

# Alternative Dispute Resolution Policy

This sets out the Policy, Processes, Procedures, Rules and Guidelines for disputing a .ie domain registration using the Alternative Dispute Resolution Process.



# Alternative Dispute Resolution Policy

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## 1. Definitions

**Abusively registered** refers to a Domain Name which was registered or used to take unfair advantage of or was unfairly detrimental to the Complainant's Rights;

**Bad Faith** means a Domain Name which was registered or used without legitimate intent, and/or to engage in deceptive conduct and/or to act in a way which is in breach of the Registrant's contractual obligations (as stated in the Registrant Terms and Conditions);

**Decision** means any binding decision reached by the Specialist in cases of a Summary Decision, Specialist Decision or Appeal;

**Complainant** means the party initiating and submitting a complaint concerning a .ie domain name registration;

**Complaint submission criteria** means the evidence that must be provided by a Complainant at the time of complaint submission. This is detailed in Section 2;

**Domain Name** means a Domain Name registered under the ".ie" Top Level Domain;

**Dispute Resolution Body** for the purpose of this policy means the Service Provider of the Alternative Dispute Resolution services as stated on the website of the IEDR, [www.iedr.ie](http://www.iedr.ie);

**IEDR** means IE Domain Registry CLG;

**Mediation** means the optional, impartial, independent mediation service which is offered to facilitate constructive discussions between the Parties in an attempt to find a mutually acceptable outcome to the complaint;

**Negatively impacted** means an adverse effect on the Complainant or their commercial interests arising from the registration or use of the Domain Name to the existing Registrant;

**Party** means a Complainant or Registrant. 'Parties' has a corresponding meaning;

**Registrant** means the holder of the legal right to use the Domain Name which is the subject of the complaint as evidenced by inclusion in the database of .ie domain name registrations;

**Rights** means any legal or other enforceable right, including but not limited to:

- Trade and service marks protected in the island of Ireland, or
- Personal names (including pseudonyms) by which the Complainant is commonly known or has acquired a reputation in on the island of Ireland, or
- Geographical indications that can prima facie be protected in the island of Ireland,
- Unregistered rights acquired through use.

**Registration and Naming Policy** means the policy each future Registrant and application must adhere to in order be granted the right to register and use a .ie Domain Name. This policy specifies what each future Registrant must provide to the IEDR in order to demonstrate their compliance with the IEDR's registration requirements, along with the requirements for the validity, availability, reachability and good management of the Domain Name, as well as complying with the technical requirements laid out in RFC 1034 and RFC 1035;

**Rules of the Process** means all Rules of the Alternative Dispute Resolution Policy as published on the websites of the Alternative Dispute Resolution Service Provider and the IEDR;

**Specialist** means the individual appointed by the Domain Resolution Body to review and, as applicable, adjudicate on the complaint;

**Summary Decision** means the outcome of the process through which a Complainant may request a binding decision from a Specialist on a complaint where the Registrant refuses to acknowledge the complaint/provide a defence;

**Specialist Decision** means the outcome of the process through which a Complainant may request a binding decision from a Specialist on a complaint where both Parties have engaged with the complaint process;

**Specialist Opinion** means the outcome of the process through which a Complainant may request a non-binding opinion based on the evidence provided by the potential Complainant in support of the subject matter.

## 2. Policy Statement

The Alternative Dispute Resolution Policy (ADRP) offers a fast and affordable way to resolve .ie domain name disputes<sup>1</sup>. It is operated by a Dispute Resolution Body approved under the European Union (Alternative Dispute Resolution for Consumer Disputes) Regulations 2015. The Dispute Resolution Body is listed on the IEDR website at [www.netneutrals.eu](http://www.netneutrals.eu).

IEDR implements binding decisions made by the Domain Dispute Specialist(s) engaged by the Dispute Resolution Body, as provided for in the .ie Registrant Terms and Conditions which all .ie Registrants agree to when registering a .ie domain name. The binding decisions of the Domain Dispute Specialist(s) are implemented after an appropriate timeframe for an appeal to be submitted has passed. It should be noted that this does not affect the statutory rights of any Party to the complaint.

In the implementation of this Alternative Dispute Resolution Policy, the Registrant shall be given the benefit of the doubt, particularly in circumstances which require decisions based on the balance of probabilities. This is because the Registrant's application has previously been evaluated and adjudged to have met the Registration and Naming Policy requirements of the Registry.

