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## Eligibility Requirements Dispute Resolution Policy (ERDRP)

1. This policy has been adopted by all accredited Domain Name Registrars for Domain Names ending in .BERLIN.
2. The policy is between the Registrar and its customer (the Domain Name holder or Registrant). Thus, the policy uses "we" and "our" to refer to the Registrar and it uses "you" and "your" to refer to the Domain Name holder.

This Policy is to be incorporated in all agreements with Registrants concerning Domain Name registrations in the .BERLIN gTLD (the "Registration Agreement"). "You" and "your" refer to the Registrant. "Us" "our" and "we" refer to the applicable Registrar.

### 1. Purpose.

This Eligibility Requirements Dispute Resolution Policy (the "Policy") is incorporated by reference into your Registration Agreement, and sets forth the terms and conditions in connection with disputes over the registration and use of an Internet Domain Name, registered by you in the .BERLIN gTLD. The proceedings under Paragraph 4 of this Policy will be conducted according to the Rules for Eligibility Requirements Dispute Resolution Policy (the "ERDRP Rules"), which are available at <http://dot.berlin>, and the selected administrative dispute resolution service provider's supplemental rules. For the purposes of this Policy, the term "Registered Name" means a Domain Name registration in the .BERLIN gTLD.

### 2. Your Representations.

By applying to register a Domain Name within the .BERLIN gTLD (a "Registered Name"), or by asking us to maintain or renew a Registered Name, you hereby represent and warrant to us that, to your knowledge, the registration of your Registered Name conforms to the eligibility requirements set forth in the .BERLIN gTLD Registration Policy (Eligibility Requirements) at <http://dot.berlin>.

### 3. Cancellations.

We will cancel Registered Names upon our receipt of a decision of an ERDRP Provider requiring such action in any administrative proceeding to which you were a party and which was conducted under this Policy or a later version of this Policy. We may also cancel a Registered Name registration in accordance with the terms of your Registration Agreement or other legal requirements.

### 4. Mandatory Administrative Proceeding.

This paragraph sets forth the types of disputes for which you are required to submit to a mandatory administrative proceeding under this Policy. These proceedings will be conducted before an ERDRP Provider that has been approved by the Internet Corporation for Assigned Names and Numbers ("ICANN"). A list of ERDRP Providers is available at <http://www.icann.org/udrp/ERDRP-providers.html>.

#### a. Applicable Disputes.

You are required to submit to a mandatory administrative proceeding in the event that a third party (a "Complainant") asserts to the applicable ERDRP Provider, in compliance with the ERDRP Rules that

your Registered Name does not meet the Eligibility Requirements; in the administrative proceeding, the Complainant must prove this element.

b. Registered Name Disputes.

Evidence of Registration in Violation of the Eligibility Requirements. For the purposes of paragraph 4, if the Panel of the ERDRP Provider finds that your Registered Name does not meet the Eligibility Requirements, then such finding shall be evidence that your Registered Name violated the Eligibility Requirements. If the Panel finds that your Registered Name violated the Eligibility Requirements, the Panel shall exercise the remedy set forth in the paragraph 5.

c. Registered Name Disputes.

How to Demonstrate Your Rights to and Legitimate Interests in the Registered Name in Responding to a Complaint. For the purposes of paragraph 4, when you receive a complaint, you should refer to the ERDRP Rules in determining how your response should be prepared.

**5. Procedure.**

a. Selection of ERDRP Provider. The Complainant shall select the ERDRP Provider from those on the list of ERDRP Providers by submitting the complaint to that ERDRP Provider. The selected ERDRP Provider will administer the proceeding.

b. Initiation of Proceeding and Process and Appointment of the Panel. The ERDRP Rules state the process for initiating and conducting a proceeding and for appointing the panel that will decide the dispute (the "Panel").

c. Fees. All fees charged by an ERDRP Provider in connection with any dispute before a Panel shall be paid in accordance with the ERDRP Rules.

d. Our Involvement in Administrative Proceedings. We do not, and will not, participate in the administration or conduct of any proceeding before a Panel. In addition, we will not be liable as a result of any decisions rendered by the Panel.

e. Remedy. The remedy available to a Complainant pursuant to any proceeding before a Panel shall be limited to the cancellation of your Registered Name.

f. Notification and Publication. The ERDRP Provider shall notify us and ICANN of any decision made by a Panel with respect to a Registered Name. All decisions under this Policy will be published in full over the Internet, except when a Panel determines in an exceptional case to redact portions of its decision.

