

Dot Cymru and Dot Wales Sunrise Dispute Resolution Policy

(August 2014)

1. Introduction

The Sunrise Dispute Resolution Policy (“SDRP”) is incorporated into the Sunrise Process and Registration Rules (the “Rules”), and applies to all registrations and applications made during the TMCH Registered Rights Sunrise period. The SDRP is intended to resolve disputes arising in relation to applications for and registrations of domain names connected to the TMCH Registered Rights Sunrise. It can be used to challenge the rejection or approval of an application for a Domain Name during this phase as having been contrary to the Rules, or any published criteria related to the TMCH Registered Rights Sunrise.

2. Definitions

Except as otherwise set out in this SDRP, the definitions set out within the Rules shall apply when interpreting this policy.

3. Applicable disputes

A complaint under the SDRP must fall within one of the following categories of applicable disputes:

- 3.1. An Application was improperly accepted by Nominet, contrary to the Rules or to ICANN’s rules regarding the operation of the TMCH Registered Rights Sunrise or the TMCH.
- 3.2. An Application was improperly rejected by Nominet, contrary to the Rules or to ICANN’s rules regarding the operation of the TMCH Registered Rights Sunrise or the TMCH.

The SDRP does not apply to any disputes or complaints regarding the validation of Use of a TMCH Registered Mark, nor does it apply to any disputes or complaints regarding the outcome of any Auction.

4. Eligible complainants

A complaint under the SDRP may only be submitted by:

- 4.1. For complaints under paragraph 3.1 above, another Applicant for the same Domain Name; or
- 4.2. For complaints under paragraph 3.2 above, the Applicant whose Application has been rejected.

5. Parties to a SDRP complaint

- 5.1. Applicant or registrant. The Applicant or registrant that is subject to a complaint shall always be a party to a SDRP complaint.
- 5.2. Third party complainant. Where a complaint is made by a third party under paragraph 3.1 above, the complainant shall be a party to the SDRP complaint.

- 5.3. Nominet. Where a complaint is made under either paragraph 3.1 or 3.2 above, Nominet shall be a party to the SDRP complaint.

6. Timing

- 6.1. Complaints in relation to an Application must be received within 10 working days after the end of the TMCH Registered Rights Sunrise.
- 6.2. Any Auctions being held in relation to a Domain Name where an Applicant is subject to a SDRP complaint shall be suspended until the SDRP complaint has been resolved.

7. Burden of proof

In all disputes made under the SDRP, the burden of proof shall lie on the party making the complaint.

8. Defences

Harmless Error. It shall be a defence against any complaint made under the SDRP for the Applicant to show that the defect in the Application has come about due to the submission of incorrect documents, or documents containing an error, provided that the correct documents, or documents containing the correct information, such that the Application should have been accepted, can be shown to have existed at the time of the Application.

9. Withdrawal of Application

An Applicant, on receipt of notice of a complaint under the SDRP, may elect to withdraw their Application rather than respond to it by sending written notice to Nominet by email to sdrp@ourhomeonline.wales or sdrp@eincartrefarlein.cymru confirming that withdrawal. Withdrawal of an Application shall not entitle an Applicant to any refund of any fees paid in relation to the Application.

10. Remedies

- 10.1. In the case of complaints made under paragraph 3.1 of the SDRP which are upheld on appeal or are not subject to an appeal (under paragraph 11.5 below), the sole remedy shall be the cancellation of the offending Application or Domain Name registration. Domain Names cancelled in this way shall be reserved from registration until such later date as Nominet determines, at which point they shall be released via an appropriate rights protection mechanism, as established by Nominet from time to time.
- 10.2. In the case of complaints made under paragraph 3.2 of the SDRP which are upheld on appeal or are not subject to an appeal (under paragraph 11.5 below), the sole remedy shall be the setting aside of the rejection of the Application. In the event that the relevant Domain Name has not been registered, or subject to an Auction, the Applicant shall be entitled to continue to participate in the TMCH Registered Rights Sunrise process, in accordance with the Rules. In the event that the relevant Domain Name has been registered, or subject to an Auction, prior to the reinstatement of an Application for such

Domain Name , then the reinstatement of the Application shall not affect the validity of the registration of that Domain Name or the outcome of the Auction.

