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This policy is issued by the office of the Domain Name Commissioner on behalf of [InternetNZ](#), the Internet Society of 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 has the greater right to use a domain name and therefore who the true registrant of a .nz domain name should be. Part A defines the policy and Part B the procedure supporting the policy.
- 1.2. Thanks go to [Nominet UK](#) for their assistance in establishing the .nz Dispute Resolution Service.

2. Background

- 2.1 InternetNZ is responsible for managing the .nz domain name space and has implemented a Shared Registry System (SRS) for the management of .nz domain name registrations and the operation of the DNS.
- 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 InternetNZ 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.

3. Definitions

Appeal Panel means a panel appointed by us under paragraph B17.7;

Complainant means a third party who asserts to us 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 B2.3);

Complaint means a complaint submitted to us 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 us according to this Policy and the Procedure;

Domain Name means a domain name registered in any sub-domain of the .nz domain;

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

Expert means an arbitrator(s) appointed under paragraphs B7 or B17 of the Procedure;

Informal Mediation means impartial mediation which we conduct under paragraphs B6 to facilitate an acceptable resolution to the dispute;

ISP means an internet service provider;

InternetNZ means the Internet Society of New Zealand Incorporated, the organisation authorised to manage 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 us 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 us 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 arising only because the name or term is generically 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 used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant's Rights;

We means InternetNZ, and **us** and **our** have corresponding meanings.

PART A – POLICY

4. Dispute Resolution Service

4.1 This Policy and Procedure applies to Respondents when a Complainant asserts to us, 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 We recommend that both Parties use our guidance and help information, which can be found on our 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 us; 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 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. No Complaint may be brought under the Dispute Resolution Service more than 3 years after all relevant events giving rise to the Complaint first occurred, or more than 3 years after the coming into effect of the first version of this Policy and Procedure, whichever is the later.

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 we have received the Parties' submissions under the Procedure (Part B), we 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 we will notify the Parties that we 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 B20.3. The Expert will come to a written Decision.

10. Notification and Publication

- 10.1. We will communicate a Decision to the Parties according to paragraph B16 and will publish all Decisions in full on our web site.
- 10.2. Fees are payable by the Complainant or otherwise according to paragraph B19 only if an acceptable resolution has not been achieved by Informal Mediation and once we have 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

Neither we nor our directors, officers, employees or servants nor any Expert or any employee of any Expert 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. We may refer questions of interpretation of the Policy and Procedure to the Appeal Panel. Any decision rendered as a result of our referral will not affect any Decision in any other previous proceedings under the Dispute Resolution Service.

12.3. We 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 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 in 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; and

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, we will implement that Decision by causing any necessary changes to the Register to take place according to the process set out in paragraph B16. We will use the details set out in the Complaint form unless the Complainant specifies other details to us in good time.

14. Other action by us

14.1.We will not cause to be cancelled transferred, activated, deactivated or otherwise changed any Domain Name registration except as set out in paragraph 13 and in accordance with the .nz policies and procedures, which are available on our 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 our 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 and approved by us 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. We may 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 we operate is constantly developing. For these reasons we reserve the right to make reasonable modifications to the Policy and Procedure at any time. Except where we are 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 our web site: <http://www.dnc.org.nz/> and will become binding and effective upon the date specified therein.

16.2. In any Dispute Resolution Service proceedings, the Respondent 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 please email policies@dnc.org.nz

PART B – PROCEDURE

B1. Communication

- B1.1. We will send a Complaint (see paragraph B2) to the Respondent by using, in our discretion, any of the following means:
- 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 our Register for the Domain Name in dispute;
 - 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>;
 - b) 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
 - B1.1.3. sending the Complaint to any addresses provided to us by the Complainant under paragraph B2.4.3 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 us of all changes.
- B1.5. Except as otherwise provided in this Procedure or as otherwise decided by us 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. us and any Party shall be copied by us 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 us and we will copy such correspondence to the Expert, if appointed.

