



## **ADNDRC Rules for Top Level Domain Name Sunrise Dispute Resolution Policy**

(Effective as of 1 July 2015)

Sunrise dispute resolution proceedings administered by Asian Domain Name Dispute Resolution Centre (ADNDRC) shall be governed by these Rules.

### **1. Definitions**

In these Rules:

**The Centre** means ADNDRC jointly established by the China International Economic and Trade Arbitration Commission (CIETAC) and the Hong Kong International Arbitration Centre (HKIAC) on 28 February 2002 with its Beijing Office managed and operated by CIETAC, its Hong Kong Office managed and operated by HKIAC, its Seoul Office managed and operated by Korean Internet Address Dispute Resolution Committee (KIDRC) and its Kuala Lumpur Office managed and operated by Kuala Lumpur Regional Centre for Arbitration (KLRCA).

**Relevant Office of the Centre** means the Beijing Office of the Centre, the Hong Kong Office of the Centre, the Seoul Office of the Centre or the Kuala Lumpur Office of the Centre as the case may be, or as the context may require.

**Policy** means a sunrise dispute resolution policy provides for dispute resolution proceedings “administered by ADNDRC”, or words to similar effect.

**Complainant** means a party which has submitted a complaint pursuant to a sunrise dispute resolution policy and these Rules.

**ICANN** refers to the Internet Corporation for Assigned Names and Numbers.

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

**Panelist** means an individual appointed by the relevant Office of the Centre to be a member of a Panel.

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

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

**Registry Operator** means the entity which administers the registration of domain names with the top level domain for which it is responsible.

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

**Rules** mean the ADNDRC Rules for Top Level Domain Sunrise Dispute Resolution Policy

## **2. Communications**

(a) Unless otherwise agreed beforehand with the relevant Office of the Centre, any submission that may or is required to be made to the relevant Office of the Centre pursuant to the Rules and the Policy may be made electronically via Internet. For any electronic submission and communications to the relevant Office of the Centre, the following address shall be used:

if to the Beijing Office : cietac@adndrc.org

if to the Hong Kong Office: hkiac@adndrc.org

if to the Seoul Office: kidrc@adndrc.org

if to the Kuala Lumpur Office: klrca@adndrc.org

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

- (i) sending the complaint (including annexes to the extent available in electronic form) to all postal, facsimile and email addresses shown in the Domain Name registration data in the Registrar's Whois database for the Registrant and the administrative contact; and
- (ii) sending the Written Notice of Complaint, to the extent practicable, to all other addresses provided to the relevant Office of the Centre by the Complainant; or
- (iii) sending the Written Notice of Complaint to any address the Respondent has notified the relevant Office of the Centre it prefers.

(c) Except as provided in Paragraph 2(b), any communication to the Complainant or the Respondent provided for under these Rules shall be made in electronic format via the Internet.

(d) Any communication to the relevant Office of the Centre or the Panel shall be made in electronic format via the Internet.

(e) Communications shall be made in the language prescribed in Paragraph 7.

(f) Either Party may update its contact details by notifying the relevant Office of the Centre and the Registrar.

(g) 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 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.

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

(i) Any communication by

- (i) a Panel to any Party shall be copied to the relevant Office of the Centre and to the other Party;
- (ii) the relevant Office of the Centre 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 relevant Office of the Centre, as the case may be.

(j) 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.

(k) In the event a Party sending a communication receives notification of non-delivery of the communication, that Party shall promptly notify the Panel (or, if no Panel is yet appointed, the relevant Office of the Centre) of the circumstances of the notification.

### **3. The Complaint**

(a) Any person or entity may initiate an administrative proceeding by submitting a complaint to the Centre in accordance with the Policy and Rules.

(b) The Complainant shall have the right to select the Beijing Office of the Centre, the Hong Kong Office of the Centre, the Seoul Office of the Centre, or the Kuala Lumpur Office of the Centre to administer the sunrise dispute resolution proceeding initiated by a complaint filed by the Complainant. Such choice shall be made by the Complainant at the time the Complainant files a complaint and such choice shall be final and binding on the Complainant and the Respondent.

(c) The complaint shall be submitted in electronic form via the Internet using the Form\_C(SD) made available by the Centre.

