



THE AUSTRALIAN DOMAIN NAME ADMINISTRATOR

## .au Dispute Resolution Policy (auDRP) (2008-01)

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### 1. BACKGROUND

1.1 This document sets out the .au Dispute Resolution Policy (auDRP) adopted by the auDA Board on 13 August 2001, on the recommendation of auDA's Dispute Resolution Working Group. The auDRP and auDRP Rules are at Schedules A and B of this document.

1.2 The purpose of the auDRP is to provide a cheaper, speedier alternative to litigation for the resolution of disputes between the registrant of a .au domain name and a party with competing rights in the domain name.

1.3 The auDRP is an adaptation of the Uniform Dispute Resolution Policy (UDRP) administered by the Internet Corporation for Assigned Names and Numbers (ICANN) with respect to the global Top Level Domains (gTLDs). The auDRP differs from the UDRP in two main respects:

- a) to take account of the policy rules that apply to .au domain names, that do not apply to gTLD domain names; and
- b) to address practical constraints that have become apparent since arbitrations under the UDRP began in 1999.

1.4 Please Note: Some parts of the auDRP are substantively different from the UDRP. Prospective complainants should not assume that principles derived from UDRP decisions will be applicable to auDRP disputes. For an explanation of the differences between the auDRP and the UDRP, see the report of the Dispute Resolution Working Group at <http://www.ada.org.au/policy/audrp>.

### 2. APPLICATION OF THE auDRP

2.1 All domain name licences issued or renewed in the open 2LDs from 1 August 2002 are subject to a mandatory administrative proceeding under the auDRP. At the time of publication, the open 2LDs are asn.au, com.au, id.au, net.au and org.au.

2.2 The auDRP does not apply to all types of domain name disputes. It only applies to disputes which meet the requirements set out in Paragraph 4(a) of the auDRP at Schedule A of this document.

2.3 The auDRP is an alternative dispute resolution mechanism. Complainants are not obliged to use the auDRP but may instead choose to pursue other means of resolving their dispute, such as litigation. Commencement of an administrative proceeding under the auDRP does not prevent either party from initiating legal proceedings at any time.

### 3. auDA APPROVED PROVIDERS

3.1 Each auDRP proceeding is administered by an independent, auDA-approved provider of dispute resolution services. A list of approved providers is available on auDA's website at <http://www.ada.org.au/policy/audrp>. Each provider must publish on its website a list of its panelists and its supplemental rules.

3.2 Each provider is wholly responsible for the appointment of its panelists according to its own accreditation procedures. Individual panelists are not approved or accredited by auDA, and auDA does not manage or supervise their activities in any way. Any queries or complaints about a panelist should be directed to the relevant provider in the first instance.

### 4. HOW TO FILE A COMPLAINT UNDER THE auDRP - SUMMARY OF REQUIREMENTS

4.1 To determine whether a complaint can be lodged in respect of a particular domain name, the complainant may apply to auDA (using the form on the auDA website at <http://www.ada.org.au/policy/audrp>) to find out the creation date of the domain name.

4.2 The complainant should ensure that they have read the entire auDRP and auDRP Rules at Schedules A and B of this document before filing their complaint. The complaint may be filed with any of the approved providers listed on auDA's website at <http://www.ada.org.au/policy/audrp>. The complaint must meet the requirements set out in Paragraph 3 of the auDRP Rules in Schedule B of this document, as well as any requirements detailed in the provider's supplemental rules (available from the provider's website).

4.3 The fee to be paid by the complainant to the provider under Paragraph 19 of the auDRP Rules in Schedule B of this document is:

- a) AUD\$2,000, in the case of a single member panel; and
- b) AUD\$4,500 in the case of a three member panel.

### 5. HOW TO FILE A RESPONSE UNDER THE auDRP - SUMMARY OF REQUIREMENTS

5.1 The respondent will receive notice of the complaint from the provider chosen by the complainant. The respondent may file a response no later than 20 days after they are notified of the complaint.

5.2 The respondent should ensure that they have read the entire auDRP and Rules at Schedules A and B of this document before filing a response. The response must meet the requirements set out in Paragraph 5 of the auDRP Rules in Schedule B of this document, as well as any requirements detailed in the provider's supplemental rules (available from the provider's website).

5.3 The respondent is not obliged to file a response. If no response is received, unless there are exceptional circumstances, the panel shall decide the dispute based on the information provided in the complaint.