B2. The Complaint

- B2.1. Any person or entity may submit a Complaint to us in accordance with the Policy and this Procedure. 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.
- B2.2. A Complaint must be made within 3 years from when all relevant events giving rise to the Complaint first occurred, or within 3 years of the coming into effect of the first version of this Policy and Procedure, whichever is the later.
- B2.3. More than one person or entity may jointly make a Complaint. Where this occurs the joint Complainants must:
- B2.3.1. all sign the hard copy of the Complaint (or have it signed on their behalf);
 - B2.3.2. 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
 - B2.3.3. 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).
- B2.4. The Complainant must send the Complaint to us in hard copy and (except to the extent not available for attachments) in electronic form. The Complaint shall:
- B2.4.1. not exceed 2000 words (not including the text set out in paragraph B2.4.9 and annexes);
 - B2.4.2. 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;
 - B2.4.3. set out any of the Respondent's contact details which are known to the Complainant;
 - B2.4.4. 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;
 - B2.4.5. 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;
 - B2.4.6. specify whether the Complainant is seeking to have the Domain Name transferred, suspended, cancelled or otherwise amended;

- B2.4.7. tell us whether any legal proceedings have been commenced or terminated in connection with the Domain Name which is the subject of the Complaint;
- B2.4.8. 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;
- B2.4.9. conclude with the following statement followed by the signature of the Complainant or its authorised representative:

"The 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 that neither InternetNZ nor NZRS, any Registrar or Expert, nor any of, those entitled directors, officers, employees or servants 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 the Complainant's 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

"If the Expert orders a transfer of the domain name(s) then I nominate [insert name of authorised .nz Registrar] and I agree to be bound by that Registrar's terms and conditions."

- B2.4.10. attach three 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.
- B2.5. 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. We will check that the Complaint sufficiently complies with the Policy and, if satisfied, this Procedure and, if so, we will forward it to the Respondent together with our explanatory coversheet within three (3) Days of our receipt of the Complaint.

- B3.2. If we consider that the Complaint does not sufficiently comply with the Policy and this Procedure, 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.
- B3.3. We will promptly notify the Parties of the date of Commencement of Dispute Resolution Service proceedings.

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 to us.
- B4.2. Within three (3) Days following our receipt of the Response, we will forward the Response to the Complainant.
- B4.3. 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:
- B4.3.1. not exceed 2000 words (not including the text set out in paragraph B4.3.5 and annexes);
 - B4.3.2. include any grounds that the Respondent wishes to rely upon to rebut the Complainant's assertions under paragraph B2.4.5 including any relevant factors set out in paragraph 6 as well as any other factors which rebut the Complainant's assertions
 - B4.3.3. 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;
 - B4.3.4. tell us whether any legal proceedings have been commenced or terminated in connection with the Domain Name(s) which is the subject of the Complaint;
 - B4.3.5. 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
 - B4.3.6. attach three 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.
- B4.4. If the Respondent does not submit a Response, we will notify the Parties that we will appoint the Expert on our receipt from the Complainant of the applicable fees according to paragraph B19 and in the absence of exceptional circumstances.

B5. Reply by the Complainant

- B5.1. Within five (5) Days of receiving the Response from us, the Complainant may submit to us 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 hard copy (including three copies of all annexes) and as far as possible in electronic form to us. If the Complainant does not submit a Reply to us within five (5) Days we will proceed to Informal Mediation.

B6. Informal Mediation

- B6.1. Within three (3) Days of our receipt of the Complainant's Reply (or the expiry of the deadline to do so), we will begin to conduct Informal Mediation. Informal Mediation will be conducted in a manner which we, in our sole discretion, consider appropriate. No Informal Mediation will occur if the Respondent does not file a Response.
- B6.2. 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 us. Any such information will not be shown to the Expert. Neither we 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 we, 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.
- B6.3. Notwithstanding paragraph B6.2, 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.
- B6.4. 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 us, unless the Parties specifically agree otherwise, a court or decision-making body of competent jurisdiction orders otherwise, or applicable laws or regulations require it.
- B6.5. 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.
- B6.6. If the Parties do not achieve an acceptable resolution through Informal Mediation within ten (10) Days, we will send notice to the Parties that we 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 B20.3. We will tell the Expert whether or not Informal Mediation occurred, but we will not tell the Expert what happened during Informal Mediation or why it failed to resolve the dispute.

