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*This policy is issued by Domain Name Commission Limited (DNC or Domain Name Commission) on behalf of InternetNZ, Internet New Zealand Incorporated.*

## **DISPUTE RESOLUTION SERVICE POLICY**

### **1. Statement of Purpose**

1.1. This policy provides an alternative to the Courts in situations where two parties are in dispute over who the registrant of a .nz domain name should be. Part A defines the policy and Part B the procedure supporting the policy.

### **2. Background**

2.1 InternetNZ has the ultimate responsibility within New Zealand for the .nz domain name space, and maintains a shared registry system (SRS) for the management of .nz domain name registrations. InternetNZ has appointed the Domain Name Commission (DNC) to manage and administer the .nz domain name space on behalf of InternetNZ.

2.2 A SRS establishes a single register for registering domain names and associated technical and administrative information. .nz Registry Services (NZRS) operates the register.

2.3 The registration of domain names and modification of information associated with that name on the register can be effected only by authorised registrars. Registrars are responsible for the information they collect.

2.4 Neither registrars nor the DNC get involved in disputes regarding who the true registrant of a domain name should be, but will undertake actions as directed either by the Courts or by the Experts under this policy.

2.5 This policy is one of the .nz policies that, as amended from time to time, all .nz registrants agree to be bound by when registering or renewing a .nz domain name.

2.6 Thanks go to Nominet UK for their assistance in establishing the .nz Dispute Resolution Service.

### 3. Definitions

**Appeal Panel** means a panel appointed by the DNC under paragraph B17.7;

**Complainant** means a third party who asserts to the DNC the elements set out in paragraph 4 of this Policy and according to the Procedure, or, if there are multiple complainants, the 'Lead Complainant' (see Procedure, paragraph B2.2);

**Complaint** means a complaint submitted to the DNC by a Complainant under paragraph B2;

**Commencement of Dispute Resolution Service proceedings** means the earliest date upon which the Complaint is deemed to have been received by the Respondent in accordance with paragraph B1.5;

**Conclusion of Dispute Resolution Service proceedings** means the date on which the Parties are notified of a Decision or the date on which the parties settle the dispute;

**Days** means, unless otherwise stated, any calendar day other than Saturday, Sunday or any public holiday in New Zealand;

**Decision** means the decision reached by an Expert and where applicable includes decisions of an appeal panel;

**Dispute Resolution Service** means the service provided by the DNC according to this Policy and the Procedure;

**Domain Name** means a domain name directly registered in any second level domain of the .nz system;

**Domain Name Commission** means Domain Name Commission Limited, a company wholly-owned by InternetNZ, responsible for the day to day oversight of the .nz domain name registration and management system;

**Domain Name Hijacking** means using the Policy in bad faith in an attempt to deprive a registered domain-name holder of a domain name;

**DNC** means the Domain Name Commission;

**Expert** means a person appointed to resolve a Domain Name Dispute under paragraphs B7 or B17 of the Procedure;

**Informal Mediation** means impartial mediation which is conducted under paragraph B6 to facilitate an acceptable resolution to the dispute;

**ISP** means an internet service provider;

**InternetNZ** means Internet New Zealand Incorporated, the organisation ultimately responsible for the .nz domain name space;

**NZRS** means New Zealand Domain Name Registry Limited, trading as .nz Registry Services, the body which operates and manages the Register;

**Party** means a Complainant or Respondent and Parties has a corresponding meaning;

**Policy** means this Policy;

**Procedure** means the Procedure under this Policy for the conduct of proceedings under the Dispute Resolution Service;

**Register** means the authoritative database and record of .nz domain names managed and operated by NZRS;

**Registrant** means the entity entered in the Register as registrant in respect of the domain name;

**Registrar** means the entity entered in the Register as registrar in respect of the domain name;

**Reply** means a submission made to the DNC by a Complainant under paragraph B5;

**Respondent** means the entity in whose name or on whose behalf a Domain Name is registered and against whom the Complainant makes a Complaint;

**Response** means a submission made to the DNC by a Respondent under paragraph B4;

**Rights** includes, but is not limited to, rights enforceable under New Zealand law. However, a Complainant will be unable to rely on rights in a name or term which is wholly descriptive of the Complainant's business;

**Unfair Registration** means a Domain Name which either:

- i) was registered or otherwise acquired in a manner which, at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the Complainant's Rights; OR
- ii) has been, or is likely to be, used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant's Rights;

## **PART A □ POLICY**

### **4. Dispute Resolution Service**

4.1 This Policy and Procedure applies to Respondents when a Complainant asserts to the DNC according to the Procedure, that:

4.1.1 The Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and

4.1.2 The Domain Name, in the hands of the Respondent, is an Unfair Registration.

4.2 The Complainant is required to prove to the Expert that both elements are present on the balance of probabilities.

4.3 The DNC recommends that both Parties use the guidance and help information, which can be found on the DNC website.

### **5. Evidence of Unfair Registration**

5.1. A non-exhaustive list of factors which may be evidence that the Domain Name is an Unfair Registration is set out in paragraphs 5.1.1 □ 5.1.5:

5.1.1. Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily:

