



SUNRISE DISPUTE RESOLUTION POLICY

v.1.1 - 31/08/15

This Sunrise Dispute Resolution Policy (the “SDRP”) is incorporated by reference into the Registration Agreement. An SDRP Complaint may be filed against a domain name registered during the .cloud sunrise period within 45 calendar days of the end of the sunrise period.

1. Purpose

Domain names in the .cloud TLD can be registered by third parties or reserved by the Registry. This SDRP describes the process and standards that will be applied to resolve challenges to names registered during the Sunrise Registration period of the TLD on the basis of (a) the improper application of the Sunrise Registration criteria applicable to the TLD and/or (b) speculative registrations of otherwise non-exclusive and generic terms obtained under a pretextual claim of formal trade or service mark rights unsupported by substantial use of the subject trade or service mark. This SDRP will not be applied to Registry-reserved names in the .cloud TLD.

2. Applicable Disputes

A name registered in the .cloud TLD during the Sunrise Registration period will subsequently be subject to an administrative proceeding upon submission of a Complaint showing that the Sunrise Registration is Formally Ineligible or Substantively Ineligible. A Complaint under this Policy shall specify only one of Formal Ineligibility or Substantive Ineligibility as a ground for proceeding.

2.1. Formal Ineligibility

A complaint under this section shall be required to show that a registered domain name in the TLD does not comply with the provisions of the Registry’s Sunrise Program. Formal Ineligibility shall be demonstrated in any of the following circumstances:

- a) At time the challenged domain name was registered, the registrant did not hold a trademark registration of national effect (or regional effect); the trademark had not been court-validated or protected by statute or treaty; or the trademark was not properly subject to the “trademark +50” eligibility for TMCH entry;
- b) The domain name is not identical to the mark on which the registrant based its Sunrise registration in accordance with TMCH “identical match” rules; or
- c) 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.

2.2. Substantive Ineligibility

- a) Token use or Non-use: The trademark registration on which the domain name registrant based its Sunrise registration is not the subject of actual and substantial use in commerce in the issuing jurisdiction on which the TMCH entry is based, or has been unused in such jurisdiction for a sufficient period to constitute abandonment thereof in

such jurisdiction; or

b) Pretextual Sunrise Registration: The domain name is otherwise a non-exclusive and generically applicable term having a primary meaning in relation to goods or services other than those for which the trade or service mark was obtained; and the domain name is not used or under demonstrable preparation for use, or held to prevent infringing use, by the registrant in connection with the goods and/or services on which the subject trademark registration is based. The following circumstances in particular shall, without limitation, constitute evidence of Pretextual Sunrise Registration:

- The registrant's use, licensing or offer of licensing of use of the domain name for the primary purpose of exploiting such non-trademark primary meaning; or
- Circumstances indicating a pattern by the Registrant or in concert with others, of Sunrise Registrations based on formal claims of trade or service mark rights in alleged marks which are otherwise non-exclusive and generically applicable terms having a primary meaning in relation to goods or services other than those for which the trade or service mark was obtained; and
- As an aggravating factor in connection with any of the circumstances above, whether the term in question is particularly generically applicable in connection with the TLD in which the Sunrise Registration was made.

3. Remedies

The remedies available to a complainant for a proceeding under this SDRP shall be:

3.1. Formal Ineligibility

If the Evaluator finds that the Sunrise Registration was Formally Ineligible, the sole remedy shall be cancellation of the registration and return of the cancelled domain name to the pool of names available for registration in the TLD.

3.2. Substantive Ineligibility

If the Evaluator finds that the Sunrise Registration was Substantively Ineligible, the domain name will be (a) suspended for the remaining term of registration, (b) cancelled and returned to the pool of names available for registration in the TLD, or (c) reserved by the Registry and subsequently made available for registration under such terms as the Registry may determine, in the discretion of the Registry.

4. Procedure

4.1. The Complaint

A Complaint under this SDRP shall be submitted to the Registry, and shall identify whether it is based on Formal Ineligibility or Substantive Ineligibility. Submission instructions can be found on the .Cloud Registry Operator's website at <https://nic.cloud/policies.aspx>. The Registry will, within three business day of receipt of the Complaint, transmit a copy to the Registrant. In the instance of a Complaint initiated by the Registry, a copy of the Complaint will be sent directly to the Registrant.

In the case of Formal Ineligibility, the Registry will conduct an initial review of the Complaint and the applicable Sunrise Registration application to determine whether the challenged Sunrise Registration was subject to technical error(s) in processing the Sunrise Registration application. In the event the Registry determines the Sunrise Registration to be the result of a technical error(s), the Registry will notify the Registrant, remedy the error, and the proceeding will terminate.

The Complaint 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 SDRP the

basis for the Complaint. In the event the Complainant believes it requires a greater word, annex, or page limit, the Complainant may request, in the Complaint, leave to file additional material. No additional material may be filed or will be considered without grant of such leave by the Evaluator.

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) Aruba PEC SpA, 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."

4.2. The Response

A Response under this SDRP may be submitted to the Registry within 30 days of notification to 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) Aruba PEC SpA, 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."

4.3. Invitation to Proceed

Within ten business days of the deadline for the Response, the Complainant will be asked whether it desires to proceed with the Proceeding, whereupon the Complainant shall pay a fee of US \$700.

4.4. Referral To Evaluator

All Complaints alleging Formal Ineligibility, which are not determined to be the result of technical error, and all Complaints alleging Substantive Ineligibility shall be referred by the Registry to an Evaluator. The Evaluator shall be one of:

- a) 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 SDRP Policy at a total cost of no more than US \$500.

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

4.5. Conduct of Proceeding / Decision

The Evaluator shall (a) consider the Complaint and Response, if any, (b) grant leave to file additional materials or request such materials within such time limits as the Evaluator deems appropriate, and (c) issue a decision stating whether, by reference to this SDRP Policy and such principles of law the Evaluator deems appropriate, whether the Sunrise Registration is ineligible. In all instances, the burden of proof shall be on the Complainant, and the Evaluator shall further state whether the Complaint is frivolous, or has not been submitted upon appropriate due diligence set forth in Paragraph 4.1. hereof. The Evaluator will, in the absence of extenuating circumstances, submit its decision to the Registry within 15 business days of the Evaluator's receipt of the Complaint, Response, or any additional materials. The Registry shall subsequently transmit the Evaluator's decision to the parties.

4.6. Maintenance of Status Quo / Implementation

Any domain names in the TLD involved in a SDRP proceeding 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.

4.7. Frivolous Filings

Upon the occurrence of three Decisions in respect of a Complainant, Complainant's counsel, or Complainant's counsel's firm, having been found to be frivolous, or otherwise not been submitted upon appropriate due diligence, such Complainant, Complainant's counsel and Complainant's counsel's firm shall be barred from further filings under this SDRP.

5. Effect of 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.

6. SDRP Modifications

The Registry reserves the right to modify this SDRP at any time subject to the terms of its Registry contract with ICANN. Such revised SDRP shall be posted on the Registry Website at least ten (10) calendar days before it becomes effective; unless this SDRP has already been invoked by the submission of a complaint, in which event 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 registrant objects to a change in this SDRP, the sole remedy is to cancel the registration, provided that registrant will not be entitled to a refund of any fees paid in connection with such registration. The current version of the SDRP will be available at <https://nic.cloud/policies.aspx>.