

**REGISTRY RESTRICTIONS DISPUTE RESOLUTION PROCEDURE (RRDRP)
REVISED - MAY 2010**

INTRODUCTION

Since the early implementation stages of the new gTLD Program, implementation of a Registry Restrictions Dispute Resolution Procedure (RRDRP) has been discussed. The purpose of the RRDRP is handling complaints from a harmed organization or individual alleging that a community-based restricted gTLD registry operator was not meeting its obligations to police the registration and use of domains within the restrictions stated in the terms of the gTLD registry agreement. The need for such a procedure is based on the idea that it would not be fair to give a preference in the new gTLD Program allocation process to an applicant based on a commitment to restrict use of a TLD to a particular community, and then not require the applicant to keep its commitment.” The improper acts of the registry operator might result in harm to the community or its member organizations or groups.

As stated in its 30 May 2009 Explanatory Memorandum introducing the RRDRP (<http://www.icann.org/en/topics/new-gtlds/rrdrp-30may09-en.pdf>), ICANN has generally avoided becoming directly involved in policing the use of domain names at the registrant level. This is appropriate in light of ICANN’s mission (to coordinate the DNS “at the overall level”) and in keeping with ICANN’s core values (e.g., “[r]especting the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN’s activities to those matters within ICANN’s mission requiring or significantly benefiting from global coordination.”).

Instituting a RRDRP (an independent post-delegation review process) for deciding questions of compliance with community-based domain eligibility requirements and use restrictions would have the benefit of removing ICANN from particularized decisions on Internet content and the use of domains. In the absence of an RRDRP, ICANN would be called upon to expend significant resources on gray areas of eligibility and content restrictions. Such a procedure is not intended to replace ICANN’s contractual compliance responsibilities. ICANN will continue to pursue its contractual compliance activities and enforcement for all of its contracted parties, scaling up with the introduction of new top-level domains. A robust RRDRP will, however, be an additional avenue for protecting the interests of legitimate and eligible registrants within community-based restricted TLDs who otherwise could see their interests in their registrations tarnished by registrations made in violation of the promised restrictions associated with the TLD. The procedure will also provide independent judgment when it is required.

An objection complaint-based RRDRP will also be advantageous since decisions on use and eligibility will be made only when there is a real party in interest that claims to be harmed through the operation of the registry. It will limit actions to instances where a party is claiming actual harm to the community because a registry operator is not complying with restrictions in the agreement. While there may be a concern that this will create a new class of potential claimants under a theory that they are third party beneficiaries to the registry agreement between ICANN and the registry operator, that is not the intent. Indeed, the Complainant shall not be allowed to claim to be the third-party beneficiary of the registry agreement, and ICANN will ensure that its registry agreements with registry operators do not expressly or tacitly make any person a third-party beneficiary.

Registry operators will be obliged, pursuant to the registry agreement, to accept the RRDRP. ICANN would not be a party to the proceedings.

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. Implementation of such an online complaint process is under investigation and consideration.

The Complainant would have the option, however, to escalate the complaint if the alleged non-compliance continues. If escalated, a neutral dispute resolution panel would issue a Determination as to whether the registration complained about was inappropriate given the registration restrictions under which the registry operator agreed to operate.

This Draft RRDRP incorporates revisions attempting to address concerns and suggestions that have been raised. In order to balance competing comments and efficiencies, however, not all suggested revisions have been, or could have been, adopted. In addition to the revisions below, please see the summary of comments and analysis in response to public comments made to the RRDRP proposal that was posted before the Nairobi International Public Meeting.

DRAFT PROCEDURE

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

- This procedure is intended to cover these 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.
- In any new gTLD registry agreement, the registry operator shall be required to agree to participate in the RRDRP and be bound by the resulting Determinations.

3. Language

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

- All communications with the Provider must be filed electronically.

- 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.
- 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.
- 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.
- All references to day limits shall be considered as calendar days unless otherwise specified.

5. Standing

- 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 the restrictions set out in the Registry Agreement.
- 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 Complainant must prove both: it is an established institution or an individual, and has an ongoing relationship with a defined community that consists of a restricted population that the gTLD supports.
- The Panel will determine standing and the Expert Determination will include a statement of the Complainant’s standing.

