

Local Council Objections - Mediation Policy and Rules

1. Application of Mediation Policy and Rules

- 1.1 The Mediation Policy and Rules apply where a local council has lodged an objection to a pending application for a community geographic domain name. Refer to <insert reference> for more information about the local council objection process.

2. Definitions

auDA means .au Domain Administration Ltd.

Complainant means the local council that has lodged an objection to a pending application for a domain name.

Mediation Fee means the fee charged by the Provider and payable by the Complainant.

Mediation Session means a meeting attended by both parties and facilitated by the Mediator.

Mediator means an individual appointed by the Provider to conduct the mediation.

Party means a Complainant or a Respondent.

Policy means this Mediation Policy.

Provider means the dispute resolution service provider approved by auDA.

Registrar means the auDA Accredited Registrar responsible for handling the Respondent's application for a domain name.

Respondent means the applicant for a domain name against which an objection has been lodged by the local council.

Rules means these Mediation Rules.

Statement of Objection means the statement provided by the Complainant to the Provider, explaining the nature of the Complainant's objection to the pending domain name application.

3. Mediation Policy

Objectives of Mediation

- 3.1 The objectives of this Policy are to:

- a) empower disputing Parties to reach a resolution which satisfies the needs and interests of all those involved;
- b) encourage all community stakeholders to work cooperatively in the management of their geographic domain name and web portal; and

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- c) minimise the likelihood of future community conflict in relation to the allocation and use of a geographic domain name.

Principles of Mediation

3.2 Mediation is the process of assisted negotiation between disputing parties conducted by an impartial person. The following principles apply to a mediation conducted under this Policy:

- a) mediation is conducted by a recognised and independent Mediator who is impartial to the dispute at hand;
- b) mediation is confidential and only the agreement reached may be publicly discussed;
- c) mediation does not prejudice any further action that either Party may wish to take; and
- d) any agreement reached is a decision made by the Parties themselves and is non-binding.

Guidelines for Mediation

3.3 The following guidelines apply to a mediation conducted under this Policy:

- a) the purpose of the community geographic 2LDs is to preserve Australian geographic names for use by the relevant local community; and
- b) under the policy rules for community geographic 2LDs, local councils are not eligible to hold a domain name licence.

4. Mediation Rules

Initiation of Mediation

- 4.1 Where a Complainant lodges an objection to a Respondent's pending domain name application, the Registrar must refer the matter to the Provider for initiation of mediation. The Registrar must also notify auDA that the matter has been referred for mediation.
- 4.2 The Complainant must initiate the mediation by submitting a Statement of Objection and paying the Mediation Fee to the Provider. The Provider is not required to take any action until the Statement of Objection and Mediation Fee have been received.
- 4.3 On receipt of the Statement of Objection and Mediation Fee, the Provider must appoint a Mediator and schedule the Mediation Session. The Provider must notify both parties of the appointment of the Mediator and date of the Mediation Session. The Mediation Session must take place within 30 calendar days of the initiation of mediation.
- 4.4 If the Provider has not received the Statement of Objection and Mediation Fee from the Complainant within 10 calendar days of the matter being referred for mediation, the Complainant's objection shall be deemed withdrawn and the Respondent's domain name application will proceed.

Mediation Session

- 4.5 A mediation conducted under this Policy shall consist of a single Mediation Session. The purpose of the Mediation Session is to assist the parties to:
- a) identify the issues under dispute;
 - b) develop options for resolving the dispute; and
 - c) reach an agreement.
- 4.6 The starting point for the Mediation Session shall be the Statement of Objection submitted by the Complainant. Both parties may submit other information and materials as they consider necessary for the purpose of the mediation. Any such information or materials must be submitted to the Provider at least 3 calendar days prior to the Mediation Session.
- 4.7 Both Parties must send at least one authorised representative, and not more than 4 authorised representatives, to the Mediation Session. Representatives must have authority to settle the dispute. At least 3 calendar days prior to the Mediation Session the Parties must inform the Provider of the names of each person who will be attending.
- 4.8 The Mediation Session shall be conducted by the Mediator in a manner agreed by the parties. If there is no agreement between the parties, the Mediator shall determine the manner in which the Mediation Session shall be conducted.
- 4.9 Each person involved in the Mediation Session must sign an appropriate confidentiality undertaking.
- 4.10 Written agreements reached at a Mediation Session must be signed by the authorised representatives of the disputing parties. A copy of the agreement is to be retained by each party, the Provider and the Registrar.

