

PUBLIC INTEREST COMMITMENT DISPUTE RESOLUTION PROCEDURE¹
DRAFT: 15 MARCH 2013

1. Parties to the Dispute

The parties to the dispute will be the allegedly harmed person or entity and the Registry Operator that the allegedly harmed person or entity claims to have violated one or more of its Public Interest Commitments (“PICs”) set forth in Specification 11 of its Registry Agreement with ICANN. ICANN shall not be a party, though ICANN does have the right, but not the obligation, to enforce any recommended remedy made by the PIC Dispute Resolution Provider (“PICDRP”) Panel.

2. Applicability

2.1 This PICDRP is intended to cover all dispute resolution proceedings relating to the violation of a Registry Operator’s PIC(s). To the extent more than one PICDRP Provider (“Provider”) is selected to implement the PICDRP, each Provider must use this PICDRP, and each provider may also have supplemental rules that when available must be followed.

2.2 In Specification 11 of the Registry Agreement, the Registry Operator agrees to participate in the PICDRP, be bound by the resulting Expert Determinations, and comply with ICANN’s imposed remedies, if any, following a PICDRP proceeding.

3. Language

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

3.2 Parties may submit supporting evidence in their original language, provided and subject to the authority of the 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 submitted 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.

¹ Initial complaints that a Registry failed to comply with its Public Interest Commitment(s) (PIC) shall be processed through a mandatory a PIC Problem Report System (PICPRS) using an online form similar to ICANN’s Whois Data Problem Report System (WDPRS). A nominal processing fee could serve to decrease frivolous complaints and is still under consideration. Upon receipt of the online complaint, the Registry Operator will be required to take reasonable steps to investigate (and remedy if warranted) the reported non-compliance of one or more of its PICs. The complainant will have the option to escalate the complaint in accordance with this PICDRP, if the alleged non-compliance continues. Failure by the Registry Operator to address the complaint to the complainant’s satisfaction does not itself give the complainant standing to file a PICDRP complaint.

- 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 has been injured as a result of a Registry Operator’s failure to comply with one or more of its PICs.
- 5.2 Complainants must have filed a complaint through the Public Interest Commitment Problem Report System (“PICPRS”) (which may be renamed or revised from time to time), related to the same PIC(s) at issue in the PICDRP proceeding, to have standing to file a PICDRP Complaint.
- 5.3 The Panel will determine standing and the Expert Determination will include a statement of the Complainant’s standing.

6. Standards

For a Complaint to be successful, the Complainant must prove that:

- 6.1. The Registry Operator violated one or more of its PICs;
- 6.2 There is a measureable harm to the Complainant as a result of the Registry Operator’s violation of one or more of its PICs.

7. Complaint

7.1 Filing:

The Complaint will be filed electronically. Once the Administrative Review referenced in section 8 below has been completed, and the Provider deems the Complaint be in compliance, the Provider will electronically serve the Complaint and serve a paper 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.

7.2 Content:

- 7.2.1 The name and contact information, including address, phone, and email address, of the Complainant, and, to the best of Complainant’s knowledge, the name and

address of the current 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, and any relevant evidence, which shall include:
 - (a) A short and plain statement of the basis upon which the Complaint is being filed, including the particular PIC that serves as the basis for the Complaint, as well as the specific act(s) or omission(s) the Complainant claims amount to a breach or violation of one or more of the Registry Operator's PICs.
 - (b) A detailed explanation of the validity of the Complaint and why the Complainant is entitled to relief.
 - (c) Why Complainant is injured by the alleged acts or omissions of the Registry Operator.
 - (d) Copies of any documents that the Complainant considers to evidence its basis for relief.
 - (e) A statement that the proceedings are not being brought for any improper purpose.
 - (f) A statement that the Complainant has filed a complaint through the PICPRS and that the PICPRS process has concluded.
- 7.3 Complaints will be limited 5,000 words and 20 pages, excluding attachments, unless the Provider determines that additional material is necessary.
- 7.4 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.

8. Administrative Review of the Complaint

- 8.1 All Complaints will be reviewed by the Provider within five (5) business days of submission to the Provider to determine whether the Complaint contains all necessary information and complies 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.

- 8.3 If deemed compliant, the Provider will electronically serve the Complaint on the Registry Operator and serve the Notice of Complaint consistent with the contact information listed in the Registry Agreement.

9. Response to the Complaint

- 9.1 The Registry Operator must file a Response to each Complaint within thirty (30) days of service of the Complaint.
- 9.2 The Response will comply with the rules for filing of a Complaint and will contain the name and contact information for the Registry Operator, as well as a point-by-point response to the statements made in the Complaint.
- 9.3 The Response must be 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.
- 9.4 Service of the Response will be deemed effective, and the time will start to run for a Reply, upon electronic service of the Response.
- 9.5 If the Registry Operator believes the Complaint is without merit, it will affirmatively plead in its Response the specific grounds for such a claim.
- 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's 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.

10. Reply

- 10.1 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.
- 10.2 Once the Complaint, Response and Reply (as necessary) are filed and served, a Panel will be appointed by the Provider and provided with all submissions.

