

**REGISTRY RESTRICTIONS DISPUTE RESOLUTION PROCEDURE (RRDRP)<sup>4</sup>**  
**REVISED - NOVEMBER 2010**

**Comment [VI1]:** Under Footnote 1, any Community TLD would be exposed to a series of challenges to individual second level domain name registrations. This is unprecedented exposure to risk. Allowing a Community TLD to be challenged for each and every domain name registration opens up the floodgates of harassment and abuse. Accordingly, Footnote 1 must be deleted in its entirety.

The RRDRP merits more attention than it has received to date. Like the PDDRP, the risk under the RRDRP is extraordinary as any decision by a Provider may result in a) “suspension of accepting new domain name registration in the gTLD”, or b) “termination of a registry agreement.” Given the severe impact of these remedies on the Registry and its effect on potentially hundreds or thousands of registrants, this proceeding must be fair and the protections for the accused robust.

Further, the RRDRP is aimed at a group of registries who do not yet exist, Community TLDs. Envisioned to reach out to cultural groups, emerging economies and language groups not currently well-represented on the web, the ICANN community has already determined that these groups need more protection in the New gTLD proceedings (for example, in the work of the Joint Applicant Supporting Working Group). By extension, counsel and legal assistance for these small Registries is likely to be scarce and difficult.

Accordingly, the level of risk for these Registries should be lower or on par with those of existing or other New gTLDs. As written, the risk for Community TLDs is greater. Since we trust this additional exposure of smaller community registries is not what ICANN intended, we submit the attached edits of the RRDRP to place it on par with the PDDRP in terms of basic protections.

**1. Parties to the Dispute**

The parties to the dispute will be the harmed organization or individual and the gTLD registry operator. ICANN shall not be a party.

**2. Applicable Rules**

2.1 This procedure is intended to cover ~~these~~ post-delegation dispute resolution proceedings generally. To the extent more than one RRDRP provider (“Provider”) is selected to implement the RRDRP, each Provider may have additional rules and procedures that must be followed when filing a Complaint. The following are the general procedure to be followed by all Providers.

2.2 In any new gTLD ~~R~~Registry ~~a~~Agreement, the registry operator shall be required to agree to participate in the RRDRP and be bound by the resulting Determinations.

**3. Language**

3.1 The language of all submissions and proceedings under the procedure will be English.

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<sup>4</sup> ~~Initial complaints by those claiming to be harmed by the non-compliance of community restricted TLDs might be processed through an online form similar to the Whois Data Problem Report System at InterNIC.net. A nominal processing fee could serve to decrease frivolous complaints. The registry operator would receive a copy of the complaint and would be required to take reasonable steps to investigate (and remedy if warranted) the reported non-compliance. The Complainant would have the option to escalate the complaint in accordance with this RRDRP, if the alleged non-compliance continues. Implementation of such an online complaint process is under investigation and consideration.~~

3.2 Parties may submit supporting evidence in their original language, provided and subject to the authority of the RRDRP Expert Panel to determine otherwise, that such evidence is accompanied by an English translation of all relevant text.

#### 4. Communications and Time Limits

- 4.1 All communications with the Provider must be filed electronically.
- 4.2 For the purpose of determining the date of commencement of a time limit, a notice or other communication will be deemed to have been received on the day that it is transmitted to the appropriate contact person designated by the parties.
- 4.3 For the purpose of determining compliance with a time limit, a notice or other communication will be deemed to have been sent, made or transmitted on the day that it is dispatched.
- 4.4 For the purpose of calculating a period of time under this procedure, such period will begin to run on the day following the date of receipt of a notice or other communication.
- 4.5 All references to day limits shall be considered as calendar days unless otherwise specified.

#### 5. Standing

- 5.1 The mandatory administrative proceeding will commence when a third-party complainant (“Complainant”) has filed a Complaint with a Provider asserting that the Complainant is a harmed organization or individual as a result of the community-based gTLD registry operator not complying with [one or more of](#) the restrictions set out in the Registry Agreement [regarding the registration of domain names](#).
- 5.2 [The Complainant must be an established institution that was listed as an endorser for the gTLD application and has an ongoing relationship with the defined community that the gTLD supports as set forth in the Registry Agreement.](#)
- 5.3 [Before proceeding to the merits of a dispute, and before the Respondent is required to submit a substantive Response, or pay any fees, the Provider shall appoint a special one-person Panel to perform an initial “threshold” review \(“Threshold Review Panel”\).](#) The [Threshold Review](#) Panel will determine standing and the Expert Determination will include a statement of the Complainant’s standing.