(a) for the purposes of selling, renting or otherwise transferring the Domain Name to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly associated with acquiring or using the Domain Name;

(b) as a blocking registration against a name or mark in which the Complainant has Rights; or

(c) for the purpose of unfairly disrupting the business of the Complainant; or

5.1.2. Circumstances demonstrating that the Respondent is using the Domain Name in a way which is likely to confuse, mislead or deceive people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant;

5.1.3. The Complainant can demonstrate that the Respondent is engaged in a pattern of registrations where the Respondent is the registrant of domain names (under .nz or otherwise) which correspond to well known names or trade marks in which the Respondent has no apparent rights, and the Domain Name is part of that pattern;

5.1.4. The Complainant can demonstrate that the Respondent has knowingly given false contact details to a Registrar and/or to the DNC; or

5.1.5. The Domain Name was registered arising out of a relationship between the Complainant and the Respondent, and the circumstances indicate that it was intended by both the Complainant and the Respondent that the Complainant would be entered in the Register as the Registrant of the Domain Name;

5.2. Failure on the Respondent's part to use the Domain Name for the purposes of e-mail or a web-site is not in itself evidence that the Domain Name is an Unfair Registration.

5.3. There shall be a presumption of Unfair Registration if the Complainant proves that the Respondent has been found to have made an Unfair Registration in three (3) or more Dispute Resolution Service cases in the two (2) years before the Complaint was filed. This presumption can be rebutted (see paragraph 6.3).

5.4. In making their decision, the Expert shall not take into account any evidence of acts or omissions amounting to unfair registration or use which occurred more than three (3) years before the date of the Complaint.

## **6. How the Respondent may demonstrate in its Response that the Domain Name is not an Unfair Registration**

6.1. A non-exhaustive list of factors which may be evidence that the Domain Name is not an Unfair Registration is set out in paragraphs 6.1.1 □ 6.1.4:

6.1.1. Before being aware of the Complainant's cause for complaint (not necessarily the Complaint itself), the Respondent has:

(a) used or made demonstrable preparations to use the Domain Name or a Domain Name which is similar to the Domain Name in connection with a genuine offering of goods or services;

(b) been commonly known by the name or legitimately connected with a mark which is identical or similar to the Domain Name;

(c) made legitimate non-commercial or fair use of the Domain Name; or

6.1.2. The Domain Name is generic or descriptive and the Respondent is making fair use of it in a way which is consistent with its generic or descriptive character;

6.1.3. In relation to paragraph 5.1.5; that the Registrant's holding of the Domain Name is consistent with an express term of a written agreement entered into by the Parties; or

6.1.4. In relation to paragraphs 5.1.3 and/or 5.3; that the Domain Name is not part of a wider pattern or series of registrations because the Domain Name is of a significantly different type or character to the other domain names registered by the Respondent.

6.2. Fair use may include sites operated solely in tribute to or in criticism of a person or business.

6.3. If paragraph 5.3 applies, to succeed the Respondent must rebut the presumption by proving in the Response that the registration of the Domain Name is not an Unfair Registration.

## **7. Informal Mediation**

7.1. After the DNC has received the Parties' submissions under the Procedure (Part B), it will initiate and conduct a period of Informal Mediation under paragraph B6 of the Procedure.

## **8. Without Prejudice**

8.1. Documents and information which are 'without prejudice' (or are marked as being 'without prejudice') may be used in submissions and may be considered by the Expert except that the Expert will not consider such materials if:

8.1.1. they are generated within Informal Mediation; or

8.1.2. the Expert believes that it is in the interests of justice that the document or information be excluded from consideration.

## **9. Appointment of Expert**

9.1. If an acceptable resolution cannot be achieved by Informal Mediation the DNC will notify the Parties that it will appoint an Expert when the Complainant has paid the applicable fees set out in paragraph B20.1 and within the time specified in paragraph B7.1. The Expert will come to a written Decision.

## **10. Notification and Publication**

10.1. A Decision will be communicated to the Parties according to paragraph B16 and all Decisions will be published in full on the DNC website.

10.2. Fees are payable by the Complainant or otherwise according to paragraph B20 only if an acceptable resolution has not been achieved by Informal Mediation and once the DNC has notified the Parties that an Expert is to be appointed.

10.3. Decisions may contain personal information, including the contact details of the Parties, and the Parties consent to personal information being displayed in this way.

## **11. Exclusion of Liability**

11.1 None of InternetNZ, the DNC, NZRS, any Registrar, Expert or Mediator, nor any of those entities—councillors, officers, employees or servants (as applicable) shall be liable to a party for anything done or omitted, whether negligently or otherwise, in connection with any proceedings under the Dispute Resolution Service unless the act or omission is shown to have been in bad faith.

## **12. Appeal, Repeat Complaints and Availability of Court Proceedings**

12.1. Either Party will have the right under paragraph B17 to appeal a Decision. The Appeal Panel will consider appeals on the basis of a full review of the matter and may review procedural matters.

12.2. The DNC may refer questions of interpretation of the Policy and Procedure to the Appeal Panel. Any decision rendered as a result of this referral will not affect any Decision in any other previous proceedings under the Dispute Resolution Service.

