

# ALTERNATIVE DISPUTE RESOLUTION RULES

(hereinafter “**ADR Rules**”)

## 1. Introductory Provision

- 1.1 The ADR Rules issued by SK-NIC as the registration authority for the .sk top-level domain apply to the resolution of disputes arising between the Registrant and a third party in relation to the registration or usage of the Domain. The ADR Rules form an appendix and an indivisible part of the Rules of the Provision of Domains within the .sk Top-Level Domain and part of the Domain Contract.
- 1.2 Under the ADR Rules disputes shall not be resolved by an arbitration under the legislation that regulates arbitration. The aim of the dispute resolution under the ADR Rules is, with the awareness of their technical, commercial and economic function, to enable a prompt resolution of disputes regarding .sk domains, but with the emphasis on quality, impartiality, transparency and fairness.

## 2. Definitions

- 2.1 Unless expressly stated otherwise, the definitions used in the Rules have the same meaning in the ADR Rules.
- 2.2 **ADR Centre** means the European Information Society Institute, NGO. The ADR Centre maintains a list of Experts, administers the dispute procedure according to the ADR Rules and issues the Regulations of the .sk Domains Dispute Resolution (hereinafter “**Regulations**”), which contain a description of the procedure for the resolution of disputes under the ADR Rules, as well as the schedule of the respective charges.
- 2.3 **Expert** means a person that resolves the dispute under the ADR Rules and is included in the list of experts maintained by the ADR Centre; unless stated otherwise, Expert shall also mean the Panel of Experts.
- 2.4 **Panel of Experts** means a group of three Experts resolving the dispute under the ADR Rules, if it has been decided, in accordance with the Regulations that the resolution of the dispute be entrusted to a Panel of Experts.
- 2.5 **Complainant** means the person that, in accordance with the ADR Rules, files a proposal with the ADR Centre for the resolution of the dispute with the Registrant regarding the Domain.
- 2.6 **Protected Mark** means a legally protected mark, in particular a registered trademark, designation of the origin of the product, geographical designation of the product, name of a protected plant species, unregistered marking, commercial name, name of a legal entity, including a name of public administration authorities, including institutions governed by public law, countries or international organisations, designation of an enterprise or an operation, name or a protected pseudonym or a generally known nickname of a natural person or the title of a protected literary or artistic work or the name of a literary character.
- 2.7 **Domain Acquisition Date** means the date of the registration of the Domain by the current Registrant, or its legal predecessor, or the date of the acquisition of the Domain following the transfer to the current Registrant or its legal predecessor within the registration period of the

Domain that lasts until the Complainant's filing of the proposal, during which exclusively the current Registrant, or its legal predecessor, has been the Registrant of the Domain. The extension of the registration period and the change of the Domain data (apart from the transfer of the Domain onto a different Registrant) shall not change the Domain Acquisition Date.

### 3. Basic Principles of the Dispute Resolution

- 3.1 The Registrant agrees to comply with the resolution of disputes under the ADR Rules and the Regulations if the Complainant files a proposal with the ADR Centre in which it affirms that
  - 3.1.1 the chain of characters forming the Registrant's Domain is identical or similar to the Protected Mark whereto the Complainant has or performs rights,
  - 3.1.2 there exists a likelihood of confusion between the Registrant's Domain and the Protected Mark; this section shall not be enforced if section 3.8 implies otherwise; and at the same time
  - 3.1.3 the Domain
    - a) has been registered or acquired without the current Registrant having a right to or a legitimate interest in the Domain or the Protected Mark under section 3.3; and at the same time
    - b) has not been registered, acquired and used in good faith.
- 3.2 Unless the Registrant proves otherwise, the Expert may consider the fact under section 3.1.3 a) evidenced by the filing of the proposal under section 3.1. Facts under the sections 3.1.1, 3.1.2 and 3.1.3 b) shall be evidenced by the Complainant.
- 3.3 The Expert may also consider the right or legal interest of the Registrant (section 3.1.3 a) as proved if
  - 3.3.1 the Registrant is the owner of the rights to the Protected Mark, which is identical to the Domain,
  - 3.3.2 before receiving any notice regarding a dispute the Registrant truly used or carried out verifiable preparations for the actual utilisation of the Domain or the name that corresponds to it, and did so in connection with the offering of goods or services in good faith,
  - 3.3.3 the Registrant as a natural person, commercial company or another legal person is in the relevant part of the public commonly known under the name or designation that corresponds to the said Domain, and that even in the case that it is not the owner of the Protected Mark, or
  - 3.3.4 the Registrant uses the Domain for legitimate non-commercial purposes without thus intending to make unfair profits by means of a deceitful redirection of users or without thus intending to cause damage to the Complainant,
  - 3.3.5 the Domain Acquisition Date is less recent than the origination of the Protected Mark by more than 60 calendar days.
- 3.4 The Expert may consider the following cases as utilisation other than in good faith under the section 3.1.3 b),
  - 3.4.1 If the Registrant, without prior agreement with the Complainant or contrary to such an agreement, has registered or acquired the Domain specifically for the purpose of sale, transfer, rent or another similar action with respect to the Complainant or its competitor

