Attachment to Module 3

New gTLD Dispute Resolution Procedure

These Procedures were designed with an eye toward timely and efficient dispute resolution. As part of the New gTLD Program, these Procedures apply to all proceedings administered by each of the dispute resolution service providers (DRSP). Each of the DRSPs has a specific set of rules or will have supplementary procedures that will also apply to such proceedings.

NEW GTLD DISPUTE RESOLUTION PROCEDURE

Article 1.   ICANN's New gTLD Program

(a)   The Internet Corporation for Assigned Names and Numbers ("ICANN") has implemented a program for the introduction of new generic Top-Level Domain Names ("gTLDs") in the internet. There will be a succession of rounds, during which applicants may apply for new gTLDs, in accordance with terms and conditions set by ICANN.

(b)   The new gTLD program includes a dispute resolution procedure, pursuant to which disputes between a person or entity who applies for a new gTLD and a person or entity who objects to that gTLD are resolved in accordance with this New gTLD Dispute Resolution Procedure (the "Procedure").

(c)   Dispute resolution proceedings shall be administered by a Dispute Resolution Service Provider ("DRSP") in accordance with this Procedure and the applicable DRSP Rules that are identified in Article 4(b).

(d)   By applying for a new gTLD, an applicant accepts the applicability of this Procedure and the applicable DRSP's Rules that are identified in Article 4(b); by filing an objection to a new gTLD, an objector accepts the applicability of this Procedure and the applicable DRSP's Rules that are identified in Article 4(b). The parties cannot derogate from this Procedure without the express approval of ICANN and from the applicable DRSP Rules without the express approval the relevant DRSP.

Article 2.   Definitions

(a)   The "Applicant" or "Respondent" is an entity that has applied to ICANN for a new gTLD and that will be the party responding to the Objection.

(b)   The "Objector" is one or more persons or entities who have filed an objection against a new gTLD for which an application has been submitted.

(c)   The "Panel" is the panel of Experts, comprising one or three "Experts", that has been constituted by a DRSP in accordance with this Procedure and the applicable DRSP Rules that are identified in Article 4(b).

(d)   The "Expert Determination" is the decision upon the merits of the Objection that is rendered by a Panel in a proceeding conducted under this Procedure and the applicable DRSP Rules that are identified in Article 4(b).

(e)   The grounds upon which an objection to a new gTLD may be filed are set out in full in [●]. Such grounds are identified in this Procedure, and are based upon the Final Report on the Introduction of New Generic Top-Level Domains, dated 7 August 2007, issued by the ICANN Generic Names Supporting Organization (GNSO), as follows:

(i)   "String Confusion Objection" refers to the objection that the string comprising the potential gTLD is confusingly similar to an existing top-level domain or another string applied for in the round of applications.

(ii)   "Existing Legal Rights Objection" refers to the objection that the string comprising the potential new gTLD infringes the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law.

(iii)   "Morality and Public Order Objection" refers to the objection that the string comprising the potential new gTLD is contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law.

(iv)   "Community Objection" refers to the objection that there is substantial opposition to the application from a significant portion of the community to which the string may be explicitly or implicitly targeted.

(f)   "DRSP Rules" are the rules of procedure of a particular DRSP that have been identified as being applicable to objection proceedings under this Procedure.

Article 3.   Dispute Resolution Service Providers

The various categories of disputes shall be administered by the following DRSPs:

(a)   String Confusion Objections shall be administered by the International Centre for Dispute Resolution.

(b)   Existing Legal Rights Objections shall be administered by the Arbitration and Mediation Center of the World Intellectual Property Organization.

(c)   Morality and Public Order Objections shall be administered by the International Centre for Expertise of the International Chamber of Commerce.

(d)   Community Objections shall be administered by the International Centre for Expertise of the International Chamber of Commerce.

Article 4.   Applicable Rules

(a)   All proceedings before the Panel shall be governed by this Procedure and by the DRSP Rules that apply to a particular category of objection. The proceedings shall be deemed an expert determination, and the members of the Panel shall act as experts.

(b)   The applicable DRSP Rules are the following:

(i)   For a String Confusion Objection, the applicable DRSP Rules are to be the ICDR Supplementary Procedures for ICANN's New gTLD Program.

(ii)   For an Existing Legal Rights Objection, the applicable DRSP Rules are theto be WIPO Rules for New gTLD Dispute Resolution.

(iii)   For a Morality and Public Order Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce.

(iv)   For a Community Objection, Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce.