5.4 There are no fees payable by the respondent unless they elect to have the dispute heard by a three member panel, in which case they must pay half the costs.

## 6. REMEDIES AVAILABLE TO COMPLAINANT

6.1 A complainant may seek to have the domain name licence:

- a) cancelled, in which case the domain name will become available for registration in the normal way; or
- b) transferred to themselves, but only if the registrar determines that they are eligible to hold the domain name under the relevant policy rules.

## 7. ENFORCEMENT OF auDRP DECISIONS

7.1 Panel decisions under the auDRP are binding on both parties. There is no appeals process.

7.2 If the unsuccessful party is not satisfied with the decision handed down by the panelist, they may decide to initiate legal proceedings against the other party. If the Panel decides that the domain name should be transferred or cancelled, the registrar is required to wait 10 business days before implementing the decision to allow for legal proceedings to be commenced.

7.3 If the unsuccessful party is not satisfied with the way in which the proceeding was administered by the provider, they should raise their concerns directly with the provider in the first instance. auDA may intervene in the administration of a proceeding in cases where there has been a clear and substantive procedural flaw.

## 8. PUBLICATION OF auDRP PROCEEDINGS AND DECISIONS

8.1 auDA will maintain a public index of all auDRP proceedings and panel decisions on the auDA website at <http://www.ada.org.au/policy/audrp>.

## 9. REVIEW OF POLICY

9.1 From time to time, auDA may update this document for the purposes of clarification or correction.

### SCHEDULE A

#### .au DISPUTE RESOLUTION POLICY (auDRP)

##### NOTES:

1. This policy has been adapted from the Uniform Dispute Resolution Policy (UDRP) of the Internet Corporation for Assigned Names and Numbers (ICANN). Some sections of this policy are substantively different from the UDRP. For an explanation of the differences, see the report of the auDA Dispute Resolution Working Group at <http://www.ada.org.au/policy/audrp>

2. This policy is intended to operate between the registrar and its licensee (the domain name holder or registrant). Thus, the policy uses "we" and "our" to refer to the registrar and it uses "you" and "your" to refer to the domain name holder.

**1. Purpose.** The .au Dispute Resolution Policy ("auDRP") is incorporated by reference into your Registrant Agreement, and sets forth the terms and conditions in connection with a dispute between you and any party other than us (the registrar) over the registration and use of an Internet domain name registered by you in one of the open .au second level domains (2LDs). Proceedings under Paragraph 4 of this Policy will be conducted according to the Rules for the auDRP (the "auDRP Rules"), which are at Schedule B of this document, and the selected administrative dispute resolution service provider's supplemental rules.

**2. Your Representations.** By applying to register a domain name, or by asking us to maintain or renew a domain name registration, you hereby represent and warrant to us that (a) the statements that you made in your domain name application are complete and accurate, including those as to your eligibility for a domain name in the open 2LD; (b) to your knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party; (c) you are not registering the domain name for an unlawful purpose; and (d) you will not knowingly use the domain name in violation of any applicable laws or regulations. It is your responsibility to determine whether your domain name registration infringes or violates someone else's rights.

**3. Cancellations, Transfers, and Changes.** We will cancel, transfer or otherwise make changes to domain name registrations under the following circumstances:

- a. subject to the provisions of Paragraph 8, our receipt of written or appropriate electronic instructions from you or your authorised agent to take such action;
- b. our receipt of an order from a court or arbitral tribunal, in each case of competent jurisdiction, requiring such action; and/or
- c. our receipt of a decision of an Administrative Panel requiring such action in any administrative proceeding to which you were a party and which was conducted under this Policy or a later version of this Policy adopted by auDA, subject to Paragraph 4(i) and (k) below.

We may also cancel, transfer or otherwise make changes to a domain name registration in accordance with the terms of your Registrant Agreement or other legal requirements.

**4. Mandatory Administrative Proceeding.** This Paragraph sets forth the type of disputes for which you are required to submit to a mandatory administrative proceeding. These proceedings will be conducted before one of the administrative dispute resolution service providers listed on the auDA web site at <http://www.auda.org.au/policy/audrp> (each, a "Provider").

**a. Applicable Disputes.** You are required to submit to a mandatory administrative proceeding in the event that a third party (a "complainant") asserts to the applicable Provider, in compliance with the Rules of Procedure that:

- (i) your domain name is identical or confusingly similar to a name [*Note 1*], trademark or service mark in which the complainant has rights; and
- (ii) you have no rights or legitimate interests in respect of the domain name [*Note 2*]; and
- (iii) your domain name has been registered or subsequently used in bad faith.