- for a certain consideration which clearly exceeds the amount of the justified costs of its registration and maintenance,
- 3.4.2 the Domain has been registered or acquired for the purpose of preventing the Complainant from using the Protected Mark within the corresponding Domain; and at the same time if
    - a) the Registrant has participated in such unfair behaviour repeatedly or
    - b) the Domain has not been truly used for the period of at least 2 years from the day of its registration or since 1.9.2017; whichever is the later,
  - 3.4.3 the Domain has been registered or acquired specifically for the purpose of disrupting the economic activities of the Complainant; or
  - 3.4.4 the Domain was or is used for the purpose of gaining unjustified profits based on the fact that as a result of the likelihood of confusion between the Domain and the Protected Mark, it attracts users towards the website or another online source in the Internet network pertaining to the Registrant or a third party.
- 3.5 Within the dispute resolution under the ADR Rules, the Complainant may seek only
- 3.5.1 the termination of the Domain registration period or
  - 3.5.2 the transfer of the Domain to the Complainant or a person designated by the Complainant.
- 3.6 The commencement of the dispute resolution procedure under the ADR Rules does not constitute a barrier to the transfer of the Domain onto a new Registrant or termination of the Domain registration period, unless the court has issued a provisional measure in this matter or unless the Domain has been blocked in this matter under the section 4.6.1 of the Rules.
- 3.7 By filing the proposal under the ADR Rules the Complainant represents that it is not the weaker party and waives any claims to compensation for damages incurred with regards to the Domain, the registration thereof or the dispute resolution under the ADR Rules in relation to SK-NIC, the ADR Centre and the Experts, unless the said damages have been caused to the natural rights, purposefully or from gross negligence.
- 3.8 If the Complainant proves that the Protected Mark enjoys a good reputation or good character in the relevant part of the public, the condition of likelihood of confusion under the section 3.1.2. shall be disregarded.
- 3.9 A proposal may also be filed by a Complainant that is not the Registrant of the rights to the Protected Mark nor the Registrant of an exclusive licence for its utilisation if it submits the consent of the owner of the Protected Mark together with the filing of the proposal. If the Complainant seeks the transfer of the Domain to a person other than itself, such consent shall also contain the designation of the natural or legal person to which the Domain is to be transferred.
- 3.10 If the Complainant (under section 3.1.1) and the current Registrant (under section 3.3) both have rights to or a legal interest in the Protected Mark, when deciding the Expert shall also take into account the priority in time on the basis of the current Registrant's Domain Acquisition Date.
- 3.11 Registrar of the Domain within the dispute resolution as well as the Authorised Registrar of the contact data of the given Registrant according to the section 4.1 has to provide full cooperation to SK-NIC in relation to execution of the professional decision of the Expert according to the section 4.1 and follow the instructions of SK-NIC. Breach of this obligation shall be considered breach of the Rules.

## 4. Dispute Resolution

- 4.1 Dispute resolution under the ADR Rules shall be concluded with the professional decision of the Expert regarding
  - 4.1.1 the termination of the Domain's registration period if the Expert discovers that the conditions under section 3 were fulfilled and the Complainant has sought the termination of the Domain's registration period,
  - 4.1.2 the transfer of the Domain onto the Complainant or another designated person in accordance with section 3.9 if the Expert discovers that the conditions under section 3 were fulfilled and the Complainant has sought the transfer of the Domain; with this purpose, the Complainant or another designated person shall be registered as the User in accordance with the Rules,
  - 4.1.3 the termination of the dispute proceedings if the parties have reached an agreement about an amicable settlement of the dispute,
  - 4.1.4 the suspension of the dispute proceedings if the dispute that is the subject of the Complainant's proposal
    - a) was prior to the filing of the proposal definitively settled by a court or by an arbitration court,
    - b) is not solvable through alternative dispute resolution, mainly due to dispute complexity (for example because of the challenging evidence associated with provision of several proofs where oral hearing is necessary on principle) or complexity or significance of preliminary issues that must be assessed (for example difficult assessment of the validity of the Protected Mark),
  - 4.1.5 the rejection of the Complainant's proposal if the Expert discovers that the conditions under section 3 were not fulfilled or that the Complainant clearly abuses the right that is applied by it.
- 4.2 Within the resolution of the disputes under ADR Rules it is not possible to award compensation for the damages incurred or compensation of the costs of the resolution of the dispute, or compensation for the fees paid to the ADR Centre.
- 4.3 The Expert's professional decision shall be final and not subject to review. The right of either party to commence a proceeding under section 7.1 is hereby not prejudiced.
- 4.4 The ADR Centre ensures that the Expert's professional decision be published in accordance with the Regulations, in electronic form and within 30 days at the latest from the delivery thereof to both the parties.
- 4.5 If the result of the dispute resolution has been the professional decision of the Expert according to section 4.1.1 or 4.1.2 and the given Complainant will not apply its right resulting from this decision within 60 calendar days from the date of this decision, which also includes non-provision of the required data to SK-NIC according to section 6.2, the right of this Complainant is forfeit. To clarify – decision according to section 4.1.1 or 4.1.2 will not be executable after the defined period and the Complainant will need to start a new dispute resolution to receive new right.