Specifically, when applying for a .ie domain name, future Registrants are required to show evidence of their compliance with the Registration and Naming Policy. This means that they must provide evidence of their connection to the island of Ireland, proof of their identity (if not provided with their proof of Connection), and prior to March 2018, show a claim to the domain name they're applying for.

### **Criteria for Submitting a Complaint**

When submitting a complaint under the ADRP, the burden of proof is on the Complainant. This means that the Complainant needs to provide evidence that it meets the complaint submission criteria.

Specifically, the Complainant will be required to prove to the Dispute Resolution Body that:-

- the Complainant would ordinarily be eligible to register the domain name in question if it was not already registered by the Registrant, and
- the Complainant has rights in the domain name or in marks or identifiers very similar to it, or that the Complainant's rights have been negatively impacted by the registration, and
- the registration of the domain should be revoked as it has been registered or used abusively or in bad faith.

Note that a dispute in relation to who was first to request to register the .ie name shall not be eligible for resolution under this Policy. This is because .ie domains are available on a first come, first served basis.

How a Complainant may open a complaint, the procedure and rules to follow, the guidelines on how to show evidence supporting a complaint are detailed in Sections 3 and 4 below.

### **Resolving the Dispute**

Under the ADRP, the Complainant can ask the Registrant to discuss the complaint in **mediation**.

If the Registrant acknowledges the complaint, but decides not to mediate, or mediation fails to resolve the complaint, the Complainant can request a **Specialist Decision**. This means that the evidence provided by both the Complainant and the Registrant will be considered by the Specialist.

If the Registrant does not acknowledge the complaint, the Complainant can request a **Summary Decision**. This means that the Specialist will make a decision based on the evidence provided only by the Complainant (as the Registrant has neither responded to the complaint nor provided a defence, nor a rebuttal).

If the Complainant just wants to get a non-binding opinion from the Specialist, it can request a **Specialist Opinion** at any time. The Specialist will review the evidence provided in support of the complaint, provide an opinion on the subject matter and whether the evidence provided supports the allegations within the complaint.

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<sup>1</sup> Note that the ie Formal Dispute Resolution Policy can be used for rights-based disputes. See <https://www.iedr.ie/dispute-resolution/>

### 3. ADR Processes

There are a number of processes available under the ADR service. These are explained in detail below, along with the procedures and rules that must be followed. Guidelines on demonstrating that you meet the applicable criteria for each process are detailed in Section 4.

#### 3.1. Mediation Process

The Complainant and the Registrant can work to resolve the dispute by communicating via the platform provided by the Dispute Resolution Body (currently the online forum, accessible to both parties and their advisers).

##### 3.1.1. Procedure

1. To request mediation, the Complainant should go to [www.netneutrals.eu](http://www.netneutrals.eu), pay the required fee<sup>2</sup>, and provide evidence that it meets the complaint submission criteria<sup>3</sup>.
2. If all is in order, the Dispute Resolution Body will then notify the Registrant of the complaint, ask that they provide a response/defence/rebuttal, and if they want to engage in mediation.
3. If the Registrant agrees to mediation, it and the Complainant are both granted access to the dispute resolution online forum and assigned a Mediator, who will help ensure that discussions are constructive.
4. The Complainant and the Registrant will be given periods of 20 working days to respond to each other's comments.
5. If the complaint is resolved through mediation, the Mediator will close the complaint.
6. If the complaint cannot be resolved through mediation, the Mediator may end the mediation process at any time.
7. The Complainant will then have the option to escalate the complaint through another ADR process, or take legal action (if it wishes to do so).

##### Note:

- **If the Complainant doesn't want to engage in mediation** – it can request a Specialist Decision or Specialist Opinion.
- **If the Registrant does not respond to the complaint** - the Complainant may request a Summary Decision or Specialist Opinion.
- **If the Registrant responds to the complaint, but does not want to engage in mediation** - the Complainant may request a Specialist Decision or Specialist Opinion. The Complainant may not request a Summary Decision.

