

Afilias Sunrise Dispute Resolution Policy (Ver. 1.0)

1. Scope and Purpose

This Sunrise Dispute Resolution Policy (SDRP) is incorporated by reference into the Registry-Registrar Agreements (RAs) and Registrar-Registrant Agreements (RRAs) associated with domain names registered in the TLDs for which Afilias Limited has entered into RAs with ICANN.

This SDRP describes the standards that will be applied to resolve challenges to domain names improperly registered during the Sunrise Registration Period of the TLD. Afilias has implemented a Start-Date Sunrise meaning that all domain names will be registered on a First-Come-First-Serve basis once Afilias begins accepting registrations from Registrars following the ICANN mandated thirty (30) day minimum notice period.

Any challenges initiated under the SDRP must be initiated on or before 14 July 2014.

2. Definitions

In this Policy, the following words and phrases have the following meanings:

<u>Complainant</u>	A person (legal or natural) who makes a complaint under this Policy.
<u>Afilias Website</u>	www.afilias.info/policies/sdrp
<u>Identical Match</u>	<p>The domain name label is an identical match to the trademark, meaning that the label consists of the complete and identical textual elements of the mark in accordance with section 4.2.1 of the TMCH Guidelines. In this regard:</p> <p>a) <i>For a trademark exclusively consisting of letters, words, numerals and/or special characters:</i> the recorded name of the mark is an identical match to the reported name as long as all characters are included in the trademark record provided to the TMCH and in the same order in which they appear on the trademark certificate.</p> <p>b) <i>For a marks that do not exclusively consist of letters, words, numerals, or special characters:</i> the recorded name of the trademark is an identical match to the reported name as long as the name of the trademark includes letters, words, numerals, keyboard signs, and punctuation marks that are: (i) predominant, (ii) clearly separable or distinguishable from the device element, and (iii) all predominant characters are included in the trademark record submitted to the TMCH in the same order they appear in the mark.</p>
<u>Panel</u>	The person or organization appointed by the Provider to provide a written decision in relation to a dispute arising under this Policy.
<u>Provider</u>	The dispute resolution provider appointed by Afilias to administer resolution of disputes arising under this Policy.
<u>Respondent</u>	The applicant or registrant of the domain name(s) subject to a complaint under this Policy.
<u>SMD File</u>	A signed mark data file issued by the TMCH signifying that the TMCH has verified that

	the trademark contained in the SMD File meets the requirements for inclusion in the TMCH in accordance with TMCH Guidelines in force at the time when a complaint under this Policy is filed.
<u>Sunrise</u>	That period of time during which holders of SMD Files may submit domain name applications for a TLD before registration becomes available to the general public.
<u>TMCH</u>	Trademark Clearinghouse (http://www.trademark-clearinghouse.com).
<u>TMCH Guidelines</u>	Guidelines published by the TMCH for mark holders and agents to inform them about the eligibility requirements for inclusion of marks in the TMCH and participation in sunrise services (currently available at http://www.trademark-clearinghouse.com/sites/default/files/files/downloads/TMCH%20guidelines%20v1.1_0.pdf).

3. Relation to Other Dispute Resolution Policies

Disputes regarding the validity of an SMD File are subject to a separate Trademark Clearinghouse (TMCH) dispute process and should be submitted to the TMCH using the dispute resolution procedures outlined in <http://trademark-clearinghouse.com/dispute> prior to the initiation of a complaint under the SDRP. In the event the TMCH issues a finding of a non-compliant SMD File, Afiliás may disqualify the Sunrise application or, in the event that non-compliance is detected after the Sunrise period, delete the applicable domain name(s).

The SDRP is in addition and complimentary to ICANN’s Uniform Domain Name Dispute Resolution Policy (UDRP), the Uniform Rapid Suspension System (URS), and any other applicable charter, nexus, or eligibility dispute policies implemented by ICANN or Afiliás.

The SDRP shall not prevent any party from submitting a dispute concerning the domain name in the TLD to concurrent administrative proceedings or to a court of competent jurisdiction for independent resolution during the pendency of a SDRP administrative proceeding or after such proceeding is concluded. Upon notice of such other proceeding, the SDRP proceeding will be terminated (in the sole discretion of the Panel as to the competence of such jurisdiction) in deference to the outcome of such other proceeding.

4. Procedure

4.1 Who Can Submit a Complaint

Any person or legal entity may file a complaint under the SDRP. However, Afiliás reserves the right in their sole discretion to limit a Vexatious Complainant’s options under the SDRP. For purposes of this policy, a Vexatious Complainant is defined as a Complainant that has habitually and persistently and without reasonable grounds instituted vexatious complaints under the SDRP. If Afiliás makes a finding that a Complainant is a Vexatious Complainant, that Complainant will be barred from the no-fee Afiliás “quick-look” procedure outlined below. However, that Complainant may elect to seek a determination under the SDRP directly from an administrative Provider conditioned upon the payment of the required fees.