In an administrative proceeding, the complainant bears the onus of proof.

**b. Evidence of Registration or Use in Bad Faith.** For the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to another person for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of a name, trademark or service mark from reflecting that name or mark in a corresponding domain name; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business or activities of another person; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to a web site or other online location, by creating a likelihood of confusion with the complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of that web site or location or of a product or service on that web site or location.

**c. How to Demonstrate Your Rights to and Legitimate Interests in the Domain Name in Responding to a Complaint.** When you receive a complaint, you should refer to Paragraph 5 of the auDRP Rules in determining how your response should be prepared. Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, is to be taken to demonstrate your rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):

- (i) before any notice to you of the subject matter of the dispute, your bona fide use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with an offering of goods or services (not being the offering of domain names that you have acquired for the purpose of selling, renting or otherwise transferring); or
- (ii) you (as an individual, business, or other organisation) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the name, trademark or service mark at issue.

**d. Selection of Provider.** The complainant must select the Provider from among those approved by auDA by submitting the complaint to that Provider. The selected Provider will administer the proceeding, except in cases of consolidation as described in Paragraph 4(f).

**e. Initiation of Proceeding and Process and Appointment of Administrative Panel.** The auDRP Rules state the process for initiating and conducting a proceeding and for appointing the panel that will decide the dispute (the "Administrative Panel").

**f. Consolidation.** In the event of multiple disputes between you and a complainant, either you or the complainant may petition to consolidate the disputes before a single Administrative Panel. This petition shall be made to the first Administrative Panel appointed to hear a pending dispute between the parties. This Administrative Panel may consolidate before it any or all such disputes in its sole discretion, provided that the disputes being consolidated are governed by this Policy or a later version of this Policy adopted by auDA.

**g. Fees.** All fees charged by a Provider in connection with any dispute before an Administrative Panel pursuant to this Policy shall be paid by the complainant, except in cases where you elect to expand the Administrative Panel from one to three panelists as provided in Paragraph 5(b)(iv) of the Rules of Procedure, in which case all fees will be borne evenly by you and the complainant.

**h. Our Involvement in Administrative Proceedings.** We do not, and will not, participate in the administration or conduct of any proceeding before an Administrative Panel. In addition, we will not be liable as a result of any decisions rendered by the Administrative Panel.

**i. Remedies.** The remedies available to a complainant pursuant to any proceeding before an Administrative Panel shall be limited to requiring the cancellation of your domain name or the transfer of your domain name registration to the complainant (provided that the complainant is otherwise eligible to hold that domain name).

**j. Notification and Publication.** The Provider shall notify us of any decision made by an Administrative Panel with respect to a domain name you have registered with us. All decisions under this Policy will be published in full over the Internet, except when an Administrative Panel determines in an exceptional case to redact portions of its decision.

**k. Availability of Court Proceedings.** The mandatory administrative proceeding requirements set forth in Paragraph 4 shall not prevent either you or the complainant from submitting the dispute to a court of competent jurisdiction for independent resolution before such mandatory administrative proceeding is commenced or after such proceeding is concluded. If an Administrative Panel decides that your domain name registration should be cancelled or transferred, we will wait ten (10) business days (as observed in the location of our principal office) after we are informed by the applicable Provider of the Administrative Panel's decision before implementing that decision. We will then implement the decision unless we have received from you during that ten (10) business day period official documentation (such as a copy of a complaint, sealed by the registrar of the court) that you have commenced a lawsuit against the complainant. If we receive such documentation within the ten (10) business day period, we will not implement the Administrative Panel's decision, and we will take no further action, until we receive (i) evidence satisfactory to us of a resolution between the parties; (ii) evidence satisfactory to us that your lawsuit has been dismissed, withdrawn or abandoned; or (iii) a copy of an order from such court dismissing your lawsuit or ordering that you do not have the right to continue to use your domain name.

**5. All Other Disputes and Litigation.** All other disputes between you and any party other than us regarding your domain name registration that are not brought pursuant to the mandatory administrative proceeding provisions of Paragraph 4 shall be resolved between you and such other party through any court, arbitration or other proceeding that may be available.

