



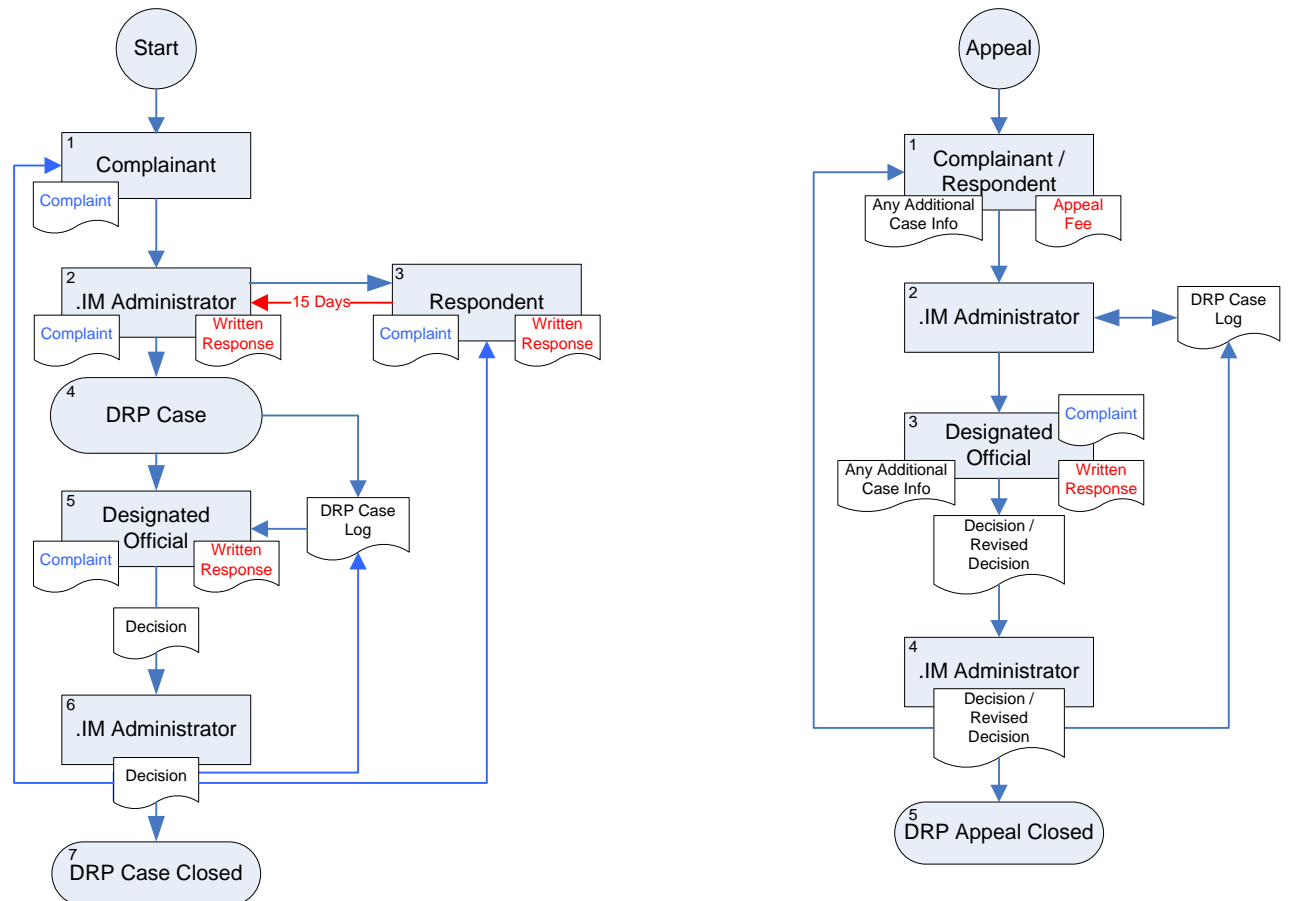
IM Dispute Resolution Procedure (IM DRP)

26 June 2006

Definitions of words used in this document can be found in the companion document **Glossary of Definitions**.