- (d) The complaint shall:
- (i) Request that the complaint be submitted for decision in accordance with the Policy and Rules and describe why the Domain Name Registration should be considered subject to the Policy;
  - (ii) Provide the full name, postal and e-mail addresses, and the telephone and facsimile numbers of the Complainant and of any representative authorised to act for the Complainant in the administrative proceeding;
  - (iii) Provide the full name of the Respondent and, if different from the contact details available in the Whois database for the Domain Name, provide all information known to the Complainant regarding how to contact the Respondent or any representative of the Respondent, including contact information based on pre-complaint dealings;
  - (iv) Specify the Domain Name that is the subject of the complaint;
  - (v) Identify the Registry Operator and Registrar (if any) with whom the Domain Name is registered at the time the complaint is filed;
  - (vi) Describe, in accordance with the Policy, the grounds on which the complaint is made including, in particular, why the Domain Name that is the subject of the dispute should be considered to have been registered in violation of the Sunrise Registration Conditions set forth in the Registration Agreement with reference to the Policy;
  - (vii) The above description should not exceed 3,000 words;
  - (viii) Specify, in accordance with the Policy, the remedy sought, i.e. cancellation of the Domain Name registration;
  - (ix) Identify any other proceedings that have been commenced or terminated in connection with or relating to the domain name that is the subject of the complaint;
  - (x) Include the following statement (for all Complainants):

"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 Centre, (b) the Registrar, (c) the Registry Operator, and (d) ICANN, 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 the Sunrise Dispute Resolution Policy, the ADNDRC Rules for Top Level Domain Sunrise Dispute

Resolution Policy and applicable law, as it now exists or as it may be extended by good-faith and reasonable argument."

#### **4. Notification of Complaint**

(a) The relevant Office of the Centre shall review the Complaint for formal compliance with the Policy and the Rules. If the complaint is found to be in compliance with the Policy and the Rules and the relevant Office of the Centre is satisfied that the Complainant's fee has been paid in accordance with Paragraph 13 (a) of the Rules, the relevant Office of the Centre shall notify the complaint to the Respondent by sending it to the e-mail addresses of the administrative contact for the Domain Name, as shown in the Whois database at the time of the Notification of the Complaint by the relevant Office of the Centre to the Respondent. In addition, the relevant Office of the Centre shall notify the complaint to the e-mail addresses of the Respondent, or of any representative of the Respondent, as provided by the Complainant in accordance with Paragraph 3 (d) (iii) of the Rules.

(b) If the relevant Office of the Centre finds the complaint to be formally deficient, it shall promptly notify the Complainant of the nature of the deficiencies identified. The Complainant shall have seven (7) calendar days after such notification within which to correct any such deficiencies, after which the administrative proceeding will be deemed terminated without prejudice to the submission of another complaint by the Complainant.

(c) The date of commencement of the administrative proceeding shall be the date the Complaint is notified by the relevant Office of the Centre to the Respondent.

(d) The relevant Office of the Centre shall notify the Complainant, the Respondent, the Registrar, and the Registry Operator of the date of commencement of the administrative proceeding.

(e) If the Complainant fails to remedy any deficiencies identified by the relevant Office of the Centre within the time period provided for in Paragraph 4 (b) of the Rules, the relevant Office of the Centre shall notify the Complainant, the Respondent, the Registrar and the Registry Operator of the deemed withdrawn of the complaint and the fee paid by the Complainant pursuant to Paragraph 13 (a) of the Rules shall be deemed forfeited.

#### **5. The Response**

(a) Within twenty (20) calendar days of the date of commencement of the administrative proceeding the Respondent shall submit a response to the relevant Office of the Centre. The response shall be submitted in electronic form via the Internet using the Form\_R(SD) made available by the Centre.

(b) The Response shall:

- (i) Annex the originals or certified copies of any trademark or service mark certificates that may be required to be submitted under the Policy and respond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent to retain registration of the disputed domain name with specific reference to the Policy. Such description should not exceed 3,000 words;
- (ii) Provide the name, postal and e-mail addresses, and the telephone and facsimile numbers of the Respondent and of any representative authorized to act for the Respondent in the administrative proceeding;
- (iii) Identify any other proceedings that have been commenced or terminated in connection with or relating to the Domain Name that is the subject of the complaint;

Include the following statement:

"Respondent certifies that the trademark or service mark forming the basis for the registration of the domain name was issued prior to the date set forth in the Sunrise terms and conditions and was current (non-expired) at the time of the registration of the domain name";

- (iv) Include the following statement followed by the signature of the Respondent or its authorized representative:

"Respondent certifies that the information contained in this Response is to the best of Respondent's knowledge complete and accurate, that this Response is not being presented for any improper purpose and that the assertions in this Response are warranted under the Sunrise Dispute Resolution Policy, the ADNDRC Rules for Top Level Domain Sunrise Dispute Resolution Policy and applicable law, as it now exists or as it may be extended by good-faith and reasonable argument."

(c) At the request of the Respondent, the relevant Office of the Centre may, in exceptional cases, extend the period of time for the filing of the response.