12.3. The DNC will publish Decisions of the Appeal Panel. Appeal Decisions will not be binding precedents, but will be of persuasive value to Experts in future decisions.

12.4. The operation of the Dispute Resolution Service will not prevent either the Complainant or the Respondent from submitting the dispute to a New Zealand court or decision-making body of competent jurisdiction or to an arbitral tribunal of competent jurisdiction.

12.5. If a Complainant has obtained a Decision in previous Dispute Resolution Service proceedings it will not be reconsidered by an Expert (but there may be rights of appeal, see paragraph 12.1 and paragraph B17). If the Expert finds that the Complaint is a resubmission of an earlier Complaint which has been resolved he or she shall reject the Complaint without a consideration of its merits.

12.6. In determining whether a Complaint is a resubmission of an earlier Complaint, or contains a material difference that justifies the Complaint being heard the Expert shall consider the following questions:

12.6.1. Are the Complainant, the Respondent and the Domain Name at issue the same as in the earlier case?

12.6.2. Does the substance of the Complaint relate to acts that occurred prior to or subsequent to the close of submissions in the earlier case?

12.6.3. If the substance of the Complaint relates to acts that occurred prior to the close of submissions in the earlier case, are there any exceptional grounds for the rehearing or reconsideration, bearing in mind the need to protect the integrity and smooth operation of the Policy and Procedure?

12.6.4. Does the substance of the Complaint relate to acts that occurred subsequent to the close of submissions in the earlier Decision? (Acts on which the re-filed Complaint is based should not be, in substance, the same as the acts on which the previous Complaint was based).

12.7. A non-exhaustive list of examples which may be exceptional enough to justify a re-hearing under paragraph 12.6.3 include:

12.7.1. serious misconduct on the part of the Expert, a party, witness or lawyer;

12.7.2. false evidence having been offered to the Expert;

12.7.3. the discovery of credible and material evidence which could not have been reasonably foreseen or known for the Complainant to have included it in the evidence in support of the earlier Complaint;

12.7.4. a breach of natural justice.

### **13. Implementation of Expert Decisions**

13.1. The Expert's powers, as part of a Decision, include powers to direct that a domain name should be cancelled, transferred, suspended or otherwise amended. The Expert may not, however, make any orders directing a party to pay costs of the Dispute Resolution Service proceedings.

13.2. If the Expert makes a Decision that a Domain Name registration should be cancelled, suspended, transferred or otherwise amended, the DNC will implement that Decision by causing any necessary changes to the Register to take place according to the process set out in paragraph B16. The details set out in the Complaint form will be used unless the Complainant specifies other details in good time.

### **14. Other action**

14.1. The DNC will not cause any Domain Name registration to be cancelled transferred, activated, deactivated or otherwise changed except as set out in paragraphs 13 and B3.4 and in accordance with the .nz policies, which are available on the DNC website.

### **15. Transfers During a Dispute**

15.1. A Domain Name registration may not be transferred:

15.1.1. if the electronic form of a Complaint has been received by the DNC Dispute Resolution Service staff and the matter is pending the receipt of a valid paper copy to confirm the Complaint (to a maximum of five (5) Days); or

15.1.2. whilst Dispute Resolution Service proceedings are ongoing in relation to the Domain Name or for a period of ten (10) Days after the conclusion of Dispute Resolution Service proceedings, unless to the Complainant as a result of a settlement reached between the Parties whether or not pursuant to Informal Mediation; or

15.1.3. whilst a court proceeding, other dispute resolution hearing or arbitration in respect of the Domain Name registration is ongoing in a New Zealand court or decision-making body of competent jurisdiction or arbitral tribunal of competent jurisdiction.

15.2. The DNC may reverse any transfer of a Domain Name registration which does not comply with paragraph 15.1.

15.3. A Respondent may not without the Complainant's consent (which the Complainant will not unreasonably withhold) transfer the Domain Name to another Registrar whilst proceedings under the Dispute Resolution Service are ongoing in relation to the Domain Name or for a period of ten (10) Days after the conclusion of Dispute Resolution Service proceedings.

### **16. Modifications to the Policy and Procedure of the Dispute Resolution Service**

16.1. The Internet is an emerging and evolving medium and the regulatory and administrative framework under which it operates is constantly developing. For these reasons the DNC reserves the

right to make reasonable modifications to the Policy and Procedure at any time. Except where the DNC is acting in pursuance of a statutory requirement or a court order, substantive changes will be implemented following a process of open public consultation. Each such change will be published in advance (where practicable, 30 calendar days in advance) on the DNC web site: <http://www.dnc.org.nz/policies> and will become binding and effective upon the date specified therein.

16.2. In any Dispute Resolution Service proceedings, the Parties will be bound by the Policy and Procedure which are current at the commencement of Dispute Resolution Service proceedings, until the conclusion of the Dispute Resolution Service proceedings.