1. Process Overview

The following diagram depicts the process for dispute resolution and appeal.



Dispute Resolution Steps:

- 1 – The **Complainant** initiates a Complaint in accordance with section 8 below and with reference to the evidence of **abusive registration** section 3 below.
- 2 – **We** check the complaint is compliant with the DRP and notify the **Respondent** in accordance with section 9.
- 3 – The **Respondent** has **15 days** to provide a written response in accordance with section 10 below and with reference to section 4 demonstrating why it is not an **abusive registration**.
- 4 – A dispute resolution case is opened and **we** submit the complaint documents to the **Designated Official**.

5 – The **Designated Official** may request further statements in accordance with section 12.

6 – The **Designated Official** reaches a **decision** in accordance with section 15 and informs **us** who notifies both parties.

7 – The dispute resolution case is then closed.

Appeal Steps:

1 – Either **party** has 10 **days** to raise an appeal in accordance with section 14, which must be accompanied by an appeal fee payment of £500 from the initiating **party** and evidence supporting the appeal.

2 – **We** submit the appeal to the **Designated Official**.

3 – Any new information presented is considered by the **Designated Official** in conjunction with the original case notes. The **Designated Official** makes a final binding **decision** and notifies **us**.

4 – **We** notify both parties.

5 – The appeal is closed.

2. Dispute Resolution Procedure

A. A Respondent must submit to proceedings under the IM DRP if a Complainant asserts to the Designated Official, according to the IM DRP, that:

- i. The **Complainant** has **Rights** in respect of a name or mark which is identical or similar to the **Domain Name**; and
- ii. The **Domain Name**, in the hands of the **Respondent**, is an **Abusive registration**.

B. The **Complainant** is required to prove to the **Designated Official** that both elements are present on the balance of probabilities.

C. **We** recommend that both Parties use **our** guidance, which includes the **IM Rules** and help information, which can be found on **our** website.

3. Evidence of Abusive Registration

A. A non-exhaustive list of factors which may be evidence that the **Domain Name** is an **Abusive Registration** is as follows:

- i. 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**;
- ii. Circumstances indicating that the **Respondent** is using the **Domain Name** in a way which has confused people or businesses into believing that the **Domain Name** is registered to, operated or authorised by, or otherwise connected with the **Complainant**;
 - iii. The **Complainant** can demonstrate that the **Respondent** is engaged in a pattern of registrations where the **Respondent** is the **registrant** of domain names (under .im or otherwise) which correspond to known names or trade marks in which the **Respondent** has no apparent **rights**, and the **Domain Name** is part of that pattern;
 - iv. It is independently verified that the **Respondent** has given false contact details to us; or
 - v. The **Domain Name** was registered as a result of a relationship between the **Complainant** and the **Respondent**, and the **Complainant**:
 - a. has been using the **Domain Name** registration exclusively; and
 - b. paid for the registration and/or renewal of the **Domain Name** registration.
- B. 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 **Abusive registration**.
- C. There shall be a presumption of **Abusive registration** if the **Complainant** proves that **Respondent** has been found to have made an **Abusive registration** in three (3) or more **IM DRP** cases in the two (2) years before the Complaint was filed. This presumption can be rebutted (see paragraph 4 (C)).
- 4. How the Respondent may demonstrate in its response that the Domain Name is not an Abusive Registration**
- A. A non-exhaustive list of factors which may be evidence that the **Domain Name** is not an **Abusive registration** is as follows:

- i. Before being aware of the **Complainant's** cause for complaint (not necessarily the 'complaint' under the **IM DRP**), 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

- ii. The **Domain Name** is generic or descriptive and the **Respondent** is making fair use of it;
 - iii. In relation to paragraph 3(A)(v); 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
 - iv. In relation to paragraphs 3(A)(iii) and/or 3(C); 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**.
- B. Fair use may include sites operated solely in tribute to or in criticism of a person or business.
- C. If paragraph 3(C) applies, to succeed the **Respondent** must rebut the presumption by proving in the Response that the registration of the **Domain Name** is not an **Abusive registration**.

