

Registrar Transfer Dispute Resolution Policy

12 July 2004

In any dispute relating to Inter-Registrar domain name transfers, Registrars are encouraged to first of all attempt to resolve the problem among the Registrars involved in the dispute. In cases where this is unsuccessful and where a registrar elects to file a dispute, the following procedures apply. It is very important for Registrars to familiarize themselves with the Transfer Dispute Resolution Policy (TDRP) as described in this document before filing a dispute. Transfer dispute resolution fees can be substantial. It is critical that Registrars fully understand the fees that must be paid, which party is responsible for paying those fees and when and how those fees must be paid.

The TDRP and corresponding procedures will apply to all domain names for which transfer requests are submitted on or after the effective date of this policy.

1. Definitions

1.1 Dispute Resolution Panel

The Dispute Resolution Panel shall mean an administrative panel appointed by a Dispute Resolution Provider ("Provider") to decide a Request for Enforcement concerning a dispute under this Dispute Resolution Policy.

1.2 Dispute Resolution Provider

1.3 The Dispute Resolution Provider must be an independent and neutral third party that is neither associated nor affiliated with either Registrar involved in the dispute or the Registry Operator under which the disputed domain name is registered. ICANN shall have the authority to accredit one or more independent and neutral Dispute Resolution Providers according to criteria developed in accordance with this Dispute Resolution Policy.

1.4 FOA

Form of Authorization - The standardized form of consent that the Gaining Registrar and Registrar of Record are required to use to obtain authorization from the Registrant or Administrative Contact in order to properly process the transfer of domain name sponsorship from one Registrar to another.

1.5 Gaining Registrar

The Registrar that submitted to the Registry the request for the transfer of a domain sponsorship from the Registrar of Record.

1.6 Registrar of Record

The Registrar of Record for a domain name for which the Registry received a transfer of sponsorship request.

1.7 Registrant

The Registrant is the individual or organization that registers a specific domain name. This individual or organization holds the right to use that specific domain name for a specified period of time, provided certain conditions are met and the registration fees are paid. This person or organization is the "legal entity" bound by the terms of the relevant service agreement with the Registry operator for the TLD in question.

1.8 Registry (Registry Operator)

The organization authorized by ICANN to provide registration services for a given TLD to ICANN-accredited Registrars.

1.9 Supplemental Rules

The Supplemental Rules shall mean those rules adopted by the Registry Operator, in the case of First Level disputes (as set forth below), or the Provider administering a proceeding (in the case of all other disputes) to supplement this Policy. Supplemental Rules shall be consistent with this Dispute Resolution Policy and shall cover topics such as fees, word and page limits and guidelines, the means for communicating with the Provider, and the form of cover sheets.

1.10 Transfer Policy

The Policy on Transfer of Sponsorship of Registrations between Registrars which is in force as part of the Registry-Registrar Agreement executed between a Registrar and the Registry, as well as the Registrar Accreditation Agreement which is executed between ICANN and all ICANN- accredited registrars.

2. Dispute Resolution Process

There are two possible steps to the Registrar Transfer Dispute Resolution Process. A Registrar may elect one or both of the steps pursuant to the rules below. In the event a Registrar either files a Request for Enforcement (as described below) with a Second-Level Dispute Provider, or files an Appeal (as described below) with a Dispute Provider, it may not revert to the First-Level Registry option later for the same filing or matter presented for resolution.

2.1 First Level - Registry Operator

A Registrar may choose to file a dispute directly with the relevant Registry Operator. Any decisions made by the Registry Operator may be appealed to a Dispute Resolution Provider. A Registrar may file a dispute directly to a Dispute Resolution Provider; however, in that case the filing Registrar would forfeit any right to appeal the decision of the Dispute Resolution Provider.

2.2 Second-Level - Dispute Resolution Panel

The primary intent of this step is to provide a means for registrars to appeal

decisions made by the Registry at the first level of the dispute resolution process, but it may also be used as the first step if a registrar so elects. The decision of the Dispute Resolution Panel is final, except as it may be appealed to a court of competent jurisdiction.

2.3 Statute of Limitations

A dispute must be filed no later than six (6) months after the alleged violation of the Transfer Policy. In the case where a Registrar of Record alleges that a transfer was in violation of this Policy, the date the transfer was completed shall be deemed the date in which the "alleged violation" took place. In the case where a Gaining Registrar alleges that a transfer should have taken place, the date in which the NACK (as defined below) was received by the Registry, shall be deemed the date in which the "alleged violation" took place.