**6. All Other Disputes and Litigation.**

All other disputes between you and any party other than us regarding your Registered Name that are not brought pursuant to the mandatory administrative proceeding provisions of Paragraph 4 shall be resolved between you and such other party through any court, arbitration or other proceeding that may be available.

**7. Our Involvement in Disputes.**

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We will not participate in any way in any dispute between you and any party other than us or the operator of the .BERLIN gTLD (Registry) regarding the registration and use of your Registered Name. You shall not name us as a party or otherwise include us in any such proceeding. In the event that we are named as a party in any such proceeding, we reserve the right to raise any and all defenses deemed appropriate, and to take any other action necessary to defend ourselves.

**8. Maintaining the Status Quo.**

We will not cancel, transfer, activate, deactivate, or otherwise change the status of any Registered Name under this Policy except as provided in Paragraph 3 above.

**9. Changing Registrars during a Dispute.**

You may not transfer your Registered Name to another Registrar during a pending administrative proceeding brought pursuant to Paragraph 4 or for a period of fifteen (15) business days (as observed in the location of our principal place of business) after such proceeding is concluded.

**10. Policy Modifications.**

We reserve the right to modify this Policy at any time with the permission of ICANN. We will post our revised Policy at <http://dot.berlin> at least thirty (30) calendar days before it becomes effective. Unless this Policy has already been invoked by the submission of a complaint to an ERDRP Provider, in which event the version of the Policy in effect at the time it was invoked will apply to you until the dispute is over, all such changes will be binding upon you with respect to any Registered Name dispute, whether the dispute arose before, on or after the effective date of our change. In the event that you object to a change in this Policy, your sole remedy is to cancel your Registered Name, provided that you will not be entitled to a refund of any fees you paid to us. The revised Policy will apply to you until you cancel your Registered Name.

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## Eligibility Requirements Dispute Resolution Policy (ERDRP) – Rules

The Eligibility Requirements Dispute Resolution Policy (ERDRP) Rules shall be followed by all ERDRP Providers. The ERDRP Rules have been developed on existing standard Dispute Resolution Policies and adopted to the gTLD .BERLIN Registry. ERDRP Providers may supplement these rules, as appropriate.

Administrative proceedings for the resolution of disputes under the ERDRP adopted by ICANN shall be governed by these Rules and also any Supplemental Rules of the Provider administering the proceedings, as posted on its web site.

### 1. Definitions.

In these Rules:

- Complainant means the party initiating a complaint concerning a Domain Name.
- Domain name means a domain name that is registered in the .BERLIN gTLD.
- Eligibility Requirements means the eligibility requirements set out in the .BERLIN Registration Policy.
- ICANN refers to the Internet Corporation for Assigned Names and Numbers.
- Mutual Jurisdiction means a court jurisdiction at the location of either (a) the principal office of the Registrar (provided the Registrant has submitted in its Registration Agreement to that jurisdiction for court adjudication of disputes concerning or arising from the use of the Domain Name) or (b) the Registrant's address as shown for the registration of the Domain Name in the Registrar's Whois database at the time the complaint is submitted to the Provider.
- Panel means an administrative panel appointed by a Provider to decide a complaint concerning a Domain Name.
- Panelist means an individual appointed by a Provider to be a member of a Panel.
- Party means a Complainant or a Respondent.
- Policy means the ELIGIBILITY REQUIREMENTS DISPUTE RESOLUTION POLICY that is incorporated by reference and made a part of the Registration Agreement.
- Provider means a dispute-resolution service provider approved by ICANN. A list of such Providers appears at <http://www.icann.org> or/and <http://dot.berlin>.
- Registrar means the entity with which the Respondent has registered a Domain Name that is the subject of a complaint.
- Registrant means the holder of a Domain Name.
- Registration Agreement means the agreement between a Registrar and a Registrant.
- Respondent means the holder of a Domain Name against which a complaint is initiated.
- Reverse Domain Name Hijacking means using the Policy in bad faith to attempt to deprive a Registrant of a Domain Name.
- Registry means dotBERLIN GmbH & Co. KG, a company in Germany, with a contract with ICANN to operate the gTLD .BERLIN.
- Supplemental Rules means any rules adopted by the Provider to supplement these Rules. Supplemental Rules shall not be inconsistent with the Policy or these Rules and shall cover such topics as fees, word and page limits and guidelines, the means for communicating with the Provider and the Panel, and the form of cover sheets.

