicants of the scope and limitation of trademark holders' rights?

(b) Should Claims Notifications only be sent to registrants who complete domain name registrations, as opposed to those who are attempting to register domain names that are matches to entries in the TMCH?

**Question 4:**

Is the exact match requirement for Trademark Claims serving the intended purposes of the Trademark Claims RPM? In conducting this analysis, recall that IDNs and Latin-based words with accents and umlauts are currently not serviced or recognized by many registries.

- a) What is the evidence of harm under the existing system?
- b) Should the matching criteria for Notices be expanded?
  - i. Should the marks in the TMCH be the basis for an expansion of matches for the purpose of providing a broader range of claims notices?
  - ii. What results (including unintended consequences) might each suggested form of expansion of matching criteria have?
  - iii. What balance should be adhered to in striving to deter bad-faith registrations but not good-faith domain name applications?
  - iv. What is the resulting list of non-exact match criteria recommended by the WG, if any?
- c) What is the feasibility of implementation for each form of expanded matches?
- d) If an expansion of matches solution were to be implemented:
  - i. Should the existing TM Claims Notice be amended? If so, how?
  - ii. Should the Claim period differ for exact matches versus non-exact matches?

**Question 5:**

Should the Trademark Claims period continue to be uniform for all types of gTLDs in subsequent rounds?

**ATTACHMENT 2: LIST OF DATA SOURCES AND PROPOSED METHODOLOGY**

Data Sources and Proposed Methodology as identified by the Working Group	Purpose & Scope of Data/Feedback to be Obtained
1. Survey of New gTLD Registry Operators (RO)	Obtain anecdotal evidence to facilitate Working Group review of Sunrise Charter Question #2 (whether Sunrise and/or Premium Pricing affects trademark (TM) holders’ ability to participate in Sunrise)
	Obtain anecdotal evidence to facilitate Working Group review of Sunrise Charter Question #4 (whether registry use of Reserved Names lists affects TM holders’ ability to participate in Sunrise)
	Obtain anecdotal evidence to facilitate Working Group review of Sunrise Charter Question #5 (whether there should be mandatory/optional Sunrise, and the efficacy of a 30-day mandatory minimum Sunrise period)
	Obtain anecdotal evidence to facilitate Working Group review of Sunrise Charter Question #12 (whether there is a need for priority or special rules for specialized gTLDs)
	If a RO ran an Approved Launch Program (ALP), Qualified Launch Program (QLP) and/or Limited Registration Period (LRP) – obtain feedback on whether, and if so what aspects of, the programs should be reviewed (Sunrise Charter Question #8)
	If a RO offered an Internationalized Domain Name (IDN) gTLD – obtain feedback on the efficacy of Sunrise for IDN gTLDs (Sunrise Charter Question #11)
	If a RO operates in a jurisdiction where profane or other words (strings) are prohibited – obtain feedback on its use of Reserved Names lists (Sunrise Charter Question #4)
	Obtain feedback from ROs who may believe that their business models (e.g. geo, community or other specialized TLDs) possess attributes that warrant a non-uniform policy in relation to Claims (Claims Charter Question #5)
2. Survey of Registrars	Obtain anecdotal evidence to facilitate Working Group review of Sunrise Charter Questions #4 & #5

	<p>(i.e. ROs' use of Reserved Names lists; mandatory vs. optional Sunrise; efficacy of mandatory minimum 30-day Sunrise period)</p>
	<p>THE FOLLOWING QUESTIONS, TO BE ADDRESSED TO REGISTRARS, WERE DEVELOPED BY THE TRADEMARK CLAIMS SUBTEAM FOR CHARTER QUESTION #1:</p>
	<p>1. What is the abandonment rate associated with reasons other than only a Claims notice being triggered? What is the difference between abandonment rates between those that trigger Claims Notices, and those that don't?</p>
	<p>2. Is there anecdotal data explaining why potential registrants did not complete registrations ?</p>
	<p>3. At what point in the registration process is a trademark record downloaded? Does this happen when domain names are placed in carts, or does it happen when payment/attempted registrations are done later in the process?</p>
	<p>4. Many registrars take orders for domain names before general availability – pre-orders do not normally result in Claims notices being presented until within 48 hours of general availability – does this contribute to the abandonment rate? If so, to what extent are pre-ordered domain name registrations abandoned?</p>
	<p>5. Would it be feasible for registrars to run surveys of domain name applicants during subsequent rounds of new gTLDs for anecdotal evidence on why registrations are being abandoned? Is this something ICANN should mandate?</p>
	<p>6. Has the TM Claims Notice been translated into the language of the registration agreement and is it being made available to registrants in that language?</p>
<p>3. Survey of TM &amp; Brand Owners</p>	<p>Obtain feedback on Sunrise Charter Questions #2, #4 &amp; #5 (whether Premium Pricing and the use of Premium Names and Reserved Names lists affected TM owners' willingness to participate in Sunrise; whether intended purpose of mandatory 30-day Sunrise fulfilled, and whether Sunrise should be mandatory/optional)</p>
	<p>Obtain feedback on number of cease-and-desist letters sent (Claims Charter Question #3 – whether</p>