5. Without Prejudice

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 **Designated Official** except that the **Designated Official** will not consider such materials if the **Designated Official** believes that it is in the interests of justice that the document or information be excluded from consideration.

6. Submission to the Designated Official

All complaints will be submitted to the **Designated Official** when the **Respondent** has made a response or a period of 15 **days** has elapsed after notifying the **Respondent** in accordance with paragraph 10 below . The **Designated Official** will come to a written **decision**.

7. Communication

- A. **We** will send a complaint to the **Respondent** by using, in our discretion, any of the following means:
- i. sending the complaint by first class post, fax or e-mail to the **Respondent** at the contact details shown as the **registrant** or other contacts in our **Domain Name register** database entry for the **Domain Name** in dispute;
 - ii. sending the complaint in electronic form (including attachments to the extent available in that form) by e-mail to;
 - iii. postmaster@<the **Domain Name** in dispute>; or
 - iv, if the **Domain Name** resolves to an active web page (other than a generic page which **we** conclude 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
 - v. sending the complaint to any addresses provided to **us** by the **Complainant** so far as this is practicable.
- B. All written communication to a **Party** or a **Party's** representative under the **IM DRP** shall be made by fax, first class post or e-mail.
- C. Communication shall be made in English. E-mail communications should be sent in plain text so far as this is practicable.
- D. During the course of proceedings under the **IM DRP**, if either **Party** wishes to change its contact details it must **notify us** of all changes.
- E. Except as otherwise provided in this **IM DRP** or as otherwise decided by **us** or the **Designated Official**, all communications provided for under this **IM DRP** shall be deemed to have been received:
- i. if sent by facsimile, on the date transmitted; or
 - ii. if sent by first class post, on the second Day after posting; or
 - iii. if sent via the Internet, on the date that the communication was transmitted;
 - iv. and, unless otherwise provided herein, the time periods provided for under the **IM DRP** shall be calculated accordingly.

- F. Any communication between:
- i. **us** and any **Party** shall be copied by **us** to the other **Party** and the **Designated Official**, below; and
 - ii. a **Party** to another **Party** shall be copied by the sender to **us** and **we** will copy such correspondence to the **Designated Official**.

8. The Complaint

- A. Any person or entity may submit a complaint to us in accordance with **IM DRP**. In exceptional circumstances, **we** may have to suspend our ability to accept complaints. If so, **we** will post a message to that effect on our web-site which will indicate when the suspension is likely to be lifted.
- B. More than one person or entity may jointly make a complaint. Where this occurs the joint **Complainants** must:
- i. all sign the hard copy of the complaint (or have it signed on their behalf);
 - ii. 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 and
 - iii. 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 **Designated Official**).
- C. The **Complainant** may send the complaint to us in hard copy or in electronic form. Electronic submissions are preferred. The **Complainant** shall:-
- i. not exceed 2000 words;
 - ii. 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;
 - iii. set out any of the **Respondent's** contact details which are known to the **Complainant**;
 - iv. specify the **Domain Name** 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**;
 - v. describe in accordance with the **IM DRP** 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 **Abusive registration** in the hands of the **Respondent**; and discuss any applicable aspects of paragraph 3 above as well as any other grounds which support the **Complainant's** assertion;