##### 3.1.2. Rules

1. The Complainant must assert and provide evidence that it meets the following complaint submission criteria at the time of complaint submission:-
  - the Complainant would ordinarily be eligible to register the domain name in question if it was not already registered by the Registrant, and
  - the Complainant has rights in the domain name or in marks or identifiers very similar to it, or that the Complainant's rights have been negatively impacted by the registration, and
  - the registration of the domain should be revoked as it has been registered or used abusively or in bad faith.
2. The Complainant must pay the required fees to the Dispute Resolution Body at the time of complaint submission.
3. The Complainant must abide by all applicable Rules of the Process as published on the Dispute Resolution Body and IEDR's website.

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<sup>2</sup> See Fee Schedule at [www.netneutrals.eu](http://www.netneutrals.eu)

<sup>3</sup> The evidence/proof that you meet the criteria in 3.1.2.1

## 3.2. Summary Decision Process

The Complainant can request a Summary Decision from the Domain Dispute Specialist if the Registrant fails to respond to the complaint. This decision may result in the transfer of the domain to the Complainant, or the cancellation/revocation of the registration, or no action being taken against the registration. The decision is binding, however, this does not interfere with any Party's statutory rights. Implementation of decisions is subject to a 21 day stay to allow the relevant Party to communicate notice of legal action or its intention to appeal the decision to the Dispute Resolution Body.

### 3.2.1. Procedure

1. Submit a request for a Summary Decision at [www.netneutrals.eu](http://www.netneutrals.eu) and pay the required fee<sup>4</sup>. The Complainant will already have provided the required evidence showing that it meets the complaint submission criteria<sup>5</sup>.
2. The Specialist will review this evidence over a period of 20 working days, and make a binding decision on the complaint.
3. If the Specialist decides that the complaint is valid based on the evidence provided, the domain may be transferred to the Complainant, or cancelled.
4. If the Specialist decides that your complaint is invalid or fails based on the evidence provided, the Registrant may keep the domain registration.
5. If the complaint is upheld, the Registrant may appeal this Summary Decision by requesting a Specialist Decision (or by seeking legal intervention through an Irish Court). This must be communicated to the Dispute Resolution Body within 20 working days of the Specialist making their decision.
6. The Registry will implement the binding decision, subject to a 21 day stay for a notice of legal action or an appeal to be communicated to the Dispute Resolution Body.

### 3.2.2. Rules

1. The Complainant must assert and provide evidence that it meets the following complaint submission criteria at the time of complaint submission:-
  - the Complainant would ordinarily be eligible to register the domain name in question if it was not already registered by the Registrant, and
  - the Complainant has rights in the domain name or in marks or identifiers very similar to it, or that the Complainant's rights have been negatively impacted by the registration, and
  - the registration of the domain should be revoked as it has been registered or used abusively or in bad faith.
2. The Complainant must pay the required fees to the Dispute Resolution Body at the time of complaint submission.
3. The Registrant must have failed to respond or provide a defence or rebuttal to the complaint within the notification period of 20 working days.
4. The Complainant must abide by all applicable Rules of the Process as published on the websites of the Dispute Resolution Body and IEDR.
5. The Dispute Resolution Body must be notified of any appeal within 20 working days of the decision being made by the Specialist.

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<sup>4</sup> See Fee Schedule at [www.netneutrals.eu](http://www.netneutrals.eu)

<sup>5</sup> The evidence/proof that you meet the criteria in 3.2.2.1

### 3.3. Specialist Decision Process

The Complainant can request a decision from the Domain Dispute Specialist. The Complainant will have the opportunity to explain its point of view, and provide evidence supporting the complaint. The Registrant will also have the opportunity to provide evidence defending its position (as explained under the process rules in 3.3.2).

This decision may result in the transfer of the domain to the Complainant, the cancellation/revocation of the registration, or no action being taken against the registration. The decision is binding, however, this does not interfere with any Party's statutory rights. Implementation of decisions is subject to a 21 day stay to allow the relevant Party to communicate its intention to appeal the decision to the Dispute Resolution Body.