**6. Our Involvement in Disputes.** We will not participate in any way in any dispute between you and any party other than us regarding the registration and use of your domain name. You shall not name us as a party or otherwise include us in any such proceeding. In the event that we are named as a party in any such proceeding, we reserve the right to raise any and all defenses deemed appropriate, and to take any other action necessary to defend ourselves.

**7. Maintaining the Status Quo.** We will not cancel, transfer, activate, deactivate, or otherwise change the status of any domain name registration under this Policy except as provided in Paragraph 3 above.

**8. Transfers During a Dispute.**

**a. Transfers of a Domain Name to a New Holder.** You may not transfer your domain name registration to another holder (i) during a pending administrative proceeding brought pursuant to Paragraph 4 or for a period of fifteen (15) business days (as observed in the location of our principal place of business) after such proceeding is concluded; or (ii) during a pending court proceeding or arbitration commenced regarding your domain name unless the party to whom the domain name registration is being transferred agrees, in writing, to be bound by the decision of the court or arbitrator. We reserve the right to cancel any transfer of a domain name registration to another holder that is made in violation of this subparagraph.

**b. Changing Registrars.** You may not transfer your domain name registration to another registrar during a pending administrative proceeding brought pursuant to Paragraph 4 or for a period of fifteen (15) business days (as observed in the location of our principal place of business) after such proceeding is concluded. You may transfer administration of your domain name registration to another registrar during a pending court action or arbitration, provided that the domain name you have registered with us shall continue to be subject to the proceedings commenced against you in accordance with the terms of this Policy. In the event that you transfer a domain name registration to us during the pendency of a court action or arbitration, such dispute shall remain subject to the domain name dispute policy of the registrar from which the domain name registration was transferred.

**9. Policy Modifications.** This Policy may only be modified by auDA.

**SCHEDULE B**

RULES FOR .au DISPUTE RESOLUTION POLICY (auDRP Rules)

*NOTE:*

*This policy has been adapted from the Uniform Dispute Resolution Policy (UDRP) Rules of the Internet Corporation for Assigned Names and Numbers (ICANN).*

Administrative proceedings for the resolution of disputes under the auDRP are governed by the auDRP Rules and also the Supplemental Rules of the Provider administering the proceedings, as posted on its web site.

**1. Definitions**

In these Rules:

**Complainant** means the party initiating a complaint concerning a domain name registration.

**auDA** refers to .au Domain Administration Limited.

**Mutual Jurisdiction** means a court jurisdiction at the location of either (a) the principal office of the Registrar (provided the domain name holder has submitted in its Registrant Agreement to that jurisdiction for court adjudication of disputes concerning or arising from the use of the domain name) or (b) the domain name holder's address as shown for the registration of the domain name in the registry database at the time the complaint is submitted to the Provider.

**Panel** means an administrative panel appointed by a Provider to decide a complaint concerning a domain name registration.

**Panelist** means an individual appointed by a Provider to be a member of a Panel.

**Party** means a Complainant or a Respondent.

**Policy** means the .au Dispute Resolution Policy (auDRP) that is incorporated by reference and made a part of the Registrant Agreement.

**Provider** means a dispute resolution service provider approved by auDA. A list of such Providers appears on the auDA web site at <http://www.auda.org.au/policy/audrp>

**Registrar** means the entity with which the Respondent has registered a domain name that is the subject of a complaint.

**Registrant Agreement** means the agreement between a Registrar and a domain name holder.

**Respondent** means the holder of a domain name registration against which a complaint is initiated.

**Reverse Domain Name Hijacking** means using the Policy in bad faith to attempt to deprive a registered domain name holder of a domain name.

**Supplemental Rules** means the rules adopted by the Provider administering a proceeding to supplement these Rules. Supplemental Rules must be approved by auDA and shall cover such topics as word and page limits and guidelines, the means for communicating with the Provider and the Panel, and the form of cover sheets.

## 2. Communications

(a) When forwarding a complaint to the Respondent, it shall be the Provider's responsibility to employ reasonably available means calculated to achieve actual notice to Respondent. Achieving actual notice, or employing the following measures to do so, shall discharge this responsibility:

(i) sending the complaint to all postal mail and facsimile addresses supplied by Registrar to the Provider for the purposes of achieving actual notice to Respondent; and

(ii) sending the complaint in electronic form (including annexes to the extent available in that form) by email to:  
(A) the email addresses for the Respondent, including technical, administrative, and other notified contacts;  
(B) `postmaster@`; and  
(C) if the domain name (or "www." followed by the domain name) resolves to an active web page (other than a generic page the Provider concludes is maintained by a registrar or ISP for parking domain names registered by multiple domainname holders), any email address shown or email links on that web page; and

(iii) sending the complaint to any address the Respondent has notified the Provider it prefers and, to the extent practicable, to all other addresses provided to the Provider by Complainant under Paragraph 3(b)(v).