## **17. General Information**

17.1. If anyone has any questions regarding this document they should email [policies@dnc.org.nz](mailto:policies@dnc.org.nz)

## **PART B □ PROCEDURE**

### **B1. Communication**

B1.1. The DNC will send a Complaint (see paragraph B2) to the Respondent by:

B1.1.1. sending the Complaint by post, fax or e-mail to the Respondent at the contact details shown as the registrant or other contacts in the Register for the Domain Name in dispute;

The DNC may also, at its discretion use any or all of the following means:

B1.1.2. sending the Complaint in electronic form (including attachments to the extent available in that form) by e-mail to:

a) [postmaster@<the Domain Name in dispute>](mailto:postmaster@<the Domain Name in dispute>);

b) if the Domain Name resolves to an active web page (other than a generic page which the DNC concludes is maintained by an ISP for parking Domain Names), to any e-mail address shown or e-mail links on that web page so far as this is practicable; or

B1.1.3. sending the Complaint to any addresses provided to the DNC by the Complainant under paragraph B2.3.3 so far as this is practicable.

B1.2. Except as set out in paragraph B1.1 above, all written communication to a Party or a Party's representative under the Policy or this Procedure shall be made by fax, post or e-mail.

B1.3. Communication shall be made in English. E-mail communications should be sent in plain text so far as this is practicable.

B1.4. During the course of proceedings under the Dispute Resolution Service, if either Party wishes to change its contact details it must notify the DNC of all changes.

B1.5. Except as otherwise provided in this Procedure or as otherwise decided by the DNC or if appointed, the Expert, all communications provided for under this Procedure shall be deemed to have been received:

B1.5.1. if sent by facsimile, on the date transmitted; or

B1.5.2. if sent by post, on the second Day after posting;

B1.5.3. if sent via the Internet, on the date that the communication was transmitted;

B1.5.4. and, unless otherwise provided in this Procedure, the time periods provided for under the Policy and this Procedure shall be calculated accordingly.

B1.6. Any communication (except for communications relating to Informal Mediation) between:

B1.6.1. the DNC and any Party shall be copied by the DNC to the other Party and if appointed, the Expert, subject to paragraph B12; and

B1.6.2. a Party to another Party shall be copied by the sender to the DNC and the DNC will copy such correspondence to the Expert, if appointed.

## **B2. The Complaint**

B2.1. Any person or entity may submit a Complaint to the DNC in accordance with the Policy and this Procedure. In exceptional circumstances, the ability to accept complaints may have to be suspended. If so, a message will be posted to that effect on the DNC website which will indicate when the suspension is likely to be lifted.

B2.2. More than one person or entity may jointly make a Complaint. Where this occurs the joint Complainants must:

B2.2.1. all sign the hard copy of the Complaint (or have it signed on their behalf);

B2.2.2. specify one of the Complainants, or a single representative, who will be the 'Lead Complainant' who will receive correspondence on behalf of all the Complainants and is entitled to act on behalf of them all (e.g. in Informal Mediation); and

B2.2.3. specify which Complainant the Complainants wish to become the sole registrant of each Domain Name(s) which are the subject of the Complaint if the Complainants are successful (this does not bind the Expert).

B2.3. The Complainant must send the Complaint to the DNC in hard copy and (except to the extent not available for attachments) in electronic form. The Complaint shall:

B2.3.1. not exceed 2000 words (not including the text set out in paragraph B2.3.9 and annexes);

B2.3.2. specify whether the Complainant wishes to be contacted direct or through an authorised representative, and set out the e-mail address, telephone number, fax number and postal address which should be used;

B2.3.3. set out any of the Respondent's contact details which are known to the Complainant;

B2.3.4. specify the Domain Name(s) which is the subject of the dispute and the name or mark which is identical or similar to the Domain Name and in which the Complainant asserts it has Rights;

B2.3.5. describe in accordance with the Policy the grounds on which the Complaint is made including in particular: what Rights the Complainant asserts in the name or mark; why the Domain Name should be considered to be an Unfair Registration in the hands of the Respondent; and any applicable aspects of paragraph 5 of the Policy above, as well as any other grounds which support the Complainant's assertion;

B2.3.6. specify whether the Complainant is seeking to have the Domain Name transferred, suspended, cancelled or otherwise amended;

B2.3.7. tell the DNC whether any legal proceedings have been commenced or terminated in connection with the Domain Name which is the subject of the Complaint;

B2.3.8. state that the Complainant will submit to the exclusive jurisdiction of the New Zealand courts with respect to any legal proceedings seeking to reverse the effect of a Decision requiring the suspension, cancellation, transfer or other amendment to a Domain Name registration, and that the Complainant agrees that any such legal proceedings will be governed by New Zealand law;

B2.3.9. conclude with the following statement followed by the signature of the Complainant or its authorised representative:

*"I, the Complainant agree that my claims and remedies concerning the registration of the Domain Name, the dispute, or the dispute's resolution shall be solely against the Respondent and that none of InternetNZ, the DNC, NZRS, any Registrar, Expert or Mediator, nor any of those entities  councillors, officers, employees or servants (as applicable) shall be liable for anything done or omitted in connection with any proceedings under the Dispute Resolution Service unless the act or omission is shown to have been in bad faith.";*