3. Dispute Procedures at the First Level (Registry)

3.1 Registrar files a Request for Enforcement with the applicable Registry Operator

3.1.1 Either the Gaining or Registrar of Record ("Filing Registrar") may submit a Request for Enforcement. This must be done in accordance with the Supplemental Rules adopted by the applicable Registry Operator.

3.1.2 The Request for Enforcement shall be submitted to the Registry and to the Respondent (the Non-filing Registrar) in electronic form and shall:

(i) Request that the Request for Enforcement be submitted for decision in accordance with the Registrar Transfer and Dispute Resolution Policy and the applicable Supplemental Rules;

(ii) Provide the name, postal and e-mail addresses, and the telephone and fax numbers of the Filing Registrar and those representatives authorized by the Filing Registrar to act on behalf of the Filing Registrar in the administrative proceeding;

(iii) Provide the name of the Respondent and all information (including any postal and e-mail addresses and telephone and fax numbers) known to Filing Registrar regarding how to contact Respondent or any representative of Respondent, including contact information based on pre-complaint dealings;

(iv) Specify the domain name(s) that is/are the subject of the Request for Enforcement;

(v) Specify the incident(s) that gave rise to the dispute;

(vi) Describe, in accordance with the Policy, the grounds on which the Request for Enforcement is based;

(vii) State the specific remedy being sought (either approval or denial of the transfer);

(viii) Identify any other legal proceedings that have been commenced or terminated in connection with or relating to any of the domain name(s) that are the subject of the complaint;

(ix) Certify that a copy of the Request for Enforcement, together with the cover sheet as prescribed by the Provider's Supplemental Rules, has been sent or transmitted to the Respondent; and

(x) Conclude with the following statement followed by the signature of the Complainant or its authorized representative:

"<insert name of Filing Registrar> agrees that its claims and remedies concerning the registration of the domain name, the dispute, or the dispute's resolution shall be solely against the Respondent and waives all such claims and remedies against the Registry Operator as well as its directors, officers, employees, and agents, except in the case of deliberate wrongdoing or gross negligence."

"<insert name of Filing Registrar> certifies that the information contained in this Request for Enforcement is to the best of Filing Registrar's knowledge complete and accurate, that this Request for Enforcement is not being presented for any improper purpose, such as to harass, and that the assertions in this Request for Enforcement are warranted under this Policy and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument."

3.1.3 The Request for Enforcement may relate to more than one domain name, provided that the domain names involve the same Filing Registrar and Respondent and that the claims arise out of the same or similar factual circumstances.

3.1.4 The Request for Enforcement shall annex the following documentary evidence (as applicable and available) in electronic form if possible, together with a schedule indexing such evidence:

(i) For the Gaining Registrar:

- a. Completed Form of Authorization ("FOA")
- b. Copy of the Whois output for the date transfer was initiated, which was used to identify the authorized Transfer Contacts
- c. Copy of evidence of identity used
- d. Copy of a bilateral agreement, final determination of a dispute resolution body or court order in cases when the Registrant of Record is being changed simultaneously with a Registrar Transfer
- e. Copies of all communications made to the Registrar of Record with regard to the applicable transfer request along with any responses from the Registrar of Record

(ii) For the Registrar of Record:

- a. Completed FOA from Registrar of Record if applicable
- b. Copy of the Whois output for the date the transfer was initiated
- c. Relevant history of Whois modifications made to the applicable registration
- d. Evidence of one of the following if a transfer was denied:
 - fraud;
 - UDRP action;
 - court order;
 - Registrant or administrative contact identity dispute in accordance with Section 4 [Registrar of Record Requirements]
 - applicable payment dispute along with evidence that the registration was put on HOLD status;
 - express written objection from the Registered Name Holder or Administrative Contact;
 - LOCK status along with proof of a reasonable means for the registrant to remove LOCK status as per Section ___ of

- Exhibit __ to this Agreement;
- domain name within 60 days of initial registration; or
- • domain name within 60 days of a prior transfer.

e. Copies of all communications made to the Gaining Registrar with regard to the applicable transfer request along with any responses from the Gaining Registrar.

3.2 The Non-Filing Registrar ("Respondent") shall have seven (7) calendar days from receipt of the Request for Enforcement to prepare a Response to the Request for Enforcement ("Response").