(b) Except as provided in Paragraph 2(a), any written communication to Complainant or Respondent provided for under these Rules shall be made by the preferred means stated by the Complainant or Respondent, respectively (see Paragraphs 3(b)(iii) and 5(b)(iii)), or in the absence of such specification

(i) by telecopy or facsimile transmission, with a confirmation of transmission; or

(ii) by postal or courier service, postage pre-paid and return receipt requested; or

(iii) electronically via the Internet, provided a record of its transmission is available.

(c) Any communication to the Provider or the Panel shall be made by the means and in the manner (including number of copies) stated in the Provider's Supplemental Rules.

(d) Communications shall be made in the language prescribed in Paragraph 11. Email communications should, if practicable, be sent in plaintext.

(e) Either Party may update its contact details by notifying the Provider and the Registrar.

(f) Except as otherwise provided in these Rules, or decided by a Panel, all communications provided for under these Rules shall be deemed to have been made:

(i) if delivered by telecopy or facsimile transmission, on the date shown on the confirmation of transmission; or

(ii) if by postal or courier service, on the date marked on the receipt; or

(iii) if via the Internet, on the date that the communication was transmitted, provided that the date of transmission is verifiable.

(g) Except as otherwise provided in these Rules, all time periods calculated under these Rules to begin when a communication is made shall begin to run on the earliest date that the communication is deemed to have been made in accordance with Paragraph 2(f).

(h) Any communication by

(i) a Panel to any Party shall be copied to the Provider and to the other Party;

(ii) the Provider to any Party shall be copied to the other Party; and

(iii) a Party shall be copied to the other Party, the Panel and the Provider, as the case may be.

(i) It shall be the responsibility of the sender to retain records of the fact and circumstances of sending, which shall be available for inspection by affected parties and for reporting purposes.

(j) In the event a Party sending a communication receives notification of non-delivery of the communication, the Party shall promptly notify the Panel (or, if no Panel is yet appointed, the Provider) of the circumstances of the notification. Further proceedings concerning the communication and any response shall be as directed by the Panel

(or the Provider).

### 3. The Complaint

(a) Any person or entity may initiate an administrative proceeding by submitting a complaint in accordance with the auDRP and these Rules to any Provider approved by auDA. (Due to capacity constraints or for other reasons, a Provider's ability to accept complaints may be suspended at times. In that event, the Provider shall refuse the submission. The person or entity may submit the complaint to another Provider.)

(b) The complaint shall be submitted in hard copy and (except to the extent not available for annexes) in electronic form and shall:

(i) Request that the complaint be submitted for decision in accordance with the Policy and these Rules;

(ii) Provide the name, postal and email addresses, and the telephone and fax numbers of the Complainant and of any representative authorised to act for the Complainant in the administrative proceeding;

(iii) Specify a preferred method for communications directed to the Complainant in the administrative proceeding (including person to be contacted, medium, and address information) for each of (A) electronic-only material and (B) material including hard copy;

(iv) Designate whether Complainant elects to have the dispute decided by a single member or a three member Panel and, in the event Complainant elects a three member Panel, provide the names and contact details of three candidates to serve as one of the Panelists (these candidates may be drawn from any auDA approved Provider's list of panelists);

(v) Provide the name of the Respondent (domain name holder) and all information (including any postal and email addresses and telephone and fax numbers) known to Complainant regarding how to contact Respondent or any representative of Respondent, including contact information based on pre-complaint dealings, in sufficient detail to allow the Provider to send the complaint as described in Paragraph 2(a);

(vi) Specify the domain name(s) that is/are the subject of the complaint;

(vii) Identify the Registrar(s) with whom the domain name(s) is/are registered at the time the complaint is filed;

(viii) Specify the name(s), trademark(s) or service mark(s) on which the complaint is based and, for each mark, describe the goods or services, if any, with which the mark is used (Complainant may also separately describe other goods and services with which it intends, at the time the complaint is submitted, to use the mark in the future.);

