

COMPLAINT RESOLUTION SERVICE: POLICY & PROCEDURES

1. Statement of Purpose

- 1.1. This Complaint Resolution Service ("Service") provides a transparent, efficient and cost effective way for the public, law enforcement, regulatory bodies and intellectual property owners to have their concerns addressed regarding use of a CoCCA member's network or services.

The Service provides a single framework in which cyber-crime, accessibility of prohibited Internet content via a member's network or services, and abuse of intellectual property rights are addressed. The framework relies on three tiers of review: immediate action to protect the public interest, informal mediation by an Ombudsman, and adjudication by an Expert, which provides an alternative to the Courts. [Part A](#) of this document defines the policy and [Part B](#) the procedures to be followed in addressing a complaint.

2. Background

- 2.1 CoCCA is a not-for-profit member owned company. [Members](#) administer country code top level domains (ccTLDs) and have granted CoCCA a non-exclusive right to receive and facilitate resolution of complaints involving domain names registered in their respective ccTLDs. This approach benefits members with economies of scale and the public with a harmonised policy framework and a "single desk" where complaints can be lodged.
- 2.2 A Shared Registry System ("SRS") establishes a single register for registering domain names and associated technical and administrative information. Each member maintains a SRS register for the ccTLD they administer.
- 2.3 The registration of domain names and modification of information associated with such names on the register can be affected only by authorised registrars. Registrars are responsible for the information they collect.
- 2.4 Neither registrars nor the CoCCA members get involved in complaints regarding who has a better right to be recognised as the registrant of a domain name. Members have, however, adopted Acceptable Use Policies ("AUP") which govern the use of their network - and by extension any domain name in such member's ccTLD. Members will undertake actions to ensure compliance with their AUP as directed either by the Courts or as set out in this document.
- 2.5 This policy may be amended from time to time as described below in paragraph 16.
- 2.6 Thanks go to the office of the Domain Name Commissioner of New Zealand and [Nominet UK](#) for establishing the framework on which this Service is largely based.

3. Definitions

Appeal Panel means a panel appointed by the Ombudsman under paragraph B17.7;

CoCCA means the Council of County Code Administrators Limited, a member-owned Christmas Island company;

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CoCCA Ombudsman (Ombudsman) means the individual(s) retained by CoCCA to provide informal arms-length mediation of complaints and oversee delegation of complaints to Experts if informal mediation fails and a Complainant expresses a desire to have the matter adjudicated;

Complainant means a third party who asserts to the CoCCA Complaint Officer the elements set out in paragraph B2.3 of this Policy and according to the Procedure, or, if there are multiple complainants, the 'Lead Complainant' (see Procedure, paragraph B2.2);

Complaint means a complaint submitted to the CoCCA Complaint Officer by a Complainant under paragraph B2;

Complaint Officer – an individual appointed by CoCCA to accept and process the resolution of a complaint in accordance with the procedures set out in this document.

Complaint Resolution Service means the service provided by the CoCCA according to this Policy and the Procedure;

Commencement of Complaint Resolution Service proceedings means the date upon which the Complaint Officer transmits notice of commencement of the Complaint to the Parties pursuant to paragraph B3.3;

Conclusion of Complaint Resolution Service proceedings means the date on which the Parties are notified of a Decision or the date on which the parties amicably settle the Complaint;

Days means, unless otherwise stated, any calendar day other than Saturday, Sunday or any public holiday on Christmas Island, Indian Ocean Territories;

Decision means the decision reached by the Complaint Officer or Expert and where applicable includes decisions of an appeal panel;

Domain Name means a domain name maintained in a CoCCA member's register;

Domain Name Hijacking means using the Policy in bad faith in an attempt to deprive a registered domain-name holder the use of a domain name;

Expert means a person appointed to resolve a Domain Name Complaint under paragraphs B7 or B17 of the Procedure;

Informal Mediation means impartial mediation which is conducted under paragraph B6 to facilitate an acceptable resolution to the Complaint;

ISP means an internet service provider;

Party means a Complainant or Respondent and **Parties** has a corresponding meaning;

Policy means this [Policy](#);

Procedure means the [Procedure](#) contained in [Part B](#) for addressing complaints under the Service;

Register means the authoritative database and record of domain names managed and operated by a CoCCA member;

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Registrant means the entity entered in the Register as registrant with respect to a Domain Name;

Registrar means the entity entered in the Register as registrar with respect to a Domain Name;

Reply means a submission made to the Complaint Officer by a Complainant under paragraph B5;

Respondent means the entity in whose name or on whose behalf a Domain Name is registered and against whom the Complainant makes a Complaint;

Response means a submission made to the CoCCA Complaint Officer by a Respondent under paragraph B4;

Rights includes, but is not limited to, rights enforceable under applicable law.;

AUP Violation means a Domain Name which has been used in a manner which violates the applicable CoCCA member's AUP.

September 22, 2006

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Part A – Policy

4. Complaint Resolution Service

- 4.1 This Policy and Procedure applies to Respondents when a Complainant alleges to the Complaint Officer according to the Procedure, that there has been an AUP Violation.
- 4.2 The Complainant is required to illustrate to the Complaint Officer or Expert on the balance of probabilities there has been an AUP Violation.

