.US™

usTLD Registrar Transfer Dispute Resolution Policy

In any dispute relating to Inter-Registrar domain name transfers, Registrars are encouraged to first of all attempt to resolve the problem among the Registrars involved in the dispute. In cases where this is unsuccessful and where a registrar elects to file a dispute, the following procedures apply. It is very important for Registrars to familiarize themselves with the usTLD Registrar Transfer Dispute Resolution Policy (usTDRP) as described in this policy before filing a dispute.

1. Definitions

1.1 Complainant

A party bringing a Complaint under the usTDRP. A Complainant may be either a Losing Registrar (in the case of an alleged fraudulent transfer) or a Gaining Registrar (in the case of an improper NACK) under this Policy.

1.2 Complaint

The initial document in a usTDRP proceeding that provides the allegations and claims brought by the Complainant against the Respondent.

1.3 Dispute Resolution Panel

The Dispute Resolution Panel shall mean an administrative panel appointed by the Dispute Resolution Provider ("Provider") to decide a Complaint concerning a dispute under the usTDRP.

1.4 Dispute Resolution Provider

The Dispute Resolution Provider is the usTLD Administrator.

1.5 Form of Authorization (FOA)

The standardized form of consent that the Gaining Registrar and Losing Registrar are required to use to obtain authorization from the Registrant or Administrative Contact in order to properly process the transfer of domain name sponsorship from one Registrar to another.

1.6 Gaining Registrar

The registrar who seeks to become the Registrar of Record by submitting a transfer request.

1.7 Invalid Transfer

A transfer that is found non-compliant with the usTLD Transfer Policy.

1.8 Losing Registrar

The registrar who was the Registrar of Record at the time a request for the transfer of domain is submitted.

1.9 NACK

A denial of a request for transfer by the Losing Registrar.

1.10 Registrant

The individual, organization, or entity that holds the right to use a specific domain name for a specified period of time.

1.11 Registrar of Record

The Registrar who sponsors a domain name at the registry.

1.12 usTLD Administrator

The organization authorized by the Department of Commerce ("DOC") to provide registration and policy administration services for the usTLD and to usTLD Accredited Registrars.

1.13 Respondent

A party against whom a Complaint is brought. Under the usTDRP, the Respondent can be a Losing Registrar in the case of an improper (NACK), a Gaining Registrar in the case of an alleged fraudulent transfer, or the Registrar of Record.

1.14 Supplemental Terms

The Supplemental Terms shall mean those rules adopted by the Provider administering a proceeding to supplement the usTDRP. Supplemental Rules shall be consistent with the usTDRP and shall cover topics such as fees, word and page limits and guidelines, the means for communicating with the Provider, and the form of cover sheets.

1.15 usTLD Transfer Policy

The policy governing the transfer of sponsorship of registrations between usTLD Accredited Registrars who have executed the usTLD Accreditation Agreement and Registry-Registrar Agreement with the usTLD Administrator.

2. Dispute Resolution Process

2.1 Filing a Complaint

The Complainant may file a Complaint with the Dispute Resolution Provider. The decision of the Dispute Resolution Panel is final, except as it may be appealed to a court of competent jurisdiction in accordance with Section 3.4 of the usTDRP.

2.2 Statute of Limitations

A dispute must be filed no later than twelve (12) months after the alleged violation of the usTLD Transfer Policy. In the case where a Losing Registrar alleges that a transfer was in violation of the usTLD Transfer Policy, the date the transfer was completed shall be deemed the date on which the "alleged violation" took place. In the case where a Gaining Registrar alleges that a transfer should have taken place, the date on which the NACK (as defined below) was received by the Registry, shall be deemed the date on which the "alleged violation" took place.

3. Dispute Procedures

3.1 Registrar files a Request for Enforcement with the Dispute Resolution Provider

3.1.1 Either the Gaining Registrar or Losing Registrar may submit a Complaint. This must be done in accordance with the Supplemental Terms adopted by the Dispute Resolution Provider.