6. Standards

- For an claim to be successful, the claims must prove that:
 - The community invoked by the objector is a defined community;
 - There is a strong association between the community invoked and the gTLD label or string;
 - The TLD operator violated the terms of the community-based restrictions in its agreement;
 - There is a measureable harm to the Complainant and the community named by the objector.

7. Complaint

- **Filing:**

The Complaint will be filed electronically. Once the Administrative Review has been completed and the Provider deems the Complaint to be in compliance, the Provider will electronically serve the Complaint and serve a hard copy and fax notice on the registry operator consistent with the contact information listed in the Registry Agreement.

- **Content:**

- 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 owner of the registration.
- The name and contact information, including address, phone, and email address of any person authorized to act on behalf of Complainant.
- A statement of the nature of the dispute, which must include:
 - The particular restrictions in the Registry Agreement with which the registry operator is failing to comply; and
 - A detailed explanation of how the registry operator's failure to comply with the identified restrictions has caused harm to the complainant.
- A statement that the proceedings are not being brought for any improper purpose.
- Complaints will be limited to 5,000 words and 20 pages, excluding attachments, unless the Provider determines that additional material is necessary.
- Any supporting documents should be filed with the Complaint.
- At the same time the Complaint is filed, the Complainant 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 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.

8. Administrative Review of the Complaint

- 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.
- If the Provider finds that the Complaint complies with procedural rules, the Complaint will be deemed filed, and the proceedings will continue. If the Provider finds that the Complaint does not comply with procedural rules, the Complaint will be dismissed and the proceedings closed 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.

- If deemed compliant, the Provider will electronically serve the Complaint on the registry operator and serve a paper notice on the registry operator that is the subject of the Complaint consistent with the contact information listed in the Registry Agreement.

9. Response to the Complaint

- The registry operator will file a response to each Complaint. The response will be filed within thirty (30) days of service the Complaint. Service will be deemed effective, and the time will start to run, upon electronic transmission of the Complaint to the registry operator.
- 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.
- The Response should be electronically filed with the Provider and the Provider shall serve it upon the Complainant in electronic form with a hard-copy notice that it has been served.
- Service of the Response will be deemed effective, and the time will start to run for a Reply, upon electronic transmission of the Response.
- 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 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.

10. Default

- If the registry operator fails to respond to the Complaint, it will be deemed to be in default.
- 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.
- The Provider shall provide Notice of Default via email to the Complainant and registry operator.
- All Default cases shall proceed to Determination on the merits.

11. Expert Panel

- The Provider shall select and appoint a single-member Expert Panel within (21) days after receiving the Response.

- The Provider will appoint a one-person Expert Panel unless any party requests a three-member Expert Panel. 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.
- Experts must be independent of the parties to the post-delegation challenge. Each Provider (if more than one is selected) will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an Expert for lack of independence.

12. Costs

- 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 the administrative fees of the Provider and for the Expert Panel, and are intended to be reasonable.
- The Provider will estimate the costs for the proceeding and request that both the Complainant and the registry operator pay in advance the full amount of the costs. The filing fees will be credited toward the advance payment of costs.
- When the proceedings are terminated, the prevailing party will be refunded its advanced payment of costs.

13. Discovery/Evidence

- 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.
- If permitted, discovery will be limited to that for which each Party has a substantial need.
- Without a specific request from the Parties, the Expert Panel may request that the Provider appoint Experts to be paid for by the Parties, request live or written witness testimony, or request limited exchange of documents.

14. Hearings

- Disputes under this RRDRP will usually be resolved without a hearing.
- 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.
- 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.

- Hearings should last no more than one day, except in the most exceptional circumstances.
- 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.
- All dispute resolution proceedings will be conducted in English.

15. Burden of Proof

- The Complainant bears the burden of proving its claim; the burden should be by a preponderance of the evidence.

16. Remedies

- 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.
- 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 promised limitations, including:
 - 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 community-based limitations; except that the remedial measures may not direct actions by the registry operator that are contrary to those required under the registry agreement
 - 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, in extraordinary circumstances where the registry operator acted with malice;
 - Providing for the termination of a registry agreement.
- In making its recommendation of the appropriate remedy, the Expert Panel will consider the ongoing harm to the Complainant.

17. The Expert Determination

- 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.

- 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.
- 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.
- 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.

18. Availability of Court or Other Administrative Proceedings

- The RRDRP is not intended as an exclusive procedure and does not preclude individuals from seeking remedies in courts of law.
- 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.