Comment [VI2]: This is 5.2 in the PDDRP

#### 6. Standards

- 6.1 [Requirements:](#) Established institutions, and individuals associated with defined communities, are eligible to file a community objection. The “defined community” must be a community related to the gTLD string in the application that is the subject of the dispute. [To qualify for standing for a community claim, the](#)

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A Complainant must prove each of the following by clear and convincing evidence:

6.1.1 That it is an established institution that was listed as an endorser for the gTLD application and has an ongoing relationship with the defined community that the gTLD supports as set forth in the Registry Agreement;

6.1.2. That the registry operator, by its affirmative conduct, has failed in a substantial and consistent manner to serve the defined community (as the registry operator has defined it and as ICANN has accepted in the Registry Agreement);

6.1.3 That the registry operator's affirmative conduct has caused substantial and measurable harm to the Complainant and the Community; and

6.1.4 That there is a pattern of bad conduct that is harmful to the Community and the Complainant.

6.2 For the Threshold Review Panel to deem a claim meritorious, the claims must prove each of the following:

6.2.1 The Community invoked by the objector is a defined community;

6.2.2 There is a strong association between the community invoked and the gTLD label or string (see ICANN Nexus Criteria).

6.2.3 The registry operator has violated the terms of its Registry Agreement; and

6.2.4 There is measurable harm to the Complainant (such as financial harm) and to the Community named by the objector, not resolvable by other mechanisms contained in the Registry Agreement (for example, by UDRP procedure).

For an claim to be successful, the claims must prove that:

6.1.1 The community invoked by the objector is a defined community;

6.1.2 There is a strong association between the community invoked and the gTLD label or string;

6.1.3 The TLD operator violated the terms of the community-based restrictions in its agreement;

6.1.3 There is a measureable harm to the Complainant and the community named by the objector.

In other words, it is not sufficient to show that a registry operator had one or two incidents of either failing to register a domain name or allowing the registration of a domain name for a particular institution or individual that is not in accordance with the restrictions set forth in the Registry Agreement. The registry operator is not liable under the RRDRP solely because it failed to register a domain name or agreed to register a domain name that Complainant feels was in error. Rather, the Complainant must prove to the RRDRP Threshold Review Panel by clear and

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Comment [VI3]: This was originally in 5.2 and is simply restated here.

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Comment [VI4]: This has been replaced by a new 6.1

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convincing evidence that the registry operator has a pattern or practice of actively and systematically acting in contravention of the restrictions on domain name registration set forth in the Registry Agreement to the extent and degree that bad faith is evident.

## 7. Complaint

### 7.1 Filing:

The Complaint will be filed electronically. Once the Administrative Review has been completed and the Provider deems the Complaint to be in compliance, per the standards provided above, the Provider will electronically serve the Complaint and serve a ~~hard copy and faxpaper~~ notice on the registry operator that is the subject of the Complaint ("Notice of Complaint") consistent with the contact information listed in the Registry Agreement.

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### 7.2 Content:

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- 7.2.1 The name and contact information, including address, phone, and email address, of the Complainant, the registry operator and, to the best of Complainant's knowledge, the name and address of the current registrant of all domain names that are the subject of this proceeding.~~owner of the registration.~~
- 7.2.2 The name and contact information, including address, phone, and email address of any person authorized to act on behalf of Complainant.
- 7.2.3 A statement of the nature of the dispute, which must include:
- 7.2.3.1 The particular restrictions in the Registry Agreement with which the registry operator is failing to comply that form the basis upon which the Complaint is being filed;
- 7.2.3.2 A detailed explanation of how the Complainant's claim meets the requirements for filing a claim pursuant to that particular ground or standard;
- 7.2.3.3 A detailed explanation of the validity of the Complaint and why the evidence from the Complainant is considered meritorious;
- 7.2.3.4 A statement that the Complainant has at least 30 days prior to the filing of the Complaint, notified the registry operator in writing of (i) its specific concerns and specific conduct it believes is resulting in its failure to comply with the Registry Agreement; and (ii) its willingness to meet to resolve the issue;
- 7.2.3.5 Copies of any documents that the Complainant considers to evidence its basis for relief;

7.2.3.6 A statement that the proceedings are not being brought for any improper purpose; and

**Comment [VI5]:** Relevant portions of the PDDRP inserted here.

7.2.3.27 A detailed explanation of how the registry operator's failure to comply with the identified restrictions has caused harm to the complainant.