Role of Mediator

- 4.11 The Mediator must be neutral, impartial and independent.
- 4.12 The Mediator's role is to help the disputing parties to reach a mutually satisfactory understanding and resolution of their dispute. The Mediator does not have the authority to impose any settlement on the disputing parties.
- 4.13 The Mediator is authorised to terminate the mediation in accordance with paragraph 4.14.

Termination of Mediation

- 4.14 Mediation must be terminated if:
- a) the Parties reach a settlement or agreement;
 - b) the Mediator is of the opinion that further efforts at mediation are unlikely to resolve the dispute; or

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- c) either Party initiates legal proceedings in respect to the domain name under dispute.

Reporting and Communication

- 4.15 The Mediator must send a report to the Provider within 10 calendar days of the date of the Mediation Session. Within 3 calendar days after receiving the report from the Mediator, the Provider must notify the Registrar and auDA of the outcome.

Exclusion of Liability

- 4.16 Except in the case of deliberate wrongdoing, neither the Mediator nor the Provider is liable to a disputing Party for any act or omission in connection with a mediation conducted under this Policy and these Rules.

Third Party Disputes - Arbitration Policy and Rules

1. Application of Arbitration Policy and Rules

1.1 The Arbitration Policy and Rules apply:

- a) in the case of a pending domain name application, where a mediation process conducted under the Mediation Policy and Rules was not successful and the local council wishes to pursue its objection to the applicant;
- b) in the case of a registered domain name, a third party wishes to challenge the right of the registrant to hold the domain name licence.

2. Definitions

Arbitration Fee means the fee charged by the Provider and payable by the Complainant.

Arbitrator means an individual appointed by the Provider to decide the complaint.

auDA means .au Domain Administration Ltd.

Complainant means the party initiating a complaint against the applicant for, or registrant of, a community geographic domain name.

Party means a Complainant or a Respondent.

Policy means this Arbitration Policy.

Provider means the dispute resolution service provider approved by auDA.

Registrar means the auDA Accredited Registrar responsible for handling the Respondent's application for a community geographic domain name, or for managing the Respondent's registered community geographic domain name.

Respondent means the applicant for, or registrant of, a community geographic domain name.

Rules means these Arbitration Rules.

Supplemental Rules means the rules adopted by the Provider for the purpose of administering a complaint under this policy, covering such topics as word and page limits, the means for communicating with the Provider and Arbitrator, and the form of cover sheets.

3. Arbitration Policy

Grounds of complaint

3.1 A complaint lodged under this policy must assert the following grounds:

- a) that the Complainant has legitimate interests in respect of the domain name; and

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- b) that the Respondent:
 - i) has no legitimate interests in respect of the domain name; or
 - ii) has been using the domain name in bad faith.

3.2 The Complainant bears the onus of proof.

3.3 The complaint may relate to more than one domain name, provided that the domain names are registered by the same entity.

Evidence of "Legitimate Interests"

3.4 For the purposes of paragraph 3.1 a) and b)(i), the following circumstances, without limitation, may be evidence of "legitimate interests" on the part of either Party:

- a) the Party resides in the address locality for the domain name, or an adjoining locality, or in the case of a local council is the local council responsible for that address locality;
- b) the Party is representative of the local community residing in the address locality for the domain name, or adjoining localities.

Evidence of "Bad Faith"

3.5 For the purposes of paragraph 3.1 b)(ii), the following circumstances, without limitation, may be evidence of "bad faith" on the part of the Respondent:

- a) in the case of an application for a domain name, the Respondent has made false declarations or provided false and misleading information to the Registrar; or
- b) in the case of a registered domain name, the Respondent has not used the domain name solely for the purpose of operating a community website - this may include any of the following circumstances, without limitation:
 - i) there is no active website at the domain name;
 - ii) the website features content that is not relevant to the local community;
 - iii) members of the local community are or have been denied access to the website by the Respondent.

Remedies available to Complainant

3.6 The remedies available to the Complainant are:

- a) in the case of an application for a domain name, the rejection of the Respondent's application; or
- b) in the case of a registered domain name, the cancellation of the Respondent's domain name licence.

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Availability of Other Dispute Resolution Proceedings

- 3.7 This Policy does not prevent either Party from submitting the dispute to a court of competent jurisdiction or any other dispute resolution proceeding that may be available.
- 3.8 If the Arbitrator's decision is that the Respondent's application for a domain name be rejected or the Respondent's domain name licence be cancelled, the Registrar must wait 10 business days before implementing the decision. The Registrar must then implement the decision, unless it receives notification from the Respondent that the Respondent has initiated legal proceedings against the Complainant. If legal proceedings have been initiated, then the Registrar must take no further action until it receives:
- a) evidence that the Parties have reached a settlement; or
 - b) notification that the Respondent's legal proceedings have been dismissed, withdrawn or abandoned; or
 - c) a court order either upholding or dismissing the Respondent's legal proceedings.