5. Evidence of AUP Violation

- 5.1 A list of factors which may be evidence that there has been an AUP Violation is set out in the applicable CoCCA member's AUP policy, which policies may be inspected at <http://www.cocca.cx>
- 5.2 Failure on the Respondent's part to use a Domain Name for the purposes of e-mail or a web-site is not in itself evidence that an AUP Violation has occurred.
- 5.3 There shall be a presumption of AUP Violation if the Complainant proves that the Respondent has been found to have made an AUP Violation in three (3) or more Complaint Resolution Service cases in the two (2) years before the Complaint was filed. This presumption can be rebutted (see paragraph 6.3).
- 5.4 In making a decision, the Complaint Officer or Expert shall not take into account any evidence of acts or omissions amounting to an AUP Violation or use which occurred more than three (3) years before the date of the Complaint.

6. Demonstration by Respondent that there has not been an AUP Violation

- 6.1 A non-exhaustive list of factors which may be evidence that there has not been an AUP Violation is set out in paragraphs 6.1.1 – 6.1.4:
- 6.1.1. Before being aware of the Complainant's cause for complaint (not necessarily the Complaint itself), the Respondent has:
- (a) used or made demonstrable preparations to use the Domain Name or a Domain Name which is similar to the Domain Name in connection with a genuine offering of goods or services;
 - (b) been commonly known by the name or legitimately connected with a mark which is identical or similar to the Domain Name;
 - (c) made legitimate non-commercial or fair use of the Domain Name; or
- 6.1.2. The Domain Name is generic or descriptive and the Respondent is making fair use of it in a way which is consistent with its generic or descriptive character;
- 6.1.3. In relation to paragraph **Error! Reference source not found.** of the AUP, that the Registrant's holding of the Domain Name is consistent with

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an agreement entered into by the Parties, which agreement is evidenced by a written instrument; or

6.1.4. In relation to the AUP, that the Domain Name is not part of a wider pattern or series of registrations because the Domain Name is of a significantly different type or character to the other domain names registered by the Respondent.

6.2. Fair use may include sites operated solely in tribute to or in criticism of a person or business.

6.3. If paragraph 5.3 applies, to succeed the Respondent must rebut the presumption by proving in the Response that the registration of the Domain Name is not an AUP Violation.

7. Informal Mediation

7.1. After the Complaint Officer has received the Parties' submissions under the Procedure ([Part B](#)), it will recommend immediate action or request the Ombudsman to initiate and conduct a period of Informal Mediation under paragraph B6 of the Procedure.

8. Without Prejudice

8.1. Documents and information which are 'without prejudice' (or are marked as being 'without prejudice') may be used in submissions and may be considered by the Expert. Notice that the Expert will not consider such materials if:

8.1.1. they are generated within Informal Mediation; or

8.1.2. the Expert believes that it is in the interests of justice that the document or information to be excluded from consideration.

9. Appointment of Expert

9.1. If an acceptable resolution cannot be achieved by Informal Mediation the Ombudsman will notify the Parties that it will appoint an Expert when the Complainant has paid the applicable fees set out in paragraph B20.1 and within the time specified in paragraph B7.1. The Expert will come to a written Decision.

10. Notification and Publication

10.1. A Decision will be communicated to the Parties according to paragraph B16 and all Decisions will be published in full on the CoCCA web site.

10.2. Fees are payable by the Complainant or otherwise according to paragraph B20 only if an acceptable resolution has not been achieved by Informal Mediation and once the Ombudsman has notified the Parties that an Expert is to be appointed.

10.3. Decisions may contain Personal Information (as this term is defined in the [Privacy Policy](#)), including the contact details of the Parties, and the Parties consent to Personal Information being displayed in this way.

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Part A – Policy

11. Exclusion of Liability

- 11.1 Neither CoCCA nor its officers, employees or members nor any Expert, Mediator, Registrar or any employee or officer of any such party shall be liable to a party for anything done or omitted, whether negligently or otherwise, in connection with any proceedings under the Complaint Resolution Service unless the act or omission is shown to have been in bad faith.

12. Appeal, Repeat Complaints and Availability of Court Proceedings

- 12.1. Either Party will have the right under paragraph B17 to appeal a Decision. The Appeal Panel will consider appeals on the basis of a full review of the matter and may review procedural matters.
- 12.2. The Ombudsman may refer questions of interpretation of the Policy and Procedure to the Appeal Panel. Any decision rendered as a result of this referral will not affect any Decision in any other previous proceedings under the Complaint Resolution Service.
- 12.3. The Ombudsman will publish Decisions of the appeal panel. Appeal Decisions will not be binding precedents, but will be of persuasive value to Experts in future decisions.
- 12.4. The operation of the Complaint Resolution Service will not prevent either the Complainant or the Respondent from submitting the Complaint to an applicable court or decision-making body of competent jurisdiction or to an arbitral tribunal of competent jurisdiction. However, any proceeding under this Policy, whether before an Ombudsman, Complaint Officer, Expert, or Appeal Panel, shall be suspended pending the decision of the court, decision making body, or tribunal. The proceeding under this Policy shall only be re-started if directed to do so by the court, decision making body, or tribunal.
- 12.5. If a Complainant has obtained a Decision in previous Complaint Resolution Service proceedings it will not be reconsidered by an Expert (however there may be rights of appeal, see paragraph 12.1 and paragraph B17). If the Expert finds that the Complaint is a resubmission of an earlier Complaint which has been resolved, then he or she shall reject the Complaint without consideration of its merits.
- 12.6. In determining whether a Complaint is a resubmission of an earlier Complaint, or contains a material difference that justifies the Complaint being heard, the Expert shall consider the following questions:
- 12.6.1. Are the Complainant, the Respondent and the Domain Name at issue the same as in the earlier case?
- 12.6.2. Does the substance of the Complaint relate to acts that occurred prior to or subsequent to the close of submissions in the earlier case?
- 12.6.2.1. If the substance of the Complaint relates to acts that occurred prior to the close of submissions in the earlier case, are there any exceptional grounds for the rehearing or reconsideration, bearing in

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mind the need to protect the integrity and smooth operation of the Policy and Procedure?