3.1.2 The Complaint shall be submitted to the Dispute Resolution Provider and to the Respondent in electronic form and shall:

i. Request that the Complaint be submitted for decision in accordance with the usTDRP and the applicable Supplemental Terms;

ii. Provide the name, postal and e-mail addresses, and the telephone and fax numbers of the Complainant and those representatives authorized by the Complainant to act on behalf of the Complainant in the administrative proceeding;

iii. Provide the name of the Respondent and all information (including any postal and e- mail 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;

iv. Specify the domain name(s) that is/are the subject of the Complaint;

v. Specify the incident(s) that gave rise to the dispute;

vi. Describe, in accordance with the usTLD Transfer Policy, the grounds on which the Complaint is based;

vii. State the specific remedy being sought (either approval or denial of the transfer);

viii. 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;

ix. Certify that 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; and

x. Conclude with the following statement followed by the signature of the Complainant or its authorized representative:

"<insert name of 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 Respondent and waives all such claims and remedies against the Dispute Resolution Provider as well as its directors, officers, employees, and agents, except in the case of deliberate wrongdoing or gross negligence."

"<insert name of 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 usTDRP and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument."

3.1.3 The Complaint may relate to more than one domain name, provided that the domain names involve the same Complainant and Respondent and that the claims arise out of the same or similar factual circumstances.

3.1.4 The Complaint shall annex the following documentary evidence (as applicable and available) in electronic form if possible, together with a schedule indexing such evidence:

   i.   For the Gaining Registrar:

   a.   Completed Form of Authorization ("FOA")

   b.   Copy of the Whois output for the date transfer was initiated, which was used to identify the authorized Transfer Contacts

   c.   Copy of evidence of identity used

   d.   Copy of a bilateral agreement, final determination of a dispute resolution body or court order in cases when the Registrant of Record is being changed simultaneously with a Registrar Transfer

   e.   Copies of all communications made to the Losing Registrar with regard to the applicable transfer request along with any responses from the Losing Registrar

   ii.   For the Losing Registrar:

   a.   Completed FOA from the Losing Registrar

   b.   Copy of the Whois output for the date the transfer was initiated

   c.   Relevant history of Whois modifications made to the applicable registration d.   Evidence of one of the following if a transfer was denied:

       fraud;

       Pending usDRP proceeding that the Registrar has been informed of;

       usRS proceeding or usRS Suspension that the Registrar has been informed of;

       Pending dispute under the usTLD Registrar Transfer Dispute Resolution Policy;

       court order by a court of competent jurisdiction;

Registrant or administrative contact identity dispute in accordance with Section 3 of usTLD the Transfer Policy [Registrar of Record Requirements]

applicable payment dispute along with evidence that the registration was put on HOLD status;

express written objection from the Registered Name Holder or Administrative Contact;

LOCK status along with proof of a reasonable means for the registrant to remove LOCK status;

The Registrar imposed a 60-day inter-registrar transfer lock following a Change of Registrant, and the Registered Name Holder did not opt out of the 60-day inter-registrar transfer lock prior to the Change of Registrant request.

domain name within 60 days of initial registration; or

domain name within 60 days of a prior transfer.

e. Copies of all communications made to the Gaining Registrar with regard to the applicable transfer request along with any responses from the Gaining Registrar.

3.2 The Respondent shall have seven (7) calendar days from receipt of the Complaint to prepare a Response to the Complaint ("Response").

3.2.1 The Response shall be submitted in electronic form to both the Dispute Resolution Provider and Complainant and shall:

i. Respond specifically to the statements and allegations contained in the Complaint (This portion of the response shall comply with any word or page limit set forth in the Dispute Resolution Provider's Supplemental Terms.);

ii. Provide the name, postal and e-mail addresses, and the telephone and fax numbers of the Respondent (non-filing Registrar);

iii. 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;

iv. State that a copy of the Response has been sent or transmitted to the Complainant;

v. Conclude with 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, 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

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

3.2.2 At the request of the Respondent, the Dispute Resolution Provider may, in exceptional cases, extend the period of time for the filing of the response, but in no case may the extension be more than an additional five (5) calendar days. The period may also be extended by written stipulation between the Parties, provided the stipulation is approved by the Dispute Resolution Provider.

3.2.3 If a Respondent does not submit a response, in the absence of exceptional circumstances, the Dispute Resolution Panel appointed by the Dispute Resolution Provider shall decide the dispute based upon the Complaint.

