

**IE Domain Registry CLG**

**Policy Advisory Committee – PAC #17**

**Minutes from the 3 September 2018 Meeting**



**IE Domain Registry**

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# Minutes of the PAC #17 Meeting held on 3 September 2018

**Meeting Location:** Liffey Suite, Hilton Garden Inn, Custom House Quay, Dublin 1.

**Meeting Time:** Called to order at 11:05am by the PAC Chairman.

**Members present:**

|   |
|---|
| Chair   |
| Association of Patent and Trade Mark Attorneys (APTMA)              |
| Department of Communications, Climate Action & Environment (DCCAIE) |
| Enterprise Ireland  |
| HEAnet  |
| Internet Service Providers Association of Ireland (ISPAI)           |
| .ie Accredited Registrar (Hosting Ireland)                          |
| .ie Accredited Registrar (Irish Domains)                            |
| .ie Accredited Registrar (Register 365)                             |
| IE Domain Registry (IEDR)   |

**IEDR Representatives:**

|                   |
|-------------------|
| David Curtin      |
| Oonagh McCutcheon |

**PAC Secretariat:**

|              |
|--------------|
| Sarah Keegan |
|--------------|

## 1. Apologies – Members not present

- Department of Business, Enterprise and Innovation - pre-arranged
- Irish Computer Society (ICS) - pre-arranged
- .ie accredited Registrar (Blacknight Solutions) - pre-arranged
- Law Society of Ireland
- Small Firms Association (SFA) – pre-arranged

## 2. Minutes from the 12 June 2018 PAC #16 meeting

It was confirmed that the Minutes from the 12 June 2018 PAC #16 meeting were published online and that members had no further comments regarding their content. The PAC Chair formally approved and signed the Minutes.

## 3. Review of action points arising from the PAC #16 meeting

### a. Proposal to alter the operation of the DNS check validation process

The proposal was summarised for the PAC, along with the action item from the last meeting. This related to IEDR updating its technical systems to support the altered DNS check process operations.

IEDR confirmed that its software developers were working on the implementation of this operational change at present. It is expected that this change will be implemented in Q4 2018. Further updates will be provided in due course.

## 4. Update on the policy change request – to introduce an Alternative Dispute Resolution (ADR) Process to the .ie namespace

The action item from the last meeting was summarised. This related to the Working Group continuing its review of the proposed policy change, in particular, the design and scope of the process. It was confirmed that the Working Group had made significant progress since the PAC #16 meeting, having engaged via three conference calls and the mailing list in the intervening months.

The PAC was reminded that consensus had previously been established for the complaint filtering outlined in “Levels 1-3” of the complaint filtering proposal – this is detailed in the supporting slides, which are available on the IEDR website at <https://www.iedr.ie/p30/policy-development/> .

It was noted that discussions on the ADR process were focused on the proposed complaint filtering labelled “Level 4” complaints.

## 4.1. Process Objectives

The PAC was reminded of the objectives behind the policy change proposal, which are as follows:-

- Introduce an easier, more affordable and faster dispute process (*particularly compared to ie Dispute Resolution Policy (ieDRP)*)
- Ensure the Policy reflects “plain-English” (*easily understood by businesses and consumers*)
- Ensure the burden of proof is on the Complainant (*Registrant is given the benefit of doubt as their application has previously been evaluated and adjudged to have met the Registration and Naming Policy requirements*)
- Mediation to be offered and encouraged (*but not compulsory*)
- Right of Appeal should exist (*for Registrant*)
- Statutory rights not affected
- Decisions made by the Specialist should be binding (*subject to 21-day stay of implementation, to allow for legal action*)

## 4.2. Process Flow

There was discussion on the proposed ADR process flow. This is available in the supporting slides from the meeting at <https://www.iedr.ie/p30/policy-development/> . The PAC was also reminded that the following processes would be available under the proposed operation of the ADR:-

- **Mediation**

The parties may optionally discuss the complaint with the aid of a trained mediator to find a resolution.

- **Summary Decision**

Available where the Registrant refuses to engage with the ADR process, i.e. provides no rebuttal or defence when notified of the complaint. Therefore, the Specialist will make a decision based on the information provided by the Complainant. The Registrant may appeal a decision within 21 days of the decision being made. This may be done by requesting a Specialist Decision, or by launching a legal challenge.