- vi. specify whether the **Complainant** is seeking to have the **Domain Name** transferred, suspended or cancelled;
 - vii. tell us whether any legal proceedings have been commenced or terminated in connection with the **Domain Name** which is the subject of the complaint;
 - viii. state that the **Complainant** will submit to the exclusive jurisdiction of the Isle of Man 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 Manx law;
 - ix. agree 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 that neither **we** nor **our** directors, officers, employees or servants nor any **Designated Official** shall be liable for anything done or omitted in connection with any proceedings under the Dispute Resolution Service.
 - x. state that the information contained in this complaint is to the best of the **Complainant's** knowledge true and complete, and that this complaint is not being presented in bad faith and the matters stated in this complaint comply with the Procedure and applicable law.
 - xi. agree that if the **Designated Official** orders a transfer of the **Domain Name(s)** to be bound by **our** Terms and Conditions for the Registration of Domain Names, and in particular the provisions relating to **our** processing of **personal data**.
 - xii. by submitting a complaint agree to be bound by the conditions of this clause (8).
 - xiii. where a hard copy is sent attach two copies of any documentary or other 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.
- D. The complaint may relate to more than one **Domain Name**, provided that those Domain Names are registered in the name of the **Respondent**.

9. Notification of Complaint

- A. **We** will check that the complaint complies with the **IM DRP** and, if so, **we** will forward it to the **Respondent** together with **our** explanatory coversheet.
- B. If **we** find that the complaint does not comply with the **IM DRP**, **we** will promptly **notify** the **Complainant** of the deficiencies **we** have identified. The **Complainant** shall have three (3) **Days** from receipt of notification within which to correct the deficiencies and return the complaint to **us**, failing which **we** will deem the complaint to be withdrawn. This will not prevent the **Complainant** submitting a different complaint to **us**.
- C. Proceedings under the **IM DRP** will commence on the earliest date upon which the complaint is deemed to have been received by the **Respondent**.

10. The Response

- A. Within fifteen (15) **Days** of the date of commencement of proceedings under the **IM DRP**, the **Respondent** may submit a response to **us**.
- B. **We** will forward the response to the **Complainant** and the **Designated Official**.
- C. The **Respondent** must send the response to **us** in hard copy and (except to the extent not available for attachments) in electronic form to **us** at the addresses set out in **our** explanatory coversheet. The response shall:
 - i. not exceed 2000 words;
 - ii. include any grounds the **Respondent** wishes to rely upon to rebut the **Complainant's** assertions including any relevant factors set out in paragraph 4 above;
 - iii. 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;
 - iv. tell us whether any legal proceedings have been commenced or terminated in connection with the **Domain Name** which is the subject of the complaint;
 - v. 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 **IM DRP** and applicable law."; and

- vi. attach three copies of any documentary or other 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.
- D. If the **Respondent** does not submit a response, **we will notify** the Parties that the **Designated Official** has been requested to review the complaint and come to a judgment based on the submissions received.

11. Communication Between Parties and the Designated Official

A **Party** and the **Designated Official** may not communicate directly. All communications between a **Party** and the **Designated Official** must be via **us**.

12. Further Statement

In addition to the complaint, the response and appeal, the **Designated Official** may request further statements or documents from the Parties. The **Designated Official** 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.

13. In Person Hearings

No in person hearings (including hearings by conference call, video conference and web conference) will be held unless the **Designated Official** 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**.

14. Appeal, Repeat Complaints and Availability of Court Proceedings

- A. Either **Party** will have the right to appeal a **decision** under the **IM DRP**.
- B. A request for appeal must be submitted in writing within 10 **days** of notification of the **decision**. The request must be accompanied by:
 - i. A full response submitted in writing, not exceeding 1000 words which sets out in detail the grounds and reasons why the **decision** should be sent to appeal.
 - ii. A fee of £500 payable to "Domicilium (IOM) Limited"
- C. The appeal will be considered by the **Designated Official** by review of the appeal response and any further information requested.
- D. The **decision** after appeal will be final.

- E. The operation of the **IM DRP** will not prevent either the **Complainant** or the **Respondent** from submitting the dispute to the Isle of Man courts.

