



Charter Eligibility Dispute Resolution Policy

Version 1.0

Charter Eligibility Dispute Resolution Policy

This ICM Registry LLC (the "Registry") Charter Eligibility Dispute Resolution Policy (the "CEDRP") is incorporated by reference into the Registry-Registrant Agreement. This CEDRP shall become effective as of September 1, 2011.

1. Purpose

Domain names in the .XXX TLD can be registered or reserved. This CEDRP describes standards that will be applied to resolve challenges to registered names in the .XXX TLD on the basis of alleged use inconsistent with the qualifications for registration. This CEDRP will not be applied to Registry-reserved names in the .XXX TLD, including without limitation Premium Names.

2. Applicable Disputes

A registered domain name in the .XXX TLD will be subject to an administrative proceeding upon submission of a complaint showing by clear and convincing evidence that the domain name in the .XXX TLD has been improperly registered or used under one or more of the circumstances in this section.

Any claim premised on non-use or improper use of a registered domain name in the .XXX TLD under this CEDRP shall be evaluated in light of practical circumstances relative to the length of time the domain name has been registered by its registrant and the adequacy thereof for engaging in preparation for eligible use of the domain name. Use constituting "non-commercial commentary or criticism" of a specific person or business entity targeted by a registered domain name in the .XXX TLD will not be deemed a legitimate use, in contrast to the provision of bona fide legal or policy advocacy services, commercial parody, satire, and other varieties of commercial nominative, comparative use which shall be deemed legitimate uses of domain names in the .XXX TLD under this CEDRP.

a. Registration Or Use Inconsistent With Community Eligibility

A complaint under this section shall be required to show that a registered domain name in the .XXX TLD has not been registered or used in compliance with the Sponsored Community eligibility criteria as further defined in the Registry-Registrant Agreement.

b. Improper Sunrise A Registration

A complaint under this section shall be required to:

(i) show that a registered domain name in the .XXX TLD has not been registered in compliance with the provisions the Registry Sunrise Program as they relate to Sponsored Community Adult Trademark Rights Holders ("AT" applicants), or Sponsored Community Existing Domain Name registrants ("AD" applicants); and

(ii) be submitted to the Provider prior to September 1, 2012.

3. Remedies

The sole remedy available to a complainant for a proceeding under this CEDRP shall be cancellation of the registration and return of the cancelled domain name to the pool of available names available for registration in the .XXX TLD.

4. Procedure

a. Dispute Resolution Provider / Selection of Procedure

A Complaint under this CEDRP shall be submitted to the National Arbitration Forum (“Provider”) by submitting the complaint directly to that Provider. The Provider will administer the proceeding and select a qualified and eligible Evaluator (“Evaluator”). The Provider shall establish Rules, subject to the approval of the Registry, setting forth a fee schedule and other technical and process requirements for a dispute under this CEDRP (“Rules”). The proceedings under this CEDRP will be conducted according to this CEDRP and the applicable Rules of the Provider.

b. Registry’s or Registrar’s Involvement

In proceedings not initiated by the Registry or registrar, neither the Registry nor registrar will participate in the administration or conduct of any proceeding before an Evaluator. In any event, neither the Registry nor the registrar is or will be liable as a result of any decisions rendered by the Evaluator.

Any domain names in the .XXX TLD involved in a CEDRP proceeding will be locked against transfer to another domain name holder or another registrar during the course of a proceeding. The contact details of the holder of a registered domain name in the .XXX TLD will be provided to the Provider by the registrar’s publicly available Whois database record for the relevant registrant. The Registry and the applicable registrar will comply with any Evaluator decision and make all appropriate changes to the status of the domain name registration(s) in their Whois databases.

c. Parties

The registrant of a registered domain name in the .XXX TLD shall be promptly notified by the Provider of the commencement of a dispute under this CEDRP, and shall have thirty (30) days in which it may contest the allegations of the complaint or show other cause why the complaint should not be granted in accordance with this CEDRP or the conditions under which the domain name in the .XXX TLD has been registered or used. In all cases, the burden of proof shall be on the complainant, and default or other failure of the holder of the registered name shall not constitute an admission to any allegation of the complaint, which may only be granted on clear and convincing grounds. The Provider shall promptly notify all named parties in the dispute, as well as the registrar and the Registry of any decision made by an Evaluator.

d. Decisions

(i) the Evaluator may state the basis on which the decision is issued in summary format and may include such commentary or guidance as the Evaluator deems appropriate;