4. Arbitration Rules

Communications

- 4.1 On receipt of a complaint, the Provider shall forward it to the Respondent. The Provider must use all reasonably available means to achieve actual notice to Respondent (for example, by sending the complaint to all postal, facsimile and email contact details for the Respondent).
- 4.2 Any written communication to the Complainant or the Respondent must, where possible, be made by the preferred means stated by the Complainant or Respondent. Either Party may update its contact details by notifying the Provider. Any communication to the Provider or the Arbitrator should be made in the manner stated in the Provider's Supplemental Rules. It is the responsibility of the sender to retain records of the fact and circumstances of sending, which must be made available for inspection by affected Parties and for reporting purposes.
- 4.3 No Party or anyone acting on its behalf may have any unilateral communication with the Provider or the Arbitrator. Any communication by:
- a) an Arbitrator to any Party must be copied to the Provider and to the other Party;
 - b) the Provider to any Party must be copied to the other Party; and
 - c) a Party to the Provider or Arbitrator must be copied to the other Party, the Arbitrator and the Provider, as the case may be.

Filing a Complaint

- 4.4 Any person or entity may initiate an arbitration proceeding by submitting a complaint to the Provider in accordance with the Policy and Rules and the Provider's Supplemental Rules.

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- 4.5 The complaint must be submitted in hard copy and (except to the extent not available for annexes) in electronic form and must:
- a) provide the name, postal and email addresses, and the telephone and fax numbers of the Complainant and of any representative authorised to act for the Complainant in the arbitration proceeding;
 - b) specify a preferred method for communications directed to the Complainant during the arbitration proceeding (including person to be contacted, medium, and address information);
 - c) provide the name of the Respondent and all contact information known to Complainant in sufficient detail to allow the Provider to send the complaint to the Respondent;
 - d) specify the domain name(s) that is/are the subject of the complaint;
 - e) describe, in accordance with the Policy, the grounds on which the complaint is made;
 - f) specify, in accordance with the Policy, the remedies sought;
 - g) identify any other legal proceedings that have been commenced or terminated in relation to any of the domain name(s) that are the subject of the complaint;
 - h) conclude with the following statement followed by the signature of the Complainant or its authorised representative:

"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 Provider and Arbitrator, except in the case of deliberate wrongdoing, (b) the Registrar, (c) the registry administrator, and (d) auDA, 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 these rules and under applicable law, as it now exists or as it may be extended by a good faith and reasonable argument."; and

- i) annex any documentary or other evidence upon which the complaint relies.

Notification of Complaint

- 4.6 On receipt of a complaint, the Provider shall review it for administrative compliance with the Policy and these Rules. If the complaint is in compliance, and the Complainant has paid the Arbitration Fee to the Provider, then the Provider must forward the complaint to the Respondent within 3 calendar days.

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- 4.7 If the Provider finds the complaint to be administratively deficient, it must promptly notify the Complainant and the Respondent of the nature of the deficiencies identified. The Complainant will have 5 calendar days within which to correct any such deficiencies, after which the complaint will be deemed withdrawn.
- 4.8 The date of commencement of the arbitration proceeding shall be the date on which the Provider forwards the Complaint to the Respondent. The Provider must immediately notify the Complainant, the Respondent, the concerned Registrar(s), and auDA of the date of commencement of the arbitration proceeding.

Filing a Response

- 4.9 The Respondent may submit a response to the Provider no later than 20 calendar days after the date of commencement of the arbitration proceeding.
- 4.10 The response must be submitted in hard copy and (except to the extent not available for annexes) in electronic form and must:
- a) respond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent to obtain or retain registration and use of the disputed domain name;
 - b) provide the name, postal and email addresses, and the telephone and fax numbers of the Respondent and of any representative authorised to act for the Respondent in the arbitration proceeding;
 - c) specify a preferred method for communications directed to the Respondent during the arbitration proceeding (including person to be contacted, medium, and address information);
 - d) identify any other legal proceedings that have been commenced or terminated in relation to any of the domain name(s) that are the subject of the complaint;
 - e) conclude with the following statement followed by the signature of the Respondent or its authorised representative:

"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 Provider and Arbitrator, except in the case of deliberate wrongdoing, (b) the Registrar, (c) the registry administrator, and (d) auDA, 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, that this Response is not being presented for any improper purpose, such as to harass, and that the assertions in this Response are warranted under these Rules and under applicable law, as it now exists or as it may be extended by a good faith and reasonable argument."; and
 - f) annex any documentary or other evidence upon which the Respondent relies.