*"The information contained in this complaint is to the best of my knowledge true and complete. This complaint is not being presented in bad faith, including not being for a dominant purpose other than resolving the issue of who the proper registrant of a Domain Name is, and the matters stated in this complaint comply with the Policy and Procedure and applicable law.";*

*I agree to the terms of the Dispute Resolution Services Policy and Procedure, and agree to be bound by any resulting Decision, subject to any rights of review or appeal.*

and

*"I acknowledge that if the Expert orders a transfer of the domain name(s) to me or at my request, I will need to select an Authorised .nz Registrar to provide me with the necessary .nz registry and other services in respect of domain name(s). I will advise the DNC of my decision on request."*

B2.3.10. attach four (4) copies of any evidence on which the Complainant relies including correspondence and any trade mark registration and/or evidence of use of or reputation in a name or mark, together with an index of the material attached.

B2.4. The Complaint may relate to more than one Domain Name, provided that those Domain Names are registered in the name of the Respondent.

### **B3. Notification of Complaint**

B3.1. The DNC will check that the Complaint sufficiently complies with the Policy and, if satisfied, this Procedure and, if so, will forward it to the Respondent together with an explanatory coversheet within three (3) Days of the receipt of the hard copy of the Complaint.

B3.2. If the DNC considers that the Complaint does not sufficiently comply with the Policy and this Procedure, the Complainant will be promptly notified of the deficiencies identified. The Complainant shall have three (3) Days from receipt of notification within which to correct the deficiencies and return the Complaint, failing which the DNC will deem the Complaint to be withdrawn. This will not prevent the Complainant submitting a different Complaint.

B3.3. The DNC will promptly notify the Parties of the date of Commencement of Dispute Resolution Service proceedings.

B3.4. On receipt of the complaint the DNC will cause the domain name to be locked until the conclusion of the proceedings, at which time the domain name will be unlocked.

#### **B4. The Response**

B4.1. Within fifteen (15) Days of the date of commencement of Dispute Resolution Service proceedings, the Respondent shall submit a Response, if they choose to do so.

B4.2. The Respondent must send the Response to the DNC signed, and in hard copy and (except to the extent not available for attachments) in electronic form at the addresses set out in the explanatory coversheet. The Response shall:

B4.2.1. not exceed 2000 words (not including the text set out in paragraph B4.2.5 and annexes);

B4.2.2. include any grounds that the Respondent wishes to rely upon to rebut the Complainant's assertions under paragraph B2.3.5 including any relevant factors set out in paragraph 6 as well as any other factors which rebut the Complainant's assertions

B4.2.3. specify whether the Respondent wishes to be contacted direct or through an authorised representative, and set out the e-mail address, telephone number, fax number and postal address which should be used;

B4.2.4. tell the DNC whether any legal proceedings have been commenced or terminated in connection with the Domain Name(s) which is the subject of the Complaint;

B4.2.5. conclude with the following statement followed by the signature of the Respondent or its authorised representative:-

*"The information contained in this response is to the best of the Respondent's knowledge true and complete and the matters stated in this response comply with the Policy and Procedure and applicable law."; and*

B4.2.6. attach four (4) copies of any evidence on which the Respondent relies including correspondence and any trade mark registration and/or evidence of use of or reputation in a name or mark together with an index of the material attached.

B4.3. Within three (3) Days following the receipt of the signed copy of the Response, the DNC will forward the Response to the Complainant.

B4.4. If the Respondent does not submit a Response, the Parties will be notified that an Expert will be appointed on receipt from the Complainant of the applicable fees according to paragraph B20 and in the absence of exceptional circumstances.

#### **B5. Reply by the Complainant**

B5.1. Within five (5) Days of receiving the Response from the DNC, the Complainant may submit a Reply to the Respondent's Response, which shall not exceed 2000 words (not including annexes). The Reply should be confined to answering any new points raised in the Response and not previously dealt with in the Complaint. The expert will not be obliged to consider any other material included in the Reply.

B5.2. If a Reply is submitted it must be submitted in signed, hard copy (including four (4) copies of all annexes) and as far as possible in electronic form. If the Complainant does not submit a Reply within five (5) Days the DNC will proceed to Informal Mediation.

## **B6. Informal Mediation**

B6.1. No Informal Mediation will occur if the Respondent does not file a Response. Within three (3) Days of the receipt of the Complainant's Reply (or the expiry of the deadline to do so), the DNC will arrange for Informal Mediation to be conducted. Informal Mediation will be conducted in a manner which the DNC, at its sole discretion, considers appropriate. The DNC will appoint a Mediator on a rotational basis from its list of Mediators.

B6.2. A Mediator may only be a person named in the list of Mediators which the DNC will maintain and publish along with the Mediators' qualifications. No Mediators' appointment will be challenged on the grounds that they are insufficiently qualified. Once the DNC has appointed the Mediator, the Parties will be notified of the name of the Mediator appointed.