12.6.2.2. Does the substance of the Complaint relate to acts that occurred subsequent to the close of submissions in the earlier Decision? (Acts on which the re-filed Complaint is based should not be, in substance, the same as the acts on which the previous Complaint was based).

12.7. A non-exhaustive list of examples which may be exceptional enough to justify a re-hearing under paragraph 12.6.2.1 include:

12.7.1. serious misconduct on the part of the Expert, a party, witness or lawyer;

12.7.2. false evidence having been offered to the Expert;

12.7.3. the discovery of credible and material evidence which could not have been reasonably foreseen or known for the Complainant to have included it in the evidence in support of the earlier Complaint;

12.7.4. a breach of natural justice.

13. Implementation of Expert Decisions

13.1. The Expert's powers, as part of a Decision, include powers to direct that a Domain Name should be cancelled, suspended, modified or otherwise amended. The Expert may not, however, make any orders directing a party to pay costs of the Complaint Resolution Service proceedings.

13.2. If the Expert makes a Decision that a Domain Name registration should be cancelled, suspended, modified or otherwise amended, the Ombudsman will implement that Decision by requesting the CoCCA member(s) responsible for the applicable Register to make the necessary changes to the Register according to the process set out in paragraph B16. The details set out in the Complaint form will be used unless the Complainant specifies other details in good time.

14. Other action

14.1. The Complaint Officer or Ombudsman will not cause any Domain Name registration to be cancelled, activated, deactivated or otherwise changed except as set out in paragraphs 13 and B3.4 and in accordance with the applicable policies and procedures, which are available on the CoCCA website <http://www.cocca.cx>

14.2. Expiration of a Domain Name which is the Subject of a Complaint.

14.2.1. This paragraph 14 shall not affect or change the expiration date of any Domain Name or the post-expiration policies or practices of any ccTLD or Registrar.

14.2.2. If a Domain Name which is the subject of Complaint is scheduled to expire, and if the Respondent and/or Registrant does not renew the Domain Name registration term, then the Complainant may, anytime

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within 30 calendar days of the scheduled expiration date, contact the Registrar and pay to have the Domain Name registration term extended by one year. Any such payment and/or extension shall not change the identity of the Registrant with respect to the Domain Name and shall not create any obligation owed by the Registrant to the Complainant.

15. Transfers During a Complaint

- 15.1. A Domain Name registration may not be transferred to another Registrar or Registrant (whether at the same or a different Registrar):
 - 15.1.1. if the electronic form of a Complaint has been received by the CoCCA AUP Complaint Officer or CoCCA Member and the matter is pending the receipt of a valid paper copy to confirm the Complaint (to a maximum of five (5) Days); or
 - 15.1.2. whilst Complaint Resolution Service proceedings are ongoing in relation to the Domain Name or for a period of ten (10) Days after the Parties are notified of a Decision by an Expert, per paragraph B16.1, unless to the Complainant as a result of a settlement reached between the Parties whether or not pursuant to Informal Mediation; or
 - 15.1.3. whilst a court proceeding, other Complaint resolution hearing or arbitration in respect of the Domain Name registration is ongoing in an applicable court or decision-making body of competent jurisdiction or arbitral tribunal of competent jurisdiction.
- 15.2. The CoCCA Member may reverse any transfer of a Domain Name registration which does not comply with paragraph 15.1.
- 15.3. A Respondent may not transfer the Domain Name to another Registrar whilst proceedings under the Complaint Resolution Service are ongoing in relation to the Domain Name or for a period of ten (10) Days after the Parties are notified of a Decision by an Expert, per paragraph B16.1.
- 15.4. Any change in the Registrant Information (as this term is defined in the Registrar Agreement) after the Complaint Officer provides notice to the parties that a Complaint has been started pursuant to paragraph B3.3, shall have no effect on the Complaint proceeding and shall not change the identity of the Respondent or the party whom all registrars shall treat as the Domain Name registrant, unless such change is a result of a settlement or agreement reached between the Parties whether or not pursuant to Informal Mediation. Any such change in Registrant Information shall be reversed as soon as practicable after either party brings the problem to the attention of the Complaint Officer or Ombudsman. No fees will be refunded to any party in the course of reversing any unauthorized change in Registrant Information.

16. Modifications to the Policy and Procedure of the Complaint Resolution Service

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- 16.1. The internet is an emerging and evolving medium and the regulatory and administrative framework under which it operates is constantly developing. For these reasons CoCCA reserves the right to make modifications to the Policy and Procedure at any time. Except where CoCCA is acting pursuant to a statutory requirement or a court order, substantive changes will be implemented following a process of open public consultation. Each such change will be published in advance (where practicable, 30 calendar days in advance) on the [CoCCA web site](#) and will become binding and effective upon the date specified therein.
- 16.2. In any Complaint Resolution Service proceedings, the Parties will be bound by the Policy and Procedure which are current at the commencement of Complaint Resolution Service proceedings, until the conclusion of the Complaint Resolution Service proceedings.