3.2.1 The Response shall be submitted in electronic form to both the Registry and Filing Registrar and shall:

(i) Respond specifically to the statements and allegations contained in the Request for Enforcement (This portion of the response shall comply with any word or page limit set forth in the Dispute Resolution Provider's Supplemental Rules.);

(ii) Provide the name, postal and e-mail addresses, and the telephone and fax numbers of the Respondent (non-filing Registrar);

(iii) Identify any other legal proceedings that have been commenced or terminated in connection with or relating to any of the domain name(s) that are the subject of the Request for Enforcement;

(iv) State that a copy of the Response has been sent or transmitted to the Filing Registrar;

(v) Conclude with the following statement followed by the signature of the Respondent or its authorized representative:

"Respondent certifies that the information contained in this Response is to the best of Respondent's knowledge complete and accurate, that this Response is not being presented for any improper purpose, such as to harass, and that the assertions in this Response are warranted under these Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument."; and

(vi) Annex any documentary or other evidence upon which the Respondent relies, together with a schedule indexing

such documents.

3.2.2 At the request of the Respondent, the Registry Operator may, in exceptional cases, extend the period of time for the filing of the response, but in no case may the extension be more than an additional five (5) calendar days. The period may also be extended by written stipulation between the Parties, provided the stipulation is approved by the Registry Operator.

3.2.3 If a Respondent does not submit a response, in the absence of exceptional circumstances, the Registry Operator shall decide the dispute based upon the Request for Enforcement.

3.3 Registry Operator must review all applicable documentation and compare registrant/contact data with that contained within the authoritative Whois database and reach a conclusion not later than 14 days after receipt of the Response.

3.3.1 If the data included in the Request for Enforcement does not match the data listed in the authoritative Whois, the Registry Operator must contact each Registrar and require additional documentation.

3.3.2 If the Gaining Registrar cannot provide a complete FOA with data matching that contained within the authoritative Whois database, then the Registry Operator shall find that the transfer should be reversed. In the case of a thick Registry, if the Registrar of Record's Whois is not accessible or invalid, the Registry Operator's Whois should be used. In the case of a thin Registry, if the Registrar of Record's Whois is not accessible or is invalid, the Registry Operator must notify ICANN and place the dispute on hold until such time as the specific problem is resolved by ICANN.

3.3.3 In the case where a Registrar of Record denies a request for a domain name transfer ("NACKs"), the Registrar of Record must provide evidence of one of the factors for which it is allowed to NACK. If the Registrar of Record cannot provide evidence that demonstrates any of the factors, and the Gaining Registrar provides to the Registry a complete FOA with data matching that contained within the authoritative Whois database, then the transfer must be approved to be processed.

3.3.4 If the data provided by neither Registrar appears to be conclusive, then the Registry shall issue a finding of "no decision." If the data provided to the Registry is complete and provides sufficient basis for a determination based on the Policy, the Registry may not issue a finding of "no decision." Either Registrar shall be able to appeal such issue to a Second-Level Dispute Resolution Provider in accordance with the provisions set forth below.

3.4 Fees for First-Level Dispute Resolution Service

3.4.1 There is no filing fee assessed to the Filing Registrar at the time the Request for Enforcement is submitted to the Registry Operator.

3.4.2 The Registrar that does not prevail in the dispute will be assessed a fee to be set by the Registry Operator. Such fee shall be set forth in the Registry's Supplemental Rules that are in effect at the time that the Request for Enforcement was filed.

3.4.3 This fee shall not be passed on to the Registrant.

3.4.4 This fee will be charged after a final decision is rendered by the Registry. In the case that the Registry issues a finding of "no decision," the Registry Operator shall collect the applicable fees from the Filing Registrar.

3.5 Availability of Court Proceedings

The procedures set forth above shall not prevent a Registrar from submitting a dispute to a court of competent jurisdiction for independent resolution before such an administrative proceeding is commenced or after such proceeding is concluded. If a Registry Operator decides a domain name registration should be transferred (either to the Gaining Registrar, or alternatively, back from the Gaining Registrar to the Registrar of Record), the Registry will wait fourteen (14) calendar days after it is informed of the decision before implementing that decision. The Registry will then implement the decision unless it has received during that fourteen (14) calendar day period official documentation (such as a copy of a complaint, file-stamped by the clerk of the court) that a lawsuit has commenced with respect to the impacted domain name(s). If such documentation is received by the Registry Operator within the fourteen (14) calendar day period, the decision will not be implemented until (i) evidence is presented to the Registry Operator that the parties have resolved such dispute; (ii) evidence is presented to the Registry Operator that the lawsuit has been dismissed or withdrawn; or (iii) the Registry Operator receives a copy of an order from such court.