11. Default

- 11.1 If the Registry Operator fails to respond to the Complaint, it will be deemed to be in Default.
- 11.2 Limited rights to set aside the finding of Default will be established by the Provider, but in no event will a set aside be permitted absent a showing of good cause to set aside the finding of Default.

11.3 The Provider shall provide notice of Default via email to the Complainant and Registry Operator.

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

12. Expert Panel

12.1 The Provider shall establish a 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.

12.2 The Provider shall appoint a one-person Expert Panel, unless any party requests a three-member Expert Panel.

12.3 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. PICDRP panelists within a Provider shall be rotated to the extent feasible.

12.4 Expert Panel members must be independent of the parties to the proceedings. Each Provider will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing a panelist for lack of independence.

13. Costs

13.1 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 be estimated to cover the Provider's administrative fees (not including the filing fees) and the Expert Panel fees, and are intended to be reasonable.

13.2 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.

13.3 If the Panel declares the Complainant to be the prevailing party, the Registry Operator is required to reimburse Complainant for all administrative fees and Expert Panel fees incurred. Failure to do shall be deemed a violation of the PICDRP and a breach of the Registry Agreement, subject to remedies available under the Agreement up to and including termination.

14. Discovery/Evidence

14.1 In order to achieve the goal of resolving disputes rapidly and at a reasonable cost, discovery will generally not be permitted, although the Expert Panel may require a party to provide additional evidence to the Panel.

- 14.2 The Expert Panel should communicate with the Registry Operator, if needed, to understand the meaning and purpose of the PIC(s) that are at issue in the PICDRP proceeding.
- 14.3 Without a specific request from the Parties, but only in extraordinary circumstances, 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 document

15. Hearings

- 15.1 Disputes under this Procedure will usually be resolved without a hearing.
- 15.2 The Expert Panel may decide on its own initiative to hold a hearing. However, the presumption is that the Expert Panel will render Determinations based on written submissions and without a hearing.
- 15.3 If a hearing is held, videoconferences or teleconferences shall be used if at all possible. If not possible, then the Expert Panel will select a place for hearing if the Parties cannot agree.
- 15.4 Hearings should last no more than one day.
- 15.5 All dispute resolution proceedings will be conducted in English, absent mutual agreement otherwise.

16. Burden of Proof

The Complainant bears the burden of proving the allegations in the Complaint; the burden must be by a preponderance of the evidence.

17. Recommended Remedies

- 17.1 Since registrants of domain names registered in violation of the PIC(s) are not a party to the PICDRP proceeding, a recommended remedy cannot take the form of deleting, transferring or suspending registrations that were made in violation of the PIC(s) (except to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator).
- 17.2 Remedies will not include monetary damages or sanctions to be paid to any party other than fees awarded pursuant to section 13.
- 17.3 The Expert Panel may recommend a variety of graduated enforcement tools against the Registry Operator if the Expert Panel determines that the Registry Operator is liable under this PICDRP, including:
 - 17.3.1 Remedial measures for the registry to employ to ensure against allowing future non-complying use of the gTLD, which may be in addition to what is required under the Registry Agreement, except that the remedial measures shall not:
 - (a) Require the Registry Operator to change its PIC(s); or

(b) Direct actions by the Registry Operator that are contrary to those required under the Registry Agreement;

17.3.2 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,

17.3.3 In extraordinary circumstances where the Registry Operator acted with malice, providing for the termination of a Registry Agreement.

17.3 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. The Expert Panel Determination

18.1 The Provider and the Expert Panel will make reasonable efforts to ensure that the Expert Determination is issued 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.

18.2 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 that Determination. The Expert Determination should be publicly available and searchable on the Provider's website.

18.3 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 Panel's Determination.

18.4 The Expert Determination shall state which party is the prevailing party.

18.5 While the Expert Determination that a Registry Operator is liable under the standards of the PICDRP shall be taken into consideration, ICANN will have the authority to impose the remedies, if any, that ICANN deems appropriate given the circumstances of each matter.

19. Appeal of Expert Determination

19.1 Either party shall have a right to seek a de novo Appeal of the Expert Determination of based on the existing record within the PICDRP proceeding for a reasonable fee to cover the costs of the appeal.

19.2 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 is filed. Manner and calculation of service deadlines shall in consistent with those set forth in Section 4 above, "Communication and Time Limits."

- 19.3 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.
- 19.4 The fees for an Appeal in the first instance shall be borne by the Appellant.
- 19.5 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.
- 19.6 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.
- 19.7 The prevailing party shall be entitled to an award of costs of appeal.
- 19.8 The Providers rules and procedures for appeals, other than those stated above, shall apply.

20. Breach

- 20.1 If the Expert determines that the Registry Operator is in breach, ICANN will then proceed to notify the Registry Operator that it is in breach. The Registry Operator will be given the opportunity to cure the breach as called for in the Registry Agreement.
- 20.2 If the Registry Operator fails to cure the breach then both parties are entitled to utilize the options available to them under the Registry Agreement, and ICANN may consider the recommended remedies set forth in the Expert Determination when taking action.
- 20.3 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.

21. Availability of Court or Other Administrative Proceedings

- 21.1 The PICDRP 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.
- 21.2 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 PICDRP was instituted prior to the filing date of the Complaint in the PICDRP, the Provider shall suspend or terminate the PICDRP.