



# **Rapid Evaluation Service Policy**

Version 1.0

## Rapid Evaluation Service Policy

This ICM Registry LLC (the "Registry") Rapid Evaluation Service ("RES") is incorporated by reference into the Registry-Registrant Agreement. This RES shall become effective as of September 1, 2011.

### 1. Purpose

The RES is intended to provide a prompt remedy to address a limited class of situations in which there is objectively clear abuse of well-known, distinctive registered trademarks or service marks of significant commercial value, or of personal or professional names of individuals.

In order to provide rapid evaluation of such situations, the complaint threshold of the RES must be narrowly limited to objective considerations. Recognizing that national standards relating to protected signs and scope of rights vary, the RES is not intended to apply to all forms of protected signs or unlawful conduct.

Trademark claims under the RES are limited to assertion of a single registered textual trademark or service mark in actual commercial use in connection with identifiable goods and/or services, and to domain name registrations in the .XXX TLD which are apparently and obviously intended to abuse or interfere with the rights embodied in such trademarks or service marks. The RES is further intended to address abusive registration in the .XXX TLD of the names of individual persons. The RES is not intended to address rights in geographic terms, appellations of origin, trade names and other protected signs, except as they may be the subject of registered trademarks or service marks of national effect.

The RES is a form of extraordinary relief, the terms of which shall be narrowly construed. The RES is not preclusive of other available administrative or judicial remedies, such as ICANN's Uniform Domain Dispute Resolution Policy ("UDRP"), which encompass a broader set of applicable disputes.

### 2. Applicable Disputes

The RES provides a proceeding applicable to the following categories of dispute:

#### a. Trademark Abuse

A Complaint under this Section shall be required to show:

- (i) the domain name in the .XXX TLD is identical or confusingly similar to a registered, textual trademark or service mark of national effect that the complainant owns and uses in the relevant jurisdiction(s) where it is registered; and
- (ii) the respondent has no rights or legitimate interests in respect of the domain name in the .XXX TLD; and
- (iii) the domain name in the .XXX TLD has been registered and is being used in bad faith or, if unused, is not conceivably susceptible to use in good faith.

## **b. Impersonation**

A Complaint under this Section shall be required to show:

- (i) that the complainant is a natural person or the authorized representative or agent of a natural person; and
- (ii) that a registered domain name in the .XXX TLD substantially corresponds to the personal, professional or “stage name” of such person, or name by which such person is commonly known; and
- (iii) that the domain name in the .XXX TLD has been registered with an unlawful intent or for the apparent and demonstrated purpose of harassment or embarrassment in relation to the complainant absent any conceivable fair use defense or any defense that the registration of the domain name in the .XXX TLD is coincidental, or that the domain name was otherwise legitimately registered for purposes relating to a fictional character or personal, professional or other name in bona fide use by the registrant thereof.

## **3. Evidentiary Standards For Decisions Relating To Trademark Abuse**

In finding the elements of an Applicable Dispute under Trademark Abuse (Section 2a of this RES), the following standards shall be applied.

### **a. Identical or Confusing Similarity**

Identical or confusing similarity may be found, considered with or without the .xxx TLD extension, where the mark is used by the complainant or its licensee in substantial commerce in connection with at least the identified goods or services actually offered for sale in the jurisdiction in which the mark is registered, or has been so used or licensed by the complainant or complainant’s predecessor in interest within three (3) years from the date of the complaint and:

- (i) the domain name in the .XXX TLD is textually identical to a textual mark; or
- (ii) the domain name in the .XXX TLD is typographically or phonetically similar to the textual mark, or appears to be intentionally selected to exploit typing errors; or
- (iii) the domain name in the .XXX TLD includes additional characters indicating the type of goods or services provided under the mark, or otherwise is likely to be perceived as indicating goods or services emanating from the complainant, and which do not alter the commercial impression conveyed by the mark.