#### 3.3.1. Procedure:

1. Submit a request for a Specialist Decision at [www.netneutrals.eu](http://www.netneutrals.eu) and pay the required fee<sup>6</sup>. If it has not already done so, the Complainant must provide the required evidence showing that it meets the complaint submission criteria<sup>7</sup>.
2. The Registrant will also have the opportunity to defend the registration and provide evidence supporting its defence/rebuttal within a period of 20 working days.
3. The Specialist will review the information provided by the Complainant and the Registrant.
4. If the Specialist decides that the Complainant's complaint is valid based on the evidence provided, the domain may be transferred to the Complainant, or cancelled.
5. If the Specialist decides that the Complainant's complaint is invalid or fails based on the evidence provided, the Registrant may keep the domain registration.
6. If the complaint is upheld, the Registrant may appeal the decision within 21 days by seeking legal intervention through an Irish Court.
7. The Registry will implement the binding decision, subject to a 21 day stay for notice of legal action or an appeal by any Party to be communicated to the Dispute Resolution Body.

#### 3.3.2. Rules

1. The Complainant must assert and provide evidence that it meets the following complaint submission criteria at the time of complaint submission:-
  - the Complainant would ordinarily be eligible to register the domain name in question if it was not already registered by the Registrant, and
  - the Complainant has rights in the domain name or in marks or identifiers very similar to it, or that the Complainant's rights have been negatively impacted by the registration, and
  - the registration of the domain should be revoked as it has been registered or used abusively or in bad faith.
2. The Complainant must pay the required fees to the Dispute Resolution Body at the time of complaint submission.
3. The Complainant must abide by all applicable Rules of the Process as published on the websites of the Dispute Resolution Body and IEDR.
4. The Dispute Resolution Body must be notified of all appeals within 21 days of the decision being made by the Specialist.

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<sup>6</sup> See Fee Schedule at [www.netneutrals.eu](http://www.netneutrals.eu)

<sup>7</sup> The evidence/proof that you meet the criteria in 3.3.2.1

### 3.4. Specialist Opinion Process

The Complainant can request an opinion from the Domain Dispute Specialist.

The Specialist will review the evidence provided by the Complainant in support of the complaint, and provide an opinion on the subject matter and whether the evidence supports the opinion.

The opinion is non-binding, is made without prejudice, and will not result in the Registry being asked to take any action against the registration.

**Note that this avenue will likely be useful to the Complainant to inform any decisions on next steps when considering mediation and other options in relation to a complaint against the registration.**

#### 3.4.1. Procedure

1. Submit a request for a Specialist Opinion at [www.netneutrals.eu](http://www.netneutrals.eu), and pay the required fee<sup>8</sup>. The Complainant must provide the required evidence showing that it meets the complaint submission criteria<sup>9</sup>.
2. The Specialist will review the information provided over a period of 20 working days.
3. The Specialist will provide a non-binding opinion on the matter at the end of the period of 20 working days.

#### 3.4.2. Rules

1. The Complainant must assert and provide evidence that it meets the following complaint submission criteria at the time of complaint submission:-
  - the Complainant would ordinarily be eligible to register the domain name in question if it was not already registered by the Registrant, and
  - the Complainant has rights in the domain name or in marks or identifiers very similar to it, or that the Complainant's rights have been negatively impacted by the registration, and
  - the registration of the domain should be revoked as it has been registered or used abusively or in bad faith.
2. The Complainant must pay the required fees to the Dispute Resolution Body at the time of complaint submission.
3. The Complainant must assert an allegation and provide evidence in support of this at the time of submitting the request for a Specialist Opinion.
4. The Complainant must abide by all applicable Rules of the Process as published on the Dispute Resolution Body and IEDR's website.

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<sup>8</sup> See Fee Schedule at [www.netneutrals.eu](http://www.netneutrals.eu)

<sup>9</sup> The evidence/proof that you meet the criteria in 3.4.2.1



## 4. Guidelines on meeting the applicable ADRP complaint submission criteria

### 4.1. Submitting a Complaint

When submitting a complaint under the ADRP, the burden of proof is on the Complainant. At the time of submission, the Complainant must provide evidence that it meets the complaint submission criteria.

Specifically, the Complainant must prove that:

- A. the Complainant would ordinarily be eligible to register the domain name in question if it was not already registered by the Registrant, and
- B. the Complainant (i) has rights in the domain name or in marks or identifiers very similar to it, or (ii) that the Complainant's rights have been negatively impacted by the registration, and
- C. the registration of the domain should be revoked as it has been registered or used abusively or in bad faith.

#### A. Complainant Eligibility to Register the Domain

The Complainant must show that it is a person, organisation or body normally entitled to register a .ie domain name.

