

# Sunrise and DPML Dispute Resolution Policy

**SDRP**

03/02/2023

# 1. Background and Objectives

**a) Scope and purpose** The ICANN gTLD Applicant Guidebook sets out a requirement for all new gTLD registries to provide a Sunrise Dispute Resolution Policy (Module 5, Trademark Clearinghouse, paragraph 6). In addition, Identity Digital Inc. (“Identity Digital”) provides a dispute resolution mechanism for its Domains Protected Marks List service (“DPML”). This Sunrise and DPML Dispute Resolution Policy (the “Policy”) governs disputes arising out of or concerning the Sunrise service and DMPL offered by Identity Digital. Additional information regarding Sunrise and DPML is available on the Identity Digital Website.

**b) Definitions** In this Policy, the following words and phrases have the following meanings:

<b>Complainant</b>	A person (legal or natural) who makes a complaint under this Policy.
<b>Identity Digital Website</b>	identity.digital

The domain name label is an identical match to the trademark, meaning that the label consists of the complete and identical textual elements of the mark in accordance with section 4.2.1 of the TMCH Guidelines. In this regard:

**Identical Match**

1. *For a trademark exclusively consisting of letters, words, numerals and/or special characters:* the recorded name of the mark is an identical match to the reported name as long as all characters are included in the trademark record provided to the TMCH and in the same order in which they appear on the trademark certificate.
2. *For a marks that do not exclusively consist of letters, words, numerals, or special characters:* the recorded name of the trademark is an identical match to the reported name as long as the name of the trademark includes letters, words, numerals, keyboard signs, and punctuation marks that are: (i) predominant, (ii) clearly separable or distinguishable from the device element, and (iii) all predominant characters are included in the trademark record submitted to the TMCH in the same order they appear in the mark.

**Panellist**

The person or organisation appointed by the Provider to provide a written decision in relation to a dispute arising under this Policy.

**Provider**

The dispute resolution provider appointed by Identity Digital to administer resolution of disputes arising under this Policy.

**Provider's Website**

<https://oxil.uk/dispute-resolution/donuts-sunrise/>

**Respondent**

The applicant or registrant of the domain name(s), or the DPML account holder subject to a complaint under this Policy.

<b>SMD File</b>	A signed mark data file issued by the TMCH signifying that the TMCH has verified that the trademark contained in the SMD File meets the requirements for inclusion in the TMCH in accordance with TMCH Guidelines in force at the time when a complaint under this Policy is filed.
<b>Sunrise</b>	That period of time during which holders of SMD Files may submit domain name applications for a TLD before registration becomes available to the general public
<b>TMCH</b>	Trademark Clearinghouse ( <a href="http://www.trademark-clearinghouse.com">http://www.trademark-clearinghouse.com</a> ).
<b>TMCH Guidelines</b>	Guidelines published by the TMCH for mark holders and agents to inform them about the eligibility requirements for inclusion of marks in the TMCH and participation in sunrise services (currently available at <a href="http://www.trademark-clearinghouse.com/sites/default/files/files/downloads/TMCH%20guidelines%20v1.1_0.pdf">http://www.trademark-clearinghouse.com/sites/default/files/files/downloads/TMCH%20guidelines%20v1.1_0.pdf</a> ).

**c) End--Date Sunrise** Identity Digital utilizes an end--date Sunrise process, meaning Sunrise registrations will not occur during Sunrise. Rather, at the end of Sunrise, sole applicants meeting all Sunrise criteria for an available domain will be awarded their applied--for domain. Other than the requirement to submit a valid SMD File with Sunrise applications, Identity Digital does not apply allocation criteria in its Sunrise application process. If there are multiple applicants for an available domain, those applicants will go to auction at the end of Sunrise after which the auction winner will be allocated the domain. Additional information regarding Sunrise and the auction process is available on the Identity Digital Website.

**d) Trademark validation and SMD File fraud** The TMCH is responsible for maintaining Sunrise eligibility requirements, validating and authenticating marks (as applicable), and hearing challenges regarding validity of a mark or SMD File. When processing Sunrise applications, Identity Digital relies on the validity of mark holder information contained in SMD Files provided by the TMCH. Disputes regarding the validity of an SMD File are subject to a separate TMCH dispute process and should be submitted to the TMCH using

its dispute resolution procedures outlined in <https://trademark-clearinghouse.com/dispute> prior to initiation of a complaint under this Policy. In the event the TMCH reports fraud in an SMD File or a Sunrise application, Identity Digital may disqualify the Sunrise application or, in the event that fraud is detected after the Sunrise period, delete the applicable domain name(s).

