

## **RULES OF THE DOMAIN DISPUTES COMMITTEE**

### **1. GENERAL PROVISIONS**

- 1.1. The Domain Disputes Committee (hereinafter the Committee) is a structural unit of the Estonian Internet Foundation (hereinafter the EIF) that settles disputes pertaining to registration of .ee domain names. Referral to the Committee does not preclude protection of rights in any other manner, including in judicial proceedings.
- 1.2. These rules (hereinafter the Rules) are based on article 11.1 of the Domain Regulation adopted by the Council of the EIF on 29.06.2010 (available at <http://www.eestiinternet.ee/>).
- 1.3. The Committee settles disputes on the basis of the Rules, the Domain Regulation and Estonian law.
- 1.4. The EIF organises the work of the Committee. Only members of the Committee settle disputes.
- 1.5. The Council of the EIF adopts the Rules, the List of Committee Members and amendments thereto.
- 1.6. The working language of the Committee is Estonian. The Committee has the right to demand that a person who submits foreign language documents have them translated into Estonian as well as to accept foreign language certificates.

### **2. DEFINITIONS**

For the purposes of these Rules the following definitions shall have the following meaning:

- 2.1. **Domain Name** means a .ee domain name registered on the basis of the Domain Regulation and constituting the object of the Application;
- 2.2. **Domain Regulation** means the Domain Regulation adopted by the Council of the EIF on 29.06.2010;
- 2.3. **EIF** means the Estonian Internet Foundation;
- 2.4. **Applicant** means the person who submitted the Application;
- 2.5. **Application** means a document submitted by the Applicant on the basis of and in accordance with the Rules and along with any and all annexes for the purpose of initiation of a procedure in the Committee;

- 2.6. **Registrant** means the person in whose name the Domain Name that constitutes the object of the dispute has been registered;
- 2.7. **Start Date of Procedure** means the day when the Application compliant with the requirements has been submitted to the Committee and the Committee procedure fee has been paid to the current account of the Committee;
- 2.8. **Party** means the Applicant or the Registrant;
- 2.9. **Parties** means the Applicant and the Registrant jointly;
- 2.10. **Rules** means these Rules of the Domain Disputes Committee;
- 2.11. **Prior Right** means trademarks valid and registered in Estonia; names of individuals; names of entities registered in Estonia; names of the state, local authorities and their agencies; names of international and inter-governmental organisations;
- 2.12. **Committee** means the Domain Disputes Committee;
- 2.13. **Committee Member** means an individual who has consented to act as a member of the Committee and included in the List of Committee Members approved by the Council of the EIF;
- 2.14. **List of Committee Members** means a list of the Members of the Committee published on the website of the EIF;
- 2.15. **Response to the Application** means a document submitted by the Registrant in response to the Application on the basis of the Rules along with any and all annexes.

### **3. DELIVERY AND NOTICES**

- 3.1. Upon submission of the Application to the Registrant, the Committee shall exploit reasonably available means in order to actually inform the Registrant of the Application.
- 3.2. The Registrant is deemed as actually informed of the Application if:
- (a) a written notice on the submission of the Application has been sent to all postal addresses and/or fax numbers specified in the WHOIS database of the EIF under the details of the holder of the Domain Name, technical contact person and administrative contact person; and
  - (b) the Application has been sent by e-mail to the e-mail addresses of the technical contact person and administrative contact person of the Domain Name specified in the WHOIS database of the EIF; and
  - (c) the Application has been sent to the Registrant's e-mail addresses submitted by the Applicant to the Committee pursuant to article 5.2.2.
- 3.3. Except for the event specified in article 3.2(a), any and all notices and evidence to be submitted on the basis of the Rules must be submitted electronically. The recipient of an electronically sent message is obligated to confirm receipt. In exceptional circumstances the Committee may accept the Party's notices and evidence on paper or in another manner and in such an

event the Party must always add a copy for the other Party in the same format. The Party that submitted the contact details is responsible for the correctness of the contact details and bears the risk of receipt of the notices sent to the respective contact persons.

