REGISTRY RESTRICTIONS DISPUTE RESOLUTION PROCEDURE (RRDRP)
REVISED - FEBRUARY 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 revised 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 additions to the revisions below, please see the summary of comments and analysis in response to public comments made to the initial RRDRP posted with version 3 of the Applicant Guidebook. Still under consideration is whether this procedure and the Trademark Post-Delegation Dispute Resolution Procedure can be combined as one.

DRAFT PROCEDURE

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.

Applicable Rules

- ~~These rules for implementation of the RRDRP are~~ This procedure is intended to cover ~~the~~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 ~~minimal basic rules~~general procedure to be followed by all Providers.

- ~~Moreover, in~~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. ~~Absent extraordinary circumstances such as bias or fraud, the Determination will be final.~~

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.

Communications and Time Limits

- All communications with the RRDRP 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.

Standing

- The mandatory administrative proceeding will commence when a third-party has filed a Complaint with a RRDRP 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 objection. To qualify for standing for a community claim, the objector must prove both: it is an established institution, and it has an ongoing relationship with a defined community that consists of a restricted population.

Standard

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

  o 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.

Complaint

- **Filing:**

  The Complaint will be filed electronically. Once reviewed for technical compliance, it will be served electronically, with a hard copy and fax notice, by the RRDRP provider 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, 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 or 20 pages, whichever is less, 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 non-refundable filing fee in the amount set in accordance with the applicable RRDRP provider rules. In the event that the filing fee is not paid within10 days of the

receipt of the Complaint by the RRDRP, the Complaint will be dismissed without prejudice.

Administrative Review of the Complaint

- All Complaints will be reviewed within ~~10~~five (5) business days of submission by panelists designated by the applicable RRDRP provider to determine whether the Complainant has standing to request relief and has complied with the procedural rules.

- If the RRDRP provider finds that the Complaint complies with procedural rules, the Complaint will be deemed filed, and the proceedings will continue. If the RRDRP 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 deemed compliant, the Provider will serve the Complaint on the registry operator.

Response to the ~~Objection~~Complaint

- ~~The RRDRP provider will serve the complaint.~~ The registry operator will file a response to each Complaint. The response will be filed within ~~thirty (30~~twenty (20) days of service the Complaint. Service will be deemed effective, and the time will start to run, upon confirmation that the written materials sent by the ~~RRDRP provider~~Provider have been received at the last known address of 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, should be filed with the ~~RRDRP provider~~Provider and served upon the Complainant in paper and electronic form. The filing fee must accompany the filing or the allegations in the Complaint will be sustained.

Default

- If the registry operator fails to respond to the Complaint, it will be deemed to be in default ~~and the allegations found in the Complaint will be deemed to have been sustained. The RRDRP provider will award an appropriate remedy in the event of default.~~.

- Limited rights to set aside the finding of default will be established by the ~~RRDRP provider~~Provider, but in no event will ~~they~~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.

Expert

- The ~~RRDRP provider~~Provider shall select and appoint a single Expert within (~~30~~21) days after receiving the response.

- Experts must be independent of the parties to the post-delegation challenge. Each ~~RRDRP provider~~Provider (if more than one is selected) will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing ~~a~~an Expert for lack of independence.

Costs

- The ~~RRDRP provider~~Provider will ~~determine~~estimate the costs for the proceedings that it administers under this procedure in accordance with the applicable ~~RRDRP provider~~Provider Rules. Such costs will cover the administrative fees of the ~~RRDRP provider~~Provider and for the Expert, and are intended to be reasonable.

- The ~~RRDRP provider~~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.

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 may require a party to provide additional evidence.

- ~~The Expert will determine whether the parties shall submit additional written statements and shall fix the short time limits for such submissions.~~

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

- Without a specific request from the Parties, the Provider may appoint experts to be paid for by the Parties, request live or written witness testimony, or request limited exchange of documents.

Hearings

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

- The Expert may decide on its own initiative, or at the request of a party, to hold a hearing. However, the presumption is that the Expert 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 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 grants one party's request for a hearing, notwithstanding the other party's opposition, the Expert is encouraged to apportion the hearing costs to the requesting party as the Expert deems appropriate.

- All dispute resolution proceedings will be conducted in English.

Burden of Proof

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

Remedies

- Since registrants of domain names registered in violation of the agreement restriction are not a party to the action, reliefa recommended remedy cannot take the form of deleting registrations that were made in violation of the agreement restrictions.

- The Expert will have at its disposal a variety of graduated enforcement tools including: to recommend against the registry if it is deemed to have allowed registrations outside the scope of its promised limitations, including:

  - Remedial measures for the registry to employ to ensure against allowing future registrations that do not comply with community-based limitations;

  - Monetary sanctions;

  - Suspension of accepting new domain name registrations in the gTLD until such time as the violation(s) is cured; or, in extraordinary circumstances,;

  - Providing for the termination of a registry agreement.

- In making its Determinationrecommendation of the appropriate remedy, the Experts will consider the ongoing harm to the Complainant.

The Expert Determination

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

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

- The Determination will further include a recommendation of specific remedies and state specifically when ~~the applicable~~those remedies ~~are to~~ should take effect~~,~~ ~~costs.~~ Costs and fees~~, however~~ to the Provider, to the extent not already paid, will be paid within thirty (30) days of the Expert's 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 followed absent extraordinary circumstances, ICANN will review, approve and enforce the recommend remedies found in the Expert Determination, or as those remedies are amended by ICANN given the circumstances of each matter.

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.