## 2. Identity Digital Internal Review

Prior to initiating a dispute under this Policy, potential Complainants must submit complaints to Identity Digital at [legal@identity.digital](mailto:legal@identity.digital). When possible, Identity Digital may attempt to resolve the issue internally without charge. If, in the opinion of Identity Digital, the matter would be more appropriately dealt with by the TMCH, Identity Digital will advise the potential Complainant accordingly. If the complaint relates to a registry process error, Identity Digital will investigate and if upheld seek to resolve such errors internally without charge. In the event Identity Digital, in its discretion, is unable to resolve the dispute, Identity Digital will notify the potential Complainant to submit its complaint to the Provider as outlined in this Policy.

## 3. Who can make a Complaint?

Any person can raise a complaint under this Policy, subject to the following:

1. Identity Digital (in its internal review) or the Panellist may in their sole discretion determine that a Complainant is a vexatious complainant, i.e. the Complainant has habitually and persistently and without any reasonable grounds instituted vexatious complaints under this Policy or equivalent policies (whether against the same person or different persons)(a “Vexatious Complainant”).
2. Factors that are relevant to the determination include, but are not limited to (a) the number of complaints made by the Complainant under this

Policy, or equivalent policies, which were resolved in favour of a respondent; and (b) whether the Complainant has exhibited a pattern or practice of filing complaints that have not passed Identity Digital' Internal Review.

Identity Digital may in its sole discretion bar a Vexatious Complainant from future filing under this Policy.

## 4. What you Need to Prove

**4.1 Sunrise complaints** To prevail in a Sunrise dispute under this Policy, a Complainant must prove by clear and convincing evidence that any of the following grounds apply:

1. at the time the challenged domain name was registered, the registrant did not hold a trademark registration of national effect (or regional effect) or the trademark had not been court--validated or protected by statute or treaty;
2. the domain name is not identical to the mark on which the registrant based its sunrise registration;
3. the trademark registration on which the registrant based its sunrise registration is not of national effect (or regional effect) or the trademark had not been court--validated or protected by statute or treaty;
4. the trademark registration on which the domain name registrant based its sunrise registration did not issue on or before the effective date of the Registry agreement and was not applied for on or before ICANN announced the applications received;
5. the Sunrise registrant does not meet the "in--use" standard;
6. the SMD File used to complete the Sunrise registration was fraudulently obtained and/or submitted; or
7. a registry process error occurred that resulted in an incorrect Sunrise registration.

**4.2 DPML complaints** To prevail in a DMPL dispute, a Complainant must prove by clear and convincing evidence that any of the following grounds apply:

1. at the time the challenged domain name was blocked, the DPML block applicant did not hold a trademark registration of national effect (or regional effect) or the trademark had not been court--validated or protected by statute or treaty);
2. the trademark registration on which the DPML applicant based its DPML block is not of national effect (or regional effect) or the trademark had not been court--validated or protected by statute or treaty;
3. the trademark registration on which the DPML applicant based its DPML block did not issue on or before the effective date of the Registry agreement and was not applied for on or before ICANN announced the applications received;
4. the DPML block otherwise does not meet Identity Digital requirements for DMPL eligibility (e.g. the blocked domain name label is not an Identical Match or does not contain an Identical Match of the domain name label in the SMD File); or
5. a registry process error occurred that resulted in an incorrect DPML Block.

Questions or disputes regarding the ability of a mark holder to override a DPML block should be addressed to Identity Digital at [DPML@identity.digital](mailto:DPML@identity.digital). Additional information regarding DPML is available on the Identity Digital Website.

## 5. Initiation of Complaint Under this Policy

### 5.1 Timing of submission

1. Sunrise complaints must be filed with the Provider within ninety (90) days of the date of registration of the relevant domain name(s).
2. DPML complaints may be filed at any time the applicable DPML block is in effect.

