

## Registry Restrictions Dispute Resolution Procedure (RRDRP)

Comments submitted by Dr. Konstantinos Komaitis

I would first like to take this opportunity to thank the ICANN staff for allowing me to submit these comments on the Registry Restrictions Dispute Resolution Procedure (from now on RRDRP) and to clarify that these comments represent only the views of the author and are submitted in his individual capacity.

In principle, I welcome the adoption of a dispute resolution procedure aiming at resolving conflicts concerning community based gTLDs. However, I am also of the opinion that under its current format, the RRDRP suffers from a variety of issues and I would strongly urge ICANN to further deliberate on these by engaging into dialogue with both Registry operators and its stakeholders.

The main problem with the RRDRP is that for the first time in its dispute resolution policy history, this dispute resolution mechanism shift the burden of proof to the responding party. Whereas dispute resolution processes are based on the evidentiary assertions of the party who initiates the complaint, the RRDRP promotes a system that sees Registry operators being asked to proceed to substantive evaluations relating to the substantive elements of the complaint. This places an unrealistic burden upon Registry operators, which does not exist under any other dispute resolution mechanism.<sup>1</sup> ICANN has failed to provide any justification on why this might be the case in these particular complaints. Various questions emerge and it is strongly recommended that ICANN submits to explaining what is the rationale of asking Registry operators to conduct such an evaluation. What makes community based objections so inherently distinctive from all other objections that would warrant a shift in the burden of proof? What is the rationale and justification that would warrant such an imposition upon Registry Operators?

It is the current practice that the hierarchical structure of the registration environment sees that compliance requirements are imposed upon Registrars rather than Registries. Asking, therefore, for the first time Registry Operators to ‘take reasonable steps to investigate the reported non-compliance’ opens a Pandora’s Box and enforces a culture that will eventually see Registry Operators proceeding to controlling content, an issue that falls outside their contractual remit. Registry Operators are service rather than content providers; they are not parties to domain name registration contracts between registrars and registrants. The RRDRP comes to alter this in a way that lacks justification or cause. Registry Operators lack the tools (and possibly the legitimacy) to proceed to such substantive evaluations.

Other issues with the RRDRP concern the language, which should not be limited to English. Community gTLDs are perhaps amongst the few cases where language will be a major issue. There are various communities around the world for which English is not their first language and should be

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<sup>1</sup> I studied dispute resolution procedures as part of my dissertation, now published as “The Current State of Domain Name Regulation”.

able to submit complaints in their own language. The RRDRP should afford parties the opportunity to choose the language they feel more comfortable with.

Although I welcome the availability of an internal appeals process, I would strongly recommend that the appellate panel remains stable and does not rotate. A permanent appellate panel of diverse international experts, perhaps not appointed by the Provider, but through an ICANN process and serving all Providers, offers advantages of consistency and uniformity, which are key to a successful dispute resolution mechanism.

Finally, any reference to the term 'arbitration' should be removed as this dilutes the whole process. Arbitral proceedings have a very unique and concrete nature and the RRDRP is inherently distinctive. To this end, any reference to arbitration will dilute the purpose and validity of the RRDRP and will create various problems for both Registry Operators and the communities.

Respectfully

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