- 3.4. If the Committee does not decide otherwise for exceptional reasons, all the notices submitted on the basis of the Rules are deemed as received by the addressee and the terms pertaining to the receipt of the notice start running as follows:
- (a) in the case of an e-mail, once the addressee has confirmed the receipt of the e-mail or, at latest, on the first working day following the sending of the e-mail; or
  - (b) in the case of a fax, on the date indicated in the confirmation of the receipt of the sender's fax message; or
  - (c) in the case of mail, registered mail or sending by a courier, on the third working day following the submission of the notice to the provider of postal or courier services or on the working date of actual receipt of the notice (depending on which circumstance occurs earlier).
- 3.5. Any and all notices that have been submitted:
- (a) by the Committee to any Party must be concurrently sent to the other Party;
  - (b) by the Party to the Committee after the Start Date of the Procedure, must be concurrently sent to the other Party.
- 3.6. The sender is obligated to preserve evidence of the fact and circumstances of sending and the evidence must be available for verification, where necessary.
- 3.7. If the Party that received the notice receives a notice that the delivery of the notice sent by it failed, the Party shall immediately inform the Committee of the circumstances of sending the notice.

#### **4. WRITTEN PROCEDURE**

The procedure in the Committee is a written procedure. No oral hearing takes place (including by way of a teleconference, video conference and web conference), unless the Committee decides on the basis of the right of discretion and special circumstances that an oral hearing is necessary for the purpose of making a decision on the Application.

#### **5. APPLICATION**

- 5.1. The procedure in the Committee may be started by any person, submitting an Application to the Committee if the Domain Name violates its rights for the purposes of article 15.4 of the Rules.
- 5.2. The Application and the evidence annexed thereto are submitted electronically and the following must be indicated therein:

- 5.2.1. the name, address and contact details of the Applicant and the same information on the representative if the Applicant is represented by a representative in the procedure; the e-mail address(es) where all the notices to be submitted to the Applicant in the course of the procedure are sent must be specified under the contact details;
  - 5.2.2. the name of the Registrant and all details of the Registrant or its representative known to the Applicant (including mail and e-mail addresses, telephone and fax numbers) through which it is possible to contact the Registrant or its representative, including the possible contact details which the Applicant used in communicating with the Registrant before submission of the Application;
  - 5.2.3. the Domain Name or Names that constitute the object of the dispute;
  - 5.2.4. the choice of the Applicant whether the dispute is settled by a panel of one or three Members of the Committee; in the case of three Members of the Committee the names of the three Members of the Committee must be submitted from the List of Committee Members;
  - 5.2.5. the name of the Registrar via whom the Domain Name has or Domain Names have been registered as of the submission of the Application;
  - 5.2.6. the Prior Rights that the Applicant relies on;
  - 5.2.7. the legal reasons for the Application, above all:
    - (a) why is the Domain Name identical or misleadingly similar to the Prior Right of the Applicant; and
    - (b) why the Domain Name has been registered in such a manner that the Registrant does not have the right or legitimate right to the Domain Name; or
    - (c) why the Domain Name was registered or is being used in bad faith.
  - 5.2.8. The Applicant's claim either for:
    - (a) cancellation of the Domain Name or
    - (b) handing the Domain Name over to the Applicant;
  - 5.2.9. any and all initiated or completed legal proceedings that are directly or indirectly related to the domain name(s) constituting the object(s) of the dispute or the Applicant's confirmation of the absence of respective proceedings.
- 5.3. The following must be added to the Application:
- 5.3.1. evidence by which the Applicant reasons its claim, including evidence of the existence of Prior Rights;
  - 5.3.2. information about payment of the fee of the Committee;
  - 5.3.3. the confirmation specified in article 8 of the Rules, which has been signed by the Applicant or its representative in hand or digitally;
  - 5.3.4. the representative's power of attorney, if the Applicant is represented by a representative.