B6.3. Negotiations conducted between the Parties during Informal Mediation (including any information obtained from or in connection to negotiations) shall be confidential as between the Parties, the mediator and the DNC. Any such information will not be shown to the Expert. Neither the DNC nor the Mediator nor any Party may reveal details of such negotiations to any third parties unless a court or decision-making body of competent jurisdiction orders disclosure, or the DNC, the Mediator or either Party are otherwise required to do so by applicable laws or regulations. Neither Party shall use any information gained during mediation for any ulterior or collateral purpose or include it in any submission likely to be seen by any court or decision-making body of competent jurisdiction or arbitral tribunal of competent jurisdiction in this dispute or any later dispute or litigation.

B6.4. Notwithstanding paragraph B6.3, the Parties may refer to the fact of Informal Mediation in subsequent proceedings before any New Zealand court or decision-making body of competent jurisdiction or arbitral tribunal of competent jurisdiction in this dispute or any later dispute or litigation.

B6.5. If the Parties reach a settlement during Informal Mediation then the existence, nature and terms of the settlement shall be confidential as between the Parties, the mediator and the DNC, unless the Parties specifically agree otherwise, a court or decision-making body of competent jurisdiction orders otherwise, or applicable laws or regulations require it.

B6.6. No binding verbal agreements can be reached as part of the Informal Mediation: any settlement reached by the Parties must be in writing to be enforceable.

B6.7. The DNC will notify the Registrar of a settlement reached in accordance with B6.5 where that settlement requires the Registrar to take action to give effect to that settlement.

B6.8. Any action to be taken by the Registrar will be completed by it as soon as possible, and no later than three days, after receiving notice from the DNC.

B6.9. Where the settlement requires a change of registrant, the new registrant is deemed to have accepted the Registrar's standard terms and conditions.

B6.10. If the Parties do not achieve an acceptable resolution through Informal Mediation within ten (10) Days, the DNC will send notice to the Parties that it will appoint an Expert when the Complainant has paid the applicable fees set out under paragraph B20.1 within the time limit specified in paragraph B7.1. The Expert will be told whether or not Informal Mediation occurred, but will not be told what happened during Informal Mediation or why it failed to resolve the dispute.

B6.11. No Party may ask the DNC (including its officers, employees, contractors, agents and any Expert or Mediator) to reveal information or materials gained as a result of any Informal Mediation under the Dispute Resolution Service unless such disclosure has been ordered by a court or decision-

making body of competent jurisdiction. Neither Party shall call the Expert, Mediator or the DNC (including its officers, employees, contractors, or agents) as a witness (either in person or to produce documents or other materials) in any proceedings which arise from, or are in connection with, the matters discussed in the mediation.

#### **B7. Appointment of the Expert and Timing of Decision**

B7.1. If the DNC does not receive the Complainant's request to refer the matter to an Expert together with the applicable fees within ten (10) Days of the Complainant's receipt of the notice referred to in paragraph B6.10, the Complaint will be deemed to have been withdrawn. This will not prevent the Complainant submitting a different Complaint.

B7.2. Within five (5) Days of the receipt of the applicable fees from the Complainant the DNC will appoint an Expert on a rotational basis from its list of Experts.

B7.3. An Expert may only be a person named in the list of Experts which the DNC will maintain and publish along with the Experts' qualifications. No Expert's appointment will be challenged on the grounds that they are insufficiently qualified. Once the Expert has been appointed, the Parties will be notified of the name of the Expert appointed and the date by which, except in exceptional circumstances, the Expert will forward his or her Decision to the DNC.

#### **B8. Impartiality and Independence**

B8.1. The Mediator and/or Expert shall be impartial and independent and both before accepting the appointment and during the proceedings will disclose to the DNC any circumstances giving rise to justifiable doubt as to their impartiality or independence. The DNC will have the discretion to appoint a substitute Mediator or Expert if necessary in which case the timetable will be adjusted accordingly.

#### **B9. Communication Between Parties and the Expert**

B9.1. A Party and the Expert must not communicate directly. All communication between a Party and the Expert must be made through the DNC.

#### **B10. Transmission of the File to the Expert**

B10.1. The DNC will forward the file except for documents relating to Informal Mediation to the Expert as soon as the Expert is appointed.

#### **B11. General Powers of the DNC and the Expert**

B11.1. The DNC, or the Expert if appointed, may in exceptional cases extend any period of time in proceedings under the Dispute Resolution Service.

B11.2. The Expert shall determine the admissibility, relevance, materiality and weight of the evidence.

B11.3. The DNC shall decide a request by a Party to consolidate multiple Domain Name disputes in accordance with the Policy and this Procedure.

#### **B12. Further Statement**

B12.1. In addition to the Complaint, the Response and if applicable the Reply, any appeal notice and appeal notice response, the Expert may request further statements or documents from the Parties. The Expert will not be obliged to consider any statements or documents from the Parties which he or she has not received according to the Policy or this Procedure or which he or she has not requested. The Expert may request that a further statement be limited to a defined topic, and the Expert will not be obliged to consider any material beyond that requested.

B12.2. Any communication with the DNC intended to be passed to the Expert which is not part of the standard process (e.g. other than a Complaint, Response, Reply, submissions requested by the Expert, appeal notice or appeal notice response) is a 'non-standard submission'. Any non-standard submission must contain as a separate, first paragraph, a brief explanation of why there is an exceptional need for the non-standard submission. The DNC will pass this explanation to the Expert and the Respondent, and the remainder will only be passed to the Expert and the Respondent at the Expert's sole discretion. If there is no explanation, the DNC may not pass on the document or information.