	Claims serves its intended purpose)
	Obtain feedback on actual brand owner experiences regarding evidence of harm intended to be addressed by the Claims RPM (Claims Charter Question #4(a))
4. Survey of Domain Name Registrants	Obtain anecdotal evidence on effect of Claims Notices (Claims Charter Question #1(b))
	Obtain “more granular data about the percentage of those who abandoned registration attempts in response to a notice based on dictionary terms versus those who abandoned attempts in response to distinctive trademarks” (quote from Sub Team report on Claims Charter Question #1(b))
	Obtain feedback on number of cease-and-desist letters received (Claims Charter Question #3)
5. Survey of Potential Registrants	Obtain “more granular data about the percentage of those who abandoned registration attempts in response to a notice based on dictionary terms versus those who abandoned attempts in response to distinctive trademarks” (Claims Charter Question #1(b))
	Show copy of Claims Notice to average Internet users who are likely to register a domain - to test understanding of the notice (in multiple languages, using languages into which the TMCH has translated its website) (Claims Charter Questions #1 & #3)
6. Survey of public interest groups and trade associations (to be identified by the Working Group)	Obtain feedback on Sunrise Charter Question #5 (mandatory vs. optional Sunrise and efficacy of 30-day mandatory minimum Sunrise period)
7. Research (can be done by law students or graduate researchers and/or staff)	A two-step process to obtain specific data showing: (1) what domains registered in new gtlds were disputed; and (2) whether they were registered during the applicable claims period for that gTLD (purpose is to evaluate efficacy of Claims Notice if one had been issued (Claims Charter Questions #1, #2, #3)):

	<ul style="list-style-type: none"> <li>● Collect, compile and organize all UDRP complaints filed in gTLDs launched under the 2012 New gTLD Program (equivalent URS data is already being compiled by ICANN staff)</li> <li>● Pull down WHOIS records for all domains subject to URS and UDRP complaints under the 2012 New gTLD Program – check for registration date to see if it matches with the relevant gTLD RO’s Claims Period and identify whether the URS complaint involves a trademark accepted into the TMCH in order to to evaluate efficacy of Claims Notice if one had been issued</li> </ul>
	<p>Find articles and other research “discussing the harm of typosquatting and other forms of non-exact-match cybersquatting, including all forms of consumer harm, not just traffic redirection” (quote from Sub Team report on Claims Charter Question #4) and “gaming” of the Sunrise Period.</p>
8. Contractors	<p>Hire contractor to generate “semantics of programming that can be used to test the historical data to see how many Claims Notices may be generated” (quote from Sub Team report on Claims Charter Question #4)</p>
	<p>Following completion of above task, ICANN staff to work with contractor (can be Deloitte and/or IBM) to determine feasibility of developing a possible Claims system to handle non-exact matches (Claims Charter Question #4)</p>
	<p>ICANN staff to work with Deloitte and/or IBM to obtain aggregated, anonymized statistics demonstrating both percentages of disputed and undisputed domains that were accepted into the TMCH and that generated a Claims Notice</p>
	<p>ICANN staff to work with contractor to obtain Sunrise and General Availability for a sampling of different types of domains (e.g. geo, community, open) - purpose is to determine if Sunrise and/or Premium Pricing affected ability of trademark holders to participate in Sunrise (Sunrise Charter Question #2)</p>
	<p>Hire contractor to assist Working Group in sorting and analyzing all data and feedback collected</p>
9. List of gTLDs that had Approved Launch Programs, Qualified Launch Programs and/or Limited Registration Periods	<p>ICANN staff to compile the list for Working Group analysis of the efficacy of these mechanisms (Sunrise Charter Question #8)</p> <p>Note – staff is compiling the list and dates only; further analysis will be conducted by the Working</p>

	Group following input from ROs in response to the professional survey proposed above
10. List of IDN gTLDs that had a Sunrise Period	<p>ICANN staff to compile the list for Working Group analysis of the efficacy of Sunrise for TMs in non-Latin scripts (Sunrise Charter Question #11)</p> <p>Note – staff is compiling the list only; actual Sunrise numbers for each gTLD will be compiled as part of the professional survey of ROs proposed above, with further analysis conducted by the Working Group</p>
11. Compilation of investigative journalists’ and other media reports as well as coverage from industry blogs and publications	<p>Staff to collect articles from Working Group-approved list of blogs, to assist with Working Group analysis of Sunrise Charter Questions #5 (mandatory vs. optional Sunrise and efficacy of 30-day mandatory minimum Sunrise period); and #12 (whether there is a need for priority or special rules for specialized gTLDs)</p> <p>Note – staff is compiling the articles only; analysis of their content and meaning will be performed by the Working Group</p>
12. Compilation of all URS cases (including domains in dispute and outcomes)	Staff to compile the list, to compare against WHOIS data (to be obtained as part of the two-step research process noted in #7 above) for domains in dispute and discover which domains were registered during the relevant Claims Period for that gTLD
13. Compilation of data and conclusions from the Analysis Group’s report on the Trademark Clearinghouse	Staff to extract relevant data and conclusions as a starting point for the Working Group’s analysis of the efficacy of the Sunrise and Claims RPMs, and avoid duplication of effort where the Analysis Group has already provided the data required
14. Compilation of INTA Cost Impact Study results	Staff to compile results relevant to Sunrise and Claims, to supplement anecdotal evidence obtained via the surveys proposed above, to determine if Sunrise and/or Premium Pricing affected ability of trademark holders to participate in Sunrise (Sunrise Charter Question #2)