7.2.3.8 Complainant must assert that the facts it intends to present that have not been previously adjudicated in a RRDRP.

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7.2.4 A statement that the proceedings are not being brought for any improper purpose.

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7.3 Complaints will be limited to 5,000 words and 20 pages, excluding attachments, unless the Provider determines that additional material is necessary.

7.4 Any supporting documents should be filed with the Complaint.

**Comment [VI6]:** This was inserted above.

7.54 At the same time the Complaint is filed, the Complainant will pay a non-refundable filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within 10 days of the receipt of the Complaint by the Provider, the Complaint will be dismissed without prejudice to the Complainant to file another complaint.

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**Comment [VI7]:** To be consistent with the PDDRP

## 8. Administrative Review of the Complaint

8.1 All Complaints will be reviewed within five (5) business days of submission by panelists designated by the applicable Provider to determine whether the Complainant has complied with the procedural rules.

8.2 If the Provider finds that the Complaint complies with procedural rules, the Complaint will be deemed filed, and the proceedings will continue to the Threshold Review. If the Provider finds that the Complaint does not comply with procedural rules, it will electronically notify the Complainant of such non-compliance and provide the Complainant five (5) business days to submit an amended Complaint. If the Provider does not receive an amended Complaint within the five (5) business days provided, it will dismiss the Complaint and close the proceedings without prejudice to the Complainant's submission of a new Complaint that complies with procedural rules. Filing fees will not be refunded if the Complaint is deemed not in compliance.

**Comment [VI8]:** To be consistent with the PDDRP

8.3 ~~Once the complaint is deemed filed, the Provider will~~ ~~If deemed compliant, the Provider will~~ Threshold Review Panel will determine compliance of the Complaint per the Standards contained in Section 6. If the Threshold Review Panel determines compliance, the Provider will electronically serve the Complaint on the registry operator and serve the Notice of Complaint a paper notice on the registry operator that is the subject of the Complaint consistent with the contact information listed in the Registry Agreement.

8.4 The Registry Operator will have ten (10) days to challenge the Threshold Review decision from the Provider from the date the Complaint is electronically received.

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Comment [VI9]: The whole Section 9 was taken and adapted from the PDDRP.

## 9. Threshold Review

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9.1 Provider shall establish a Threshold Review Panel, consisting of one panelist selected by the Provider, for each proceeding within five (5) business days after completion of Administrative Review and has been deemed compliant with procedural rules.

9.2 The Threshold Review Panel shall be tasked with determining whether the Complainant satisfies the following criteria:

9.2.1 That it is an established institution that was listed as an endorser for the gTLD application and has an ongoing relationship with the defined community as set forth in the Registry Agreement;

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9.2.2 That the registry operator is engaging in a pattern of failing to comply with a specific provisions in its Registry Agreement;

Comment [VI10]: This was originally in the RRDRP – just moved to be a sub-bullet in Standards, rather than in Standing.

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9.2.3 That Complainant has demonstrated that it has been materially harmed, including, but not limited to, significant financial harm, as a result of the registry operator's pattern of actions;

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9.2.4 That Complainant has asserted facts with sufficient specificity that, if everything the Complainant asserted is true, states a claim under the Standards herein;

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9.2.5 The Complainant has asserted that: (i) at least 30 days prior to the filing of the Complaint, the Complainant notified the registry operator in writing of its specific concerns and specific conduct it believes is resulting in its failure to comply with the Registry Agreement and its willingness to meet to resolve the issue; (ii) whether the registry operator responded to the Complainant's notice of specific concerns; and (iii) if the registry operator did respond, that the Complainant attempted to engage in good faith discussions to resolve the issue prior to initiating the RRDRP.

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9.3 Within ten (10) business days of date Provider served Notice of Complaint, the registry operator shall have the opportunity, but is not required, to submit papers to support its position as to the Complainant's standing and challenge the decision of the Threshold Review Panel that the Complaint is meritorious. If the registry operator chooses to file such papers, it must pay a filing fee.

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9.4 If the registry operator submits papers, the Complainant shall have ten (10) business days to submit an opposition.

9.5 The Threshold Review Panel shall have ten (10) business days from the due date of the Complainant's opposition or the due date of the registry operator's papers, if non were filed, to issue its Threshold Determination.

9.6 Provider shall electronically serve the Threshold Determination on all parties.

9.7 If the Complainant has not satisfied the Threshold Review criteria, the Provider will dismiss the proceedings on the grounds that the Complainant lacks standing and declare that the registry operator is the prevailing party.