17. General Information

- 17.1. If there are any questions regarding this document please email (up to date?) policy@cocca.cx

September 22, 2006

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Part B - Procedure

B1. Communication

- B1.1. The Complaint Officer will send a Complaint (see paragraph B2) to the Respondent and the CoCCA member designated contact by:
- B1.1.1. sending the Complaint by post, fax or e-mail to the Respondent at the contact details shown as the Registrant or other contacts in the Register for the Domain Name in Complaint;

The Complaint Officer may also, at its discretion use the following means:
 - B1.1.2. sending the Complaint to any addresses provided to the Complaint Officer by the Complainant under paragraph B2.3.3 so far as this is practicable.
- B1.2. Except as set forth otherwise, all written communication to a Party or a Party's representative under the Policy or this Procedure shall be made by fax, post or e-mail.
- B1.3. Communication shall be made in English. E-mail communications (other than attachments) should be sent in plain text so far as this is practicable.
- B1.4. During the course of proceedings under the Complaint Resolution Service, if either Party wishes to change its contact details it must notify the Complaint Officer of all changes, provided, however that no change shall be made in the Registrant Information for the Domain Name absent mutual agreement of the parties or settlement. See paragraph 15.4 regarding changes to Registrant Information.
- B1.5. Except as otherwise provided in this Procedure or as otherwise decided by the Complaint Officer or if appointed, the Expert, all communications provided for under this Procedure shall be deemed to have been received:
- B1.5.1. if sent by facsimile, on the date transmitted; or
 - B1.5.2. if sent by post, on the fifth Day after posting;
 - B1.5.3. if sent via the Internet, on the date that the communication was transmitted;
 - B1.5.4. and, unless otherwise provided in this Procedure, the time periods provided for under the Policy and this Procedure shall be calculated based on the time zone of the Complaint Officer.
- B1.6. Any communication (except for communications relating to Informal Mediation) between:
- B1.6.1. the Complaint Officer and any Party shall be copied by the Complaint Officer to the other Party and if appointed, the Expert, subject to paragraph B12; and

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- B1.6.2. a Party to another Party shall be copied by the sender to the Complaint Officer and the Complaint Officer will copy such correspondence to the Expert, if appointed.

B2. The Complaint

- B2.1. Any person or entity may submit a Complaint to the Complaint Officer in accordance with the Policy and this Procedure. In exceptional circumstances, the ability to accept Complaints may have to be suspended. If so, a message will be posted to that effect on the CoCCA web-site which will indicate when the suspension is likely to be lifted.
- B2.2. More than one person or entity may jointly make a Complaint. Where this occurs the joint Complainants must:
- B2.2.1. all sign the hard copy of the Complaint (or have it signed on their behalf);
 - B2.2.2. specify one of the Complainants, or a single representative, who will be the 'Lead Complainant' who will receive correspondence on behalf of all the Complainants and is entitled to act on behalf of them all (e.g. in Informal Mediation); and
 - B2.2.3. specify which Complainant the Complainants wish to become the sole registrant of each Domain Name(s) which are the subject of the Complaint if the Complainants are successful in the event of a decision for a Registrant name change (this does not bind the Expert).
- B2.3. The Complainant must send the Complaint to the Complaint Officer in hard copy and (except to the extent not available for attachments) in electronic form. The Complaint shall:
- B2.3.1. not exceed 2000 words (not including the text set out in paragraph B2.3.9 and annexes);
 - B2.3.2. specify whether the Complainant wishes to be contacted directly or through an authorised representative, and set out the e-mail address, telephone number, fax number and postal address which should be used;
 - B2.3.3. set out any of the Respondent's contact details which are known to the Complainant;
 - B2.3.4. specify the Domain Name(s) which is the subject of the Complaint;
 - B2.3.5. describe in accordance with the Policy the grounds on which the Complaint is made including in particular: what Rights the Complainant asserts in the name or mark; why the Domain Name use should be considered to be an AUP Violation; and any applicable aspects of paragraph 5 of the Policy above, as well as any other grounds which support the Complainant's assertion;
 - B2.3.6. specify whether the Complainant is seeking to have the Domain Name transferred, suspended, cancelled or otherwise amended;

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- B2.3.7. tell the Complaint Officer whether any legal proceedings have been commenced or terminated in connection with the Domain Name which is the subject of the Complaint;
- B2.3.8. state that the Complainant will submit to the exclusive jurisdiction of the applicable courts with respect to any legal proceedings seeking to reverse the effect of a Decision requiring the suspension, cancellation, transfer or other amendment to a Domain Name registration, and that the Complainant agrees that any such legal proceedings will be governed by applicable law;
- B2.3.9. conclude with the following statement followed by the signature of the Complainant or its authorised representative:

"I, the Complainant agree that my claims and remedies concerning the registration of the Domain Name, the Complaint, or the Complaint 's resolution shall be solely against the Respondent and neither CoCCA nor the CoCCA Member, any Registrar or Expert or Mediator, nor any of those entities' councillors, officers, members, employees or servants shall be liable for anything done or omitted in connection with any proceedings under the Complaint Resolution Service unless the act or omission is shown to have been in bad faith.";

"The information contained in this complaint is to the best of my knowledge true and complete. This complaint is not being presented in bad faith, including not being for a dominant purpose other than resolving the issue of who the proper registrant of a Domain Name is, and the matters stated in this complaint comply with the Policy and Procedure and applicable law.";

"I agree to the terms of the Complaint Resolution Services Policy and Procedure, and agree to be bound by any resulting Decision, subject to any rights of review or appeal."

