

ANNEX V

**Rules for Administrative Procedure Concerning
Abusive Domain Name Registrations**

I. GENERAL PROVISIONS

Definitions

Article 1

In these rules:

“Complainant” means the party initiating a complaint concerning a domain name registration.

“Panel” means the administrative panel appointed to rule upon a complaint concerning a domain name registration.

“Party” means the Complainant or the Respondent.

“Policy” means the Policy on Dispute Resolution for Abusive Domain Name Registrations adopted by the Internet Corporation for Assigned Names and Numbers (ICANN).

“Provider” means a dispute-resolution service provider that has received accreditation to administer the procedure established by the Policy and that is specified in the domain name registration agreement.

“Registrar” means the authorized registrar with which the Respondent has registered the domain name that is the subject of the complaint.

“Respondent” means the holder of a domain name registration against which a complaint is initiated.

Scope of Application of Rules

Article 2

Where a Complaint is initiated concerning a domain name that has been registered in top-level domains to which the Policy applies, it shall be decided in accordance with the Policy and these Rules, as in effect on the date of the commencement of the Complaint.

Notices, Periods of Time

Article 3

(a) Any notice or other communication that may or is required to be given under these Rules shall be delivered by expedited postal or courier service, transmitted by telefax, or sent, where the Provider has the appropriate technical facilities, by electronic transmission through the Internet.

(b) A Party's contact details, as provided in the domain name registration agreement, or updated with the Registrar pursuant to that agreement, shall be a valid address for the purpose of any notice or other communication in the absence of any notification of a change by that Party.

(c) For the purpose of determining the date of commencement of a time-limit, a notice or other communication shall be deemed to have been received on the day it is delivered or, in the case of telecommunications or Internet modalities, transmitted.

(d) For the purpose of determining compliance with a time-limit, a notice or other communication shall be deemed to have been sent or transmitted if it is dispatched prior to or on the day of the expiration of the time-limit.

(e) For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice or other communication is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day that follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

(f) The Provider may, at the request of a Party or on its own motion, extend the period of time referred to in Article 8(a).

Representation

Article 4

(a) Any Party may be represented or assisted by persons of its choice, irrespective of, in particular, nationality or professional qualifications.

(b) Each Party shall communicate the names, postal and e-mail addresses and telephone and telefax numbers of any representative to the Provider and to the other Party.

Exclusion of Liability

Article 5

Except in respect of deliberate wrongdoing, any member of a Panel constituted under these Rules and the Provider shall not be liable to a Party for any act or omission in connection with any proceedings under these Rules.

II. COMMENCEMENT OF COMPLAINT

The Complaint *Article 6*

(a) Any person may initiate a complaint under these Rules concerning a domain name that has been registered in a top-level domain to which the Policy applies by transmitting the Complaint to a Provider specified in the domain name registration agreement.

(b) The Complaint shall contain:

(i) a request that the Complaint be referred to a Panel under these Rules;

(ii) the names and postal and e-mail addresses and the telephone and telefax numbers of the Complainant and the Respondent and of any representative of the Complainant;

(iii) an indication of the domain name that is the subject of the Complaint;

(iv) an indication of the Registrar that registered the domain name;

(v) an allegation that the registration of the domain name is abusive, as defined in the Policy;

(vi) a description of the grounds on which the Complaint is made;

(vii) any documentary evidence upon which the Complainant relies, together with a schedule of such documents; and

(viii) a statement of the determination sought.

(c) The Complaint may relate to more than one domain name registered in the same or different top-level domains to which the Policy applies, provided that the domain names are registered by the same person.

Notifications by the Provider Upon Submission of Complaint
Article 7

(a) The date of commencement of the proceedings shall be the date on which the Complaint is received by the Provider.

(b) The Provider shall transmit the Complaint to the Respondent and inform both the Complainant and the Respondent of the date of commencement of the proceedings.

The Response
Article 8

(a) Within 10 days of the date of commencement of the proceedings the Respondent shall submit to the Provider a Response which shall contain a statement of defense including comments on any of the elements in the Complaint, as well as any documentary evidence upon which the Respondent relies, together with a schedule of such documents.

(b) The Provider shall transmit the Response to the Complainant.

III. COMPOSITION AND ESTABLISHMENT OF THE PANEL

Appointment of the Panel
Article 9

(a) The Provider shall appoint a Panel of three members, one of whom it shall designate to be the presiding member, to conduct the proceedings and to reach a determination on the Complaint. Unless the Parties have the same nationality, the presiding member of the Panel shall, in the absence of special circumstances, be a national of a country other than the countries of the Parties.

(b) The Parties shall be notified by the Provider of the appointment of the members of the Panel and of the presiding member.

Impartiality and Independence
Article 10

(a) Each member of the Panel shall be impartial and independent.

(b) Each prospective member of the Panel shall, before accepting appointment, disclose to the Provider, the Parties and other members of the Panel any circumstances that might give rise to justifiable doubt as to that person's impartiality or independence, or confirm in writing that no such circumstances exist.