**5.2 Format of submission** All submissions, including any annexes, under this Policy must be lodged electronically via the appropriate form on the Provider's Website. **5.3 Providing evidence**

1. The complaint must include:
  1. Name, company (if applicable), email, phone number and address of the Complainant and of any representative authorised to act for the Complainant in the administrative proceeding;
  2. Domain name(s) that are the subject of the dispute;
  3. Applicable trademark(s) as validated by the TMCH and the relevant SMD File;
  4. Name of the Respondent, and the Respondent's contact information from the WHOIS entry associated with the disputed domain name(s);
  5. Ground(s) relied on (as set out in paragraphs 0 or 0);
  6. Up to 500 words describing how the criteria relied on are made out;
  7. The remedy requested; and
  8. 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 dispute.

The complaint must conclude with the following statement for and on behalf of the Complainant: "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 (a) the dispute resolution provider and panellists except in the case of deliberate wrongdoing, (b) the registrar, (c) Identity Digital, its directors, officers, employees, affiliates and agents, 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 this Policy and under applicable law, as it now



exists or as it may be extended by a good faith and reasonable argument.” Annex any documentary or other evidence upon which the Respondent relies, together with a schedule indexing all documents.

1. A single complaint may relate to more than one domain name, provided that the domain names are registered the same registrant, and are all in TLDs operated by Identity Digital.

## 6. Fees

1. All fees charged by the Provider in connection with a dispute under this Policy shall be paid by the Complainant at the time of submission of the complaint.
2. The fees are GBP 250 for a single complaint relating to up to 5 domain names registered to the same registrant. For a complaint involving 6 or more domain names, the Complainant should contact the Provider directly for a quotation using the contact details on the Provider’s Website.
3. The Provider’s Website contains information about acceptable payment mechanisms.

## 7. Notification of Complaint

1. The Provider shall review the complaint for administrative compliance with this Policy and, if in compliance, shall forward the complaint, including any annexes, electronically to the Respondent within five (5) days following receipt of the fees to be paid by the Complainant in accordance with paragraph 6.
2. 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) 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 the Complainant.

3. The date of commencement of the administrative proceeding shall be the date on which the Provider completes its responsibilities under paragraph 7(a) in connection with sending the complaint to the Respondent.
4. The Provider shall immediately notify the parties, the concerned registrar, and Identity Digital of the date of Commencement of the administrative proceeding.

## 8. Response

1. Within twenty (20) days of the date of commencement of the administrative proceeding the Respondent shall submit a response to the Provider.
2. The response shall:
  1. In up to 500 words, respond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent to retain the disputed domain name;
  2. Provide the name, postal and email addresses and the telephone numbers of the Respondent and of any representative authorised to act for the Respondent in the administrative proceeding;
  3. Identify and annex applicable trademark(s) as validated by the TMCH and the relevant SMD File; and
  4. 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 dispute.

The response must conclude with the following statement for and on behalf of the Respondent: “Respondent certifies that the information contained in this response is to the best of Respondent’s knowledge complete and accurate and that the assertions in this response are warranted under this Policy and under applicable law, as it now exists or as it may be extended by a good faith and reasonable argument.” Annex any documentary or other evidence upon which the Respondent relies, together with a schedule indexing such documents.

## 9. Further Statements

The Panellist is not required to consider any further statements submitted by or on behalf of the parties in relation to any administrative proceeding under this Policy.

## 10. Appointment of Panellist

1. The Provider shall maintain a list of Panellists and their qualifications.
2. The role of the Panellist is to evaluate whether or not the Complaint satisfies the criteria set out at paragraph 4 of this Policy. The Panellists shall not specify a remedy, which is to be determined by Identity Digital (see paragraph 17).
3. The Provider shall appoint within five (5) days following receipt of the response or the lapse of the time period for the submission of the response, a Panellist. The Provider will notify the parties of the name of the Panellist and the date on which a decision, absent exceptional circumstances, the Panellist shall forward its decision on the complaint to the Provider.

## 11. Impartiality and Independence

A Panellist 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 Panellist's impartiality or independent. 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 Panellist, the Panellist shall promptly disclose such circumstances to the Provider. In such event, the Provider shall have the discretion to appoint a substitute Panellist.

