

Top Level Design LLC January 22, 2015

Defined Terms

Definitions are provided in the definitions section of the Registry Registrar Agreement or as otherwise defined in the body of the Policy.

Sunrise Dispute Resolution Policy

Top Level Design LLC (“the Registry”) has entered into multiple agreements with the Internet Corporation of Assigned Names and Numbers (ICANN) to manage and maintain the registries for new generic top-level domains (“TLDs” and/or “gTLDs”) including TLDs .WIKI, .INK, and .DESIGN. This policy is applicable to .DESIGN. ICANN’s Applicant Guidebook for new gTLDs sets out a requirement for all new TLD registries to provide a Sunrise Dispute Resolution Policy (Module 5, Trademark Clearinghouse, paragraph 6).

The Registry reserves the right to modify this Policy at any time subject to the terms of its Registry contract with ICANN and its Registry Registrar Agreement. A revised Policy shall be notified to Registrars and posted publicly on the registry website at least ninety (90) calendar days before it becomes effective. If this SDRP has already been invoked by the submission of a complaint, the version of the SDRP in effect at the time it was invoked will apply until the dispute is concluded, all such changes will be binding with respect to any dispute, whether the dispute arose before, on or after the effective date of the change. In the event that the registrant objects to a change in this Policy, the sole remedy is to cancel the registration or application for registration, in such a case, the registrant will not be entitled to a refund of any fees paid in connection with such registration. The current version of this Policy will be available at the Registry website: <http://tldesign.co/policy/> and on the CentralNic Console¹.

1. End-Date Sunrise

The Registry utilizes what has been termed by ICANN as 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; as Sunrise may occur within the Controlled Interruption period mandated by ICANN to address Name Collision concerns. Sunrise registrations will be allocated to applicants that meet the Sunrise Criteria but will not be activated until the Controlled Interruption period is over. More information on Name Collision Mitigation and Controlled Interruption can be found here: <https://www.icann.org/resources/pages/name-collision-2013-12-06-en>. Other than the ICANN requirement to submit a valid Signed Mark Data File (“SMD File”) with Sunrise applications, the Registry does not apply allocation criteria in its Sunrise application process. The Registry does require the payment of a unique, non-refundable Sunrise Application fee, in addition to the payment of a minimum of one year (1) of registration. If there are multiple applicants for a given,

available domain, those applicants will go to a post-Sunrise auction at the end of Sunrise after which the auction winner will be awarded the domain.

2. The TMCH & Trademark Validation

The Trademark Clearinghouse (“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, the Registry 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 at <http://trademark-clearinghouse.com/dispute> prior to initiation of a complaint under this Policy. In the event the TMCH reports fraud in a SMD File or a Sunrise application, the Registry may disqualify the Sunrise application or, in the event that fraud is detected after the Sunrise period, delete the applicable domain(s).

3. Initiating a Dispute and Internal Review

Prior to initiating a dispute under this Policy, potential Complainants must submit complaints to the Registry at disputes@tldesign.co. The “Complainant” is a person, real or natural, that makes a complaint as per this policy.

When possible, the Registry may attempt to resolve the issue internally without charge. Especially in the case that the matter is more appropriately dealt with by the TMCH, it will advise the potential Complainant accordingly. If the complaint relates to a registry process error affecting the applicable domain(s), the Registry will investigate and if upheld seek to resolve such errors internally without charge. In the event the Registry is unable to resolve the dispute, it will notify the potential Complainant of the escalation of the Complaint and the appointment of an Expert, as defined in Section 8.

4. Frivolous Complaints

A Complainant, Complainant’s counsel, or Complainant’s counsel’s firm, that is found to be responsible for a minimum of 3 complaints deemed to be frivolous may be barred from further use of this policy at the Registry’s discretion. A frivolous complaint comes from a complainant that has habitually lodged vexatious complaints, persistently and without grounds. In denying use of this policy, the Registry or the Expert, may consider the number of complaints lodged under this Policy or related Registry policies and paths of dispute resolution, which were resolved in favor of a respondent, or otherwise consider a pattern of abusing this Policy and related policies.

5. Burden of Proof

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:

- i) 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;
- ii.) The domain name is not identical to the mark on which the registrant based its Sunrise Registration;
- iii.) 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;
- iv.) 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;
- v.) the Sunrise registrant does not meet the “in-use” standard;
- vi.) the SMD File used to complete the Sunrise registration was fraudulently obtained and/or submitted; or
- vii.) a registry process error occurred that resulted in an incorrect Sunrise registration.