- B2.3.10. attach four copies of any evidence on which the Complainant relies including correspondence and any trade mark registration and/or evidence of use of or reputation in a name or mark, together with an index of the material attached.
- B2.4. The Complaint may relate to more than one Domain Name, provided that those Domain Names are registered in the name of the Respondent.

B3. Notification of Complaint

- B3.1. The Complaint Officer, in consultation with the CoCCA member will check that the Complaint sufficiently complies with the Policy and this Procedure and, if so, will forward it to the Respondent together with an explanatory coversheet within five (5) Days of the receipt of the hard copy of the Complaint.
- B3.2. If the Complaint Officer, in consultation with the CoCCA member considers that the Complaint does not sufficiently comply with the Policy and this Procedure, the Complainant will be promptly notified of the deficiencies

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identified. The Complainant shall have five (5) Days from receipt of notification within which to correct the deficiencies and return the Complaint, failing which the Complaint Officer, in consultation with the CoCCA member will deem the Complaint to be withdrawn. This will not prevent the Complainant submitting a different Complaint.

- B3.3. The Complaint Officer will promptly notify the Parties by email of the date of Commencement of Complaint Resolution Service proceedings, the date and time of transmission of such email in the time zone of the Complaint Officer according to the email header generated by the Complaint Officer's transmitting email system, being the date of Commencement of Complaint Resolution Service proceedings.
- B3.4. On receipt of the complaint the Complaint Officer will request the domain name to be locked by the CoCCA member(s) and/or the Registrar until a period of ten (10) Days after the Parties are notified of a Decision by an Expert, per paragraph B16.1, at which time the domain name may be unlocked.
- B3.5. Within 3 Days of receipt of the complaint, (excluding weekends and holidays) the CoCCA Complaint Officer - in consultation with the CoCCA member where possible, will review the complaint to determine if immediate action is required to protect the public interest or otherwise align use with provisions of the AUP. In such cases the CoCCA member may suspend the domain or request the suspension of the domain by a registrar immediately due to "exceptional circumstances". The procedure will then proceed as per this policy but with the domain suspended.

B4. The Response

- B4.1. Within fifteen (15) Days of the date of Commencement of Complaint Resolution Service proceedings, the Respondent may submit a Response.
- B4.2. The Respondent must send the Response to the Complaint Officer signed, and in hard copy, and (except to the extent not available for attachments) in electronic form at the addresses set out in the explanatory coversheet. In determining whether a Response was submitted in a timely manner, the date and time of receipt (as determined by the Complaint Officer's receiving email server) shall be considered by the Complaint Officer as the date and time of submission, provided that such email i) contains a scanned copy of documents which include signatures, ii) contains all attachments, iii) is of a form and format which may be opened by the Complaint Officer, and iv) is accompanied by a statement by the Respondent or the Respondent's representative that the hard copy of the Response was or was to be placed in the mail as soon as practicable after transmission of the email. The Response shall:
- B4.2.1. not exceed 2000 words (not including the text set out in paragraph B4.2.5 and annexes);
- B4.2.2. include any grounds that the Respondent wishes to rely upon to rebut the Complainant's assertions under paragraph B2.3.5 including any relevant factors set out in paragraph 6 of the Policy as well as any other factors which rebut the Complainant's assertions

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- B4.2.3. specify whether the Respondent wishes to be contacted directly or through an authorised representative, and set out the e-mail address, telephone number, fax number and postal address which should be used in communications with the Respondent;
- B4.2.4. tell the Complaint Officer whether any legal proceedings have been commenced or terminated in connection with the Domain Name(s) which is the subject of the Complaint;
- B4.2.5. conclude with the following statement followed by the signature of the Respondent or its authorised representative:-

"The information contained in this response is to the best of the Respondent's knowledge true and complete and the matters stated in this response comply with the Policy and Procedure and applicable law.";

and

attach four copies of any evidence on which the Respondent relies including correspondence and any trade mark registration and/or evidence of use of or reputation in a name or mark together with an index of the material attached.

- B4.3. Within three (3) Days following the receipt of the signed copy of the Response, the Complaint Officer will forward the Response to the Complainant.
- B4.4. If the Respondent does not submit a Response, the domain will be suspended, pending receipt of a Response and the Parties will be notified that an Expert may be appointed on receipt from the Complainant of the applicable fees according to paragraph B20 and in the absence of exceptional circumstances.

B5. Reply by the Complainant

- B5.1. Within five (5) Days of receiving the Response from the Complaint Officer, the Complainant may submit a Reply to the Respondent's Response, which shall not exceed 2000 words (not including annexes). The Reply should be confined to answering any new points raised in the Response and not previously dealt with in the Complaint. The expert will not be obliged to consider any other material included in the Reply.
- B5.2. If a Reply is submitted it must be submitted in signed, hard copy (including four copies of all annexes) and as far as possible in electronic form. If the Complainant does not submit a Reply within five (5) Days the Complaint Officer will request the Ombudsman to commence Informal Mediation. In determining whether a Reply was submitted in a timely manner, the date and time of receipt (as determined by the Complaint Officer's receiving email server) shall be considered by the Complaint Officer as the date and time of submission, provided that such email i) contains a scanned copy of documents which include signatures, ii) contains all attachments, iii) is of a form and format which may be opened by the Complaint Officer, and iv) is accompanied by a statement by the Respondent or the Respondent's

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representative that the hard copy of the Reply was or was to be placed in the mail as soon as practicable after transmission of the email.