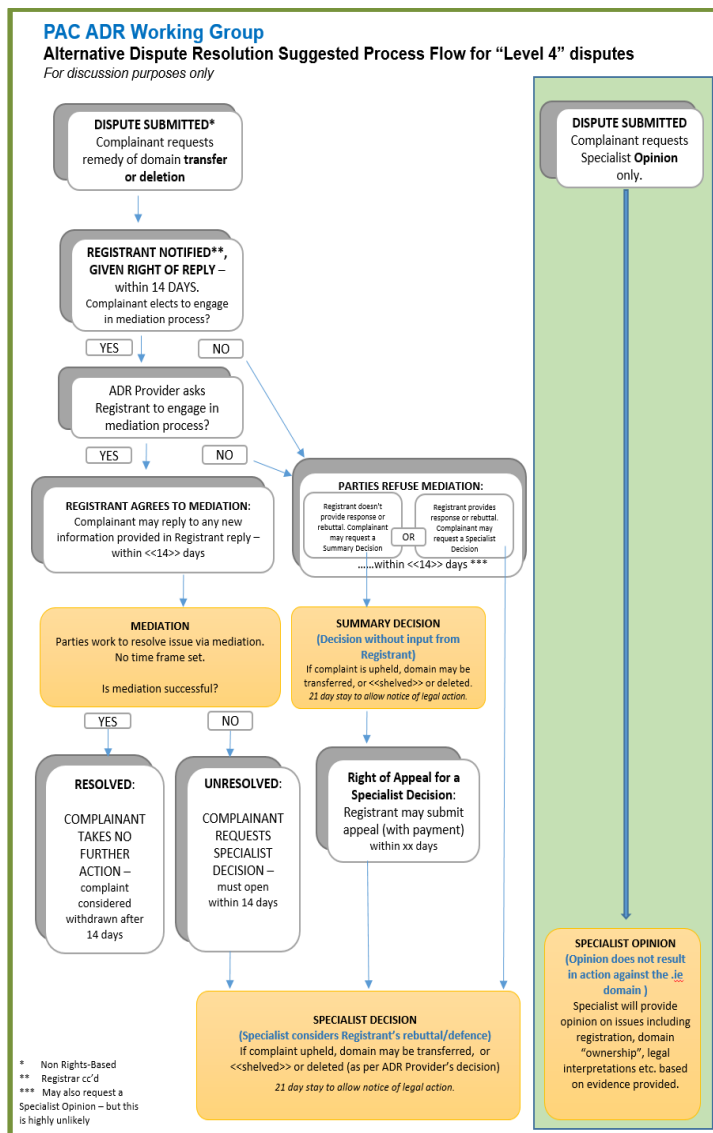
- **Specialist Decision**

Available where the Registrant responds to the complaint outlining their defence. The Specialist will review the evidence provided by both Parties and make a binding decision. Any Party may appeal within 21 days of the decision being made by launching a legal challenge.

- **Specialist Opinion**

Available where the Complainant requests a non-binding Opinion (made without prejudice) from the Specialist. The Specialist will review the allegation made by the Complainant, in addition to the supporting evidence provided. The Specialist will then provide an opinion on the subject matter and whether the evidence supports the allegation.

There was significant discussion on this matter. One view queried whether this process should be offered under the ADRP. The value of this process from a consumer protection perspective was acknowledged by the wider PAC membership, which was in favour of the inclusion of this service as part of the ADR process. One accredited .ie Registrar representative held a minority opinion against the availability of the service but acknowledged the wider PAC consensus and agreed that it would defer to the majority opinion / consensus of the PAC.



It was confirmed that there was consensus for this proposed ADR process flow, subject to further WG deliberations.

- **Remediation Options**

Discussion followed on the potential remediation options that would be available under the ADR process. These are as follows:

- ❖ **Transfer of the Domain**

- Where the complaint is upheld, the successful Complainant would be granted right to use the domain (after a 21 day stay on decision implementation to allow for legal challenge, or appeal from the Registrant in cases of Summary Decision)

## ❖ **Deletion**

- Where the complaint is upheld, the successful Complainant may request the deletion of the domain – this would make the domain available for registration on a first come, first served basis (after a 21 day stay on decision implementation to allow for legal challenge, or appeal from the Registrant in cases of Summary Decision)

## ❖ **Shelving (proposal rejected)**

- It was noted that the Working Group had considered the potential “shelving” of the domain as a remediation option where both Parties are agreeable. This would result in the domain being made unavailable for registration to any party. It was confirmed that feedback was sought from another ccTLD operator on this matter, particularly to determine if any scenarios exist where this may be an appropriate remediation option. It was noted that “shelving” was used where law enforcement / regulators required control of the domain following due process. Therefore, it was agreed that “shelving” would not be an available remediation option under the proposed .ie ADR process.