(d) If a Respondent does not pay the Respondent's fee in accordance with Paragraph 13 (b) of the Rules or does not submit a response, the Respondent shall be deemed to have defaulted and the complaint will be granted.

## **6. Default**

(a) In the event that a Respondent does not comply with any of the time periods established by the Rules or The Relevant Office of the Centre/Panel, The Relevant Office of the Centre/Panel, unless it finds exceptional circumstances apply, 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, the Rules or any request from the relevant Office of the Centre, the relevant Office of the Centre may draw such inferences therefrom and may undertake such procedural steps as it considers appropriate.

## **7. Language of Proceedings**

(a) Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration 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.

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

(a) The Centre shall maintain and publish a publicly available name list of panelists. The Panel in charge of the Sunrise Complaint shall be composed by a single Panelist.

(b) Within five (5) business days following receipt of the response by the relevant Office of the Centre, or the lapse of the time period for the submission thereof, the relevant Office of the Centre shall appoint a single Panelist from its list of panelists. For the panelist appointment of specific case, the Centre shall appoint suitable person from the list, having regard to:

- (i) the nature of the dispute;
- (ii) the availability of the Panelist;
- (iii) the identity of the Parties;
- (iv) the independence and impartiality of the Panelist;
- (v) any stipulation in the relevant Registration Agreement.

(c) The Panelist shall have the right to decide by its sole discretion whether to accept the appointment. To ensure the promptness and smoothness of the domain name dispute resolution proceedings, if any of the Panelists designated cannot accept the appointment, the Centre shall appoint another Panelist from its list of panelists at its sole discretion.

(d) Once the Panel is appointed, the relevant Office of the Centre shall promptly forward the case file to the Panel and shall notify immediately the parties of the Panelist appointed and the date by which the Panel shall forward its decision on the complaint to the relevant Office of the Centre.

(e) A Panelist shall be impartial and independent and shall have, before accepting appointment, disclosed to the Centre any circumstances giving rise to justifiable doubt as to the Panelist's impartiality or independence. If, at any stage during the proceedings, new circumstances arise which could give rise to justifiable doubt as to the impartiality or independence of the Panelist, that Panelist shall promptly

disclose such circumstances to the Centre. In such event, the relevant Office of the Centre shall have the discretion to appoint a substitute Panelist.

Prior to the acceptance of appointment as a Panelist, a candidate shall be required to submit to the Centre a Declaration of Independence and Impartiality in writing.

Where either party thinks that any Panelist has material interests with the opposing party and that such circumstance may affect the fair ruling of the case, that party may request to the relevant Office of the Centre for removing the Panelist before the Panel has rendered its decision. Removal of the Panelist shall be at the relevant Office of Centre's discretion.

(f) 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 relevant Office of the Centre shall be made to a case administrator appointed by the relevant Office of the Centre in the manner prescribed in these Rules.

## **9. Hearing and Ruling**

(a) 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, give out its reasons and provide the evidence.

The Panel shall ensure that the proceedings take place with due expedition. It may, at the request of a party, extend, under some special circumstances, a period of time fixed by these Rules.

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

(b) In addition to the complaint and the response, the Panel may request, at its sole discretion, further statements or documents from either of the parties.

(c) Unless otherwise requested or agreed by the Panel in exceptional circumstances, no further statements or documents from either of the Parties are to be submitted.

(d) There shall be no in-person hearings in the absence of exceptional circumstances.

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

(f) If a party, in the absence of exceptional circumstances, does not comply with any provisions of the Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

(g) The Panel shall render its decision in writing on the complaint and forward the decision to the relevant Office of the Centre within fourteen (14) calendar days of its appointment. In exceptional circumstances, the Centre may extend the time limit as required for the Panel to forward its Decision.

(h) The Panel's decision shall be made in electronic form, provide the final decision, indicate the date on which it was rendered and include the signature of the Panelist.

(i) In the event of any legal or arbitral proceedings initiated prior to or during the sunrise complaint proceedings in respect of a domain name which is the subject of the complaint, the relevant Office of the Centre or the Panel shall have the discretion to decide whether to suspend or terminate the proceedings, or to proceed to a decision.

Where a party initiates any legal or arbitral proceedings during the pendency of the sunrise complaint proceedings in respect of a domain name which is the subject of the complaint, it shall promptly notify the Panel and the relevant Office of the Centre.

(j) Before the Panel's decision, the proceedings may be terminated, if

(i) The parties agree on a settlement.