In practice, this means that the Complainant must have a substantive connection to the island of Ireland. If the Complainant has other .ie domain names registered in their own name, this requirement is satisfied automatically.

#### B. (i) Complainant's Rights in the Domain

A Complainant may submit a complaint if it can show it has rights in the domain name, or in marks or identifiers sufficiently close to the domain such that there would be a strong likelihood of confusion.

Any legal or other enforceable right can be considered, including but not limited to:

- Trade and service marks protected in the island of Ireland, or
- Personal names (including pseudonyms) by which the Complainant is commonly known or has acquired a reputation in on the island of Ireland, or
- Geographical indications that can prima facie be protected in the island of Ireland,
- Unregistered rights acquired through use.

#### B. (ii) Complainant Rights Negatively Impacted

A Complainant may submit a complaint if it can show its rights are negatively impacted by the domain registration or use. It can do this by showing:

- The domain name registration or use is misleading or confusing to its customers, or
- The domain name registration or use is commercially damaging to its business through activities such as passing-off, content scraping or impersonation, or
- The domain name is being used to circulate defamatory material relating to the Complainant, or
- The domain name is being used for the purpose of making unauthorised use of material in which the Complainant has a copyright or another protected interest

#### C. Domain Used or Registered Abusively or in Bad Faith

A Complainant can demonstrate that the domain has been registered or is being used Abusively or in Bad Faith by the Registrant if it can provide evidence that:

- The domain name was registered or is being used with the primary purpose of selling or renting it specifically to the Complainant (or a competitor) for more than the Registrant paid for it, or
- The domain name was registered or is being used with the primary purpose of preventing the Complainant registering a name or mark in which the Complainant has rights, or
- The domain name was registered or is being used with the primary purpose of unfairly disrupting or interfering with the Complainant's business, or

- The domain name is being used in a way that is likely to confuse people or businesses into believing that it is registered to, operated or authorised by, or otherwise connected with the Complainant, or
- The domain name was registered or is being used for an unlawful purpose (e.g. it is engaging in suspected fraudulent activity, engaging in other criminal/illegal online activity), or
- The domain name is registered to a company which currently has a dissolved company trading status, or
- The domain name is being used to facilitate the circulation of defamatory or racist material, or
- The domain name is registered to a Registrant which does not have (and never had) a connection to the island of Ireland, or
- The domain name was registered as a result of a relationship between the Complainant and the Registrant, and the Complainant a) has been using the Domain Name registration exclusively; and b) paid for the registration and/or renewal of the Domain Name registration; or

Failure by the Registrant to use the Domain Name for the purposes of email or a web site, the Registrant offering a domain name for sale, or use of domain parking services that may include advertising related to the keyword content of the domain name are not of themselves evidence of abuse or bad faith, however the Specialist may consider these issues in combination with other factors when deciding a case.

## 4.2. Responding to a Complaint

When making a complaint, the onus is on the Complainant to state and prove that it meets the complaint submission criteria. In the absence of this a complaint will not normally be upheld, however the Registrant is encouraged to provide evidence to show that its registration and use of the domain name is not an abuse or Bad Faith.

### 4.2. (A) Showing that a Registration is not Abusive or in Bad Faith

When responding, the Registrant may provide information to counter any statements within the complaint and can submit its own evidence to show that its registration and/or use of the domain is not unreasonable, including but not limited to demonstrating any of the factors below:

- The Registrant has established rights in the domain name, or in marks or identifiers very similar to the domain name including but not limited to:
  - Trade and service marks protected in the island of Ireland, or
  - Personal names (including pseudonyms) by which the Complainant is commonly known or has acquired a reputation in on the island of Ireland, or
  - Unregistered rights acquired through use.
- Prior to any notice of the dispute, the Registrant used the domain name or a name reasonably corresponding to the Domain Name in connection with a bona fide offering of goods or services or made demonstrable preparations for such use, or
- The Registrant (as an individual, business, or other organization) has been commonly known by the domain name or similar name, even in the absence of a registered trademark, or
- The domain name is generic or descriptive and the Registrant is making fair use of it, or
- The domain name is being used solely for tribute or criticism, or
- The domain name contains or references the Complainant's mark but the Registrant is making fair use of it.