4.2 Language of Proceedings

The language of all communications and supporting documentation relating to the SDRP shall be in English. It is the responsibility of all parties to the proceedings to provide certified or otherwise official English translations of all relevant text, along with a copy of the original.

4.3 Complaint Requirements

A Complaint must include/comply with the following requirements to be processed:

- 4.3.1 The name of the individual or legal entity filing the complaint, along with the following contact details: email, phone number, address of the Complainant and of any representative authorized to act on behalf of the Complainant in the administrative proceeding;
- 4.3.2 The domain name(s) that are subject of the dispute;
- 4.3.3 Applicable trademark(s) as validated by the TMCH and the relevant SMD File;
- 4.3.4 Name of the Respondent, and the Respondent's contact information from the Whois entry associated with the disputed domain name(s);
- 4.3.5 Ground(s) relied upon for seeking to cancel the Sunrise registration;
- 4.3.6 Remedy requested;
- 4.3.7 Complaint and all annexes must be submitted electronically according to the instructions listed on the Afilias Website, with the Complaint not to exceed 1000 words and no more than five annexes, which annexes shall not exceed fifty (50) pages in total;
- 4.3.8 Identification of any other legal proceedings that have been commenced or terminated in connection with or relating to any of the domain name(s) that are subject to the dispute;
- 4.3.9 Complaint must conclude with the following statement for an on behalf of the Complainant:

"Complaint 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 Respondent and waives all such claims and remedies against (a) the Provider and Panel except in the case of deliberate wrongdoing, (b) Afilias (c) the Registrar, and (d) ICANN; and the respective directors, officers, employees, representatives and agents of each of the foregoing."

"Complainant certifies that the information contained in this complaint is, to the best of 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 the SDRP and under applicable law, as it now exists or as it may be extended by a good faith and reasonable argument."

4.4 Afilias Quick Look

Upon receipt of a properly formatted Complaint, Afilius will attempt to resolve the issue internally without charge. If, in the opinion of Afilius, the matter would be more appropriately dealt with by the TMCH, Afilius will advise the Complainant accordingly. If the complaint relates to a registry process error, Afilius will investigate and, if upheld, seek to resolve such errors internally without charge. In the event Afilius, in its discretion, is unable to resolve the dispute, Afilius will notify the Complainant to submit its complaint to a Provider. Afilius will endeavor to conduct this quick look within seven (7) calendar days of receipt.

4.5 Submission to a Provider

If Afilius is unable to resolve the dispute in accordance with the “Quick Look” process outlined above, then Complainant may submit its complaint to a Provider(s) listed on the Afilius Website in accordance with any supplemental instructions listed by that Provider.

4.6 Fees

Complainant shall be required to pay all fees charged in accordance with the instructions listed by that Provider.

4.7 Notification of Complaint

- 4.7.1 The Provider shall review the complaint for administrative compliance with the SDRP and, if in compliance, shall forward the complaint, including any annexes, electronically to the Respondent within five (5) days following receipt of the fees to be paid by Complainant.
- 4.7.2 If the Provider finds the complaint to be administratively deficient, it shall promptly notify the Complainant and the Respondent of the nature of the deficiencies identified. The Complainant shall have five (5) days within which to correct any such deficiencies, after which the administrative proceeding will be deemed withdrawn without prejudice to submission of a subsequent complaint by the Complainant.
- 4.7.3 The date of commencement of the administrative proceeding shall be the date on which the Provider completes its responsibilities under 4.7.1 in connection with sending the complaint to the Respondent.
- 4.7.4 The Provider shall immediately notify the parties, the concerned registrar, and Afilius of the date of Commencement of the administrative proceeding.

4.8 Response

Within twenty (20) days of the date of commencement of the proceeding with a Provider, Respondent shall submit a response to the Provider that includes/complies with the following requirements:

- 4.8.1 The name of Respondent, along with the following contact details: email, phone number, address of the Respondent and of any representative authorized to act on behalf of the Respondent in the administrative proceeding;
- 4.8.2 Identify and annex applicable trademark(s) as validated by the TMCH and the relevant SMD File;
- 4.8.3 Response and all annexes must be submitted electronically according to the instructions listed by Provider, with the Response not to exceed 1000 words and no more than five annexes, which annexes shall not exceed fifty (50) pages in total;
- 4.8.4 Identification of any other legal proceedings that have been commenced or terminated in connection with or relating to any of the domain name(s) that are subject to the dispute;
- 4.8.5 Response must conclude with the following statement for an on behalf of the Respondent:
“Respondent certifies that the information contained in this response is to the best of Respondent’s knowledge complete and accurate, and that the assertions in this response are warranted under the SDRP and under applicable law, as it now exists or as it may be extended by a good faith and reasonable argument.”

4.9 Additional Submissions

The parties are not permitted to submit additional documentation beyond the initial Complaint and Response absent permission from the Panel.

4.10 Panel Appointment

Provider will endeavor to appoint a Panel within five (5) days following the receipt of the response or the lapse of time of the time period for the submission of a response. Provider will notify the parties as of the name of the Panel and the date on which a decision, absent exceptional circumstances, the Panel will forward its decision on the complaint to the Provider.