(c)   In the event of any discrepancy between this Procedure and the applicable DRSP Rules, this Procedure shall prevail.

(d)   The place of the proceedings, if relevant, shall be the location of the DRSP that is administering the proceedings.

(e)   In all cases, the Panel shall ensure that the parties are treated with equality, and that each party is given a reasonable opportunity to present its position.

Article 5. Language

(a)   The language of all submissions and proceedings under this Procedure shall be English.

(b)   Parties may submit supporting evidence in its original language, provided and subject to the authority of the Panel to determine otherwise, that such evidence is accompanied by an English translation of all relevant text.

Article 6. Communications and Time Limits

(a)   All communications by the Pparties with the DRSPs and Panels must be submittedfiled electronically and copied to ICANN. A Party that wishes to make a submission that is not available in electronic form (e.g., evidentiary models) shall request leave from the Panel to do so, and the Panel, in its sole discretion, shall determine whether to accept the non-electronic submission.

(b)   The DRSP, Panel, Applicant, and Objector shall provide copies to one another and to ICANN of all correspondence (apart from confidential correspondence between the Panel and the DRSP and among the Panel) regarding the proceedings.

(c)   For the purpose of determining the date of commencement of a time limit, a notice or other communication shall be deemed to have been received on the day that it is transmitted in accordance with paragraphs (a) and (b) of this Article.

(d)   For the purpose of determining compliance with a time limit, a notice or other communication shall be deemed to have been sent, made or transmitted if it is dispatched in accordance with paragraphs (a) and (b) of this Article prior to or on the day of the expiration of the time limit.

(e)   For the purpose of calculating a period of time under this Procedure, such period shall begin to run on the day following the day when a notice or other communication is received.

(f)   Unless otherwise stated, all time periods provided in the Procedure are calculated on the basis of calendar days If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended to the next business day. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

Article 7. Filing of the Objection

(a)   A person wishing to object to a new gTLD for which an application has been submitted may file an objection ("Objection"). Any Objection to a proposed new gTLD must be filed within ninety (90) days from ICANN's publication of a report identifying the application for such gTLD.

(b)   The Objection must be filed with the appropriate DRSP, using a model form made available by that DRSP, with copies to ICANN and the Applicant.

(c)   The electronic addresses for filing Objections are the following:

(i)   A String Confusion Objection must be filed at: [●].

(ii)   An Existing Legal Rights Objection must be filed at: [●].

(iii) A Morality and Public Order Objection must be filed at: [●].

(iv)   A Community Objection must be filed at: [●].

(d)   All Objections must be filed separately:

(i)   An Objector who wishes to object to an application on more than one ground must file separate objections with the appropriate DRSP(s).

(ii)   An Objector who wishes to object to more than one gTLD must file separate objections to each gTLD with the appropriate DRSP(s).

(e)   If an Objection is filed with the wrong DRSP, that DRSP shall promptly notify the Objector of the error and shall not process the incorrectly filed Objection. The Objector may then cure the error by filing its Objection with the correct DRSP within seven (7) days of its receipt of the error notice, failing which the Objection shall be disregarded. If the Objection is filed with the correct DRSP within seven (7) days of its receipt of the error notice but after the lapse of the time for submitting an Objection stipulation by Article 7(a) of this Procedure, it shall be deemed to be within this time limit.

Article 8.   Content of the Objection

(a)   The Objection shall contain, *inter alia*, the following information:

(i)   The names and contact information (address, telephone number, email address, etc.) of the Objector;

(ii)   A statement of the Objector's basis for standing; and

(iii)   A description of the basis for the Objection, including:

(aa)   A statement of the ground upon which the Objection is being filed, as statdefined in Article 2(ec) of this Procedure;

(bb)   An explanation of the validity of the Objection and why the objection should be upheld.

(b)   The substantive portion of the Objection shall be limited to 5,000 words or 20 pages, whichever is less, excluding attachments. The Objector shall also describe and provide copies of any supporting or official documents upon which the Objection is based.

(c)   At the same time as the Objection is filed, the Objector shall pay a filing fee in the amount set in accordance with the applicable DRSP Rules and include evidence of such payment in the Objection. In the event that the filing fee is not paid within ten (10) days of the receipt of the Objection by the DRSP, the Objection shall be dismissed without prejudice.

Article 9.   Administrative Review of the Objection

(a)   The DRSP shall conduct an administrative review of the Objection for the purpose of verifying compliance with Articles 5-8 of this Procedure and the applicable DRSP Rules, and inform the Objector, the Applicant and ICANN of the result of its review within fourteen (14) days of its receipt of the Objection. The DRSP may extend this time limit for reasons explained in the notification of such extension.