### 2. Communications.

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a. When notifying a complaint to the Respondent, it is the Provider's responsibility to employ reasonably available means calculated to achieve actual notice to the Respondent. Achieving actual notice, or employing the following measures to do so, shall discharge this responsibility:

i. sending the complaint (including annexes to the extent available in electronic form) to all postal, facsimile and email addresses shown in the Domain Name registration data in the Registrar's Whois database for the Registrant and the administrative contact; and

ii. sending the complaint, to the extent practicable, to all other addresses provided to the Provider by the Complainant; or

iii. sending the complaint to any address the Respondent has notified the Provider it prefers.

b. Except as provided in Paragraph 2(a), any written communication to the Complainant or the Respondent provided for under these Rules shall be made by the preferred means stated by the Complainant or the Respondent, respectively (see Paragraphs 3(b)(iii) and 5(b)(iii)), or in the absence of such specification

i. by facsimile transmission, with a confirmation of transmission; or

ii. by postal or courier service, postage pre-paid and return receipt requested; or

iii. electronically via the Internet, provided a record of its transmission is available.

c. Any communication to the Provider or the Panel shall be made by the means and in the manner (including number of copies) stated in the Provider's Supplemental Rules.

d. Communications shall be made in the language(s) prescribed in Paragraph 11.

e. Either Party may update its contact details by notifying the Provider and the Registrar.

f. Except as otherwise provided in these Rules, or decided by a Panel, all communications provided for under these Rules shall be deemed to have been made:

i. if delivered by facsimile transmission, on the date shown on the confirmation of transmission; or

ii. if by postal or courier service, on the date marked on the receipt; or

iii. if via the Internet, on the date that the communication was transmitted, provided that the date of transmission is verifiable.

g. Except as otherwise provided in these Rules, all time periods calculated under these Rules shall begin to run on the earliest date that the communication is deemed to have been made in accordance with Paragraph 2(f).

h. Any communication by

i. a Panel to any Party shall be copied to the Provider and to the other Party;

- ii. the Provider to any Party shall be copied to the other Party; and
- iii. a Party shall be copied to the other Party, the Panel and the Provider, as the case may be.
- i. It shall be the responsibility of the sender to retain records of the fact and circumstances of sending, which shall be available for inspection by affected parties and for reporting purposes.
- h. In the event a Party sending a communication receives notification of non-delivery of the communication, that Party shall promptly notify the Panel (or, if no Panel is yet appointed, the Provider) of the circumstances of the notification.

### 3. The Complaint.

- a. Any person or entity may submit a complaint in accordance with the Policy and these Rules to any Provider. A copy of the complaint shall be sent to the Respondent and the concerned Registrar(s).
  - b. The complaint shall be submitted in hard copy and in electronic form (except for annexes not available in electronic form) and shall:
    - i. Request that the complaint be submitted for decision in accordance with the Policy and these Rules;
    - ii. Provide the name, postal and email addresses, and the telephone and facsimile numbers of the Complainant and of any representative authorized to act for the Complainant in the administrative proceeding;
    - iii. Specify a preferred method for communications directed to the Complainant in the administrative proceeding (including person to be contacted, medium, and address information) for each of (A) electronic-only material and (B) material including hard copy;
    - iv. Provide the name of the Respondent and all information (including any postal and email addresses and telephone and facsimile numbers) known to the Complainant regarding how to contact the Respondent or any representative of the Respondent, including contact information based on pre-complaint dealings, in sufficient detail to allow the Provider to send the complaint as described in Paragraph 2(a);
    - v. Specify the Domain Name(s) that is/are the subject of the complaint;
    - vi. Identify the Registrar(s) with whom the Domain Name(s) is/are registered at the time the complaint is filed;
    - vii. Describe, in accordance with the Policy, the grounds on which the complaint is made including, in particular, the manner in which the Respondent does not meet the Eligibility Requirements.
- The description shall comply with any word or page limit set forth in the Provider's Supplemental Rules;
- viii. Identify any other legal proceedings that have been commenced or terminated in connection with or relating to any of the domain name(s) that are the subject of the complaint;

ix. State that a copy of the complaint, together with the cover sheet as prescribed by the Provider's Supplemental Rules, has been sent or transmitted to the Respondent in accordance with Paragraph 2(b) and to the concerned Registrar(s);

x. Identify the Mutual Jurisdiction (as defined in Paragraph 1) to which the Complainant will submit, with respect to any challenges to a decision in the administrative proceeding cancelling the Domain Name, as follows:

"The Complainant hereby designates [identify precisely the court jurisdiction] as the Mutual Jurisdiction, for the purposes of any challenges to a decision in the administrative proceeding cancelling or transferring the domain name."

xi. Conclude with the following statement followed by the signature of the Complainant or its authorized 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 Registrant and waives all such claims and remedies against (a) the dispute-resolution provider and panelists, except in the case of deliberate wrongdoing, (b) the Registrar, (c) the registry operator, (d) the Registry, and (e) the Internet Corporation for Assigned Names and Numbers, as well as their directors, officers, employees, and agents."