11. Procedure

11.1. Complaint

A complainant must submit a complaint under the SDRP in writing, by email to sdrp@ourhomeonline.wales or sdrp@eincartrefarlein.cymru. The complaint must be in English and may be supported by appropriate evidence. Complaints must only be submitted electronically; complaints submitted in hard copy will not be accepted. A complaint itself shall not exceed 1000 words and the supporting evidence shall comprise no more than 20 pages or 10MB (whichever is smaller).

11.2. Administrative Review and Notice

Nominet shall acknowledge receipt of any complaint within 2 working days of receipt. Thereafter, Nominet shall conduct an initial administrative review of a complaint in order to ensure that the SDRP is an appropriate forum to resolve the dispute. In the event that, at Nominet's sole discretion, a complaint is deemed to be inappropriate, it will be rejected and the complainant notified. If the complaint is accepted, Nominet will notify all relevant parties. The review and notification shall be completed within 10 working days of receipt of the complaint.

11.3. Response

Where a complaint has been made by a third party regarding an Application, the Applicant shall be given an opportunity to respond to the complaint, in writing. The response may be supported by appropriate evidence, and must be received by Nominet within 10 working days of notice being given under paragraph 11.2 above. A response shall not exceed 1000 words and the supporting evidence shall comprise no more than 20 pages or 10MB (whichever is smaller).

11.4. Initial examination

Once the steps above have been completed, Nominet (or an agent acting on Nominet's behalf) shall conduct an initial examination of the complaint and response (if applicable) against the SDRP, Rules and relevant ICANN rules. Nominet may elect to uphold or reject the complaint following such examination, and shall provide a written explanation setting out the reasons for its decision. No fee shall be charged for an initial examination.

11.5. Appeal to independent expert

In the event that a party to a SDRP complaint is unsatisfied with the decision made by Nominet under paragraph 11.4 above, they may elect to appeal the decision to an independent expert by notifying Nominet of this intention within 3 working days of receipt of Nominet's decision under paragraph 11.4 above. An independent expert shall be appointed from the panel of appropriately qualified experts maintained by Nominet. The first available expert shall be appointed (using the 'cab rank' principle), subject to

there being no conflict of interests. There will be a fee for any appeal at a rate as published on Nominet's website from time to time.

12. Expert determination

- 12.1. Where an independent expert is appointed to determine the complaint under paragraph 11.5 above, the expert shall determine the complaint on the basis of the submissions of all parties, including the decision made by Nominet under paragraph 11.4.
- 12.2. The independent expert's decision shall be in writing, in English, and shall set out the reasons why the expert has made their decision. The decision must be returned to Nominet within 15 working days, and Nominet must distribute it to all parties within 3 working days.
- 12.3. The independent expert's decision shall be final and binding on all parties.

13. Effect of complaints on registrations

During the course of any proceedings under the SDRP, any Domain Name registration shall be locked to prevent any transfer, cancellation or change in the registration details.

14. Indemnity and exclusion of liability

Neither Nominet nor its directors, officers, employees or servants nor any independent expert shall be liable to a party for anything done or omitted in connection with any proceedings under the SDRP unless the act or omission is shown to have been in bad faith. All Applicants subject to an SDRP complaint and third party complainants shall indemnify Nominet and any independent expert from any claim arising in relation to the conduct or outcome of any proceeding under this SDRP.

15. Effect of other proceedings

No party involved in a SDRP complaint shall be prevented from submitting the dispute to a court of relevant jurisdiction, nor from commencing a dispute under ICANN's UDRP or URS processes. Nominet may, at its sole discretion, suspend a SDRP dispute in the event that it becomes aware of such alternative proceedings.

16. Modifications

Nominet may amend the terms of this SDRP at any time on giving no less than 30 days' notice, by publishing the amended SDRP on its website. Any revisions to the SDRP shall only have effect on complaints commenced once the revisions have come into force.