



## Sunrise Dispute Resolution Policy (SDRP)

**Desi Networks, LLC**

**Version 1, March 2014**



This Sunrise Dispute Resolution Policy (the “SDRP”) is incorporated by reference into the Registration Agreement. This SDRP is effective as of March 1, 2014. An SDRP Complaint may be filed with the National Arbitration Forum against a domain name registered during the .desi gTLD during its sunrise period, until forty-five (45) calendar days after end of the Sunrise Period

## **1. Purpose**

Domain names in the .desi gTLD (“the gTLD”) can be registered by third parties or reserved by the Registry. This SDRP describes the process and standards that will be applied to resolve challenges alleging that a domain name has been registered in violation of the Registry’s SDRP criteria. This SDRP will not be applied to Registry-reserved names in the gTLD.

## **2. Applicable Disputes**

A registered domain name in the gTLD will be subject to an administrative proceeding upon submission of a complaint that the Sunrise Registration was improper under one or more of the following criteria.

### **a. Improper Sunrise Registration-Trademarks<sup>1</sup>**

A complaint under this section shall be required to show by reasonable evidence that a registered domain name in the gTLD does not comply with the provisions of the Registry’s Sunrise Program. The complaint must prove one or more of the following elements:

- i. at time the challenged domain name was registered, the registrant did not hold a trademark registration of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty;
- ii. the domain name is not identical to the mark on which the registrant based its Sunrise registration;<sup>2</sup>
- iii. the trademark registration on which the registrant based its Sunrise registration is not of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty; or

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<sup>1</sup> Applicant Guidebook 4 June 2012, Module 5, Page 8, Article 6.2.4. A dispute under this section also addresses the TLD Criteria from ICANN’s Trademark Clearinghouse Rights Protection Mechanism Requirements [published 30 September 2013], Article 2.3.6 and Article 2.3.1.4. The Forum’s SDRP does not interact with (nor instruct) the Trademark Clearinghouse and is limited to adjudicating disputes over the Registry’s registration and allocation of domain names during the sunrise period.

<sup>2</sup> For the purposes of analysis of this element, neither the gTLD itself, nor the “dot,” shall be considered.

- iv. the trademark registration on which the domain name registrant based its Sunrise registration did not issue on or before the date specified by the Registry in its Sunrise Criteria, if one was specified.

#### **b. SDRP Effective Dates.**

Any SDRP claim brought under this Policy for domain names registered in the .desi gTLD domain names shall be brought no later than forty-five (45) calendar days after end of the Sunrise Period.

### **3. Evidence and Defenses**

#### **a. Evidence**

Panelists will review the Registry's Sunrise Criteria, allocation requirements, or community-based eligibility requirements which are required to be submitted with the Complaint, as applicable, in making its decision.

#### **b. Defenses**

Harmless error. A Respondent may produce evidence to show that, although the sunrise registration was granted based on submission of the wrong documents, or documents containing an error, the true and correct evidence existed at the time the sunrise registration was applied for and, thus, the registration would have been granted.

### **4. Remedies**

The remedies available to a complainant for a proceeding under this SDRP shall be limited to:

#### **a. Improper Sunrise Registration**

If the Panelist finds that the domain name was improperly registered during the Sunrise period, the sole remedy for a Complaint filed under SDRP 2(a) shall be cancellation of the registration and return of the cancelled domain name to the pool of available names available for registration in the gTLD. If the Complainant independently qualifies to register the domain name, either as a regular or defensive/blocking registrant, such application may be made to the Registry, or registrar, as applicable.

In the event an SDRP dispute is brought by an auction bidder for the same domain name, the auction will be suspended until the dispute is resolved.

### **5. Procedure**

#### **a. Dispute Resolution Provider / Selection of Procedure**

A Complaint under this SDRP shall be submitted to the National Arbitration Forum (“Forum”) by submitting the complaint directly to the Forum. The Forum will administer the proceeding and select a qualified and eligible Panelist (“Panelist”). The Forum has established Rules for National Arbitration Forum’s Sunrise Dispute Resolution Policy (“Rules”), setting forth a fee schedule and other technical and process requirements for handling a dispute under this SDRP. The proceedings under this SDRP will be conducted according to this SDRP and the applicable Rules of the Forum.

#### **b. Registry’s or Registrar’s Involvement**

Neither the Registry nor registrar will participate in the administration or conduct of any proceeding before a Panelist. In any event, neither the Registry nor the registrar is or will be liable as a result of any decisions rendered by the Panelist. Any sunrise-registered domain names in the gTLD involved in a SDRP proceeding will be locked against transfer to another domain name holder or another registrar during the course of a proceeding.<sup>3</sup> In the case of a claim under SDRP 2(c), the Registry will prevent other parties from registering the unregistered domain name at issue until a decision is reached. The contact details of the holder of a registered domain name in the gTLD, against which a complaint has been filed, will be as shown in the registrar’s publicly available Whois database record for the relevant registrant. The Registry and the applicable registrar will comply with any Panelist decision and make all appropriate changes to the status of the domain name registration(s) in their Whois databases.