(ii) The Panel thinks that it becomes unnecessary or impossible to continue the proceedings for other reasons, unless a party raises justifiable grounds for objection within a period of time to be determined by the Panel

## **10. The Panel's Decisions**

(a) The Panel's decision of whether that any Sunrise registration conditions set forth in the Policy are met will be based solely on a prima facie examination of any trademark or service mark certificates submitted in relation to the information contained in the relevant Whois database. The Panel's decision is of an administrative nature. The Panel shall be required to state reasons for its decision.

(b) The Panel, at its sole discretion, may prior to rendering the decision, consult relevant intellectual property offices in the context of reaching its determination.

#### **11. Communication of Decision**

(a) The relevant Office of the Centre shall communicate the decision to each Party, the Registrar, and the Registry Operator.

(b) In case of multiple complaints, the relevant Office of the Center will issue the notifications in accordance with the relevant provisions of the Policy.

(c) Within seven (7) calendar days of receiving the decision, a Party may by written notice to the Centre and the other Party requests the Panel to correct in the decision any errors in computation, any clerical or typographical errors or any errors of a similar nature. Any such corrections shall be given in electronic form to the Parties and shall become a part of the decision.

(d) The Panel may correct any errors on its own initiative within seven (7) calendar days of the date of the decision being rendered.

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

(a) If the Complainant notifies the relevant Office of the Centre that the Parties have agreed on a settlement, the relevant Office of the Centre may suspend or terminate the administrative proceeding, subject to any conditions that may apply under Policy.

(b) If both the Complainant and the Respondent agree to cancel the domain name at issue, the Panel may issue a decision to facilitate the cancellation of the domain name at issue at its sole discretion.

(c) If it becomes unnecessary or impossible to continue the administrative proceeding for any other reason, the relevant Office of the Centre shall terminate the administrative proceeding.

(d) In case of a termination of the administrative proceeding in accordance with Paragraph 4 (b) of the Rules, any fees paid by the Parties in accordance with Paragraph 13 of the Rules shall be deemed forfeited.

#### **13. Fees**

(a) The applicable fees for documents-only administrative procedure are specified as follows:

Number of Domain Name involved in the Complaint	Fee for Single Panelist	ADNDRC's Administrative Fee	Total Fees
1 to 2 domain names	US\$700	US\$600	US\$1,300
3 to 5 domain names	US\$900	US\$700	US\$1,600
6 to 9 domain names	US\$1,100	US\$800	US\$1,900
10 domain names or more	(to be determined by the relevant office of the ADNDRC)		

(a) If any amendments are required due to deficiencies in the Complaint (Form CS), an additional charge of US\$150 shall accompany any resubmission

(b) Fees to be paid to the relevant Office of the Centre in accordance with the Supplemental Rules shall be paid to:

- "China International Economic and Trade Arbitration Commission" in the event the proceedings are to be administered by the Centre's Beijing Office, or
- "Hong Kong International Arbitration Centre" in the event the proceedings are to be administered by the Centre's Hong Kong Office, or
- "Korean Internet Address Dispute Resolution Committee" in the event the proceedings are to be administered by the Centre's Seoul Office, or
- "Kuala Lumpur Regional Centre for Arbitration" in the event the proceedings are to be administered by the Centre's Kuala Lumpur Office.

The Complainant shall be responsible for paying the total fees.

(c) The said fees do not include any payments that might have to be made to a lawyer representing a Party.

(d) All bank charges, transfer fees or other amounts that may be levied in connection with a payment made to the relevant Office of the Centre shall be the responsibility of the Party making the payment.

(e) The relevant Office of the Centre shall be under no obligation to take any action on a complaint until it has received from Complainant the initial fee in accordance with Paragraph 13(a).

(f) If the relevant Office of the Centre has not received the fee within ten (10) calendar days of receiving the complaint, the relevant Office of the Centre may terminate the administrative proceeding.

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

(h) Under no circumstances case filing fee shall be reimbursed by the Centre.

#### **14. Appointment of Case Administrator**

(a) When the Complaint is sent by the relevant Office of the Centre to the Respondent, the relevant Office of the Centre shall notify the Parties of the name and contact details of the Case Administrator responsible for the administration of the proceedings commenced by the Complaint.

(b) Communication between the Panelist and the Parties shall be coordinated through the Case Administrator.

#### **15. Exclusion of Liability**

Except in the case of deliberate wrongdoing, the Centre, a Panelist and any intellectual property office consulted by the Panelist shall not be liable to a Party for any act or omission in connection with any administrative proceeding under the Policy and the Rules.

#### **16. Amendments**

This version of the Rules in effect at the time of the submission of the complaint to the Centre shall apply to the administrative proceeding commenced thereby. The Centre reserves the right to modify the Rules at any time.