### **b. Legitimate Rights And Interests**

Legitimate rights and interests shall be found where:

- (i) before any notice of a dispute, the respondent has used, or made demonstrable preparations to use, the domain name in the .XXX TLD or a name corresponding to the domain name in the .XXX TLD in connection with a bona fide offering or advertisement of goods or services; or
- (ii) the respondent has been commonly known by the domain name in the .XXX TLD, even if the respondent has acquired no registered trademark or service mark rights; or
- (iii) the domain name in the .XXX TLD has a primary meaning apart from its secondary meaning as a trademark or service mark associated with the complainant, and is being used in connection with its primary meaning in association with which the complainant has not acquired distinctiveness in the adult-entertainment industry.

#### **c. Registration and Use in Bad Faith**

The following circumstances shall be deemed evidence of the registration and use of a domain name in the .XXX TLD in bad faith:

- (i) circumstances indicating the respondent has registered or acquired the domain name in the .XXX TLD primarily for the purpose of selling, renting, or otherwise transferring the domain name registration in the .XXX TLD to the complainant or to a competitor of the complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name registration in the .XXX TLD; or
- (ii) the domain name in the .XXX TLD is part of a pattern of domain registrations apparently undertaken in order to prevent the complainant from reflecting the mark(s) in a corresponding domain name in the .XXX TLD, or a part of a pattern of registration of domain names typographically similar to such mark(s); or
- (iii) the domain name in the .XXX TLD has been registered primarily for the purpose of disrupting the business of the complainant; or
- (iv) by using the domain name in the .XXX TLD, the respondent has intended to create a probable likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the web site by the complainant.

#### **d. Additional Considerations**

The evidentiary items noted above shall be considered in view of the following considerations where appropriate:

- (i) the inherent distinctiveness, exclusivity, or scope of the mark at issue, and whether there is no conceivable good faith or legitimate use of the domain name(s) in the .XXX TLD;
- (ii) the extent of presumptive effect afforded by the national registration(s) shown by the Complainant in the relevant jurisdiction(s);

- (iii) the scope and extent of actual use of the mark by the complainant;
- (iv) whether the domain name in the .XXX TLD consists of common word(s) used primarily in association with their primary meaning by the respondent for sale or advertising of goods or services related to such primary meaning;
- (v) indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of the service, or other characteristics of goods or services offered or advertised by the respondent;
- (vi) use of the mark to the extent necessary to indicate the intended purpose of a product or service, provided it is used in accordance with honest practices in industrial or commercial matters;
- (vii) whether the domain name in the .XXX TLD was registered or acquired prior to the acquisition of rights in the mark by the complainant, or whether circumstances indicate the domain name in the .XXX TLD was likely registered in willful anticipation of the acquisition of such rights;
- (viii) the reasonability of available time in which to develop or demonstrate plans to develop a corresponding web site for the domain name in the .XXX TLD at issue; and/or
- (ix) whether the complainant offers its goods or services under the same or similar domain name in another TLD, and the respondent's use of the domain name in the .XXX TLD manifests a clear predatory intent with respect to the same or similar goods or services.

## **4. Remedies**

The sole remedy available to a complainant for a proceeding under this RES shall be cancellation of the registration and re-assignment of the name servers to the Registry and re-direction to a registry-designated web page signifying such de-activation.

## **5. Procedure**

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

A Complaint under this RES shall be submitted to the National Arbitration Forum ("Provider") by submitting the complaint directly to that Provider. The Provider will administer the proceeding and select a qualified and eligible Evaluator ("Evaluator"). The Provider shall establish Rules, subject to the approval of the Registry, setting forth a fees schedule and other technical and process requirements for a dispute under this RES ("Rules"). The proceedings under this RES will be conducted according to this RES and the applicable Rules of the Provider.

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

In proceedings not initiated by the Registry or registrar, neither the Registry nor the registrar will

participate in the administration or conduct of any proceeding before an Evaluator. In any event, neither the Registry nor the registrar is or will be liable as a result of any decisions rendered by the Evaluator.

Any domain names in the .XXX TLD involved in a RES proceeding will be locked against transfer to another domain name holder or another registrar during the course of a proceeding. The contact details of the holder of a registered domain name will be provided to the Provider by the registrar's publicly available Whois database record for the relevant registrant. The Registry and the applicable registrar will comply with any Evaluator's decision and make all appropriate changes to the status of the domain name registration(s) in their Whois databases.