#### **c. Parties**

The registrant of a registered domain name in the gTLD shall be promptly notified by the Forum of the commencement of a dispute under this SDRP, and may contest the allegations of the complaint or show other cause why the remedy requested in the complaint should not be granted in accordance with this SDRP. In all cases, the burden of proof shall be on the complainant, and default or other failure of the holder of the registered domain name shall not constitute an admission to any allegation of the complaint. The Forum shall promptly notify all named parties in the dispute, as well as the registrar and the Registry of any decision made by a Panelist.

#### **d. Decisions**

- (i) The Panelist may state the basis on which the decision is issued in summary format and may include such commentary or guidance as the Panelist deems appropriate;
- (ii) the decision shall state whether a registered domain name in the gTLD is to be cancelled or the status quo maintained; and
- (iii) decisions made under this SDRP will be publicly published by the Forum on its website.

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<sup>3</sup> A Registry may, though its agreement with registrars, instead require the registrar to perform the lock and/or implementation steps.

### **e. Implementation of a Lock and the Decision**

If a Panelist's decision requires a change to the status of a registered domain name, the Registry<sup>4</sup> will wait ten (10) business days after communication of the decision before implementing that decision, unless the registrant submits to the Registry (with a copy to the Forum) during that ten (10) day period official documentation (such as a copy of a complaint, file-stamped by the clerk of the court) that the registrant has commenced a lawsuit to preserve its claimed rights in a court of competent jurisdiction over the parties and the registered domain name. If such documentation is received no further action shall be taken until the Registry receives (i) evidence satisfactory to the Registry of an agreed resolution between the parties; (ii) evidence satisfactory to Registry that registrant's lawsuit has been dismissed or withdrawn; or (iii) a copy of an order from such court dismissing such lawsuit or otherwise directing disposition of the registered domain name.

**f. Representations and Warranties** Parties to a dispute under this SDRP shall warrant that all factual allegations made in the course thereof are true and correct to the best of their knowledge, shall remain subject to all representations and warranties made in the course of registration of a disputed domain name.

### **6. Maintaining the Status Quo**

During a proceeding under the SDRP, the registered domain name shall be locked against transfers between registrants and/or registrars and against deletion by registrants.

**7. Indemnification / Hold Harmless** The parties shall hold the registrar, the Registry, the Forum, and the Panelist harmless from any claim arising from operation of the SDRP. Neither party may name the registrar, the Registry, the Forum, or the Panelist as a party or otherwise include the registrar, the Registry, the Forum, or the Panelist in any judicial proceeding relating to the dispute or the administration of the SDRP policy. The parties shall indemnify, defend and hold harmless the registrar, the Registry, the Forum, the Panelist and their respective employees, contractors, agents and service providers from any claim arising from the conduct or result of a proceeding under this SDRP. Neither the registrar, the Registry, Forum, the Panelist and their respective employees, contractors, agents and service providers shall be liable to a party for any act or omission in connection with any administrative proceeding under this SDRP or the corresponding Rules. The complainant shall be directly and solely liable to the registrant in the event the complaint is granted in circumstances where the registrant is lawfully entitled to registration and use of the registered domain name(s) in the gTLD.

**8. Relation To Other Dispute Resolution Policies** This SDRP is in addition to and complementary with the Uniform Domain Name Dispute Resolution Policy ("UDRP"), the

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<sup>4</sup> A Registry may, though its agreement with registrars, instead require the registrar to perform the lock and implementation steps.

Uniform Rapid Suspension System (“URS”) and any charter, nexus, or eligibility dispute policies adopted by ICANN or the Registry.

**9. Effect of Other Proceedings** The administrative proceeding under the SDRP shall not prevent either party from submitting a dispute concerning the registered domain name in the gTLD to concurrent administrative proceedings or to a court of competent jurisdiction for independent resolution during a pending SDRP administrative proceeding or after such proceeding is concluded. Upon notice of such other proceeding, the SDRP proceeding may be terminated (in the sole discretion of the Panelist) in deference to the outcome of such other proceeding.

**10. SDRP Modifications** The Registry reserves the right to modify this SDRP at any time subject to the terms of its MoU with the Forum. Such revised SDRP shall be posted on the Forum Website at least thirty (30) calendar days before it becomes effective;<sup>5</sup> unless this SDRP has already been invoked by the submission of a complaint, in which event the version of the SDRP in effect at the time it was invoked will apply until the dispute is concluded. In the event that registrant objects to a change in this SDRP, the sole remedy is to cancel the registration, provided that registrant will not be entitled to a refund of any fees paid in connection with such registration.

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<sup>5</sup> The Forum may correct typographical errors without notice.