"The Complainant certifies that the information contained in this Complaint is to the best of the 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

xii. Annex any documentary or other evidence together with a schedule indexing such evidence.

The complaint may relate to more than one Domain Name, provided that the Domain Names are registered by the same Registrant.

#### **4. Notification of Complaint.**

a. The Provider shall review the complaint for formal compliance with the Policy and these Rules. If the complaint is found to be in compliance, then the Provider shall forward the complaint (together with the explanatory cover sheet prescribed by the Provider's Supplemental Rules) to the Respondent, in the manner prescribed by Paragraph 2(a), within three (3) business days (as observed at the Provider's principal place of business) following receipt of the fees to be paid by the Complainant in accordance with Paragraph 19.

b. If the Provider finds the complaint to be formally deficient, it shall promptly notify the Complainant and the Respondent of the nature of the deficiencies identified. The Complainant shall have five (5) calendar days within which to correct any such deficiencies, after which the administrative proceeding

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will be deemed withdrawn without prejudice to the submission of a different complaint by the Complainant. The Provider shall notify the Complainant, the Respondent and the concerned Registrar(s) of the withdrawal.

c. The date of commencement of the administrative proceeding shall be the date on which the Provider notifies the complaint to the Respondent in accordance with Paragraph 2(a).

d. The Provider shall immediately notify the Complainant, the Respondent, the concerned Registrar(s), the Registry and ICANN of the date of commencement of the administrative proceeding.

## **5. The Response.**

a. Within twenty (20) calendar days of the date of commencement of the administrative proceeding the Respondent shall submit a response to the Provider.

b. The response shall be submitted in hard copy and in electronic form (except for annexes not in electronic form) and shall:

i. Respond specifically to the statements and allegations contained in the complaint and include any and all bases that the Respondent meets the Eligibility Requirements and should retain registration and use of the disputed Domain Name (This portion of the response shall comply with any word or page limit set forth in the Provider's Supplemental Rules.);

ii. Provide the name, postal and e-mail addresses, and the telephone and facsimile numbers of the Respondent and of any representative authorized to act for the Respondent in the administrative proceeding;

iii. Specify a preferred method for communications directed to the Respondent in the administrative proceeding (including person to be contacted, medium, and address information) for each of (A) electronic-only material and (B) material including hard copy;

iv. Identify any other legal proceedings that have been commenced or terminated in connection with or relating to any of the Domain Name(s) that are the subject of the complaint;

v. State that a copy of the response has been sent or transmitted to the Complainant, in accordance with Paragraph 2(b); and

vi. Conclude with the following statement followed by the signature of the Respondent or its authorized representative:

vii. "The Respondent certifies that the information contained in this Response is to the best of the 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



viii. Annex any documentary or other evidence upon which the Respondent relies, together with a schedule indexing such documents.

c. 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 stipulation between the Parties, provided the stipulation is approved by the Provider.

d. If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint.

**6. Appointment of the Panel and timing of decision.**

a. Each Provider shall maintain and publish a publicly available list of panelists and their qualifications.

b. The Provider shall endeavour to appoint, within five (5) business days following receipt of the response by the Provider or the lapse of the time period for the submission thereof, a single Panelist from its list of panelists.

c. Once the Panel is appointed, the Provider shall notify the Parties of the Panelist appointed and the date by which, absent exceptional circumstances, the Panel shall forward its decision on the complaint to the Provider.

**7. Impartiality and independence.**

A Panelist shall be impartial and independent and shall have, before accepting appointment, disclosed to the Provider any circumstances giving rise to justifiable doubt as to the Panelist's impartiality or independence. If, at any stage during the administrative proceeding, new circumstances arise that could give rise to justifiable doubt as to the impartiality or independence of the Panelist, that Panelist shall promptly disclose such circumstances to the Provider. In such event, the Provider shall have the discretion to appoint a substitute Panelist.

**8. Communication between Parties and the Panel.**

No Party or anyone acting on its behalf may have any unilateral communication with the Panel. All communications by a Party to the Panel or to the Provider shall be made to a case administrator appointed by the Provider in the manner prescribed in the Provider's Supplemental Rules.

**9. Transmission of the file to the Panel.**

The Provider shall forward the file to the Panel as soon as the Panelist is appointed.