B6. Informal Mediation

- B6.1. No Informal Mediation will occur if the Respondent does not file a Response. Within three (3) Days of the receipt of the Complainant's Reply (or the expiry of the deadline to do so), the Complaint Officer will arrange for Informal Mediation to be conducted. Informal Mediation will be conducted in a manner which the Ombudsman, at its sole discretion, considers appropriate. The Complaint Officer will appoint an Ombudsman to mediate on a rotational basis from its list of Ombudsmen.
- B6.2. An Ombudsman may only be a person formally retained by CoCCA to provide Informal Mediation.
- B6.3. Negotiations conducted between the Parties during Informal Mediation (including any information obtained from or in connection to negotiations) shall be confidential as between the Parties. Any such information will not be shown to the Expert. Neither the Ombudsman nor any Party may reveal details of such negotiations to any third parties unless a court or decision-making body of competent jurisdiction orders disclosure or the Mediator or either Party are otherwise required to do so by applicable laws or regulations. Neither Party shall use any information gained during mediation for any ulterior or collateral purpose or include it in any submission likely to be seen by any court or decision-making body of competent jurisdiction or arbitral tribunal of competent jurisdiction in this Complaint or any later Complaint or litigation.
- B6.4. Notwithstanding paragraph B6.3, the Parties may refer to the fact of Informal Mediation in subsequent proceedings before any Applicable court or decision-making body of competent jurisdiction or arbitral tribunal of competent jurisdiction in this Complaint or any later Complaint or litigation.
- B6.5. If the Parties reach a settlement during Informal Mediation then the existence, nature and terms of the settlement shall be confidential as between the Parties unless the Parties specifically agree otherwise, a court or decision-making body of competent jurisdiction orders otherwise, or applicable laws or regulations require it.
- B6.6. No binding verbal agreements can be reached as part of the Informal Mediation: any settlement reached by the Parties must be in writing to be enforceable.
- B6.7. If the Parties do not achieve an acceptable resolution through Informal Mediation within ten (10) Days, the Ombudsman will send notice to the Parties that it will appoint an Expert when the Complainant has paid the applicable fees set out under paragraph B20.1 within the time limit specified in paragraph B7.1. The Expert will be told whether or not Informal Mediation occurred, but will not be told what happened during Informal Mediation or why it failed to resolve the Complaint.
- B6.8. No Party may ask CoCCA (including its councillors, officers, members, employees, contractors, agents and any Expert or Mediator) to reveal
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information or materials gained as a result of any Informal Mediation under the Complaint Resolution Service unless such disclosure has been ordered by a court or decision-making body of competent jurisdiction. Neither Party shall call the Expert, Mediator or CoCCA (including its, councillors, officers, employees, contractors, or agents) as a witness (either in person or to produce documents or other materials) in any proceedings which arise from, or are in connection with, the matters discussed in the mediation.

B7. Appointment of the Expert and Timing of Decision

- B7.1. If the Ombudsman does not receive the Complainant's request to refer the matter to an Expert together with the applicable fees within ten (10) Days of the Complainant's receipt of the notice referred to in paragraph B6.7, the Complaint will be deemed to have been withdrawn. This will not prevent the Complainant submitting a different Complaint.
- B7.2. Within five (5) Days of the receipt of the applicable fees from the Complainant, the Ombudsman will appoint an Expert on a rotational basis from its list of Experts.
- B7.3. An Expert may only be a person named in the list of Experts which the Ombudsman will maintain and publish along with the Experts' qualifications. No Expert's appointment will be challenged on the grounds that they are insufficiently qualified. Once the Expert has been appointed, the Parties will be notified of the name of the Expert appointed and the date by which, except in exceptional circumstances, the Expert will forward his or her Decision to the Complaint Officer.

B8. Impartiality and Independence

- B8.1. The Expert shall be both impartial and independent before accepting the appointment. During the proceedings the Expert will disclose to the Ombudsman any circumstances giving rise to justifiable doubt as to their impartiality or independence. The Ombudsman will have the discretion to appoint a substitute Expert if necessary in which case the timetable will be adjusted accordingly.

B9. Communication Between Parties and the Expert

- B9.1. A Party and the Expert must not communicate directly. All communication between a Party and the Expert must be made through the Ombudsman.

B10. Transmission of the File to the Expert

- B10.1. The Ombudsman will forward the file except for documents relating to Informal Mediation to the Expert as soon as the Expert is appointed.

B11. General Powers of CoCCA and the Expert

- B11.1. CoCCA, or the Expert if appointed, may in exceptional cases extend any period of time in proceedings under the Complaint Resolution Service.
- B11.2. The Expert shall determine the admissibility, relevance, materiality and weight of the evidence.

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B11.3. CoCCA shall decide a request by a Party to consolidate multiple Domain Name Complaints in accordance with the Policy and this Procedure.

B12. Further Statement

B12.1. In addition to the Complaint, the Response and if applicable the Reply, any appeal notice and appeal notice response, the Expert may request further statements or documents from the Parties. The Expert will not be obliged to consider any statements or documents from the Parties which he or she has not received according to the Policy or this Procedure or which he or she has not requested. The Expert may request that a further statement will be limited to a defined topic, and the Expert will not be obliged to consider any material beyond that requested.