## • **Timeframes**

The Working Group advised that it intends to give further consideration to the allocated response timeframes associated with each available process, recognising the important need to ensure Registrants have sufficient time to gain awareness of the complaint and respond accordingly.

It was agreed that the previously proposed timeframe of 14 calendar days may be challenging for Registrants, particularly in view of the need to prepare response documentation. After discussion, there was emerging consensus amongst the Working Group for a proposed timeframe of 20 working days for Registrants to reply to complaint notifications.

## • **Other Process Considerations**

There was discussion on whether the Parties to a dispute would be allowed to make multiple submissions. It was noted that a limit of one opportunity to engage would be unduly harsh for those inexperienced with the ADR process. One suggestion was that both Parties should be granted one opportunity to engage, and one opportunity to reply to the counter arguments provided.

Brief discussion followed on the potential for recognising repeat-offender Registrants that are party to numerous successful complaints from Complainants under the ADR (where a pattern of offending by the Registrant is identified).

The Working Group noted that these points had not been considered in detail and that they will be discussed on the next ADR Working Group conference call.

### 4.3. Process Criteria

- ***Avoiding Spurious Complaints***

The importance of mitigating the potential for spurious / vexatious or time-wasting complaints was acknowledged. It was noted that the proposed cost structure had been selected on the basis that it would deter non-serious complainants (as Complainant's were obliged to pay the required fee at the time of complaint submission).

It was also clarified that the Complainant would be required to provide evidence that they meet the entry requirements, in addition to the evidence supporting their complaint, at the time of complaint submission. This would filter out and protect Registrants from vexatious or spurious complaints.

- ***Entry Requirements***

It was noted that all Complainants would be required to show evidence that they have "skin in the game", i.e. legitimate interests in the domain name being disputed, or are negatively impacted by its registration.

The PAC were reminded that, during early stage discussions, it had been suggested that setting entry requirements that are too challenging may act as a deterrent to those wishing to enter the process (especially those with legitimate complaints). Therefore, the importance of ensuring an appropriate balance with regard to the process entry criteria was acknowledged.

- ***Criteria for a Successful Complaint***

There was discussion on the proposed criteria for a successful complaint. The current draft proposes that a Complainant must provide evidence in support of any one of the criteria. The Working Group noted that there was still some outstanding matters to be discussed / decided on, particularly with regard to "and/or" terms within the proposed criteria. It is expected that this matter will be considered and finalised on the next ADR Working Group conference call.

Discussion followed on the potential inclusion of a provision deeming "Protected Identifier" infringement as a valid complaint type under the ADR (such complaints are addressed under the WIPO operated ieDRP). The PAC members were reminded that one of the objectives of the ADR process was to offer a cheaper and faster alternative to the WIPO process. Therefore, it was agreed that "Protected Identifier" rights should not necessarily be excluded from the ADR process criteria.

It was noted that the ADR process had been considered a "non-rights based" dispute process until now, and that further consideration would be given to this matter on the next ADR Working Group conference call.

In the interim, the PAC Secretariat was asked to engage with the preferred process operator regarding any potential impact of including such a provision within the ADR, particular from a commercial perspective.



#### **4.4. Stakeholder Consultation**

It was suggested that a limited consultation should be held with interested stakeholders, especially the accredited .ie Registrar channel and the Intellectual Property Rights community, to ensure the opinions of these communities were taken into consideration during the decision making process.

There was consensus for this suggestion and it was agreed that the PAC Secretariat would draft a plain-English policy document for the ADRP when the process criteria had been finalised by the Working Group. This will then be circulated to the relevant stakeholders during the consultation process.

#### **4.5. Next Steps**

- Engage with the preferred process operator to confirm the cost impact of including criteria relating to infringement of a “Protected Identifier” (as per WIPO operated ieDRP)
- Working Group to develop consensus for the entry requirements, criteria for a successful complaint, and appropriate notification timeframes
- 30 day consultation to be held with interested stakeholders

Further updates will be provided at the PAC #18 meeting.