**10. General Powers of the Panel.**

a. The Panel shall conduct the administrative proceeding in such manner as it considers appropriate in accordance with the Policy and these Rules.

b. In all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case.

c. The Panel shall ensure that the administrative proceeding takes place with due expedition. It may, at the request of a Party or on its own motion, extend, in exceptional cases, a period of time fixed by these Rules or by the Panel.

d. The Panel shall determine the admissibility, relevance, materiality and weight of the evidence.

e. A Panel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules.

#### **11. Language of proceedings.**

a. Unless otherwise agreed by the Parties, the administrative proceeding shall be in German or in exceptional circumstances in English, subject to the authority of the Provider or the Panel, as the case may be, to determine otherwise, having regard to the circumstances of the administrative proceeding.

b. The Panel may order that any documents submitted in languages other than the language of the administrative proceeding be accompanied by a translation in whole or in part into the language of the administrative proceeding.

#### **12. Further statements.**

In addition to the complaint and the response, the Panel may request, in its sole discretion, further statements or documents from either of the Parties

#### **13. In-person hearings.**

There shall be no in-person hearings (including hearings by teleconference, videoconference, and web conference), unless the Panel determines, in its sole discretion and as an exceptional matter, that such a hearing is necessary for deciding the complaint.

#### **14. Default.**

a. 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 Panel, the Panel shall proceed to a decision on the complaint.

b. If a Party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, these Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

#### **15. Panel decisions.**

a. A Panel 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.

b. In the absence of exceptional circumstances, the Panel shall forward its decision on the complaint to the Provider within fourteen (14) calendar days of its appointment pursuant to Paragraph 6.

c. The Panel's decision shall be in writing, provide the reasons on which it is based, indicate the date on which it was rendered and identify the name of the Panelist.

d. Panel decisions shall normally comply with the guidelines as to length set forth in the Provider's Supplemental Rules. If the Panel concludes that the dispute is not within the scope of Paragraph 4(a) of the Policy, it shall so state. If after considering the submissions the Panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain name holder, the Panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.

**16. Communication of decision to Parties.**

a. Within three (3) business days (as observed at the Provider's principal place of business) after receiving the decision from the Panel, the Provider shall communicate the full text of the decision to each Party, the concerned Registrar(s), the Registry and ICANN. In the event of a determination in favour of a Complainant, the concerned Registrar(s) shall immediately communicate to each Party, the Provider, the Registry and ICANN the date for the implementation of the decision in accordance with the Policy.

b. Except if the Panel determines otherwise (see Paragraph 5 of the Policy), the Provider shall publish the full decision and the date of its implementation on a publicly accessible web site. In any event, the portion of any decision determining a complaint to have been brought in bad faith (see Paragraph 15d of these Rules) shall be published.

**17. Settlement or other grounds for termination.**

a. If the Complainant notifies the Provider or the Panel that the Parties have agreed on a settlement, then the Provider or the Panel, as the case may be, shall suspend or terminate the administrative proceeding.

b. If it becomes unnecessary or impossible to continue the administrative proceeding for any other reason, then the Provider or the Panel, as the case may be, shall terminate the administrative proceeding, unless a Party raises justifiable grounds for objection within a period of time to be determined by the Provider or the Panel.

**18. Effect of court proceedings.**

a. In the event of any legal proceedings initiated prior to or during an administrative proceeding in respect of a domain name dispute that is the subject of the complaint, the Panel shall have the discretion to decide whether to suspend or terminate the administrative proceeding, or to proceed to a decision.

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b. In the event that a Party initiates any legal proceedings during the pendency of an administrative proceeding in respect of a domain name dispute that is the subject of the complaint, it shall promptly notify the Panel and the Provider. See Paragraph 8 above.

**19. Fees.**

a. The Complainant shall pay to the Provider an initial fixed fee, in accordance with the Provider's Supplemental Rules, within the time and in the amount required. The Complainant shall bear all of the Provider's fees, except as prescribed under Paragraph 19(d).

b. The Provider shall be under no obligation to take any action on a complaint until it has received from Complainant the initial fee in accordance with Paragraph 19(a).

c. If the Provider has not received the fee within ten (10) calendar days of receiving the complaint, the Provider may terminate the administrative proceeding.

d. In exceptional circumstances, for example in the event an in-person hearing is held, the Provider shall request the Parties for the payment of additional fees, which shall be established in agreement with the Parties and the Panel.

**20. Exclusion of liability.**

Except in the case of deliberate wrongdoing, neither the Provider nor a Panelist shall be liable to a Party for any act or omission in connection with any administrative proceeding under these Rules.

**21. Amendments.**

The version of these Rules in effect at the time of the submission of the complaint to the Provider shall apply to the administrative proceeding commenced thereby.