6. Complaint Procedure

As detailed above, an initial review must be conducted via the Complainant emailing the Registry at: disputes@tldesign.co.

The language of the Complaint shall be English, as shall any possible proceedings.

The Registry will conduct a timely review and may attempt to remediate as detailed above.

Should it be deemed necessary and in a timely manner, the Registry will transmit a copy of the Complaint to the Registrant.

The Complaint itself shall be limited to 1000 words and no more than five annexes constituting no more than 50 pages in total, and shall specify by particular reference to the paragraphs of this Policy the basis for the Complaint. In the event the Complainant believes it requires a greater word, annex, or page limit, the Complainant may request leave to file additional material. No additional material may be filed or will be considered without grant of such leave by the Expert.

The Complaint shall particularly identify a factual basis for a reasonable belief for each of the allegations therein. Mere lack of knowledge or conclusory allegations shall not constitute a reasonable belief, in the absence of evidence of due diligence to support the allegations of the Complaint.

The Complaint shall contain the following certification: “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 Evaluator, (b) the registrar, (c) Registry, 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."

7. Response Procedure

A Response under this Policy may be submitted to the Registry within 30 days of notification by the Respondent of the Complaint. The Response shall be limited to 1000 words and no more than five annexes constituting no more than 50 pages in total, and may dispute the allegations of the Complaint as appropriate. In the event the Registrant believes it requires a greater word, annex, or page limit, the Registrant may request, in the Response, leave to file additional material. In the event the Respondent believes it requires a greater word, annex, or page limit, the Complainant may request leave to file additional material.

Absence of a Response shall not constitute an admission by the Registrant as to any allegation of the Complaint.

The Response shall include the following certification: "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 Evaluator, (b) the registrar, (c) the Registry, its directors, officers, employees, affiliates and agents, and (d) ICANN 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 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."

8. Payment and Appointed Expert

Within 10 business days of the close of the 30 day Response Period, the Complainant will be contacted to ensure they wish to proceed and to facilitate the payment of the \$700 fee. All complaints proceeding to Expert evaluation will be referred to one of the following eligible parties:

(i) A licensed attorney with at least ten years experience in intellectual property law including: either the conduct of at least 100 domain name dispute proceedings under ICANN or ccTLD domain name dispute resolution policies or a panelist listed by an accredited ICANN UDRP

provider, and who has agreed to decide disputes under this Policy at a total cost of no more than US \$500.

(ii) A dispute resolution provider organization maintaining a roster of evaluators possessing the qualifications noted in subsection (i), and who has agreed to decide disputes under this Policy at a total cost of no more than US \$500.

9. Implementation of Decision

Any domain names in the TLD involved in the proceedings described above will be locked against transfer to another domain name holder or another registrar during the course of a proceeding. The Registry will implement the decision after 10 business days, in the absence of notice to the Registry of an action filed by the Complainant or the Respondent in the jurisdiction of (a) the Registry, (b) the Registrant, or (b) the stated jurisdiction of the registration agreement, whereupon implementation of the Decision will be determined by the relevant litigation provisions of the [Uniform Domain Name Dispute Resolution Policy](#). If the Registry receives such notice within the ten day period, it will not implement the decision, and will take no further action, until the Registry 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.

If the Expert finds that the Complaint succeeds, the Registry in its discretion shall determine the most appropriate remedy for the parties consistent with the decision of the Expert. This may include but is not limited to: revocation or cancellation of the disputed domain name(s) without refund of any fees collected; transfer of domain name(s) to the Complainant, provided that the Complainant agrees to the same terms as required for registration in the relevant TLD.

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.

10. Other Proceedings

The administrative proceeding under the SDRP shall not prevent either party from submitting a dispute concerning the domain name in the TLD to concurrent administrative proceedings or to a court of competent jurisdiction for independent resolution during a pending SDRP administrative proceeding or after such proceeding is concluded. Upon notice of such other proceeding, the SDRP proceeding will be terminated (in the sole discretion of the Evaluator as to the competence of such jurisdiction) in deference to the outcome of such other proceeding.

10. Exclusion of Liability

Except in the case of deliberate wrongdoing, neither the Registry nor any Expert shall be liable to a party for any act or omission in connection with any administrative proceeding under this

Policy.

ⁱ "CentralNic Console" refers to the Registrar interface at <https://registrar-console.centralnic.com/dashboard/login> or such other location as amended from time to time.