B12.2. Any communication with the Ombudsman intended to be passed to the Expert which is not part of the standard process (e.g. other than a Complaint, Response, Reply, submissions requested by the Expert, appeal notice or appeal notice response) is a 'non-standard submission'. Any non-standard submission must contain as a separate, first paragraph, a brief explanation of why there is an exceptional need for the non-standard submission. The Ombudsman will pass this explanation to the Expert and the Respondent, and the remainder will only be passed to the Expert and the Respondent at the Expert's sole discretion. If there is no explanation, the Ombudsman may not pass on the document or information.

B13. In Person Hearings

B13.1. No in person hearings (including hearings by conference call, video conference and web conference) will be held unless the Expert determines in his or her sole discretion and in exceptional cases, that such a hearing is necessary to enable him or her to come to a Decision.

B14. Default

B14.1. If the Ombudsman finds that a submission by a Party exceeds the word limits, the submission will be returned to that Party who will within three (3) Days return a submission which complies with the word limits. If the Ombudsman does not receive the submission back within the deadline from:

B14.1.1. the Complainant, the Complaint will be deemed to have been withdrawn, which will not stop the Complainant from submitting a different Complaint; or

B14.1.2. the Respondent, and the Parties will be notified that the Expert will be appointed when the Complainant has paid the applicable fees set out in paragraph B20 and in the absence of exceptional circumstances. Once appointed the Expert will decide the Complaint based upon the Complaint and evidence attached to it.

B14.2. If, once the Expert has been appointed, and in the absence of exceptional circumstances, a Party does not comply with any time period laid down in the Policy or this Procedure, the Expert will proceed to a Decision on the Complaint. If the Expert has not been appointed, CoCCA shall take any

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action which it deems appropriate in its sole discretion, unless prescribed by this Procedure.

B14.3. If, in the absence of exceptional circumstances, a Party does not comply with any provision in the Policy or this Procedure or any request by the Ombudsman or the Expert, the Expert will draw such inferences from the Party's non compliance as he or she considers appropriate.

B15. Expert Decision

B15.1. The Expert will decide a Complaint on the basis of the Parties' submissions, the Policy and the Procedure.

B15.2. Unless exceptional circumstances apply, an Expert shall forward his or her Decision to the Ombudsman within ten (10) Days of his or her appointment pursuant to paragraph B7. The Decision shall be transmitted to the Ombudsman electronically via email with a hard copy sent by mail.

B15.3. The Decision shall be in writing and signed by the Expert, provide the reasons on which it is based, indicate the date on which it was made, the place the Decision was made and identify the name of the Expert.

B15.4. If the Expert concludes that the Complaint is not within the scope of paragraph 0??, he or she shall state that this is the case. If, after considering the submissions, the Expert finds that the Complaint was brought in bad faith, for example in an attempt at Domain Name Hijacking, the Expert shall state this finding in the Decision. If the Complainant is found on three separate occasions within a 2-year period to have brought a Complaint in bad faith, CoCCA will not accept any further Complaints from that Complainant for a period of 2 years from the date of the third such Decision.

B16. Communication of Decision to Parties and Implementation of Decision

B16.1. Within three (3) Days of the receipt of a Decision from the Expert, the Ombudsman will communicate the full text of the Decision to each Party via email, and the date for the implementation of the Decision in accordance with the Policy, which date shall be ten (10) Days after the date that the parties were notified of the Decision (which, for an email, is the date the notification is sent by the Ombudsman).

B16.2. CoCCA will publish the full Decision and the date that any action which the Decision requires will be taken, on the CoCCA website.

B16.3. If the Expert makes a Decision that a Domain Name registration should be cancelled, suspended, transferred or otherwise amended, the Ombudsman will implement that Decision by causing the necessary changes to be made to the Register after ten (10) Days of the date that the parties were notified, unless, during the ten (10) Days following the date that the parties were notified the Ombudsman receives from either Party:

B16.3.1. an appeal or statement of intention to appeal complying with paragraph B17, in which case the Ombudsman will take no further action in respect of the Domain Name until the appeal is concluded; or

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B16.3.2. official documentation showing that the Party has issued and served legal proceedings before an applicable court or decision-making body of competent jurisdiction, or an arbitral tribunal of competent jurisdiction against the other Party in respect of the Domain Name. In this case, the Ombudsman will take no further action in respect of the Domain Name unless it receives:

a) evidence which satisfies it that the Parties have reached a settlement; or

b) evidence which satisfies it that such proceedings have been disposed of.

B16.3.3. In the event of the Ombudsman being satisfied that a judgment, decision or award has been made directing or requiring that a Domain Name should be cancelled, suspended, transferred or otherwise amended, the Ombudsman will implement that Decision by requesting any necessary changes to the applicable Register to take place, and the Complaint resolution service proceeding will be terminated.

B17. Appeal

B17.1. Either Party shall have the right to appeal a Decision by submitting either:

B17.1.1. a statement of the intention to appeal (see paragraph B17.2), plus the non-refundable deposit (see paragraph B20.4), which must be followed within fifteen (15) Days by an appeal notice (see paragraph B17.3) and the balance of the fee (see paragraph B20.4); or

B17.1.2. an appeal notice (see paragraph B17.3) and the whole fee (see paragraph B20.4).

B17.2. A statement of intention to appeal should only contain sufficient information to make it clear that an appeal is requested. The statement of intention to appeal should not contain the actual grounds or reasons for appeal, and the panel of Experts will not be obliged to consider any such grounds or reasons.

B17.3. An appeal notice should not exceed 1000 words, should set out detailed grounds and reasons for the appeal, but shall contain no new evidence or annexes.