(ix) Describe, in accordance with the Policy, the grounds on which the complaint is made. (The description should discuss any aspects of the Policy that are applicable. The description shall comply with any word or page limit set forth in the Provider's Supplemental Rules.);

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

(xi) 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;

(xii) State whether a copy of the complaint, together with the cover sheet as prescribed by the Provider's Supplemental Rules, has been sent or transmitted to the Respondent (domain name holder), in accordance with Paragraph 2(b);

(xiii) State that Complainant will submit, with respect to any challenges to a decision in the administrative proceeding cancelling or transferring the domain name, to the jurisdiction of the courts in at least one specified Mutual Jurisdiction;

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

"Complainant 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 domain name holder and waives all such claims and remedies against (a) the dispute resolution provider and panelists, except in the case of deliberate wrongdoing, (b) the registrar, (c) the registry administrator, and (d) auDA, as well as their directors, officers, employees, and agents."

"Complainant certifies that the information contained in this Complaint is to the best of Complainant's knowledge complete and accurate, that this Complaint is not being presented for any improper purpose, such as to harass, and that the assertions in this Complaint 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

(xv) Annex any documentary or other evidence, including a copy of the Policy applicable to the domain name(s) in dispute and any name, trademark or service mark registration upon which the complaint relies, together with a schedule indexing such evidence.

(c) The complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

### 4. Notification of Complaint

(a) The Provider shall review the complaint for administrative compliance with the Policy and these Rules and, if in compliance, shall forward the complaint (together with the explanatory cover sheet prescribed by the Provider's Supplemental Rules) to the Respondent, in the manner prescribed by Paragraph 2(a), within three (3) calendar days following receipt of the fees to be paid by the Complainant in accordance with Paragraph 19.

(b) If the Provider finds the complaint to be administratively deficient, it shall promptly notify the Complainant and the Respondent of the nature of the deficiencies identified. The Complainant shall have five (5) calendar days within which to correct any such deficiencies, after which the administrative proceeding will be deemed withdrawn without prejudice to submission of a different complaint by Complainant.

(c) The date of commencement of the administrative proceeding shall be the date on which the Provider completes its responsibilities under Paragraph 2(a) in connection with forwarding the Complaint to the Respondent.

(d) The Provider shall immediately notify the Complainant, the Respondent, the concerned Registrar(s), and auDA of the date of commencement of the administrative proceeding.

## **5. The Response**

(a) No later than twenty (20) days after the date of commencement of the administrative proceeding the Respondent shall submit a response to the Provider.

(b) The response shall be submitted in hard copy and (except to the extent not available for annexes) in electronic form and shall:

(i) Respond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name (This portion of the response shall comply with any word or page limit set forth in the Provider's Supplemental Rules.);

(ii) Provide the name, postal and email addresses, and the telephone and telefax numbers of the Respondent (domain name holder) and of any representative authorised to act for the Respondent in the administrative proceeding;

(iii) Specify a preferred method for communications directed to the Respondent in the administrative proceeding (including person to be contacted, medium, and address information) for each of (A) electronic-only material and (B) material including hard copy;

(iv) If Complainant has elected a single member panel in the Complaint (see Paragraph 3(b)(iv)), state whether Respondent elects instead to have the dispute decided by a three member panel;

(v) If either Complainant or Respondent elects a three member Panel, provide the names and contact details of three candidates to serve as one of the Panelists (these candidates may be drawn from any auDA approved Provider's list of panelists);

(vi) 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;

(vii) State that a copy of the response has been sent or transmitted to the Complainant, in accordance with Paragraph 2(b); and

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

"Respondent 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 complainant and waives all such claims and remedies against (a) the dispute resolution provider and panelists, except in the case of deliberate wrongdoing, (b) the registrar, (c) the registry administrator, and (d) auDA, as well as their directors, officers, employees, and agents."

"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

(ix) Annex any documentary or other evidence upon which the Respondent relies, together with a schedule indexing such documents.

(c) If Complainant has elected to have the dispute decided by a single member Panel and Respondent elects a three member Panel, Respondent shall be required to pay one-half of the applicable fee for a three member Panel as set forth in the Provider's Supplemental Rules. This payment shall be made together with the submission of the response to the Provider. In the event that the required payment is not made, the dispute shall be decided by a single member Panel.

(d) At the request of the Respondent, the Provider may, in exceptional cases, extend the period of time for the filing of the response. The period may also be extended by written stipulation between the Parties, provided the stipulation is approved by the Provider.