9.8 If the Threshold Review panel determines that the Complainant has standing and satisfied the criteria, then the Provider will commence with the proceedings on the merits.

#### 10. **Response to the Complaint**

910.1 The registry operator must file a response to each Complaint within ~~thirty (30)~~ ~~forty-five (45)~~ days of service the Complaint after the date of the Threshold Review Panel Declaration.

**Comment [VI11]:** To make consistent with the PDDRP.

910.2 The Response will comply with the rules for filing of a Complaint and will contain the names and contact information for the registry operator, as well as a point by point response to the statements made in the Complaint.

910.3 The Response must be electronically filed with the Provider and the Provider must serve it upon the Complainant in electronic form with a hard-copy notice that it has been served.

910.4 Service of the Response will be deemed effective, and the time will start to run for a Reply, upon electronic transmission of the Response and hard-copy notice of the Response was sent by the Provider to the addresses provided by the Complainant.

910.5 If the registry operator believes the Complaint is without merit, it will affirmatively plead in it Response the specific grounds for the claim. One basis would be that the matter has previously been the subject of an RRDRP and that there are no new facts in dispute.

9.6 At the same time the Response is filed, the registry operator will pay a filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within ten (10) days of the receipt of the Response by the Provider, the Response will be deemed improper and not considered in the proceedings, but the matter will proceed to Determination.

**Comment [VI12]:** To make consistent with the PDDRP

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#### 10-11. **Reply**

101.1 The Complainant is permitted ten (10) days from Service of the Response to submit a Reply addressing the statements made in the Response showing why the Complaint is not “without merit.” A Reply may not introduce new facts or evidence into the record, but shall only be used to address statements made in the Response. Any new facts or evidence introduced in a Response shall be disregarded by the Expert Panel.

101.2 Once the Complaint, Response and Reply (as necessary) are filed and served, a Panel will be appointed and provided with all submissions.

**112. Default**

112.1 If the registry operator fails to respond to the Complaint, it will be deemed to be in default.

112.2 Limited rights to set aside the finding of default will be established by the Provider, but in no event will it be permitted absent a showing of good cause to set aside the finding of Default.

112.3 The Provider shall provide Notice of Default via email to the Complainant and registry operator.

112.4 All Default cases shall proceed to Expert Determination on the merits.

**123. Expert Panel**

123.1 The Provider shall select and appoint a ~~an single-member~~ Expert Panel within (21) days after receiving the Reply, or if no Reply is filed, within 21 days after the Reply was due to be filed .

123.2 The Provider ~~will~~ shall appoint a one-person Expert Panel unless any party requests a three-member Expert Panel. No Threshold Panel member shall serve as an Expert Panel member in the same RRDRP proceeding.

123.3 In the case where either party requests a three-member Expert Panel, each party (or each side of the dispute if a matter has been consolidated) shall select an Expert and the two selected Experts shall select the third Expert Panel member. Such selection shall be made pursuant to the Provider’s rules or procedures. RRDRP panelists within a Provider shall be rotated to the extent feasible.

123.4 Expert Panel members must be independent of the parties to the post-delegation challenge. Each Provider will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an Expert for lack of independence.

**134. Costs**

134.1 The Provider will estimate the costs for the proceedings that it administers under this procedure in accordance with the applicable Provider Rules. Such costs will cover only

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the administrative fees of the Provider and for the Expert Panel, and are intended to be reasonable.

134.2 The Complainant shall be required to pay the filing fee as set forth above in the "Complaint" section, and shall be required to submit the full amount of the Provider estimated administrative fees and the Expert Panel fees at the outset of the proceedings. Fifty percent of that full amount shall be in cash (or cash equivalent) to cover the Complainant's share of the proceedings and the other 50% shall be in either cash (or cash equivalent), or in bond, to cover the registry operator's share if the registry operator prevails.

134.3 If the Panel declares the Complainant to be the prevailing party, the registry operator is required to reimburse Complainant for all Panel and Provider fees incurred. Failure to do shall be deemed a violation of the RRDRP and a breach of the Registry Agreement, subject to remedies available under the Agreement up to and including termination.

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#### 145. Discovery/Evidence

145.1 ~~In order to achieve the goal of resolving disputes rapidly and at a reasonable cost, discovery will generally not be permitted. In exceptional cases, the Expert Panel may require a party to provide additional evidence. Whether and to what extent discovery is allowed is at the discretion of the Panel, whether made on the Panel's own accord, or upon request from the Parties.~~

Comment [VI13]: To make consistent with the PDDRP.