(c) If, at any stage during the proceedings, new circumstances arise that might give rise to justifiable doubt as to the impartiality or independence of any member of the Panel, that member shall promptly disclose such circumstances to the Provider, the Parties and the other members of the Panel.

Availability, Acceptance and Notification
Article 11

(a) Each member of the Panel shall, by accepting appointment, be deemed to have undertaken to make available sufficient time to enable the proceedings to be conducted and completed expeditiously.

(b) Each prospective member of the Panel shall communicate acceptance of appointment to the Provider.

Objection to a Member of the Panel
Article 12

A Complainant or Respondent may present an objection to any member of the Panel if circumstances exist that give rise to justifiable doubt as to the member's impartiality or independence in relation to the Complaint.

Article 13

A Complainant or Respondent presenting an objection to a member of the Panel shall submit a notice to the Provider, the Panel and the other Party, stating the reasons for the objection, within 7 days after being notified of that member's appointment or after becoming aware of the circumstances that it considers give rise to justifiable doubt as to that member's impartiality or independence.

Article 14

When an objection to a member of the Panel has been presented by a Party, the other Party shall have the right to respond to the objection and shall, if it exercises this right, submit, within 5 days after receipt of the notice referred to in Article 13, its response to the Provider, the Party presenting the objection and the Panel.

Article 15

The Panel may, in its discretion, suspend or continue the proceedings concerning the Complaint in relation to which the objection has been presented during the pendency of the objection.

Article 16

The other Party or the member may agree to the objection. In either case, the member shall be replaced without any implication that the grounds for the objection are valid.

Article 17

If the other Party or the member does not agree to the objection, the decision on the objection shall be made by the Provider in accordance with its internal procedures. Such a decision is of an administrative nature and shall be final. The Provider shall not be required to state reasons for its decision.

Release from Appointment

Article 18

At the request of a member of the Panel, the member may be released from appointment either with the consent of the Parties or by the Provider.

Replacement of a Member of the Panel

Article 19

(a) Whenever necessary, a substitute member of the Panel shall be appointed by the Provider.

(b) Pending the replacement, the proceedings shall be suspended, unless otherwise agreed by the Parties.

IV. CONDUCT OF THE PROCEEDINGS

Transmission of the File to the Panel

Article 20

The Provider shall transmit the file to each member of the Panel as soon as the member is appointed.

General Powers of the Panel
Article 21

(a) Subject to these Rules, the Panel may conduct the proceedings in such manner as it considers appropriate.

(b) In all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case.

(c) The Panel shall ensure that the proceedings take place with due expedition. It may, at the request of a Party or on its own motion, extend in exceptional cases a period of time fixed by these Rules, by itself or as agreed to by the Parties. In urgent cases, such an extension may be granted by the presiding member alone.

Language of Proceedings
Article 22

(a) Unless otherwise agreed by the Parties, the language of the proceedings shall be the language of the domain name registration agreement, subject to the power of the Panel to determine otherwise, having regard to any observations of the Parties and the circumstances of the proceedings.

(b) The Panel may order that any documents submitted in languages other than the language of the proceedings be accompanied by a translation in whole or in part into the language of the proceedings.

Further Statements
Article 23

The Panel may, in its discretion, allow or require further statements from the Parties.

Communication Between Parties and the Panel
Article 24

Except as otherwise provided in these Rules or permitted by the Panel, no Party or anyone acting on its behalf may have any *ex parte* communication with any member of the Panel with respect to any matter of substance relating to the Complaint.

Evidence
Article 25

- (a) The Panel shall determine the admissibility, relevance, materiality and weight of evidence.
- (b) At any time during the proceedings, the Panel may, at the request of a Party or on its own motion, order a Party to transmit such documents or other evidence as it considers necessary or appropriate.

Evidentiary Presumption in Certain Cases
Article 26

Where the Complainant is the beneficiary of an exclusion granted under ICANN's Policy for Domain Name Exclusions and the Complainant shows that the domain name that is the subject of the Complaint is identical or misleadingly similar to the mark that is the subject of the exclusion and that the use of the domain name is likely to damage the interests of the Complainant in that mark, the Respondent shall have the burden of justifying the legitimacy of its registration of the domain name.

Hearings
Article 27

- (a) Normally, the determinations on Complaints under these Rules are to be made with reference to the file alone. However, as an exceptional matter a Panel may, at the request of a Party or on its own motion, determine in relation to a particular Complaint that a hearing shall be held with the participation of the Parties.
- (b) For the purposes of this Article, "hearing" shall include a physical meeting, a telephone or video conference and the simultaneous exchange of electronic communications in a manner that allows the Panel and the Parties to receive any communication sent by one of them and to send communications to the others.
- (c) In the event of a hearing, the Panel shall give the Parties adequate notice of the date, time and modality thereof, determine whether the hearing is to be private, and determine whether and, if so, in what form a record shall be made.

Default
Article 28

- (a) If the Respondent, without showing good cause, fails to submit its Response in accordance with Article 8(a), the Panel shall, unless there are exceptional circumstances that the Panel considers, in its discretion, call for other action, nevertheless proceed with the Complaint and make its determination.