## 5. Dispute Resolution Procedure

- 5.1 The resolution of the dispute begins with the filing of the proposal in accordance with the Regulations. The resolution of the dispute is processed electronically under the Regulations, on an online platform operated by the ADR Centre.
- 5.2 Any address maintained by SK-NIC for the purpose of delivery to the Registrant of any Domain which is the subject of a dispute may also be used for the purpose of delivery when resolving the dispute under the ADR Rules, and the Registrant confirms that by means of this address it shall communicate in relation to the dispute according to the ADR Rules.
- 5.3 The fee for the filing of the proposal shall be fully borne by the Complainant and within the deadline stipulated in the Regulations. The ADR Centre may also specify other supplementary fees in the Regulations for other services, which may be utilised by each party.
- 5.4 The filings of the parties and the documents of the ADR Administrator, as well as other documents pertaining to the dispute resolution, especially the Expert's professional decision, shall be delivered by means designated in the Regulations.
- 5.5 The language of the dispute resolution shall be the Slovak language unless both the parties agree otherwise in accord with the Regulations.

## 6. The Position of SK-NIC in the Dispute Resolution

- 6.1 SK-NIC is not a party to the dispute resolution under the ADR Rules.
- 6.2 If the Expert decides upon the termination of the Domain's registration period or the transfer of the Domain, SK-NIC shall perform this decision, and shall do so not earlier than 15 days from the day when it received the Expert's decision and the identification data of the Complainant or the person designated by the Complainant necessary to process the transfer; this shall not happen if such a change is not to be performed in accordance with section 7.5 or section 6.2. For this purpose, the Complainant or the person designated by the Complainant shall fulfil the conditions of the new Registrant according to the relevant provision of the Rules.
- 6.3 The termination of the Domain's registration period and the transfer of the Domain shall be performed according to the Rules, including the cessation of the corresponding rights.

## 7. The Relation to the Court Proceedings

- 7.1 The ADR Rules shall not affect the rights of the Complainant or the Registrant ensuing from the applicable legislation including the rules pertaining to the court proceedings or arbitration proceedings under the corresponding legislation.
- 7.2 The resolution of the dispute under the ADR Rules shall not constitute a barrier preventing either party from filing a corresponding proposal regarding the Domain with a competent court, which may be done at any time prior to the commencement, during, or following the conclusion of such dispute resolution.
- 7.3 The Complainant and the Registrant are obliged to submit to the Expert without undue delay any and all court judgements concerning the dispute between them under the ADR Rules, as well as their own filings with regard to such proceedings.

- 7.4 Conditions of the corresponding section of the Rules regarding the Arbitration, Dispute Resolution and Procedures when Adopting Court and Other Decisions shall be valid for the court proceedings following, under the section 7.1 hereof, the procedures under the ADR Rules.
- 7.5 If the Registrant delivers a document to SK-NIC proving the commencement of proceedings in a related matter before a court or an arbitration court within 10 days from the delivery of the Expert's professional decision under section 6.2, in which the Registrant claims cancellation of the professional decision of the Expert against the Complainant, SK-NIC shall not perform the change stated in the Expert's decision and it shall subsequently inform the ADR Centre about this fact, which shall trigger an immediate communication thereof to the Complainant; if this proceeding lawfully ends without the effect of the cancellation of the professional decision of the Expert, SK-NIC based on the request from the Complainant immediately performs the change stated in the Expert's decision according to the ADR Rules.

## **8. Final Provisions**

- 8.1 The ADR Rules are subject to the conditions and actions for the modification of the Rules according to the corresponding section of the Rules.
- 8.2 The ADR Rules shall enter into force and effect as of 1.9.2020.