145.2 If permitted, discovery will be limited to that for which each Party has a substantial need.

145.3 ~~Without a specific request from the Parties, but only in~~ extraordinary circumstances, ~~the Expert Panel may request that~~ the Provider may appoint experts to be paid for by the Parties, request live or written witness testimony, or request limited exchange of documents.

~~15.4 At the close of discovery, if permitted by the Expert panel, the Parties will make a final evidentiary submission, the timing and sequence to be determined by the Provider in consultation with the Expert Panel.~~

Comment [VI14]: To make consistent with the PDDRP.

#### 156. Hearings

156.1 Disputes under this RRDRP will usually be resolved without a hearing unless either party requests a hearing or the Expert Panel determines on its own initiative that one is necessary.

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~~15.2 The Expert Panel may decide on its own initiative, or at the request of a party, to hold a hearing. However, the presumption is that the Expert Panel will render Determinations based on written submissions and without a hearing.~~

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15.36.2 If a request for a hearing is granted, videoconferences or teleconferences should be used if at all possible. If not possible, then the Expert Panel will select a place for hearing if the parties cannot agree.

15.46.3 Hearings should last no more than one day, except in the most exceptional circumstances.

~~15.5 If the Expert Panel grants one party's request for a hearing, notwithstanding the other party's opposition, the Expert Panel is encouraged to apportion the hearing costs to the requesting party as the Expert Panel deems appropriate.~~

Comment [VI15]: To make consistent with the PDDRP.

15.6.4 All dispute resolution proceedings will be conducted in English.

## 167. Burden of Proof

The Complainant bears the burden of proving ~~the allegation in its Complaint~~ claim; the burden should be by ~~clear and convincing evidence~~ a preponderance of the evidence.

Comment [VI16]: To make consistent with the PDDRP.

## 178. Remedies

178.1 Since registrants of domain names registered in violation of the agreement restriction are not a party to the action, a recommended remedy cannot take the form of deleting, transferring or suspending registrations that were made in violation of the agreement restrictions (except to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator).

178.2 Recommended remedies will not include monetary damages or sanctions to be paid to any party other than fees awarded pursuant to section 134.

178.3 The Expert Panel may recommend a variety of graduated enforcement tools against the registry operator if the Expert Panel determines that the registry operator allowed registrations outside the scope of its ~~Registry Agreement~~ promised limitations, including:

178.3.1 Remedial measures, which may be in addition to requirements under the registry agreement, for the registry to employ to ensure against allowing future registrations that do not comply with ~~the Registry Agreement~~ community-based limitations; except that the remedial measures shall not:

- (a) Require the registry operator to monitor registrations not related to the names at issue in the RRDRP proceeding, or
- (b) ~~D~~irect actions by the registry operator that are contrary to those required under the ~~R~~egistry ~~a~~greement

178.3.2 Suspension of accepting new domain name registrations in the gTLD until such time as the violation(s) identified in the Determination is(are) cured or a set period of time;

OR,

~~178.3.3~~ In extraordinary circumstances where the registry operator acted with malice providing for the termination of a registry agreement.

~~17.38.4~~ In making its recommendation of the appropriate remedy, the Expert Panel will consider the ongoing harm to the Complainant, as well as the harm the remedies will create for other, unrelated, good faith domain name registrants operating within the gTLD.

18.5 The Expert Panel may also determine whether the Complaint was filed “without merit,” and if so, award the appropriate sanctions on a graduated scale, including:

18.5.1 Temporary bans from filing Complaints;

18.5.2 Imposition of costs of registry operator, including reasonable attorney fees; and

18.5.3 Permanent bans from filing Complaints after being banned temporarily.

#### **~~189.~~ The Expert Determination**

~~189.1~~ The Provider and the Expert Panel will make reasonable efforts to ensure that the Expert Determination is rendered within 45 days of the appointment of the Expert Panel and absent good cause, in no event later than 60 days after the appointment of the Expert Panel.

~~189.2~~ The Expert Panel will render a written Determination. The Expert Determination will state whether or not the Complaint is factually founded and provide the reasons for its Determination. The Expert Determination should be publicly available and searchable on the Provider’s web site.

~~189.3~~ The Expert Determination may further include a recommendation of specific remedies. Costs and fees to the Provider, to the extent not already paid, will be paid within thirty (30) days of the Expert Determination.

~~189.4~~ The Expert Determination shall state which party is the prevailing party.