### **5. Update on the policy change request – to remove restrictions on .ie domains corresponding to TLDs**

The action item from the last meeting was summarised. This related to IEDR working to schedule the release of the 14 relevant domains once other planned technical changes have been implemented (i.e. DNS check operational change and Console changes for natural person Registrants to opt-in to publishing their name on WHOIS). It is expected that the Release Mechanism for these domains will be the precedent Sunrise / Landrush / General Availability model as previously agreed by the PAC.

As technical work is in-progress on the other planned technical changes, it was confirmed that there was no update on this matter. It was suggested that the item be carried over to the next PAC #18 meeting.

It was counter-proposed that the policy change be implemented prior to the release of the relevant domains in order to avoid a potential conflict within the Registration and Naming Policy. Specifically, it was acknowledged that the Registration and Naming Policy currently prohibit the registration of .ie domains corresponding to TLD extensions.

However, .ie domains which correspond to nTLD extensions were already registered prior to ICANN's introduction of those namespaces (therefore, the .ie registrations were not in breach of the Registration and Naming Policy at the time of registration). It should also be noted that some .ie domains that correspond to ccTLD extensions were registered following the policy change relating to the introduction of one and two letter domains. Therefore, while there is a temporary conflict between the existing Registration and Naming Policy and zone (which could be resolved through the modification of the Policy), IEDR expressed reservations about updating the Policy, while the 14 domains remained on the “blocked” list, pending the Sunrise / Landrush process. IEDR expressed the need to consult with the new Board of Directors on the proposals. IEDR advised that it would consider the matter further and revert to the PAC in due course.

## 6. Policy change conclusion template on the policy change requests arising from the introduction of the EU General Data Protection Regulation (GDPR)

The IEDR briefly summarised the policy changes that were required in advance of GDPR-enforcement. IEDR reminded the PAC that modifications were made to the .ie Privacy Policy and .ie WHOIS Policy. It was further noted that the .ie Data and Document Retention Policy was introduced to ensure GDPR-compliance, enhancing transparency on retention practices in the .ie namespace.

Based on the post-GDPR experience to date, it was noted that no further changes had been required since the PAC were last updated on the policy changes made. On that basis, the policy conclusion template had been drafted by the PAC Secretariat.

No objections were raised to the conclusion of this policy change request, and the PAC Chair formally signed the policy change conclusion template.

## 7. Any Other Business

### a) Annual Report

It was confirmed that the Annual Report on the operations of the PAC in 2017 was presented to the IEDR Board of Directors at its last meeting. The Board commented on the impressive work undertaken by the PAC and conveyed its thanks to members for their dedication and efforts to date.

### b) Industry related developments / relevant legislative changes

There was brief discussion on the progression of the transposal of the EU Directive on security of network and information systems (NIS Directive) into Irish Law. The PAC representative from the Department of Communications, Climate Action and Environment advised that it expects the Regulation will be sent to the Houses of the Oireachtas for approval in November 2017. It was also noted that a notification process for those designated as “Operators of Essential Services (OES)” is expected to begin once the Regulation has been stamped and approved.

There was further brief discussion on the exemptions for small enterprises from the obligations arising under designation as an OES, or Digital Service Provider (DSP).

Further updates will be provided at the PAC #18 meeting.

## 8. Next Steps

### **IEDR will:-**

- Continue preparing for the operational changes to the DNS check process, with a view to implementing this change in Q4 2018
- Continue preparing technical changes to facilitate toggling between the WHOIS opt-in / opt-out outputs for natural persons on Console (and potentially API)
- Consider finalising the policy change required to permit the registration of .ie domains that correspond to nTLD extensions (prior to the commencement of the Sunrise / Landrush process (the release mechanism previously agreed by PAC)

### **PAC Secretariat will:-**

- Engage with the ADR Working Group to progress discussions
- Engage with the preferred ADR operator regarding any potential impact of the proposed process criteria on the estimated process costs

## 9. Next Meeting

PAC Secretariat will engage with wider PAC to set a date for the next meeting, which is expected to be held in late November / December 2018, perhaps to coincide with Registrar Day on 21 November 2018.