(b)   If the DRSP finds that the Objection complies with Articles 5-8 of this Procedure and the applicable DRSP Rules, the DRSP shall confirm that the Objection shall be registered for processing.

(c)   If the DRSP finds that the Objection does not comply with Articles 5-8 of this Procedure and the applicable DRSP Rules, the DRSP shall have the discretion to request that any administrative deficiencies in the Objection be corrected within five (5) days. If the deficiencies in the Objection are cured within the specified period but after the lapse of the time limit for submitting an Objection stipulated by Article 7(a) of this Procedure, the Objection shall be deemed to be within this time limit.

(d)   If the DRSP finds that the Objection does not comply with Articles 5-8 of this Procedure and the applicable DRSP Rules, and the deficiencies in the Objection are not corrected within the period specified in Article 9(c), the DRSP shall dismiss the Objection and close the proceedings, without prejudice to the Objector's submission of a new Objection that complies with this Procedure, provided that the Objection is filed within the deadline for filing such Objections. The DRSP's review of the Objection shall not interrupt the running of the time limit for submitting an Objection stipulated by Article 7(a) of this Procedure.

(ec)   Immediately upon registering an Objection for processing, pursuant to Article 9(b), the DRSP shall post the following information about the Objection on its website: (i) the proposed string to which the Objection is directed; (ii) the names of the Objector and the Applicant; (ii) the grounds for the Objection; and (iv) the dates of the DRSP's receipt of the Objection.

Article 10.   ICANN's Dispute Announcement

(a)   Within thirty (30) days of the deadline for filing Objections in relation to gTLD applications in a given round, ICANN shall publish a document on its website identifying all of the admissible Objections that have been filed (the "Dispute Announcement"). ICANN shall also directly inform each DRSP of the posting of the Dispute Announcement.

(b)   ICANN shall monitor the progress of all proceedings under this Procedure and shall take steps, where appropriate, to coordinate with any DRSP in relation to individual applications for which objections are pending before more than one DRSP.

Article 11.   Response to the Objection

(a)   Upon receipt of the Dispute Announcement, each DRSP shall promptly send a notice to: (i) each Applicant for a new gTLD to which one or more admissible Objections have been filed with that DRSP; and (ii) the respective Objector(s).

(b)   The Applicant shall file a response to each Objection (the "Response"). The Response shall be filed within thirty (30) days of the Applicant's receipt of the notice sent by the DRSP pursuant to Article 11(a).

(c)   The Response must be filed with the appropriate DRSP, using a model form made available by that DRSP, with copies to ICANN and the Objector.

(d)   The Response shall contain, inter alia, the following information:

   (i)   The names and contact information (address, telephone number, email address, etc.) of the Applicant; and

(ii)   A point-by-point response to the statements made in the Objection.

(e)   The substantive portion of the Response shall be limited to 5,000 words or 20 pages, whichever is less, excluding attachments. The Applicant shall also describe and provide copies of any supporting or official documents upon which the Response is based.

(f)   At the same time as the Response is filed, the Applicant shall pay a filing fee in the amount set and published by the relevant DRSP (which shall be the same as the filing fee paid by the Objector) and include evidence of such payment in the Response. In the event that the filing fee is not paid, within ten (10) days of the receipt of the Response by the DRSP, the Applicant shall be be disregarded deemed to be in default, any Response disregarded and the Objection shall be deemed successful.

(g)   If the DRSP finds that the Response does not comply with Articles 11(c) and (d)(1) of this Procedure and the applicable DRSP Rules, the DRSP shall have the discretion to request that any administrative deficiencies in the Response be corrected within five (5) days. If the administrative deficiencies in the Response are cured within the specified period but after the lapse of the time limit for submitting a Response pursuant to this Procedure, the Response shall be deemed to be within this time limit.

(g)   If the Applicant fails to file a Response to the Objection within the 30-day time limit, the Applicant shall be deemed to be in default and the Objection shall be deemed successful. No fees paid by the Applicant will be refunded in case of default.

Article 12.   Consolidation of Objections

(a)   The DRSP is encouraged to, whenever possible and practicable, may, at its discretion and as may be further stipulated in the applicable DRSP Rules, to consolidate Objections, for example, when more than one Objector has filed an Objection to the same gTLD on the same grounds. The DRSP shall endeavor to decide upon consolidation prior to issuing its notice pursuant to Article 11(a) and, where appropriate, shall inform the parties of the consolidation in that notice.