~~189.5~~ While the Expert Determination that a community-based restricted gTLD registry operator was not meeting its obligations to police the registration and use of domains within the applicable restrictions shall be considered, ICANN shall have the authority to impose the remedies ICANN deems appropriate, given the circumstances of each matter.

#### **~~1920.~~ Appeal of Expert Determination**

~~1920.1~~ Either party shall have a right to seek a de novo appeal of the Expert Determination of liability or recommended remedy based on the existing record within the RRDRP proceeding for a reasonable fee to cover the costs of the appeal.

[1920.2](#) An appeal must be filed with the Provider and served on all parties within 20 days after an Expert Determination is issued and a response to the appeal must be filed within 20 days after the appeal. Manner and calculation of service deadlines shall in consistent with those set forth in Section 4 above, “Communication and Time Limits.”

[1920.3](#) A three-member Appeal Panel is to be selected by the Provider, but no member of the Appeal Panel shall also have been an Expert Panel member.

[1920.4](#) The fees for an appeal in the first instance shall be borne by the appellant.

[1920.5](#) A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint.

[1920.6](#) The Appeal Panel may request at its sole discretion, further statements or evidence from any party regardless of whether the evidence pre-dates the filing of the Complaint if the Appeal Panel determines such evidence is relevant..

[1920.7](#) The prevailing party shall be entitled to an award of costs of appeal.

[1920.8](#) The Providers rules and procedures for appeals, other than those stated above, shall apply.

## **[201.](#) Challenge of a Remedy**

[201.1](#) ICANN shall not implement a remedy for violation of the RRDRP for at least 20 days after the issuance of an Expert Determination, providing time for an appeal to be filed.

[201.2](#) If an appeal is filed, ICANN shall stay its implementation of a remedy pending resolution of the appeal.

[201.3](#) If ICANN decides to implement a remedy for violation of the RRDRP, ICANN will wait ten (10) business days (as observed in the location of its principal office) after notifying the registry operator of its decision. ICANN will then implement the decision unless it has received from the registry operator during that ten (10) business-day period official documentation that the registry operator has either: (a) commenced a lawsuit against the Complainant in a court of competent jurisdiction challenging the Expert Determination of liability against the registry operator, or (b) challenged the intended remedy by initiating dispute resolution under the provisions of its Registry Agreement. If ICANN receives such documentation within the ten (10) business day period, it will not seek to implement its decision under the RRDRP until it receives: (i) evidence of a resolution between the Complainant and the registry operator; (ii) evidence that registry operator’s lawsuit against Complainant has been dismissed or withdrawn; or (iii) a copy of an order from the dispute resolution provider selected pursuant to the Registry Agreement dismissing the dispute against ICANN whether by reason of agreement of the parties or upon determination of the merits.

201.4 The registry operator may challenge ICANN’s imposition of a remedy imposed in furtherance of an Expert Determination that the registry operator is liable under the RRDRP, to the extent a challenge is warranted, by initiating dispute resolution under the provisions of its Registry Agreement. Any arbitration shall be determined in accordance with the parties’ respective rights and duties under the Registry Agreement. Neither the Expert Determination nor the decision of ICANN to implement a remedy is intended to prejudice the registry operator in any way in the determination of the arbitration dispute, which shall consider all issues de novo. Any remedy involving a termination of the Registry Agreement must be according to the terms and conditions of the termination provision of the Registry Agreement.

201.5 Nothing herein shall be deemed to prohibit ICANN from imposing remedies at any time and of any nature it is otherwise entitled to impose for a registry operator’s non-compliance with its Registry Agreement.

#### **212. Availability of Court or Other Administrative Proceedings**

212.1 The RRDRP is not intended as an exclusive procedure and does not preclude individuals from seeking remedies in courts of law, including, as applicable, review of an Expert Determination as to liability. All procedures for the review or challenge of any determination of liability or remedies in this RRDRP are cumulative and not intended to be to the exclusion of any other form or challenge provided herein.

212.2 In those cases where a Party submits documented proof to the Provider that a Court action involving the same parties, facts and circumstances as the RRDRP was instituted prior to the filing date of the Complaint in the RRDRP, the Provider shall suspend or terminate the RRDRP.

22.3 The parties are encouraged, but not required to participate in informal negotiations and/or mediation at any time throughout the dispute resolution process but the conduct of any such settlement negotiation is not, standing alone, a reason to suspend any deadline under the proceedings.

**Comment [VI17]:** To be consistent with the PDDRP.