### **B13. In Person Hearings**

B13.1. No in person hearings (including hearings by conference call, video conference and web conference) will be held unless the Expert determines in his or her sole discretion and in exceptional cases, that such a hearing is necessary to enable him or her to come to a Decision.

### **B14. Default**

B14.1. If the DNC finds that a submission by a Party exceeds the word limit, the submission will be returned to that Party who will within three (3) Days return a submission which complies with the word limits. If the DNC does not receive the submission back within the deadline from:

B14.1.1. the Complainant, the Complaint will be deemed to have been withdrawn, which will not stop the Complainant from submitting a different Complaint; or

B14.1.2. the Respondent, the Parties will be notified that the Expert will be appointed when the Complainant has paid the applicable fees set out in paragraph B20 and in the absence of exceptional circumstances. Once appointed the Expert will decide the dispute based upon the Complaint and evidence attached to it.

B14.2. If, once the Expert has been appointed, and in the absence of exceptional circumstances, a Party does not comply with any time period laid down in the Policy or this Procedure, the Expert will proceed to a Decision on the Complaint. If the Expert has not been appointed the DNC shall take any action which it deems appropriate in its sole discretion, unless prescribed by this Procedure.

B14.3. If, in the absence of exceptional circumstances, a Party does not comply with any provision in the Policy or this Procedure or any request by the DNC or the Expert, the Expert will draw such inferences from the Party's non compliance as he or she considers appropriate.

### **B15. Expert Decision**

B15.1. The Expert will decide a Complaint on the basis of the Parties' submissions, the Policy and the Procedure.

B15.2. Unless exceptional circumstances apply, an Expert shall forward his or her Decision to the DNC within ten (10) Days of his or her appointment pursuant to paragraph B7.

B15.3. The Decision shall be in writing and signed by the Expert, provide the reasons on which it is based, indicate the date on which it was made, the place the Decision was made and identify the name of the Expert.

B15.4. If the Expert concludes that the dispute is not within the scope of paragraph 4, he or she shall state that this is the case. If, after considering the submissions, the Expert finds that the Complaint was brought in bad faith, for example in an attempt at Domain Name Hijacking, the Expert shall state this finding in the Decision. If the Complainant is found on three separate occasions within a 2-year period to have brought a Complaint in bad faith, the DNC will not accept any further Complaints from that Complainant for a period of 2 years from the date of the third such Decision.

## **B16. Communication of Decision to Parties and Implementation of Decision**

B16.1. Within three (3) Days of the receipt of a Decision from the Expert, the DNC will communicate the full text of the Decision to each Party and the date for the implementation of the Decision in accordance with the Policy.

B16.2. The DNC will publish the full Decision and the date that any action which the Decision requires will be taken, on the DNC website.

B16.3. If the Expert makes a Decision that a Domain Name registration should be cancelled, suspended, transferred or otherwise amended, the DNC will implement that Decision by causing the necessary changes to be made to the Register after ten (10) Days of the date that the parties were notified, unless, during the ten (10) Days following the date that the parties were notified the DNC receives from either Party:

B16.3.1. an appeal or statement of intention to appeal complying with paragraph B17, in which case the DNC will take no further action in respect of the Domain Name until the appeal is concluded; or

B16.3.2. official documentation showing that the Party has issued and served legal proceedings before a New Zealand Court or decision-making body of competent jurisdiction, or an arbitral tribunal of competent jurisdiction against the other Party in respect of the domain name. In this case, the DNC will take no further action in respect of the Domain Name unless it receives:

- a). evidence which satisfies it that the Parties have reached a settlement; or
- b). evidence which satisfies it that such proceedings have been disposed of

B16.3.3. In the event of the DNC being satisfied that a judgment, decision or award has been made directing or requiring that a Domain Name be cancelled, suspended, transferred or otherwise amended, the DNC will implement that Decision by causing any necessary changes to the Register to take place and the dispute resolution service proceeding will be terminated.

## **B17. Appeal**

B17.1. Either Party shall have the right to appeal a Decision by submitting either:

B17.1.1. a statement of the intention to appeal (see paragraph B17.2), plus the non-refundable deposit (see paragraph B20.4), which must be followed within fifteen (15) Days by an appeal notice (see paragraph B17.3) and the balance of the fee (see paragraph B20.4); or

B17.1.2. an appeal notice (see paragraph B17.3) and the whole fee (see paragraph B20.4).

B17.2. A statement of intention to appeal should only contain sufficient information to make it clear that an appeal is requested. The statement of intention to appeal should not contain the actual grounds or reasons for appeal, and the panel of Experts will not be obliged to consider any such grounds or reasons.

B17.3. An appeal notice should not exceed 1000 words, should set out detailed grounds and reasons for the appeal, but shall contain no new evidence or annexes.