(b)   If the DRSP itself has not decided to consolidate two or more Objections, any Applicant or Objector may propose the consolidation of Objections within seven (7) days of the notice given by the DRSP pursuant to Article 11(a). If, following such a proposal, the DRSP decides to consolidate certain Objections, the deadline for the Applicant's Response in the consolidated proceeding shall be thirty (30) days from the Applicant's receipt of the DRSP's notice of consolidation.

(c)   In deciding whether to consolidate Objections, the DRSP shall weigh the benefits (in terms of time, cost, consistency of decisions, etc.) that may result from the consolidation against the possible prejudice or inconvenience that the consolidation may cause.

(d)   Objections based upon different grounds, as summarized in Article 2(e), shall not be consolidated.

Article 13.   The Panel

(a)   The DRSP shall select and appoint the Panel of Expert(s)Panelist within thirty (30) days after receiving the Response.

(b)   Number and specific qualifications of Expert(s)Panelist:

    (i)   There shall be one ExpertPanelist in proceedings involving a String Confusion Objection.

    (ii)   There shall be one ExpertPanelist or, if all of the Parties so agree, three Experts with relevant experience in intellectual property rights disputes in proceedings involving an Existing Legal Rights Objection.

    (iii)   There shall be three ExpertsPanelist recognized as eminent jurists of international reputation, one of whom shall be designated as the Chair and of a nationality different from the nationalities of the Applicant and of the Objector, in proceedings involving a Morality and Public Order Objection.

    (iv)   There shall be one ExpertPanelist in proceedings involving a Community Objection.

(c)   All Experts acting under this Procedure shall be impartial and independent of the parties. The applicable DRSP Rules stipulate the manner by which each Expert shall confirm and maintain their impartiality and independence.

(d)   The applicable DRSP Rules stipulate the procedures for challenging an Eexpert Panelist and replacing an Eexpert Panelist.

(e)   Unless required by a court of law or authorized in writing by the parties, an Eexpert Panelist shall not act in any capacity whatsoever, in any pending or future proceedings, whether judicial, arbitral or otherwise, relating to the matter referred to expert determination under this Procedure.

Article 14.   Costs

(a)   Each DRSP shall determine the costs for the proceedings that it administers under this Procedure in accordance with the applicable DRSP Rules. Such costs shall cover the fees and expenses of the members of the Panel, as well as the administrative fees of the DRSP (the "Costs").

(b)   Within ten (10) days of constituting the Panel, the DRSP shall estimate the total Costs and request the Objector and the Applicant/Respondent each to pay in advance the full amount of the Costs to the DRSP. Each party shall make its advance payment of Costs within ten (10) days of receiving the DRSP's request for payment and submit to the DRSP evidence of such payment. The respective filing fees paid by the Pparties shall be credited against the amounts due for this advance payment of Costs.

(c)   The DRSP may revise its estimate of the total Costs and request additional advance payments from the parties during the proceedings.

(d)   Failure to make an advance payment of Costs:

    (i)   If the Objector fails to make the advance payment of Costs, its Objection shall be dismissed and no fees that it has paid shall be refunded.

    (ii)   If the Applicant fails to make the advance payment of Costs, the Objection will be deemed to have been sustained and no fees that the Applicant has paid shall be refunded.

(e)   Upon the termination of the proceedings, after the Panel has rendered its Expert Determination, the DRSP shall refund to the prevailing party, as determined by the Panel, its advance payment(s) of Costs.

Article 15.   Representation and Assistance

(a)   The parties may be represented or assisted by persons of their choice.

(b)   Each party shall communicate the name, contact information and function of such persons to ICANN, the DRSP and the other party (or parties in case of consolidation).

Article 16.   Negotiation and Mediation

(a)   The parties are encouraged, but not required, to participate in negotiations and/or mediation at any time throughout the dispute resolution process aimed at settling their dispute amicably.

(b)   Each DRSP shall be able to propose, if requested by the parties, a person who could assist the parties as mediator.

(c)   A person who acts as mediator for the parties shall not serve as an Expert~~Panelist~~ in a dispute between the parties under this Procedure or any other proceeding under this Procedure involving the same gTLD.

(d)   The conduct of negotiations or mediation shall not, *ipso facto*, be the basis for a suspension of the dispute resolution proceedings or the extension of any deadline under this Procedure. Upon the joint request of the parties, the DRSP or (after it has been constituted) the Panel may grant the extension of a deadline or the suspension of the proceedings. Absent exceptional circumstances, such extension or suspension shall not exceed thirty (30) days and shall not delay the administration of any other Objection.