(e) If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint.

## **6. Appointment of the Panel and Timing of Decision**

(a) Each Provider shall maintain and publish a publicly available list of panelists and their qualifications.

(b) If neither the Complainant nor the Respondent has elected a three member Panel (Paragraphs 3(b)(iv) and 5(b)(iv)), the Provider shall appoint, within five (5) calendar days following receipt of the response by the Provider, or the lapse of the time period for the submission thereof, a single Panelist from its list of panelists. The fees for a single member Panel shall be paid entirely by the Complainant.

(c) If either the Complainant or the Respondent elects to have the dispute decided by a three member Panel, the

Provider shall appoint three Panelists in accordance with the procedures identified in Paragraph 6(e). The fees for a three member Panel shall be paid in their entirety by the Complainant, except where the election for a three member Panel was made by the Respondent, in which case the applicable fees shall be shared equally between the Parties.

(d) Unless it has already elected a three member Panel, the Complainant shall submit to the Provider, within five (5) calendar days of communication of a response in which the Respondent elects a three member Panel, the names and contact details of three candidates to serve as one of the Panelists. These candidates may be drawn from any auDA approved Provider's list of panelists.

(e) In the event that either the Complainant or the Respondent elects a three member Panel, the Provider shall endeavour to appoint one Panelist from the list of candidates provided by each of the Complainant and the Respondent. In the event the Provider is unable within five (5) calendar days to secure the appointment of a Panelist on its customary terms from either Party's list of candidates, the Provider shall make that appointment from its list of panelists. The third Panelist shall be appointed by the Provider from a list of five candidates submitted by the Provider to the Parties, the Provider's selection from among the five being made in a manner that reasonably balances the preferences of both Parties, as they may specify to the Provider within five (5) calendar days of the Provider's submission of the five candidate list to the Parties.

(f) Once the entire Panel is appointed, the Provider shall notify the Parties of the Panelists appointed and the date by which, absent exceptional circumstances, the Panel shall forward its decision on the complaint to the Provider.

### **7. Impartiality and Independence**

A Panelist shall be impartial and independent and shall have, before accepting appointment, disclosed to the Provider any circumstances giving rise to justifiable doubt as to the Panelist's impartiality or independence. If, at any stage during the administrative proceeding, new circumstances arise that could give rise to justifiable doubt as to the impartiality or independence of the Panelist, that Panelist shall promptly disclose such circumstances to the Provider. In such event, the Provider shall have the discretion to appoint a substitute Panelist.

### **8. Communication Between Parties and the Panel**

No Party or anyone acting on its behalf may have any unilateral communication with the Panel. All communications between a Party and the Panel or the Provider shall be made to a case administrator appointed by the Provider in the manner prescribed in the Provider's Supplemental Rules.

### **9. Transmission of the File to the Panel**

The Provider shall forward the file to the Panel as soon as the Panelist is appointed in the case of a Panel consisting of a single member, or as soon as the last Panelist is appointed in the case of a three member Panel.

### **10. General Powers of the Panel**

(a) The Panel shall conduct the administrative proceeding in such manner as it considers appropriate in accordance with the Policy and these Rules.

(b) In all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case.

(c) The Panel shall ensure that the administrative proceeding takes place with due expedition. It may, at the request of a Party or on its own motion, extend, in exceptional cases, a period of time fixed by these Rules or by the Panel.

(d) The Panel shall determine the admissibility, relevance, materiality and weight of the evidence.

(e) A Panel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules.

### **11. Language of Proceedings**

(a) Unless otherwise agreed by the Parties, or specified otherwise in the Registrant Agreement, the language of the administrative proceeding shall be the language of the Registrant Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

(b) The Panel may order that any documents submitted in languages other than the language of the administrative proceeding be accompanied by a translation in whole or in part into the language of the administrative proceeding.

### **12. Further Statements**

In addition to the complaint and the response, the Panel may request or permit, in its sole discretion, further statements or documents from either of the Parties.

### **13. In-Person Hearings**

There shall be no in-person hearings (including hearings by teleconference, videoconference, and web conference), unless the Panel determines, in its sole discretion and as an exceptional matter, that such a hearing is necessary for deciding the complaint.

### **14. Default**

a) In the event that a Party, in the absence of exceptional circumstances, does not comply with any of the time periods established by these Rules or the Panel, the Panel shall proceed to a decision on the complaint.