- 5.4. The object of the Application may be more than one Domain Name if the Parties are the same.

## **6. STEPS UPON SUBMISSION OF APPLICATION**

- 6.1. The Committee sends the Applicant confirmation of receipt of the Application. If the Committee finds that the Application does not comply with the formal requirements specified in the Rules, the Committee shall inform the Applicant of the defects and gives the Applicant 7 calendar days for elimination of the respective deficiencies. If the Applicant fails to eliminate the deficiencies within the term, the Committee shall inform the Applicant of the refusal to accept the Application. The fee of the Commission paid by the Applicant is not refunded. Refusal to accept the Application on such basis does not deprive the Applicant of the right to submit a new, corrected Application.
- 6.2. If the Application complies with the formal requirements specified in the Rules and the Commission's fee has fully accrued to the EIF's current account, the Committee shall accept the Application. Concurrently with the acceptance, the EIF shall prohibit the cancellation and transfer of the Domain Name (see articles 5.3.6.1 and 5.3.6.2 of the Domain Regulation) until the procedure of settling the dispute or the judicial procedure following it has ended and the decision that has entered into force has been communicated to the EIF.
- 6.3. The Committee shall submit the Application to the Registrant within a reasonable term and at the same time informs the Applicant of the acceptance of the Application and submission thereof to the Registrant.
- 6.4. If the Application is filed against a domain name that has already been challenged, the procedure of the later Application shall be suspended until the decision in the first procedure has entered into force. If the Application in the first procedure is approved, upon entry into force of the decision the fees paid to the Committee by the submitters of the subsequent Applications shall be returned to them.

## **7. RESPONSE TO APPLICATION**

- 7.1. The Registrant submits a Response to the Application within 20 calendar days after receiving the Application.
- 7.2. In the Response to the Application the Registrant must:
- 7.2.1. indicate the name, mail and e-mail addresses, telephone and fax numbers of the Registrant and its authorised representative (if any) and specify an e-mail address from among the contact details where all the notices to be submitted in the course of the procedure are to be submitted to the Registrant;
  - 7.2.2. if the Applicant opted for a one-member Committee to resolve the dispute, inform whether the Registrant applies for a three-member Committee instead. If the Registrant opts for a three-member Committee, the Registrant shall pay an additional fee and submit the details of the payment along with

a response to the Application. If the respective fee has not been paid, the dispute shall be resolved by a one-member Committee;

- 7.2.3. name any and all legal proceedings initiated or completed by any domain name or domain names constituting the object of any Application, which the Applicant has not specified in the Application;
- 7.2.4. submit the legal grounds that serve as the basis for the Response to the Application, especially submit the circumstances that show the Registrant's right or legitimate right to the Domain Name for the purposes of article 15.5 of the Rules.
- 7.3. The following must be added to the Response to the Application:
  - 7.3.1. evidence, including evidence of the Registrant's right or legitimate right that the Registrant relies on;
  - 7.3.2. the confirmation specified in article 8 of the Rules, which has been signed by the Registrant or its representative in hand or digitally;
  - 7.3.3. the representative's power of attorney, if the Registrant is represented by a representative. No power of attorney needs to be added if the representative is the Registrant's administrative contact person registered in the WHOIS database of the EIF, but the Committee may demand the submission of a power of attorney.
- 7.4. The Committee confirms to the Registrant the receipt of the Response to the Application. If the Committee finds that the Response to the Application does not comply with the formal requirements specified in the Rules, the Committee shall immediately inform the Registrant of the deficiencies and if the deficiencies can be eliminated, the Committee shall give the Registrant 7 calendar days for elimination of the respective deficiencies. If the Registrant fails to eliminate the deficiencies within the respective term, it shall be deemed that the Registrant has not submitted the Response to the Application.
- 7.5. The Committee shall immediately submit to the Applicant the Response complying with the formal requirements.
- 7.6. If the Registrant does not submit the Response to the Application or the Response to the Application does not comply with all the formal requirements and the Registrant fails to eliminate the deficiencies within the prescribed term, the Committee shall inform the Parties of the failure by the Registrant to perform the obligation and send the Response to the Application, which does not comply with the formal requirements, to the Applicant for information purposes. In such an event the Committee may settle the dispute solely on the basis of the Application.
- 7.7. The provisions of article 7.6 do not deprive the Registrant of the right to have a three-member Committee decide on the case, provided that the additional fee had been paid pursuant to article 7.2.2.