3.2.4 The Dispute Resolution Panel appointed by the Dispute Resolution Provider must review all applicable documentation and compare registrant/contact data with that contained within the authoritative Whois database and reach a conclusion not later than thirty (30) days after receipt of Response from the Respondent.

i.   If the registrant/contact data does not match the data listed in authoritative Whois, the Dispute Resolution Panel should contact each Registrar and require additional documentation.

ii.   If the Gaining Registrar is unable to provide a complete FOA with data matching that contained within the authoritative Whois database at the time of the transfer request, then the Dispute Resolution Panel shall find that the transfer should be reversed. In the case of a thick Registry, if the Registrar of Record's Whois is not accessible or invalid, the applicable Registry Operator's Whois should be used. In the case of a thin Registry, if the Registrar of Record's Whois is not accessible or is invalid, the Dispute Resolution Provider may place the dispute on hold until such time as the problem is resolved.

iii.   In the case where a Losing Registrar NACKs a transfer, the Losing Registrar must provide evidence of one of the factors for which it is allowed to NACK as set forth in Section 3.1.4(ii)(d) of the TDRP. If the Losing Registrar cannot provide evidence that demonstrates any of the factors, and the Gaining Registrar provides to the Dispute Resolution Provider a complete FOA with data matching that contained within the authoritative Whois database at the time of the transfer request, then the transfer should be approved.

iv.   The Dispute Resolution Panel may not issue a finding of "no decision." It must weigh the applicable evidence in light of the usTLD Transfer Policy and determine, based on a preponderance of the evidence, which Registrar should prevail in the

> dispute and what resolution to the Complaint will appropriately redress the issues set forth in the Complaint.

> v.   Resolution options for the Dispute Resolution Panel are limited to the following:

> > a.   Approve Transfer

> > b.   Deny the Transfer (This could include ordering the domain name be returned to the Losing Registrar in cases where a Transfer has already occurred.)

> vi.   Transfers from a Gaining Registrar to a third registrar, and all other subsequent transfers, are invalid if the Gaining Registrar acquired sponsorship of the domain name(s) at issue through an Invalid Transfer, as determined through the dispute resolution process set forth in this Transfer Dispute Resolution Policy.

> vii.   In the event the Dispute Resolution Panel determines that an Invalid Transfer occurred, the domain shall be transferred back to the registrar that was Registrar of Record immediately prior to the Invalid Transfer.

3.3 Fees for Dispute Resolution Service

3.3.1 The Dispute Resolution Provider shall determine the applicable filing fee ("Filing Fees"). The specific fees along with the terms and conditions governing the actual payment of such fees shall be included in the Dispute Resolution Provider's Supplemental Terms. It is critical that Registrars fully understand the fees that must be paid, which party is responsible for paying those fees and when and how those fees must be paid.

3.3.2 In the event that the Complainant does not prevail in a dispute, the Filing Fees shall be retained by the Dispute Resolution Provider.

3.3.3 In the event that the Complainant prevails in a dispute, the Respondent, must submit to the Dispute Resolution Provider, the Filing Fees within fourteen (14) calendar days after such decision. In such an event, the Dispute Resolution Provider shall refund to the Complainant, whichever applicable, the Filing Fees, no later than fourteen (14) calendar days after it receives the Filing Fees from the Respondent. Such fees must be paid regardless of whether a court proceeding is commenced in accordance with Section 3.4 below. Failure to pay Filing Fees to the Dispute Resolution Provider may result in the loss of accreditation by the usTLD Administrator.

3.4 Availability of Court Proceedings

The procedures set forth above shall not prevent a Registrar from submitting a dispute to a court of competent jurisdiction for independent resolution before such administrative proceeding is commenced or after such proceeding is concluded. If a Dispute Resolution Panel decides a domain name registration should be transferred (either to the Gaining Registrar, or alternatively, back from the Gaining Registrar to the Losing Registrar), such Registrar will wait fourteen (14) calendar days after it is informed of the decision before implementing that decision. The usTLD Administrator will then implement the decision

unless it has received from either of the parties to the dispute during that fourteen (14) calendar day period official documentation (such as a copy of a complaint, file-stamped by the clerk of the court) that a lawsuit has commenced with respect to the impacted domain name(s). If such documentation is received by the usTLD Administrator, as applicable, within the fourteen (14) calendar day period, the decision will not be implemented until (i) evidence is presented that the parties have resolved such dispute; (ii) evidence is presented that the lawsuit has been dismissed or withdrawn; or (iii) a copy of an order from such court dismissing the lawsuit or ordering certain actions with respect to the domain name.

3.5 Decision Publication

3.5.1. The Dispute Resolution Provider may publish any decision made with respect to a transfer dispute initiated under the usTDRP. All decisions under this Policy may be published in full over the Internet except when the Panel, convened by the Dispute Resolution Provider, in an exceptional case, determines to redact portions of its decision. The portion of any decision determining a complaint to have been brought in bad faith shall be published.

3.5.2. Decision reports shall include, at a minimum:

    i. The domain name under dispute;

    ii. The names of parties involved in the dispute;

    iii. The date of the implementation of the decision.

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