

*[Draft WIPO Rules for New gTLD Dispute Resolution,
Version 1 of August __, 2009]*

World Intellectual Property Organization Rules for New gTLD Dispute Resolution for Existing Legal Rights Objections (“WIPO Rules for New gTLD Dispute Resolution”)

(In effect as of [Month Date, Year])

1. Scope of WIPO Rules for New gTLD Dispute Resolution in Relation to Procedure

(a) Set out below are the applicable WIPO Rules for New gTLD Dispute Resolution for Existing Legal Rights Objections as referred to in Article [4] of the New gTLD Dispute Resolution Procedure (“Procedure”) as approved by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on [Month Date, Year]. The WIPO Rules for New gTLD Dispute Resolution are to be read and used in connection with the Procedure which provides the basic framework for the four categories of objections [defined in Article [4] of the Procedure] arising from Applications under ICANN’s New gTLD Program.

(b) The version of the WIPO Rules for New gTLD Dispute Resolution applicable to a proceeding conducted under the Procedure is the version in effect on the day when the relevant Application for a new gTLD is submitted. *[Language to be aligned with ultimate language of Article 23(b) of the Procedure.]*

2. Definitions

Terms defined in the Procedure shall have the same meaning in the WIPO Rules for New gTLD Dispute Resolution. Words used in the singular shall include the plural and *vice versa* as the context may require.

3. Communications

(a) Subject to Article [6] of the Procedure, except where otherwise agreed beforehand with the WIPO Arbitration and Mediation Center (“Center”), and subject to the discretion of any appointed Panel, any submission to the Center or to the Panel shall be made:

- (i) [By electronic mail (email) using [...@wipo.int]; or
- (ii) In consultation with the Center, and where available, through the WIPO Electronic Case Facility (WIPO ECAF).]

(b) Subject to Article [6(a)] of the Procedure, if a party wishes to submit a hard copy or other non-electronic submission prior to Panel appointment, it shall first request leave to do so from the Center; the Center shall, in its sole discretion, then make a *prima facie* determination whether to accept the non-electronic submission, subject to the ultimate discretion of the Panel on appointment whether to accept the non-electronic submission in accordance with Article [6(a)] of the Procedure.

(c) Absent a request from a party for a hard copy of the Expert Determination, and subject to Article [21(f)] of the Procedure, the Center shall provide the parties and ICANN with an electronic copy of the Expert Determination.

4. Submission of Objection and Response

(a) In accordance with Articles [7] and [8] of the Procedure, the Objector shall transmit its Objection using the Objection Model Form set out in Annex [A] hereto and posted on the Center's website and shall comply with the Center's Filing Guidelines set out in Annex [B] hereto and posted on the Center's website.

(b) In accordance with Article [11] of the Procedure, the Applicant shall transmit its Response using the Response Model Form set out in Annex [C] hereto and posted on the Center's website and shall comply with the Center's Filing Guidelines set out in Annex [B] hereto and posted on the Center's website.

5. Center Review of Objections

(a) In accordance with Article [9] of the Procedure if an Objection is dismissed due to the Objector's failure to remedy an administrative deficiency, there shall be no refund of any DRSP Fee paid by the Objector pursuant to Article [14] of the Procedure and Paragraph [10] of the WIPO Rules for New gTLD Dispute Resolution.

(b) If an Objector submits a new Objection within ten (10) calendar days of closure of a proceeding as provided in Article [9(d)] of the Procedure and Paragraph [5(a)] of the WIPO Rules for New gTLD Dispute Resolution to remedy an administratively deficient Objection, such new Objection may be accompanied by a request for a DRSP Fee waiver, in whole or in part, for the Center's consideration in its sole discretion.

6. Appointment of Case Manager

(a) The Center shall advise the parties of the name and contact details of the Case Manager who shall be responsible for all administrative matters relating to the dispute and communications to the Panel.

(b) The Case Manager may provide administrative assistance to the parties or Panel, but shall have no authority to decide matters of a substantive nature concerning the dispute.