## **8. PARTY'S WARRANTY**

The Applicant adds the following warranty to the Application and the Registrant adds the following warranty to the Response to the Application,

thereby the warranty must be signed by the Party or the person authorised by the Party:

“This is to certify that any and all the submitted information is complete and true.

I consent to the processing of my personal data by the Committee to the extent necessary for performance of the Committee’s functions.

I consent to the full publication of the decision (incl. the personal data contained in the decision) made in the procedure on the EIF’s website.

In connection with the procedure in the Committee I waive any and all possible claims and legal measures with regard to the following persons:

- (a) the EIF, including the members of its directing bodies, employees, advisors and representatives, except in the event of intentional unlawful acts or omissions;
- (b) the Members of the Committee, except in the event of intentional unlawful acts or omissions;
- (c) the Registrar, except in the event of intentional unlawful acts or omissions.”

## **9. APPOINTMENT OF COMMITTEE MEMBERS**

- 9.1. The Application is reviewed by one Committee Member who is appointed at the discretion of the Committee from among the List of Committee Members, except if the Applicant or Registrant applies for a panel of three Members of the Committee.
- 9.2. If the Registrant has applied for a panel of three members of the Committee in its Response to the Application, the Applicant shall submit to the Committee the names of three Members of the Committee within five calendar days as of the day of delivery of the Response to the Application to the Applicant.
- 9.3. If the Applicant or the Registrant would like a panel of three Members of the Committee, the Committee shall appoint one member of the panel from among three candidates submitted by the Applicant, one member from among three candidates submitted by the Registrant and one member at its own discretion from the List of Committee Members. If any of the Parties has failed to submit its three candidates, the Committee shall, at its own discretion, appoint an additional member from the List of Committee Members.
- 9.4. After appointment of the Committee Members the Committee shall inform the Parties of the Committee Members and the date when the Committee makes a decision on the Application.

## **10. LIST, IMPARTIALITY AND INDEPENDENCE OF COMMITTEE MEMBERS**

- 10.1. The List of Committee Members and amendments thereto are approved by the Council of the EIF. The List of Committee Members is published on the website of the EIF.
- 10.2. The Committee Members maintain confidentiality of the information submitted to them in the course of the procedure, unless such information has been submitted in a decision that is subject to publication.
- 10.3. A Committee Member must be and seem to be impartial and independent. A Committee Member may remove themselves if at any stage of the procedure any circumstances that may lead to reasonable doubts about the impartiality or independence of the Committee Member become evident or if the resolution of the case by the Member may seem partial and dependent. In such an event the Committee appoints a new Committee Member.
- 10.4. The Parties may request that a Committee Member be removed. The Party that requests the removal of a Committee Member must submit the reasons as to why it requests the removal. The removal application must be submitted within five calendar days after learning of the circumstances communicated by the Party that undermine the impartiality and independence of the Committee Member.
- 10.5. If one of the Parties requests that a Committee Member be removed, the other Party and the respective Committee Member shall have the right to reply to the removal request within five calendar days after receiving the removal request. The Committee Member appointed by the Committee decides on the removal and their decision is final and not subject to appeal.

## **11. ADDITIONAL SUBMISSIONS**

The Committee may, based on the right of discretion, request or accept additional submissions or documents from both Parties in addition to the Application and the Response to the Application.