(ii) the decision shall state whether a registered name in the .XXX TLD is to be cancelled or the status quo maintained; and

(iii) no information regarding decisions made under this CEDRP will be publicly published by the Registry, the Provider or the Evaluator; only aggregate statistical information about the CEDRP process itself, including decision percentages, may be published by the Registry and/or Provider.

e. Implementation

If an Evaluator's decision requires a change to the status of a registered name, the registrar and/or Registry will wait ten (10) business days after communication of the decision before implementing that decision, unless the registrant submits to the Registry during that ten (10) day period official documentation (such as a copy of a complaint, file-stamped by the clerk of the court) that the registrant has commenced a lawsuit to preserve its claimed rights in a court of competent jurisdiction over the parties and the domain name. If such documentation is received no further action shall be taken until the Registry receives (i) evidence satisfactory to the Registry of an agreed resolution between the parties; (ii) evidence satisfactory to Registry that registrant's lawsuit has been dismissed or withdrawn; or (iii) a copy of an order from such court dismissing such lawsuit or otherwise directing disposition of the domain name.

f. Representations and Warranties

Parties to a dispute under this CEDRP shall warrant that all factual allegations made in the course thereof are true and correct to the best of their knowledge, shall remain subject to all representations and warranties made in the course of registration of a disputed domain name.

5. Maintaining the Status Quo

During a proceeding under the CEDRP, the domain name shall be locked against transfers between registrants and/or registrars. In the event the domain name(s) is due to expire during a proceeding, the name shall proceed to a temporarily reserved status if it is not renewed by the registrant; the CEDRP proceeding, in that case, shall be terminated.

6. Indemnification / Hold Harmless

The parties shall hold the registrar, the Registry, the Provider, and the Evaluator harmless from any claim arising from operation of the CEDRP. Neither party may name the registrar, the Registry, the Provider, or the Evaluator as a party or otherwise include the registrar, the Registry, the Provider, or the Evaluator in any judicial proceeding relating to the dispute or the administration of the CEDRP policy.

The parties shall indemnify, defend and hold harmless the registrar, the Registry, the Provider, the Evaluator and their respective employees, contractors, agents and service providers from any claim arising from the conduct or result of a proceeding under this CEDRP.

Neither the registrar, the Registry, Provider, the Evaluator and their respective employees, contractors, agents and service providers shall be liable to a party for any act or omission in connection with any administrative proceeding under this CEDRP or the corresponding Rules.

The complainant shall be directly and solely liable to the registrant in the event the complaint is granted in circumstances where the registrant is lawfully entitled to registration and use of the domain name(s) in the .XXX TLD.

7. Relation To Other Dispute Resolution Policies

This CEDRP is in addition to and complementary with the Uniform Domain Name Dispute Resolution Policy (“UDRP”) and the conditions herein may constitute lack of legitimate interests and/or bad faith as appropriate under the UDRP in relation to domain names in the .XXX TLD. Remedies ordered under the UDRP shall be subject to the general registration and Sponsored Community eligibility criteria requirements of domain names in the .XXX TLD.

8. Effect of Other Proceedings

The administrative proceeding under the CEDRP shall not prevent either party from submitting a dispute concerning the domain name in the .XXX TLD to concurrent administrative proceedings or to a court of competent jurisdiction for independent resolution during a pending CEDRP administrative proceeding or after such proceeding is concluded.

Upon notice of such other proceeding, the CEDRP proceeding will be suspended or terminated (in the sole discretion of the Evaluator) in deference to the outcome of such other proceeding.

If a domain name in the .XXX TLD is subject to a UDRP proceeding, the factors set forth in the CEDRP may be alleged in such proceeding as applicable terms of legitimate rights or registration and use under the UDRP in addition to any allegations or defenses available.

9. CEDRP Modifications

The Registry reserves the right to modify this CEDRP at any time subject to the terms of its Registry contract with ICANN. Such revised CEDRP shall be posted on the Registry Website at least ten (10) calendar days before it becomes effective; unless this CEDRP has already been invoked by the submission of a complaint, in which event the version of the CEDRP in effect at the time it was invoked will apply until the dispute is concluded, all such changes will be binding with respect to any dispute, whether the dispute arose before, on or after the effective date of the change. In the event that registrant objects to a change in this CEDRP, the sole remedy is to cancel the registration, provided that registrant will not be entitled to a refund of any fees paid in connection with such registration.