## **12. Communication between the Parties and the Panellist**

No party or anyone acting on its behalf may have any unilateral communication with the Panellist. All communications between a Party and the Panellist shall be made through the Provider.

## **13. Transmission of File**

The Provider shall forward the file to the Panellist as soon as appointed.

## **14. No In--Person Hearings**

There shall be no in--person hearings (including hearings by teleconference, video conference or web conference).

## **15. Impact of Default**

1. In the event that a party, in the absence of exceptional circumstances, does not comply with any of the time periods established by this Policy or the Panellist, the Panellist shall proceed to a decision on the complaint.
2. If a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, this Policy or any request from the Panellist, the Panellist shall draw such inferences as it considers appropriate.

## 16. Panellist Decision

### 16.1 Basis of decision

1. The Panellist will make a decision on the basis of the statements and documents provided by the parties, this Policy, other Identity Digital policies, and any rules and principles of law that it deems applicable;
2. In the absence of exceptional circumstances, the Panellist shall forward its decision on the complaint to the Provider within fourteen (14) days of its appointment pursuant to paragraph 10;
3. The Panellist's decision will be in writing, in summary format and may (but is not required to) provide reasons or commentary as the Panellist in its sole discretion deems appropriate; and
4. All decisions rendered under this Policy will be published on the Provider's website. Subject to the parties' rights under paragraph 18, the Panellist's decision shall be final, without the availability of appeal.

**16.2 Communication of decision to the parties** Within five (5) days after receiving the decision from the Panellist, the Provider shall communicate the full text of the decision to each party, the applicable registrar, and Identity Digital.

## 17. Remedies

1. If the Panellist finds that the Complaint succeeds, Identity Digital in its discretion shall determine the most appropriate remedy for the parties consistent with the decision of the Panellist.
2. The available remedies may include, but are not limited to:
  1. revocation or cancellation of the disputed domain name(s) or DPML block without refund of any registration or related fees; or
  2. transfer of the disputed domain name(s) to the Complainant, provided that the Complainant agrees to the same terms as required for registration in the relevant TLD.

3. In the event that a complaint under this Policy is not upheld, the disputed domain(s) will be retained by the Respondent and any lock in place will be lifted.

## 18. Implementation of decision

Identity Digital will implement the remedy as directed by the Panellist's decision unless Identity Digital has received within ten (10) days of issuance of such decision official documentation (such as a copy of a complaint, file--stamped by the clerk of the court) that the Complainant or Respondent has commenced and served a lawsuit against the other party/parties in another venue. If Identity Digital receives such documentation within the ten (10) day period, Identity Digital will not implement the decision, and will take no further action, until Identity Digital receives (i) satisfactory evidence of a resolution between the parties; (ii) satisfactory evidence that the lawsuit has been dismissed or withdrawn; or (iii) a copy of an order from such court dismissing the lawsuit or ordering that a party/parties have no right to the domain name(s) in dispute.

## 19. No modifications, transfers, or deletion during disputes under this Policy

On initiation of a complaint under this Policy, the disputed domain name(s) will be locked against modification or transfers between registrants and/or registrars, and against deletion.

## 20. Availability of Court Proceedings

The dispute process set forth in this Policy does not prevent either party from submitting a dispute concerning the domain name to another administrative proceeding (e.g. UDRP or URS) or to a court of competent jurisdiction. Such activity may be initiated during the Sunrise or DMPL dispute resolution process or after such proceeding is concluded. The party initiating such activity must immediately provide the Provider with notice of commencement of such activity, whereupon any active proceedings under this Policy will be stayed pending the outcome of the proceedings so initiated.

## 21. Exclusions of Liability

Except in the case of deliberate wrongdoing, neither Identity Digital, the Provider, nor any Panellist shall be liable to a party for any act or omission in connection with any administrative proceeding under this Policy.

## 22. Language of Proceedings

The language of proceedings shall be English. All communications shall be in English. It is the responsibility of the parties to provide certified translations into English of all documents and supporting evidence whose original is in any other language, along with a copy of the original.

## 23. Ability to Update

This Policy is subject to change in Identity Digital discretion. It is the obligation of the parties to check the most recent version of this Policy as published on the Identity Digital Website. The version of this Policy in effect at the time of submission of the complaint to the Provider shall apply to the relevant administrative proceeding.