B6.7. No Party may ask us (including our directors, officers, employees, contractors, agents and any Expert) 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 or us (including our directors, 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 we do 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 B6.6, we will deem the Complaint to be withdrawn. This will not prevent the Complainant submitting a different Complaint to us.

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

B7.3. An Expert may only be a person named in our list of Experts which we will maintain and publish along with their qualifications. No Expert's appointment will be challenged on the grounds that they are insufficiently qualified. Once we have appointed the Expert, we will notify the Parties 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 us.

B8. Impartiality and Independence

B8.1. The Expert shall be impartial and independent and both before accepting the appointment and during the proceedings will disclose to us any circumstances giving rise to justifiable doubt as to his or her impartiality or independence. We will have the discretion to appoint a substitute Expert if necessary in which case we will adjust the timetable 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 us.

B10. Transmission of the File to the Expert

B10.1. We 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 InternetNZ and the Expert

B11.1. We, 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. We 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 us 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. We 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, we 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 we find that a submission by a Party exceeds the word limit, we will return the submission to that Party who will within three (3) Days return a submission to us which complies with the word limits. If we do not receive the submission back within the deadline from:

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

B14.1.2. the Respondent, we will notify the Parties that we will appoint the Expert when the Complainant has paid the applicable fees set out in paragraph B19 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 InternetNZ 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 us 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 us 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, InternetNZ 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 our receipt of a Decision from the Expert, we 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. We will publish the full Decision and the date that any action which the Decision requires will be taken, on our website.

B16.3. If the Expert makes a Decision that a Domain Name registration should be cancelled, suspended, transferred or otherwise amended, we 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 we receive from either Party:

B16.3.1. an appeal or statement of intention to appeal complying with paragraph B17, in which case we 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, we will take no further action in respect of the Domain Name unless we receive:

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

B16.3.3. In the event of us 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, we will implement that Decision by causing any necessary changes to the Register to take place.

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 B20.5), which must be followed within fifteen (15) Days by an appeal notice (see paragraph B17.3) and the balance of the fee (see paragraph B20.5); or

B17.1.2. an appeal notice (see paragraph B17.3) and the whole fee (see paragraph B20.5).

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 our receipt of the:

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

B17.4.2. appeal notice and the full fee
we will forward the statement of intention to appeal or appeal notice (as the case may be) to the other Party.

B17.5. Within ten (10) Days of receiving the appeal notice from us, the other Party may submit to us 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) we will appoint an appeal panel of three Experts. The test of impartiality shall apply to each appeal Expert. Subject to that qualification the appeal panel shall consist of:

B17.7.1. the chairman 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 our 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 us 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 us; 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 us of a settlement which we approve, whether or not pursuant to Informal Mediation, we will terminate proceedings under the Dispute Resolution Service.

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

B19. Effect of Court Proceedings

B19.1. If we are 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 our attention, we will suspend the Dispute Resolution Service proceedings, pending the outcome of the legal proceedings.

B19.2. A Party must promptly notify us 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, we 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). InternetNZ 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 we notify the Parties that an Expert is to be appointed.

B20.3. If we have not received the fees from the Complainant as set out in paragraph B20.1 within ten (10) Days of receipt by the Complainant of notice from us that an Expert is to be appointed under paragraphs B4.4, B6.6 or B14.1.2 we will deem the Complaint to be withdrawn. This will not prevent the Complainant submitting a further Complaint to us.

B20.4. In exceptional circumstances, for example if an in person hearing is held, we will request that the Parties pay additional fees to be agreed between us, the Parties and the Expert.

B20.5. The applicable fees for the submission of an appeal are \$7,000 + 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 \$6,300 + 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. Neither we nor our councillors, officers, employees or servants nor any Expert or any employee of any Expert 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 we operate is constantly developing. For these reasons we reserve the right to make reasonable modifications to the Policy and Procedure at any time. Except where we are acting in pursuance of a statutory requirement or a court order, substantive changes will be implemented following a process of open public consultation.

B22.2. The Complainant and Respondent 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.