



# **Rules of Procedure ICM Registry's Rapid Evaluation Service**

Version 1.0

## 1. Initiating a Complaint

- a. Proceedings are initiated by electronically filing the RES Complaint Form at <http://domains.adrforum.com> or by such other submission procedure as may be provided. The RES Complaint Form shall provide for entry of the substantive and formal components a RES Complaint.
- b. Each complaint must be accompanied by a non-refundable fee as determined by the Provider's Supplemental Rules.
- c. A complaint may join related complainants, provided that all such related complainants have a mutual interest in the trademark or service mark right(s) asserted.
- d. A complaint shall identify a single respondent.
- e. The complainant shall, by submitting a complaint, attest that the complaint is not being filed for any improper basis and that there is a sufficient good faith basis for filing the complaint. The complainant shall further agree that it shall be directly and solely liable to the registrant in the event that 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.
- f. The complaint shall be filed in English.

## 2. Administrative Review

Within one (1) Business Day from receipt, the Provider shall subject the complaint to an administrative review upon filing, to determine whether the complaint appears to comply with the filing requirements set forth in Section 1 and the Provider's relevant Supplemental Rules, including payment of the required filing fee.

- a. During the administrative review, if further information is required to confirm the identity or authority of the complainant and/or the complainant's representative, the complainant shall respond to any such requirement within two (2) Business Days (as defined in the Provider's Supplemental Rules). The complaint will be dismissed without prejudice to the complainant filing a new complaint in the event that it does not comply with the filing requirements, or appears to be unauthorized by the complainant. The initial filing fee shall not be refunded.
- b. The complaint will be dismissed with prejudice if circumstances indicate that it has been filed by a party deemed to be an abusive filer, as defined in Rule 8(b), by at least three (3) prior determinations that the complainant, complainant's counsel, firm or firm office in the same jurisdiction (for multi-jurisdictional firms) has made an abusive filing in the span of three (3) years. The initial filing fee shall not be refunded.

## 3. Notice and Locking of Domain

Upon successful completion of the administrative review, the Provider shall request the Registry to lock the domain name in the .XXX TLD. Within two (2) Business Days of the request, the Registry shall "lock" the domain name, meaning the Registry shall restrict all changes to the registration data, including transfer and

deletion of the domain name in the .XXX TLD, but the domain name in the .XXX TLD will continue to resolve; the Registry shall concurrently notify the Provider that the lock is in place. Within one (1) Business Day after receiving notice of the lock on the domain name in the .XXX TLD, the Provider shall send a Notice of Complaint and Commencement to the registrant of the domain name in the .XXX TLD, sending an electronic copy of the complaint to the addresses listed in the Whois contact information. The notice of the complaint shall provide the location of the RES Policy and Rules, and specify the deadline for the response. Within one (1) Business Day, the Provider shall concurrently electronically send the Registry and the registrar of record for the domain name in the .XXX TLD the Notice of Complaint and Commencement for their reference.

#### **4. Evaluators**

RES Evaluators shall consist of accredited Panelists under the UDRP Procedure, who shall meet the criteria established by the Registry on the basis of familiarity with the substance and purpose of this RES Policy. RES Evaluators shall not accept a case in which such acceptance would constitute a conflict of interest or other impairment of impartiality.

#### **5. Preliminary Decision (2 Business Days)**

Complaints will be subjected to a Preliminary Evaluation by an Evaluator. The Evaluator shall be appointed concurrent with commencement. The Preliminary Evaluation shall be completed within two (2) business days and may result in a Preliminary Decision, which the Provider shall transmit to the Parties, the Registry, and the registrar immediately. In the event the Evaluator elects to make no Preliminary Decision, then within such two (2) business day time period, the Provider shall communicate to the parties, the Registry, and the registrar that the case will be subject to a Final Decision only.

A Preliminary Decision may consist of:

- a. A decision that, in the Evaluator's discretion, the complaint is facially frivolous or abusive, in which case the complaint will be dismissed with prejudice; or otherwise non-compliant with filing requirements, in which case the complaint will be dismissed without prejudice to the complainant filing a new complaint. The initial filing fee shall not be refunded in these circumstances; or
- b. A decision that, in the Evaluator's discretion, the complaint presents a strong likelihood of success, irreparable harm to the complainant, and there does not appear to be a substantial likelihood of harm to the respondent (e.g. no apparent active substantial .xxx website) by immediate disabling of the domain name(s) in the .XXX TLD identified in the complaint. Additionally, any registrant having received at least three (3) adverse RES Final Decisions in one (1) year may presumptively be considered an abusive registrant. In such circumstances the Provider will transmit the Preliminary Decision to the parties, the Registry, and the registrar. In this circumstance, the domain name in the .XXX TLD shall be immediately disabled pending a final decision.

## 6. Response

A registrant shall have ten (10) Business Days from the notice of complaint for submission of a response, in English, using the response form provided at <http://domains.adrforum.com> or other such submission method as may be provided. The response form shall provide the ability to request an extension of time and state reasons therefor, which shall be in the discretion of the Evaluator.

## 7. Default

If, at the expiration of the ten (10) Business Day answer period (or extended period if granted), the registrant does not submit an answer, the complaint shall proceed to an Evaluator for review on the merits of the complaint.

In Default cases if a Final Decision is rendered in favor of complainant, registrant shall have the right to seek relief from Default via review ("Default Cure Period") by filing a response at any time up to three (3) months after the date of the Final Decision in favor of complainant.

## 8. Final Decision

- a. Upon expiration of the response period, the case shall be transmitted back to the Evaluator. The Evaluator shall determine whether the complaint has clearly and convincingly demonstrated abusive registration, and that the response has not presented a genuine issue of material fact, or a viable or credible defense. The Evaluator shall issue a Final Decision stating the conclusion of the evaluation, and may include a summary limited to determinative facts of such Final Decision if, in the Evaluator's discretion, such summary would be instructive. If the Evaluator finds the complaint was abusive, such findings shall be clearly identified in the Final Decision.
- b. The Evaluator shall further indicate whether the complaint is, in the Evaluator's discretion, abusive. An abusive complaint shall be one:
  - (i) presented solely for improper purpose such as to harass, cause unnecessary delay, or needlessly increase the cost of doing business; or
  - (ii) where the claims or other assertions were clearly unwarranted by any existing law or the RES Policy, or good faith argument for extension thereof; or
  - (iii) where the factual contentions lacked any evidentiary support; or
  - (iv) where the complaint contained a deliberate material falsehood if it contained an assertion of fact, which at the time it was made, was made with the knowledge that it was false and which, if true, would have an impact on the outcome on the RES proceeding.

## 9. Implementation

If the complaint is unsuccessful the domain name in the .XXX TLD shall be unlocked and restored to the status quo ante. Final Decisions to disable a domain name or restore the domain name to its status quo ante shall be implemented within two (2) Business Days after communication of a Decision to the parties unless the Registry receives notice of that either party has initiated a UDRP or other administrative or judicial proceeding in relation to the domain name in the .XXX TLD, in which case the status of the name at the time of receipt of such notice shall be maintained pursuant to the outcome of such other proceeding. Upon the conclusion of such other proceeding, the domain name in the .XXX TLD shall be registered or reserved in accordance with the outcome of such other proceeding.