B17.4. Within three (3) Days of the receipt of the:

B17.4.1. statement of the intention to appeal and deposit; or

B17.4.2. appeal notice and the full fee,

the statement of intention to appeal or appeal notice (as the case may be) will be forwarded to the other Party.

B17.5. Within ten (10) Days of receiving the appeal notice from the DNC, the other Party may submit an appeal notice response (paragraph B17.6).

B17.6. An appeal notice response must not exceed 1000 words, should set out detailed grounds and reasons why the appeal should be rejected but should contain no new evidence or annexes.

B17.7. Following the filing of an appeal notice response (or the expiry of the deadline to do so) an appeal panel of three Experts will be appointed. The test of impartiality shall apply to each appeal Expert. Subject to that qualification the appeal panel shall consist of:

B17.7.1. the Chair of the group of Experts, or at his or her discretion, an Expert of his or her choice; and

B17.7.2. the next available two Independent Experts appointed by rotation from the list.

B17.8. The appeal panel should not normally take into consideration any new evidence presented in an appeal notice or appeal notice response unless they believe that it is in the interests of justice to do so.

B17.9. So far as is appropriate in the circumstances paragraphs B15 and B16 apply equally to appeal Decisions, except that:

B17.9.1. appeal Decisions should be returned by the appeal panel to the DNC within thirty (30) Days of the appointment of the last panellist, but this deadline may be extended by up to ten (10) Days by agreement with the DNC; and

B17.9.2. appeal Decisions cannot be subject to any appeal within the Dispute Resolution Service.

## **B18. Settlement or Other Grounds for Termination**

B18.1. If, before a Decision is made the Parties agree and notify the DNC of a settlement, whether or not pursuant to Informal Mediation, proceedings under the Dispute Resolution Service will terminate.

B18.2. If, before a Decision is made, it becomes unnecessary or impossible to continue proceedings under the Dispute Resolution Service for any reason, the DNC will terminate proceedings under the Dispute Resolution Service unless a Party raises justifiable grounds for objection within a period of time which the DNC will determine and notify the Parties of.

## **B19. Effect of Court Proceedings**

B19.1. If the DNC is satisfied that legal proceedings relating to a Domain Name which is the subject of a Complaint are issued before a New Zealand court or decision-making body of competent jurisdiction or an arbitral tribunal of competent jurisdiction, before or during the course of proceedings under the Dispute Resolution Service and are brought to its attention, it will suspend the Dispute Resolution Service proceedings, pending the outcome of the legal proceedings.

B19.2. A Party must promptly notify the DNC if it initiates or becomes aware of legal proceedings in a court or decision-making body of competent jurisdiction or arbitral tribunal of competent jurisdiction relating to a Domain Name which is the subject of a Complaint during the course of proceedings under the Dispute Resolution Service.

B19.3. Either party may request, before or during the Dispute Resolution Service, an interim measure of protection from a Court.

## **B20. Fees**

B20.1. The applicable fees in respect of the referral of proceedings under the Dispute Resolution Service to an Expert are \$1,800 plus GST for disputes involving 1-5 Domain Names and only one Complainant. For disputes involving 6 or more Domain Names, and/or more than one Complainant, the DNC will set a fee in consultation with the Complainant. Fees are calculated on a cost-recovery basis, and are passed on in their entirety to the Expert(s). The DNC does not charge for its mediation or administration services in respect of the Dispute Resolution Service.

B20.2. Fees are payable by the Complainant only if an acceptable resolution has not been achieved after Informal Mediation and the DNC notifies the Parties that an Expert is to be appointed.

B20.3. In exceptional circumstances, for example if an in-person hearing is held, the DNC will request that the Parties pay additional fees to be agreed between it, the Parties and the Expert.

B20.4. The applicable fees for the submission of an appeal are \$6,600 + GST. If the option is used to pay a deposit and the balance, the deposit is \$700 + GST and non-refundable, and the balance is \$5,900 + GST. If the deposit is paid, and the balance of the fee and/or appeal notice are not filed in time, that appeal is deemed withdrawn and the case will be closed.

## **B21. Exclusion of Liability**

B21.1. None of InternetNZ, the DNC, NZRS, any Registrar, Expert or Mediator, nor any of those entities' councillors, officers, employees or servants (as applicable) shall be liable to a party for anything done or omitted, whether negligently or otherwise, in connection with any proceedings under the Dispute Resolution Service unless the act or omission is shown to have been in bad faith.

## **B22. Modifications to the Policy and Procedure of the Dispute Resolution Service**

B22.1. The Internet is an emerging and evolving medium and the regulatory and administrative framework under which the DNC operates is constantly developing. For these reasons the DNC reserves the right to make reasonable modifications to the Policy and Procedure at any time. Except where the DNC is acting in pursuance of a statutory requirement or a court order, substantive changes will be implemented following a process of open public consultation. Each such change will be published in advance (where practicable, 30 calendar days in advance) on the DNC web site: <http://www.dnc.org.nz/policies> and will become binding and effective upon the date specified therein.

B22.2. The Parties will be bound by the Policy and Procedure which are current at the commencement of the Dispute Resolution Service proceedings until the conclusion of the Dispute Resolution Service proceedings.