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- 4.11 At the request of the Respondent, the Provider may, in exceptional cases, extend the period of time for the filing of the response. The period may also be extended by written agreement between the Parties, provided the agreement is approved by the Provider.
- 4.12 If the Respondent does not submit a response, in the absence of exceptional circumstances, the Arbitrator shall decide the dispute based upon the complaint.

Appointment of the Arbitrator and Timing of Decision

- 4.13 The Provider must maintain and publish a publicly available list of Arbitrators and their qualifications.
- 4.14 Within 5 calendar days following receipt of the response from the Respondent, or the lapse of the time period for filing a response, the Provider must appoint an Arbitrator from its list of Arbitrators. Once the Arbitrator is appointed, the Provider must notify the Parties of the Arbitrator appointed and the date by which the Arbitrator is required to forward its decision to the Provider. The Provider must forward the complaint and response (if any) to the Arbitrator as soon as the Arbitrator is appointed.

Role and Powers of the Arbitrator

- 4.15 The Arbitrator must be impartial and independent and must, before accepting appointment, disclose to the Provider any circumstances giving rise to justifiable doubt as to their impartiality or independence. In the event that new circumstances arise that could give rise to justifiable doubt as to the impartiality or independence of the Arbitrator, the Provider has the discretion to appoint a substitute Arbitrator.
- 4.16 The Arbitrator shall conduct the arbitration proceeding in such manner as it considers appropriate in accordance with the Policy and these Rules. The Arbitrator shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.
- 4.17 In all cases, the Arbitrator must ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case.
- 4.18 The Arbitrator shall ensure that the arbitration proceeding takes place with due expedition. The Arbitrator may, at the request of a Party or on its own motion, in exceptional cases, extend a period of time fixed by these rules.
- 4.19 The Arbitrator shall determine the admissibility, relevance, materiality and weight of the evidence. In addition to the complaint and the response, the Arbitrator may request or permit, in its sole discretion, further statements or documents from either of the Parties. There will be no in-person hearings (including hearings by teleconference, videoconference, and web conference), unless the Arbitrator determines that such a hearing is necessary for deciding the complaint.
- 4.20 In the event that a Party, in the absence of exceptional circumstances, does not comply with any of the time periods established by these rules or the Arbitrator, the Arbitrator must proceed to a decision on the complaint. If a Party, in the absence of exceptional circumstances, does not comply with any requirement under these rules or any request

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from the Arbitrator, the Arbitrator may draw such inferences therefrom as it considers appropriate.

- 4.21 In the absence of exceptional circumstances, the Arbitrator must forward its decision on the complaint to the Provider within 14 calendar days of its appointment. The Arbitrator's decision must be in writing, provide the reasons on which it is based, and indicate the date on which it was handed down.

Communication of Decision to Parties

- 4.22 Within 3 calendar days after receiving the decision from the Arbitrator, the Provider must communicate the full text of the decision to each Party, the Registrar, and auDA. The Registrar must immediately communicate to each Party, the Provider, and auDA the date for the implementation of the decision in accordance with paragraph 3.8 of the Policy.
- 4.23 Except if the Arbitrator determines otherwise, the Provider shall publish the full decision and the date of its implementation on a publicly accessible website.

Termination or Suspension of Arbitration Proceeding

- 4.24 The Arbitrator must terminate the arbitration proceeding if:
- a) the Parties agree on a settlement before the Arbitrator's decision; or
 - b) the Arbitrator is of the opinion that it is unnecessary or impossible to continue the arbitration proceeding for any reason, unless a Party raises justifiable grounds for objection within a period of time to be determined by the Arbitrator.
- 4.25 In the event of any legal proceedings initiated prior to or during an arbitration proceeding in relation to the domain name that is the subject of the complaint, the Arbitrator has the discretion to decide whether to suspend or terminate the arbitration proceeding, or to proceed to a decision.

Exclusion of Liability

- 4.26 Except in the case of deliberate wrongdoing, neither the Provider nor an Arbitrator shall be liable to a Party for any act or omission in connection with any arbitration proceeding conducted under this Policy and these Rules.