4. Dispute Procedures at the Second Level with a Dispute Resolution Provider

4.1 The services of the Dispute Resolution Panel may be invoked in any of the following two situations:

(i) A Filing Registrar may elect to skip the First-Level dispute process at Registry level and submit a Request for Enforcement directly with a Dispute Resolution Provider;

(ii) The non-prevailing Registrar in a First-Level dispute proceeding may submit an appeal of the applicable Registry Operator's decision to the Dispute Resolution Provider. Additionally, in the case where the result in the First-Level dispute process is a "no-decision," either Registrar may file an Appeal of such decision to a Dispute Resolution Provider.

4.2 Initial Request for Enforcement

4.2.1 In the event that the Filing Registrar elects to submit a Request for Enforcement to the Dispute Resolution Provider in lieu of submitting a Request for Enforcement to the applicable Registry Operator, the obligations and responsibilities set forth in Sections 3.1 through 3.2 above shall apply.

4.2.2 The Dispute Resolution Panel appointed by the Dispute Resolution Provider must review all applicable documentation and compare registrant/contact data with that contained within the authoritative Whois database and reach a conclusion not later than thirty (30) days after receipt of Response from the Respondent.

(i) If the data does not match the data listed in authoritative Whois, the Dispute Resolution Panel should contact each Registrar and require additional documentation.

(ii) If the Gaining Registrar is unable to provide a complete FOA with data matching that contained within the authoritative Whois database at the time of the transfer request, then the Dispute Resolution Panel shall find that the transfer should be reversed. In the case of a thick Registry, if the Registrar of Record's Whois is not accessible or invalid, the applicable Registry Operator's Whois should be used. In the case of a thin Registry, if the Registrar of Record's Whois is not accessible or is invalid, the Dispute Resolution Provider may place the dispute on hold until such time as the problem is resolved.

(iii) In the case where a Registrar of Record NACKs a transfer, the Registrar of Record must provide evidence of one of the factors for which it is allowed to NACK as set forth in Section 3.1.4 (ii) of this Dispute Resolution Policy. If the Registrar of Record cannot provide evidence that demonstrates any of the factors, and the Gaining Registrar provides to the Dispute Resolution Provider a complete FOA with data matching that contained within the authoritative Whois database at the time of the transfer request, then the transfer should be approved.

(iv) Unlike under the First-Level dispute process, the Dispute Resolution Panel may not issue a finding of "no decision." It must weigh the applicable evidence in light of the Transfer policies and determine, based on a preponderance of the evidence, which Registrar should prevail in the dispute and what resolution to the Request for Enforcement will appropriately redress the issues set forth in the Request for Enforcement.

(v) Resolution options for the Dispute Resolution Panel are limited to the following:

- a. Approve Transfer
- b. Deny the Transfer (or ordering the domain name be returned to the Registrar of Record in cases where a Transfer has already occurred)

4.3 Appeal of First Level Dispute Decision or Registry Operator Finding of "No-Decision."

4.3.1 In the event that the Registrar which does not prevail in the First-Level dispute is dissatisfied by the Registry-Operator's decision, such Registrar may file an appeal with a Dispute Resolution Provider, provided that such appeal is filed no later than fourteen (14) calendar days after the date on which the First-Level decision was issued.

4.3.2 In the event that the Registry Operator issues a finding of "no-decision" in accordance with Section 3.3.4 above, either Registrar may file an appeal of such decision with a Dispute Resolution Provider, provided that such appeal is filed no later than fourteen (14) calendar days after the date on which the First-Level decision was issued.

4.3.3 In either case, the document submitted by the Registrar to the Dispute Resolution Provider shall be referred to as an "Appeal."

4.3.4 The Appellant shall submit the Appeal in electronic form and shall:

- (i) Request that the Appeal be submitted for decision in accordance with the Policy and these Rules;
- (ii) Provide the name, postal and e-mail addresses, and the telephone and telefax numbers of the Appellant and of any representative authorized by the Appellant to act on behalf of the Appellant in the administrative proceeding;
- (iii) Provide the name of the Appellee and all information (including any postal and e-mail addresses and telephone and telefax numbers) known to Appellee regarding how to contact Appellee or any representative of Appellee, including contact information based on pre-Request for Enforcement and pre-Appeal dealings;
- (iv) Specify the domain name(s) that is/are the subject of the Appeal;
- (v) Specify the incident(s) which gave rise to the dispute;

(vi) State the basis for such appeal, including specific responses to the findings of the Registry Operator in the First-Level Dispute process. (This portion of the response shall comply with any word or page limit set forth in the Dispute Resolution Provider's Supplemental Rules);

(vii) Specify, in accordance with the Policy, the remedies sought;

(viii) Identify any other related legal proceedings known to the Appellant that have been commenced or terminated in connection with or relating to any of the domain name(s) that are the subject of the complaint;

(ix) State that a copy of the Appeal, together with the cover sheet as prescribed by the Dispute Resolution Provider's Supplemental Rules, has been sent or transmitted to the Appellee; and

(x) Conclude with the following statement followed by the signature of the Appellant or its authorized representative:

"Appellant agrees that its claims and remedies concerning the registration of the domain name, the dispute, or the dispute's resolution shall be solely against the Appellee and waives all such claims and remedies against the Dispute Resolution Provider and the Registry Operator as well as their directors, officers, employees, and agents, except in the case of deliberate wrongdoing or gross negligence."