B17.4. Within three (3) Days of the receipt of the:

B17.4.1. statement of the intention to appeal and deposit; or

B17.4.2. appeal notice and the full fee,

the statement of intention to appeal or appeal notice (as the case may be) will be forwarded to the other Party.

B17.5. Within ten (10) Days of receiving the appeal notice from the Ombudsman, the other Party may submit an appeal notice response (paragraph B17.6).

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- B17.6. An appeal notice response must not exceed 1000 words, should set out detailed grounds and reasons why the appeal should be rejected, but should contain no new evidence or annexes.
- B17.7. Following the filing of an appeal notice response (or the expiry of the deadline to do so) an appeal panel of three Experts will be appointed. The test of impartiality shall apply to each appeal Expert. Subject to that qualification the appeal panel shall consist of:
- B17.7.1. the Chair of the group of Experts, or at his or her discretion, an Expert of his or her choice; and
 - B17.7.2. the next available two Independent Experts appointed by rotation from the list.
- B17.8. The appeal panel should not normally take into consideration any new evidence presented in an appeal notice or appeal notice response unless they believe that it is in the interests of justice to do so.
- B17.9. So far as it is appropriate in the circumstances of paragraphs B15 and B16 to apply equally to appeal Decisions, except that:
- B17.9.1. appeal Decisions should be returned by the appeal panel to the Ombudsman within thirty (30) Days of the appointment of the last panellist, but this deadline may be extended by up to ten (10) Days by agreement with the Ombudsman; and
 - B17.9.2. appeal Decisions cannot be subject to any appeal within the Complaint Resolution Service.

B18. Settlement or Other Grounds for Termination

- B18.1. If, before a Decision is made the Parties agree and notify the Ombudsman of a settlement, whether or not pursuant to Informal Mediation, proceedings under the Complaint Resolution Service will terminate.
- B18.2. If, before a Decision is made, it becomes unnecessary or impossible to continue proceedings under the Complaint Resolution Service for any reason, the Ombudsman will terminate proceedings under the Complaint Resolution Service unless a Party raises justifiable grounds for objection within a period of time which the Ombudsman will determine and notify the Parties of.

B19. Effect of Court Proceedings

- B19.1. If, before or during the course of proceedings under the Complaint Resolution Service, the Ombudsman is made aware that legal proceedings have begun in or before an applicable court or decision-making body of competent jurisdiction or an arbitral tribunal of competent jurisdiction, and that such legal proceedings relate to a Domain Name which is the subject of a Complaint and are brought to its attention, it will suspend the Complaint Resolution Service proceedings, pending the outcome of the legal proceedings.

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B19.2. A Party must promptly notify the Ombudsman if it initiates or becomes aware of legal proceedings in a court or decision-making body of competent jurisdiction, or arbitral tribunal of competent jurisdiction relating to a Domain Name, which is the subject of a Complaint during the course of proceedings under the Complaint Resolution Service.

B19.3. Either party may request, before or during the Complaint Resolution Service, an interim measure of protection from a Court.

B20. Fees

B20.1. The applicable fees in respect of the referral of proceedings under the Complaint Resolution Service to an Expert are (in United States Dollars) \$2500 plus applicable taxes, such as goods and services taxes ("GST") for Complaints involving 1-5 Domain Names and only one Complainant. For Complaints involving 6 or more Domain Names, and/or more than one Complainant, the Ombudsman will set a fee in consultation with the Complainant. Fees are calculated on a cost-recovery basis, and are passed on in their entirety to the Expert(s). CoCCA does not charge for its mediation or administration services in respect of the Complaint Resolution Service.

B20.2. Fees are payable by the Complainant only if an acceptable resolution has not been achieved after Informal Mediation, and the Ombudsman notifies the Parties that an Expert is to be appointed.

B20.3. In exceptional circumstances, for example if an in-person hearing is held, the Ombudsman will request that the Parties pay additional fees to be agreed between it, the Parties and the Expert.

B20.4. The applicable fees for the submission of an appeal are (in United States dollars) \$6,600 + applicable taxes, such as GST. If the option is used to pay a deposit and the balance, the deposit is \$700 and non-refundable, and the balance is \$5,900 + applicable taxes, such as GST. If the deposit is paid, and the balance of the fee and/or appeal notice are not filed in time, that appeal is deemed withdrawn and the case will be closed.

B21. Exclusion of Liability

B21.1. Neither CoCCA nor its councillors, officers, members, employees or servants nor any Expert, Mediator or any employee of any Expert or Mediator shall be liable to a Party for anything done or omitted, whether negligently or otherwise, in connection with any proceedings under the Complaint Resolution Service unless the act or omission is shown to have been in bad faith.

B22. Modifications to the Policy and Procedure of the Complaint Resolution Service

B22.1. The internet is an emerging and evolving medium and the regulatory and administrative framework under which CoCCA operates is constantly developing. For these reasons CoCCA reserves the right to make reasonable modifications to the Policy and Procedure at any time. Except where CoCCA is acting in pursuance of a statutory requirement or a court

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order, substantive changes will be implemented following a process of open public consultation. Each such change will be published in advance (where practicable, 30 calendar days in advance) on the Ombudsman web site: <http://www.cocca.cx> and will become binding and effective upon the date specified therein.

- B22.2. The Parties will be bound by the Policy and Procedure which are current at the commencement of the Complaint Resolution Service proceedings until the conclusion of the Complaint Resolution Service proceedings.

September 22, 2006

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