7. Consolidation

(a) In accordance with Article [12] of the Procedure, the Center may, where possible and practicable, and in its sole discretion, decide to consolidate Objections by appointing the same Panel to decide multiple Objections sharing certain commonalities. In the event of consolidation, the Panel shall render individual Expert Determinations for each Objection.

(b) A party may submit a consolidation request pursuant to Article [12(b)] of the Procedure, or may oppose any consolidation request submitted. Any such opposition to a consolidation request shall be provided within seven (7) calendar days of the consolidation request. Any consolidation request or opposition thereto shall be limited to 1,500 words in length.

(c) In the case of consolidated Objections, the applicable reduced Panel fees are specified in Annex [D] hereto and posted on the Center's website.

(d) Pursuant to Article [12] of the Procedure, in weighing the that may result from consolidation against the possible prejudice or inconvenience that consolidation may cause, the Center in reaching its decision concerning consolidation, may take into account, *inter alia*, the following non-exclusive factors:

- (i) Whether the Objections concern the same or similar TLD(s);
- (ii) Whether the same Objector files Objections concerning multiple TLD applications;
- (iii) Whether in any consolidation request, or opposition thereto, the Objector or Applicant relies on single or multiple mark(s);
- (iv) The scope of evidence relied on by an Objector or Applicant in any Objection or application;
- (v) Any other arguments raised in any consolidation request, or opposition thereto;
- (vi) Expert availability to accept appointment.

(e) The Center's decision on any consolidation of multiple Objections for Expert Determination by the same Panel is of an administrative nature and shall be final. The Center shall not be required to state reasons for its decision.

8. Panel Appointment Procedures

- (a) The Center will maintain and publish on its website a publicly-available List of Experts.
- (b) Pursuant to Article [13(b)(ii)] of the Procedure, there shall be a Single-Expert Panel unless all the Parties agree to the appointment of a Three-Expert Panel.
- (c) In the event of a Single-Expert Panel, the Center shall in its sole discretion appoint an Expert from its List of Experts.
- (d) In the event all the Parties agree to the appointment of a Three-Expert Panel, any such agreement shall be communicated to the Center within five (5) calendar days of the Center's receipt of the Response filed in accordance with Article [11] of the Procedure and Paragraph [4(b)] of the WIPO Rules for New gTLD Dispute Resolution.
- (i) If Objections are not consolidated, and if the parties have communicated their agreement on the appointment of a Three-Expert Panel, within five (5) calendar days of such communication each party shall separately submit to the Center (notwithstanding Article [6(b)] of the Procedure) the names of three (3) candidates from the Center's List of Experts, in the order of their respective preference, for appointment by the Center as a Co-Expert. In the event none of a party's three (3) candidates is available for appointment as a Co-Expert, the Center shall appoint the Co-Expert in its sole discretion.
 - (ii) In the event of consolidation in accordance with Paragraph [7] of the WIPO Rules for New gTLD Dispute Resolution, the Objectors or Applicants shall, as the case may be, jointly submit the names of the three (3) candidates from the Center's List of Experts in order of preference (i.e., one list on behalf of all Objector(s) and one list on behalf of all Applicant(s)). If the Objectors or Applicants as the case may be do not jointly agree on and submit the names of three (3) candidates within five (5) calendar days of the parties' communication to the Center on their agreement to the appointment of a Three-Expert Panel, the Center shall in its sole discretion appoint the Co-Experts.
 - (iii) The third Expert, who shall be the Presiding Expert, shall absent exceptional circumstances be appointed by the Center from a list of five (5) candidates submitted by the Center to the parties. The Center's selection of a Presiding Expert shall be made in a manner that seeks to reasonably balance the preferences of each party as communicated to the Center within five (5) calendar days of the Center's communication of the list of candidates to the parties.

- (iv) Where any party fails to indicate its order of preference for the Presiding Expert to the Center, the Center shall nevertheless proceed to appoint the Presiding Expert in its sole discretion, taking into account any preferences of any other party.

9. Expert Impartiality and Independence

(a) In accordance with Article [13(c)] of the Procedure, any prospective Expert shall, before accepting appointment, disclose to the Center and parties any circumstance that might give rise to justifiable doubt as to the Expert's impartiality or independence, or confirm in writing that no such circumstance exist by submitting to the Center a *Declaration of Impartiality and Independence* using the form set out in Annex [E] hereto and posted on the Center's website.

