

ANNEX IV

**Policy  
on  
Dispute Resolution for Abusive Domain Name  
Registrations**

1. This document establishes a uniform administrative procedure for dealing with complaints concerning abusive domain name registrations.
2. The Policy is subject to review and modification from time to time. The Policy in effect on the date of the commencement of a complaint shall apply.

**TOP-LEVEL DOMAINS**

3. This Policy applies to domain name disputes arising in:
  - (i) such generic top-level domains (gTLDs) as may be designated from time to time by the Internet Corporation for Assigned Names and Numbers (ICANN); and
  - (ii) any country code top-level domain (ccTLD) where the competent authority has declared the Policy to be applicable.

**LEGAL BASIS**

4. Registration authorities in top-level domains to which the Policy applies shall abide by this Policy and shall require domain name applicants in their registration agreements to:
  - (i) submit to the administrative procedure established by the Policy in respect of any dispute concerning the domain name that falls within the scope of the Policy;
  - (ii) agree to the implementation by relevant registration authorities of determinations made in the administrative procedure; and
  - (iii) agree that registration authorities shall not be liable for acting in accordance with their enforcement and implementation responsibilities under the Policy.

**RELATIONSHIP WITH COURT LITIGATION**

5. The availability of the administrative procedure does not preclude a complainant from filing a claim in a court instead of initiating the administrative procedure.

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6. Any dispute that has been submitted to the administrative procedure may be brought by either party to a court at any time during or after the procedure. If, during the administrative procedure, the dispute is brought to a court and the administrative complaint is not withdrawn, the administrative Panel shall have discretion to decide whether to suspend the administrative procedure or to proceed to a determination.

7. It is recognized that the determinations flowing from the administrative procedure do not, as such, have the weight of binding precedent under national judicial systems.

8. It is recognized that a temporary or final order of a court which is enforceable in the jurisdiction of the registration authority that is contrary to a determination resulting from the administrative procedure overrides the administrative determination.

#### **ADMINISTRATIVE PANEL**

9. Complaints brought under the administrative procedure shall be determined by Panels consisting of three impartial and independent members.

10. The Panels shall be appointed and the procedure administered by dispute-resolution service providers which shall be required to receive accreditation to render such services.

11. Each dispute-resolution service provider shall maintain a list of persons from which administrative Panels will be appointed, and are encouraged to publish this list, together with details of the qualifications and experience of the persons on the list, on a publicly accessible website.

#### **ABUSIVE REGISTRATION OF A DOMAIN NAME**

12. The scope of this Policy and the administrative procedure established by it shall be restricted to complaints alleging the abusive registration of a domain name.

13. The registration of a domain name shall be considered to be abusive when all of the following conditions are met:

- (i) the domain name is identical or misleadingly similar to a trade or service mark in which the complainant has rights; and
- (ii) the holder of the domain name has no rights or legitimate interests in respect of the domain name; and
- (iii) the domain name has been registered and is used in bad faith.

14. For the purposes of paragraph 13(iii), the following, in particular, shall be evidence of the registration and use of a domain name in bad faith;

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- (i) an offer to sell, rent or otherwise transfer the domain name to the owner of the trade or service mark, or to a competitor of the owner of the trade or service mark, for valuable consideration; or
- (ii) an attempt to attract, for financial gain, Internet users to the domain name holder's website or other on-line location, by creating confusion with the trade or service mark of the complainant; or
- (iii) the registration of the domain name in order to prevent the owner of the trade or service mark from reflecting the mark in a corresponding domain name, provided that a pattern of such conduct has been established on the part of the domain name holder; or
- (iv) the registration of the domain name in order to disrupt the business of a competitor.

15. To the extent that the Panel makes reference to any applicable law to reach a determination, it shall apply the law or rules of law that it determines to be appropriate in light of all the relevant circumstances.

#### **REMEDIES**

16. The remedies available under the administrative procedure shall be limited to:
- (i) the cancellation of a domain name registration;
  - (ii) the transfer of a domain name registration to the claimant; and
  - (iii) the allocation of the responsibility for payment of the costs of the proceedings (not including attorneys' fees).

17. If the Panel determines that a complaint does not fall within the scope of the administrative procedure, the Panel shall so rule and the complaint shall be rejected.

#### **PROCEDURAL RULES**

18. The Procedural Rules annexed to this Policy shall apply to the administrative procedure.

#### **TIME FRAME**

19. The final determination on a complaint shall be made, whenever possible, within not more than forty-five days after the commencement of the administrative procedure.

#### **ENFORCEMENT AND PUBLICATION**

20. The dispute-resolution service provider shall notify the concerned registration authority and ICANN of any determinations made pursuant to the administrative procedure seven days

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after the determination has been communicated to the dispute-resolution service provider by the Panel.

21. Upon receipt of notification of a determination made pursuant to the administrative procedure, the concerned registration authority shall implement the determination immediately, unless a court of competent jurisdiction has ordered otherwise.

22. All determinations made under the administrative procedure shall be notified by the relevant dispute-resolution service provider to the World Intellectual Property Organization, which shall publish such determinations on a publicly accessible website.

### **COSTS**

23. Dispute-resolution service providers shall determine the level of their administration fee and the fees payable to the Panel.

24. The complainant shall be required to pay, at the commencement of the administrative procedure, fees for the costs of the procedure. The Panel shall have authority to decide, in the determination, on the allocation of these costs of the procedure among the parties, in the light of all the circumstances of the disputes and the result.

[Annex V follows]