4.11 Impartiality and Independence

A Panel 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 Panel’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 Panel, the Panel shall promptly disclose such circumstances to the Provider. In such event, the Provider shall have the discretion to appoint a substitute Panel.

4.12 Communication between the Parties and Panel

No party or anyone acting on its behalf may engage ex parte (unilateral) communication with the Panel. All communications between a party and the Panel shall be made through the Provider.

4.13 No In-Person Hearings

There shall be no in-person hearings (including teleconferences, video conferences, or web conferences).

4.14 Burden of Proof

In order to prevail in a dispute under the SDRP, a Complainant must prove by clear and convincing evidence that any of the following grounds apply:

- 4.14.1 At the 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;
- 4.14.2 The domain name is not identical to the mark on which the registrant based its sunrise registration;
- 4.14.3 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;
- 4.14.4 The trademark registration on which the domain name registrant based its sunrise registration did not issue on or before the effective date of the Registry agreement and was not applied for on or before 13 June 2012 (i.e., ICANN announced the applications received);
- 4.14.5 The Sunrise SMD File used to complete the Sunrise registration was improperly obtained and/or submitted; or
- 4.14.6 A registry process error occurred that resulted in an incorrect Sunrise registration.

4.15 Impact of Default

In the event that a party, in the absence of exceptional circumstances, does not comply with any of the time periods established by this Policy or the Panel, the Panel shall proceed to a decision on the complaint. If a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, this Policy or any request from the Panel, the Panel shall draw such inferences as it considers appropriate.

4.16 Decision

In rendering its decision the Panel shall:

- 4.16.1 Make a decision on the basis of the statements and documents provided by the parties, this Policy, other Afiliás policies, and any rules and principles of law that it deems applicable;
- 4.16.2 In the absence of exceptional circumstances, the Panel shall forward its decision on the complaint to the Provider within fourteen (14) days of its appointment pursuant to paragraph 4.10;
- 4.16.3 The Panel's decision will be in writing, in summary format and may (but is not required to) provide reasons or commentary as the Panel in its sole discretion deems appropriate; and
- 4.16.4 All decisions rendered under this Policy will be published on the Provider's website.

4.17 Remedies

4.17.1 If the Panel finds that the Complainant succeeds, Afiliás in its discretion shall determine the most appropriate remedy for the parties consistent with the decision of the Panel. The available remedies may include, but are not limited to:

- (i) revocation or cancellation of the disputed domain name(s) without refund of any registration or related fees; or
- (ii) transfer of the disputed domain name(s) to the Complainant, provided that the Complainant agrees to the same terms as required for registration in the relevant TLD.

4.17.2 In the event that a complaint under this Policy is not upheld, the disputed domain(s) will be retained by the Respondent and any lock in place will be lifted.

4.17.3 Subject to the parties' rights under paragraph 4.18, the Panel's decision shall be final, without the availability of appeal.

4.18 Implementation

Afiliás will implement the decision after ten (10) calendar days, in the absence of notice to Afiliás of an action filed by the Complainant or the Respondent in the jurisdiction of (a) Afiliás, (b) the Registrant, or (c) the stated jurisdiction of the registration agreement, whereupon implementation of the Decision will be determined by the outcome of such legal proceedings.

5 Maintaining the Status Quo

On initiation of a complaint under the SDRP, the subject domain name(s) shall be locked against transfer to another domain name holder, transfer to another registrar, and against deletion during the course of the proceeding, except in the case of Afiliás being in receipt of a court or arbitral tribunal, in each case of competent jurisdiction, requiring other action.

6 Indemnification/Hold Harmless

The parties shall hold ICANN, Afiliás, Registrar, Provider and the Panel harmless from any claims arising from the operation of the SDRP. Neither party may name ICANN, Afiliás, Registrar, Provider or the Panel as a party or otherwise include the ICANN, Afiliás, Registrar, Provider and the Panel in any judicial proceeding relating to the dispute or the administration of this SDRP. The parties shall indemnify, defend and hold harmless ICANN, Afiliás, Registrar, Provider and the Panel and their respective

employees, contractors, agents and service providers from any claim arising from the conduct or result of a proceeding against this SDRP. Neither ICANN, Afilias, Registrar, Provider and the Panel 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. The Complainant shall be directly and solely liable to Registrant in the event that complaint is granted in circumstances where the Registrant is lawfully entitled to registration and use of the domain name(s) at issue.

7 Amendments to Policy

Afilias reserves the right to modify the SDRP at its sole discretion consistent with its rights set forth in the Registry Agreement. Such revised SDRP shall be posted on the Afilias Website at least 15 days calendar days before its effective date. It is the obligation of all parties to check the Afilias Website for the most current version of the policy. The version of the Policy in effect at the time of submission of the complaint shall apply until that dispute is concluded. In the event that a Registrant objects to the any change in the SDRP, the sole remedy is cancelation of the domain name registration.