(b) If at any stage during a proceeding conducted under the Procedure, circumstances arise that might give rise to justifiable doubt as to an Expert's impartiality or independence, the Expert shall promptly disclose such circumstances to the parties and the Center.

(c) A party may challenge an Expert if circumstances exist which give rise to justifiable doubt as to the Expert's impartiality or independence. A party may challenge an Expert whom it has appointed or in whose appointment it concurred, only for reasons of which it becomes aware after the appointment has been made.

- (i) A party challenging an Expert shall send notice to the Center and the other party, stating the reasons for the challenge, within five (5) calendar days after being notified of that Expert's appointment or becoming aware of circumstances that it considers give rise to justifiable doubt as to that Expert's impartiality or independence.
- (ii) The decision on the challenge shall be made by the Center in its sole discretion. Such a decision is of an administrative nature and shall be final. The Center shall not be required to state reasons for its decision. In the event of an Expert's removal, the Center shall appoint a new Expert in accordance with the Procedure and these WIPO Rules for New gTLD Dispute Resolution.

10. Fees

(a) The applicable fees for the Procedure for Existing Legal Rights Objections are specified in Annex [D] hereto and posted on the Center's website.

(b) After the Expert Determination has been rendered or a proceeding conducted under the Procedure has been terminated, the Center shall provide an accounting to the parties

of the payments received and, in consultation with any Panel, return any unexpended balance of the Panel Fee to the parties.

11. Confidentiality

(a) A party invoking the confidentiality of any information it wishes or is required to submit in any Existing Legal Rights Objection proceeding conducted under the Procedure, shall submit the request for confidentiality to the Center for the Panel's consideration, stating the reasons for which it considers the information to be confidential. If the Panel decides that the information is to be treated as confidential, it shall decide under which conditions and to whom the confidential information may in part or in whole be disclosed and shall require any person to whom the confidential information is to be disclosed to sign an appropriate confidentiality undertaking.

(b) Further to Article [6(b)] of the Procedure, except in exceptional circumstances as decided by the Panel and in consultation with the parties and the Center, no party or anyone acting on its behalf shall have any *ex parte* communication with the Panel.

12. Mediation

Further to Article [16] of the Procedure, prior to the Panel rendering its Expert Determination in a proceeding conducted under the Procedure, the parties may inform the Center that they wish to participate in mediation to attempt to resolve the dispute and may request the Center to administer the mediation. In such event, unless both parties agree otherwise, the [WIPO Mediation Rules](#) shall apply *mutatis mutandis*. On request from the parties, and absent exceptional circumstances, the Center's mediation administration fee shall be waived.

13. Effect of Court Proceedings

(a) The Objector and Applicant shall include in any Objection or Response relevant information regarding any other legal proceedings concerning the TLD. In the event that a party initiates any legal proceedings during the pendency of a proceeding conducted under the Procedure, it shall promptly notify the Center.

(b) In the event of any legal proceedings initiated prior to or during a proceeding conducted under the Procedure, the Panel shall have the discretion to decide whether to suspend or terminate such proceeding under the Procedure, or to proceed to an Expert Determination.

14. Termination

(a) If, before the Panel renders an Expert Determination, it becomes unnecessary or impossible to continue a proceeding conducted under the Procedure for any reason, the Panel may in its discretion terminate the proceeding.

(b) If, prior to Panel appointment, it becomes unnecessary or impossible to continue a proceeding conducted under the Procedure for any reason, the Center in consultation with the parties and ICANN, may in its discretion terminate the proceeding.

15. Amendments

Subject to the Procedure, the Center may amend these WIPO Rules for New gTLD Dispute Resolution in its sole discretion.

16. Exclusion of Liability

Except in respect of deliberate wrongdoing, an Expert, the World Intellectual Property Organization, and the Center shall not be liable to any party or ICANN for any act or omission in connection with any proceeding conducted under the Procedure and the WIPO Rules for New gTLD Dispute Resolution.