**c. Notification to the Parties**

The registrant of a registered domain name in the .XXX TLD shall be promptly notified by the Provider of the commencement of a dispute under this RES. The Provider shall promptly notify all named parties in the dispute, as well as the registrar and the Registry of any decision made by an Evaluator.

**d. Decisions**

(i) Preliminary Decision - All complaints under this RES will be subject to a preliminary evaluation under which an Evaluator may decide to suspend the operation of the domain name in the .XXX TLD pending a Final Decision. This preliminary evaluation will occur within two (2) business days, pursuant to the Rules.

(ii) Final Decision – At the conclusion of a proceeding under this RES, the Evaluator will issue a Final Decision in which:

- (1) the Evaluator may state the basis on which the decision is issued in summary format and may include such commentary or guidance as the Evaluator deems appropriate;
- (2) the decision shall state whether a registered name in the .XXX TLD is to be cancelled or maintain the status quo; and
- (3) no information regarding decisions made under this RES will be publicly published by the Registry, the Provider or the Evaluator; only aggregate statistical information about the RES process itself, including decision percentages, may be published by the Registry and/or the Provider.

**e. Representations and Warranties**

Parties to a dispute under this RES 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 in the .XXX TLD.

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

During a proceeding under the RES, the domain name in the .XXX TLD shall be locked against transfers between registrants and/or registrars. In the event the domain name(s) in the .XXX TLD is due to expire during a proceeding, the name shall proceed to reserved status if it is not renewed by the registrant; the RES proceeding, in that case, shall be terminated.

## **7. Indemnification / Hold Harmless**

The parties shall hold the registrar, the Registry, the Provider, and the Evaluator harmless from any claim arising from operation of the RES. Neither party may name the registrar, the Registry, the Provider, or the Evaluator as a party or otherwise include the registrar, the Registry, the Provider, or the Evaluator in any judicial proceeding relating to the dispute or the administration of the RES policy.

The parties shall indemnify, defend and hold harmless the registrar, the Registry, the Provider, the Evaluator and their respective employees, contractors, agents and service providers from any claim arising from the conduct or result of a proceeding under this RES.

Neither the registrar, the Registry, Provider, the Evaluator 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 RES 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 domain name(s) in the .XXX TLD.

## **8. Relation To Other Dispute Resolution Policies**

This RES is in addition to and complementary with the Uniform Domain Name Dispute Resolution Policy ("UDRP") and the conditions herein may constitute lack of legitimate interests and/or bad faith as appropriate under the UDRP in relation to domain name in the .XXX TLD. Remedies ordered under this RES and/or the UDRP shall be subject to the Sponsored Community eligibility criteria requirements and the general registration requirements and of domain names in the .XXX TLD.

## **9. Effect of Other Proceedings**

The mandatory administrative proceeding under the RES shall not prevent either party from submitting a dispute concerning the domain name(s) in the .XXX TLD to concurrent administrative proceedings or to a court of competent jurisdiction for independent resolution during a pending RES administrative proceeding or after such proceeding is concluded.

Upon notice of such other proceeding, the RES proceeding will be suspended or terminated (in the sole

discretion of the Evaluator, once appointed, and automatically terminated if an Evaluator is not appointed) in deference to the outcome of such other proceeding.

If a domain name in the .XXX TLD is subject to a UDRP proceeding, the factors set forth in the RES may be alleged in such proceeding as applicable terms of legitimate rights or registration and use under the UDRP in addition to any allegations or defenses available.

## **10. RES Modifications**

The Registry reserves the right to modify this RES at any time. The Registry agrees to publish any revised version of this RES at least ten (10) calendar days before it becomes effective. Unless this RES has already been invoked by the submission of a complaint, in which event the version of the RES in effect at the time it was invoked will apply to the domain name(s) until the dispute is over, all such changes will be binding upon you with respect to any domain name registration dispute, whether the dispute arose before, on or after the effective date of our change. In the event that the Registrant objects to a change in this RES, the sole remedy is to cancel the domain name registration.