15. Designated Official Decision

- A. The **Designated Official** will decide a complaint on the basis of the Parties' submissions, the **IM DRP**.
- B. Unless exceptional circumstances apply, an **Designated Official** shall forward his or her **decision** to **us**.
- C. The **decision** shall be in writing and signed, provide the reasons on which it is based, indicate the date on which it was made and identify the name of the **Designated Official**.
- D. If the **Designated Official** concludes that the dispute is not within the scope of paragraph 2 of the Policy, he or she shall state that this is the case. If, after considering the submissions, the **Designated Official** finds that the complaint was brought in bad faith, for example in an attempt at **Reverse Domain Name Hijacking**, the **Designated Official** 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, **we** will not accept any further complaints from that **Complainant** for a period of 2 years.

16. Implementation of Designated Official Decisions

- A. If the **Designated Official** makes a **decision** that a **Domain Name** registration should be cancelled, suspended, transferred or otherwise amended, **we** will implement that **decision** by making any necessary changes to the **Register**. **We** will use the details set out in the Complaint form unless you specify other details to **us** in good time.

17. Transfers During a Dispute

- A. A **Respondent** may not transfer a **Domain Name** registration:
- i. once a Complaint has been passed to the **Designated official**; or
 - ii. whilst proceedings under the **IM DRP** are ongoing in relation to the **Domain Name** or for a period of ten (10) **Days** after their conclusion, unless to the **Complainant** as a result of a settlement reached between the Parties and approved by **us**; or
 - iii. whilst a court proceeding or arbitration in respect of the **Domain Name** registration is ongoing in a court of competent jurisdiction.

We reserve the right to reverse any transfer of a **Domain Name** registration which does not comply with this paragraph.

- B. A **Respondent** may not without the **Complainant's** consent (which the **Complainant** will not unreasonably withhold) transfer the hosting of a **Domain Name** to another **ISP** whilst proceedings under the **IM DRP** are ongoing in relation to the **Domain Name** or for a period of ten (10) **Days** after the conclusion of the **IM DRP**.

18. Settlement or Other Grounds for Termination

- A. If, before a **decision** is made the Parties agree and **notify us** of a settlement which **we** approve **we** will terminate proceedings under the **IM DRP**.
- B. If, before a **decision** is made, it becomes unnecessary or impossible to continue proceedings under the **IM DRP** for any reason, **we** will terminate proceedings unless a **Party** raises justifiable grounds for objection within a period of time which **we** will determine.

19. Effect of Court Proceedings

- A. If legal proceedings relating to a **Domain Name** which is the subject of a complaint are issued in a court of competent jurisdiction before or during the course of proceedings under the **IM DRP** and are brought to **our** attention, **we** will suspend the proceedings, pending the outcome of the legal proceedings.
- B. A **Party** must promptly **notify us** if it initiates legal proceedings in a court of competent jurisdiction in relating to a **Domain Name** which is the subject of a complaint during the course of proceedings under the **IM DRP**.

20. Notification and Publication

- A. **We** will communicate a **decision** to the Parties according to paragraph 7 above and will publish all **decisions** in full on our web site.
- B. **Decisions** may contain the contact details of the Parties.

21. Exclusion of Liability

- A. Neither **we** nor **our** directors, officers, employees or servants nor any **Designated Official** shall be liable to a **party** for anything done or omitted in connection with any proceedings under the **IM DRP** unless the act or omission is shown to have been in bad faith.

22. Modifications to the IM DRP

- A. **We** reserve the right to make reasonable modifications to the **IM DRP** at any time. **We** will only do so when **we** have good reason. Each such change will be published in advance (where practicable, 30 calendar **days** in advance) on **our** web site: <http://www.nic.im> and will become binding and effective upon the date specified therein.

- B. The **Respondent** will be bound by the **IM DRP** which is current at the time the Complaint is passed to the **Designated Official** until the dispute is concluded.