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(b) The Panel may also proceed with the Complaint and make its determination if a Party, without showing good cause, fails to avail itself of the opportunity to present its case within the period of time determined by the Panel.

(c) If a Party, without showing good cause, fails to comply with any provision of, or requirement under, these Rules or any direction given by the Panel, the Panel may draw the inferences therefrom that it considers appropriate.

Closure of Proceedings
Article 29

The Panel shall declare the proceedings closed when it is satisfied that the Parties have had adequate opportunity to present submissions and evidence.

Waiver
Article 30

A Party which knows that any provision of, or requirement under, these Rules, or any direction given by the Panel, has not been complied with, and yet proceeds without promptly recording an objection to such non-compliance, shall be deemed to have waived its right to object.

V. DETERMINATIONS AND OTHER DECISIONS

Abusive Registration of a Domain Name
Article 31

The Panel shall determine the Complaint in accordance with the Policy.

Decision-Making
Article 32

(a) Any determination, order or other decision of the Panel shall be made by a majority. In the absence of a majority, the presiding member of the Panel shall make the determination, order or other decision as if acting as sole panelist.

(b) The Panel shall transmit to the Provider a copy of each order or other decision that it makes.

Form and Notification of Determinations
Article 33

- (a) The determination shall state the date on which it was made.
- (b) The determination shall state the reasons on which it is based.
- (c) The determination shall be signed digitally or in writing by the members of the Panel. Signature of the determination by a majority of the members of the Panel, or, in the case of Article 32(a), second sentence, by the presiding member, shall be sufficient. Where a member fails so to sign, the determination shall briefly state the reason for the absence of the signature.
- (d) The Panel may consult the Provider with regard to matters of form concerning the determination.
- (e) The determination shall be communicated by the Panel to the Provider, which shall communicate the determination to each Party.
- (f) Seven days after the communication of the determination to the parties, the Provider shall communicate the determination to the Registrar, which shall take any action necessary to implement the determination, and to the World Intellectual Property Organization, which shall publish the determination on a publicly accessible website.
- (g) At the request of a Party, the Provider shall provide the Party with a copy of the determination certified by it.

Time Period for Delivery of Determinations
Article 34

The proceedings should, wherever reasonably possible, be declared closed within not more than 10 days after either the delivery of the Response or the establishment of the Panel, whichever event occurs later. The final determination should, wherever reasonably possible, be made within 10 days after the closure of the proceedings.

Effect of Determination
Article 35

- (a) The Parties and the Registrar undertake to carry out the determination without delay.
- (b) The determination shall be effective and binding on the Parties as from the date it is communicated to the Registrar pursuant to Article 33(f).

Settlement or Other Grounds for Termination
Article 36

(a) If, before the determination is made, the Parties agree on a settlement, the Panel shall terminate the proceedings and, if requested jointly by the Parties, record the settlement in the form of a consent determination. The Panel shall not be obliged to give reasons for such a determination.

(b) If, before the determination is made, the continuation of the proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph (a), the Panel shall inform the Parties of its intention to terminate the proceedings. The Panel shall have the power to issue such an order terminating the proceedings, unless a Party raises justifiable grounds for objection within a period of time to be determined by the Panel.

(c) The consent determination or the order for termination of the proceedings shall be signed by the members of the Panel in accordance with Article 33(c) and shall be transmitted by the Panel to the Provider which shall communicate it in accordance with Article 33(f).

VI. FEES AND COSTS

Administration Fee
Article 37

(a) The Complaint shall be subject to the payment to the Provider of an administration fee. The amount of the corresponding administration fee shall be as fixed by the Provider and publicly notified.

(b) The administration fee shall not be refundable.

(c) No action shall be taken by the Provider on a Complaint until the administration fee has been paid.

(d) If Complainant fails, within 7 days after a second reminder transmitted by the Provider, to pay the corresponding administration fee, it shall be deemed to have withdrawn its Complaint.

Fees of the Panel
Article 38

The amount of the fees of the members of the Panel shall be fixed by the Provider and publicly notified.

Deposit
Article 39

(a) Upon receipt of notification from the Provider of the establishment of the Panel, the Complainant shall deposit an amount as an advance for the costs of the proceedings referred to in Article 40. The amount of the deposit shall be determined by the Provider.

(b) If a Party fails, within 7 days after a second reminder transmitted by the Provider, to pay the required deposit, it shall be deemed to have withdrawn the Complaint.

Award of Costs of Proceedings
Article 40

(a) In its determination, the Panel shall fix the costs of the proceedings, which shall consist of:

(i) the Panel's fees;

(ii) any properly incurred outgoings of the members of the Panel, and

(iii) such other expenses as are necessary for the conduct of the proceedings, such as the cost of hearing facilities.

(b) The aforementioned costs shall, as far as possible, be debited from the deposit required under Article 39.

(c) The Panel shall, subject to any agreement of the Parties, apportion between the Parties the costs of the proceedings and the administration fee in the light of all the circumstances and the outcome of the proceedings.

[Annex VI follows]