(b) If a Party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement



under, these Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

### **15. Panel Decisions**

(a) A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

(b) In the absence of exceptional circumstances, the Panel shall forward its decision on the complaint to the Provider within fourteen (14) days of its appointment pursuant to Paragraph 6.

(c) In the case of a three member Panel, the Panel's decision shall be made by a majority.

(d) The Panel's decision shall be in writing, provide the reasons on which it is based, indicate the date on which it was rendered and identify the name(s) of the Panelist(s).

(e) Panel decisions and dissenting opinions shall normally comply with the guidelines as to length set forth in the Provider's Supplemental Rules. Any dissenting opinion shall accompany the majority decision. If the Panel concludes that the dispute is not within the scope of Paragraph 4(a) of the Policy, it shall so state. If after considering the submissions the Panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain name holder, the Panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.

### **16. Communication of Decision to Parties**

(a) Within three (3) calendar days after receiving the decision from the Panel, the Provider shall communicate the full text of the decision to each Party, the concerned Registrar(s), and auDA. The concerned Registrar(s) shall immediately communicate to each Party, the Provider, and auDA the date for the implementation of the decision in accordance with the Policy.

(b) Except if the Panel determines otherwise (see Paragraph 4(j) of the Policy), the Provider shall publish the full decision and the date of its implementation on a publicly accessible web site. In any event, the portion of any decision determining a complaint to have been brought in bad faith (see Paragraph 15(e) of these Rules) shall be published.

### **17. Settlement or Other Grounds for Termination**

(a) If, before the Panel's decision, the Parties agree on a settlement, the Panel shall terminate the administrative proceeding.

(b) If, before the Panel's decision is made, it becomes unnecessary or impossible to continue the administrative proceeding for any reason, the Panel shall terminate the administrative proceeding, unless a Party raises justifiable grounds for objection within a period of time to be determined by the Panel.

### **18. Effect of Court Proceedings**

(a) In the event of any legal proceedings initiated prior to or during an administrative proceeding in respect of a domain name dispute that is the subject of the complaint, the Panel shall have the discretion to decide whether to suspend or terminate the administrative proceeding, or to proceed to a decision.

(b) In the event that a Party initiates any legal proceedings during the pendency of an administrative proceeding in respect of a domain name dispute that is the subject of the complaint, it shall promptly notify the Panel and the Provider. See Paragraph 8 above.

### **19. Fees**

(a) The Complainant shall pay to the Provider an initial fixed fee, in accordance with the Provider's Supplemental Rules, within the time and in the amount required. A Respondent electing under Paragraph 5(b)(iv) to have the dispute decided by a three member Panel, rather than the single member Panel elected by the Complainant, shall pay the Provider one-half the fixed fee for a three member Panel. See Paragraph 5(c). In all other cases, the Complainant shall bear all of the Provider's fees, except as prescribed under Paragraph 19(d). Upon appointment of the Panel, the Provider shall refund the appropriate portion, if any, of the initial fee to the Complainant, as specified in the Provider's Supplemental Rules.

(b) No action shall be taken by the Provider on a complaint until it has received from Complainant the initial fee in accordance with Paragraph 19(a).

(c) If the Provider has not received the fee within ten (10) calendar days of receiving the complaint, the complaint shall be deemed withdrawn and the administrative proceeding terminated.

(d) In exceptional circumstances, for example in the event an in-person hearing is held, the Provider shall request the Parties for the payment of additional fees, which shall be established in agreement with the Parties and the Panel.

### **20. Exclusion of Liability**

Except in the case of deliberate wrongdoing, neither the Provider nor a Panelist shall be liable to a Party for any act or omission in connection with any administrative proceeding under these Rules.

### **21. Amendments**

The version of these Rules in effect at the time of the submission of the complaint to the Provider shall apply to the administrative proceeding commenced thereby. These Rules may not be amended without the express written

approval of auDA.

*Notes:*

[1] For the purposes of this policy, auDA has determined that a "name ... in which the complainant has rights" refers to:

- a) the complainant's company, business or other legal or trading name, as registered with the relevant Australian government authority; or
- b) the complainant's personal name.

[2] For the purposes of this policy, auDA has determined that "rights or legitimate interests in respect of the domain name" are not established merely by a registrar's determination that the respondent satisfied the relevant eligibility criteria for the domain name at the time of registration.

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