"Appellant certifies that the information contained in this Appeal is to the best of Appellant's knowledge complete and accurate, that this Appeal is not being presented for any improper purpose, such as to harass, and that the assertions in this Appeal are warranted under this Policy and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument."

4.3.5 The Appeal may relate to more than one domain name, provided that the domain names involve the same decision issued by the Registry Operator for the First-Level Dispute.

4.3.6 The Appeal shall annex any documentary evidence that was not already submitted to the Registry Operator during the First-Level Dispute.

4.3.7 A Dispute Resolution Provider must request all documentation relating to the First-Level Dispute from the applicable Registry Operator no later than seven (7) calendar days of receipt of the appeal. The Registry Operator shall submit such documentation to the Dispute Resolution Provider within seven (7) days of such request.

4.3.8 The Dispute Resolution Panel must review all applicable documentation and reach a conclusion not later than 30 calendar days after receipt of the Appeal.

(i) The Dispute Resolution Panel may submit questions to the Registry, the Appellant or Appellee.

(ii) Responses to all such questions must be received by the Dispute Resolution Panel within 7 days.

(iii) The Dispute Resolution Panel shall review each Appeal on a De Novo basis. Although the Dispute Resolution Panel is not bound by the findings of the Registry Operator in an Appeal, it shall have the discretion to consider such findings in reaching its own conclusions. The purpose of the Dispute Resolution Panel should be to make a determination as to whether the Appeal has merit based solely on the requirements of the current Transfer policy and determine the appropriate resolution to the issues presented.

(iv) The Remedies ordered by the Dispute Resolution Panel shall be limited to:

- Approval of a Transfer
- Denial of the Transfer (or ordering the domain name be returned to the Registrar of Record in cases where a Transfer has already occurred)

4.4 Fees for Second-Level Dispute Resolution Service

4.4.1 In the case of either a Request for Enforcement or an Appeal filed at the Second Level, the applicable Dispute Resolution Provider shall determine the applicable filing fee ("Filing Fee"). The specific fees along with the terms and conditions governing the actual payment of such fees shall be included in the Dispute Resolution Provider's Supplemental Rules.

4.4.2 In the event that the Filing Registrar or Appellant, whichever applicable, does not prevail in a Second-Level dispute, the Filing Fees shall be retained by the Dispute Resolution Provider.

4.4.3 In the event that the Filing Registrar or Appellant, whichever applicable, prevails in a Second-Level dispute, the Respondent or Appellee, whichever applicable, must submit to the Dispute Resolution

Provider, the Filing Fees within fourteen (14) calendar days after such decision. In such an event, the Dispute Resolution Provider shall refund to the Filing Registrar or Appellant, whichever applicable, the Filing Fees, no later than fourteen (14) calendar days after it receives the Filing Fees from the Respondent or Appellee. Such fees must be paid regardless of whether a Court Proceeding is commenced in accordance with Section 4.5 below. Failure to pay Filing Fees to the Dispute Resolution Provider may result in the loss of accreditation by ICANN.

4.5 Availability of Court Proceedings

The procedures set forth above shall not prevent a Registrar from submitting a dispute to a court of competent jurisdiction for independent resolution before such administrative proceeding is commenced or after such proceeding is concluded. If a Dispute Resolution Panel decides a domain name registration should be transferred (either to the Gaining Registrar, or alternatively, back from the Gaining Registrar to the Registrar of Record), such Registrar will wait fourteen (14) calendar days after it is informed of the decision before implementing that decision. The Registry will then implement the decision unless it has received from either of the parties to the dispute during that fourteen (14) calendar day period official documentation (such as a copy of a complaint, file-stamped by the clerk of the court) that a lawsuit has commenced with respect to the impacted domain name(s). If such documentation is received by the Registry, as applicable, within the fourteen (14) calendar day period, the decision will not be implemented until (i) evidence is presented that the parties have resolved such dispute; (ii) evidence is presented that the lawsuit has been dismissed or withdrawn; or (iii) a copy of an order from such court dismissing the lawsuit or ordering certain actions with respect to the domain name.