(e)   If, during negotiations and/or mediation, the parties agree on a settlement of the matter referred to the DRSP under this Procedure, the parties shall inform the DRSP, which shall terminate the proceedings, subject to the parties' payment obligation under this Procedure having been satisfied, and inform ICANN and the parties accordingly.

Article 17.   Additional Written Submissions

(a)   The Panel may decide whether the parties shall submit any written statements in addition to the Objection and the Response, and it shall fix time limits for such submissions.

(b)   The time limits fixed by the Panel for additional written submissions shall not exceed thirty (30) days, unless the Panel, having consulted the DRSP, determines that exceptional circumstances justify a longer time limit.

Article 18.   Evidence

In order to achieve the goal of resolving disputes over new gTLDs rapidly and at reasonable cost, procedures for the production of documents shall be limited. In exceptional cases, the Panel may require a party to provide additional evidence.

Article 19.   Hearings

(a)   Disputes under this Procedure and the applicable DRSP Rules will usually be resolved without a hearing.

(b)   The Panel may decide, on its own initiative or at the request of a party, to hold a hearing only in extraordinary circumstances.

(c)   In the event that the Panel decides to hold a hearing:

(i)   The Panel shall decide how and where the hearing shall be conducted.

(ii)   In order to expedite the proceedings and minimize costs, the hearing shall be conducted by videoconference if possible.

(iii)   The hearing shall be limited to one day, unless the Panel decides, in exceptional circumstances, that more than one day is required for the hearing.

(iv)   The Panel shall decide whether the hearing will be open to the public or conducted in private.

Article 20.   Standards

(a)   The Panel shall apply the standards that have been defined by ICANN for each category of Objection, and identified in Article 2(e).

(b)   In addition, the Panel may refer to and base its findings upon ~~the basis of~~ the statements and documents submitted and any ~~widely accepted~~ rules or principles ~~of international law~~ that it determines to be appl~~ropriat~~icable.

(c)   The Objector bears the burden of proving that its Objection should be sustained in accordance with the applicable standards.

Article 21.   The Expert Determination

(a)   The DRSP and the Panel shall make reasonable efforts to ensure that the Expert Determination is rendered within forty-five (45) days of the constitution of the Panel. In specific circumstances such as consolidated cases and in consultation with the DRSP, a brief extension may be allowed.

(b)   The Panel shall submit its Expert Determination in draft form to the DRSP's scrutiny as to form before it is signed, unless such scrutiny is specifically excluded by the applicable DRSP Rules. The modifications proposed by the DRSP to the Panel, if any, shall address only the form of the Expert Determination. The signed Expert Determination shall be communicated to~~by~~ the DRSP, which in turn will communicate that Expert Determination to the Parties and ICANN.

(c)   When the Panel comprises three ~~E~~experts, the Expert Determination shall be made by a majority of the Expert~~Panelists~~. ~~If there is no majority, the Expert Determination shall be made by the Chair of the Panel.~~

(d)   The Expert Determination shall be in writing, shall identify the prevailing party and shall state the reasons upon which it is based. The remedies available to an Applicant or an Objector pursuant to any proceeding before a Panel shall be limited to the success or dismissal of an Objection and to the refund by the DRSP to the prevailing party, as determined by the Panel in its Expert Determination, of its advance payment(s) of

Costs pursuant to Article 14(e) of this Procedure and any relevant provisions of the applicable DRSP Rules.

(e)   The Expert Determination shall state the date when it is made, and it shall be signed by the Eexpert(s). If any Eexpert fails to sign the Expert Determination, it shall be accompanied by a statement of the reason for the absence of such signature.

(f)   In addition to providing electronic copies of its Expert Determination, the Panel shall provide a signed hard copy of the Expert Determination to the DRSP, unless the DRSP Rules provide for otherwise.

(g)   Unless the Panel decides otherwise, the Expert Determination shall be published in full on the DRSP's website.

Article 22.   Exclusion of Liability

In addition to any exclusion of liability stipulated by the applicable DRSP Rules, neither the Eexpert(s), nor the DRSP and its employees, nor ICANN and its Board members, employees and consultants shall be liable to any person for any act or omission in connection with any proceeding conducted under this Procedure.

Article 23.   Modification of the Procedure

(a)   ICANN may from time to time, in accordance with its Bylaws, modify this Procedure.

(b)   The version of this Procedure that is applicable to a dispute resolution proceeding is the version that was in effect on the day when the relevant application for a new gTLD is submitted.