## **12. ADMISSION**

If a Party to the procedure does not respond within the term set by the Committee, the Committee may deem it consenting to the statements of fact and legal statements or claims of the other Party (admission).

## **13. EXTENSION OF TERMS**

At the request of a Party submitted before the expiry of the respective term or terms, the Committee may, based on the right of discretion and in the event of existence of special circumstances or by agreement of the Parties, extend the term.

## **14. AGREEMENT BETWEEN PARTIES, SUSPENSION OF PROCEDURE AND TERMINATION OF PROCEDURE**

- 14.1. The Committee terminates the procedure once it has obtained confirmation from both Parties that the Parties have come to an agreement on the Domain Name constituting the object of the dispute.
- 14.2. If the Parties would like to negotiate in order to come to an agreement, the Parties may request that the Committee suspend the procedure for the term specified in the request. At the request of the Parties the Committee may extend the term for suspension of the procedure. The procedure continues with the receipt of the respective application from the Registrant or the Applicant or with the expiry of the established term.
- 14.3. If an action or another legal procedure has been initiated before or is initiated during the procedure in the Committee with regard to the Domain Name constituting the object of the dispute between the same Parties, the Committee may decide based on the right of discretion whether to suspend or terminate the Committee procedure or make a decision.
- 14.4. With good reason and on exceptional circumstances the Committee may suspend the procedure also at the request of one Party. In such an event the procedure continued on the Committee's own initiative or on the basis of the request of the Party that applied for suspension.
- 14.5. The Committee also terminates the Procedure once it becomes evident that with regard to the Domain Name constituting the object of the dispute between the parties:
- (a) the final decision by a competent court, court of arbitration or the Committee has been made; or
  - (b) the court has, by way of a measure for securing the action, prohibited a procedure in the Committee or taken measures for securing the action, which would impede enforcement of the Committee's decision.

## **15. DECISION**

- 15.1. The Committee makes a decision on the basis of the Parties' positions and documents, which have been submitted in accordance with the Rules.
- 15.2. The decisions of the Committee are final, they cannot be appealed against and they are binding upon the Parties, relevant Registrars and the EIF. This does not preclude the Party's right to initiate a judicial procedure against the other Party, which results in the consequences set out in the Rules (see article 15.8).
- 15.3. The Committee makes a decision to approve the Application only regarding the deletion of a disputed Domain Name or transfer thereof to the Applicant.
- 15.4. The Committee approves the Application by a decision if the Applicant proves that:
- (a) the Domain Name is identical or misleadingly similar to the Prior Right of the Applicant; and

- (b) the Domain Name had been registered without the Registrant being entitled to having a legitimate interest in the Domain Name; or
  - (c) the Domain Name has been registered or is being used in bad faith.
- 15.5. The Registrant's right or legitimate right to the Domain Name for the purposes of article 15.4(b) may be proven, among other things, but not only, by the following circumstances, if the Committee considers these circumstances as proven on the basis of all the submitted evidence:
- (a) before the dispute the Registrant actually used the Domain Name or name that corresponded to the Domain Name in connection with provision of goods or services or make certifiable preparations for the same;
  - (b) the Registrar is well-known by the Domain Name, even if it has no legal protection for the name;
  - (c) the Registrant uses the Domain Name lawfully and for a non-commercial purpose and honestly, without the intention of misleading consumers or harming or taking advantage of the reputation of the Applicant or its Prior Right.
- 15.6. Among other things, but not only, the following circumstances may prove registration or use of the Domain Name in bad faith for the purposes of article 15.4(c), if the Committee finds that the following circumstances have occurred:
- (a) the Domain Name had been registered or obtained directly with the aim of selling the Domain Name, granting the right of use of the Domain Name or otherwise transfer the Domain Name to the holder of the Prior Right or to the Applicant's competitor for a fee that considerably exceeds the direct costs of registration of the Domain Name; or
  - (b) the Domain Name has been registered with the aim of preventing the exercise of the Prior Right in the respective Domain Name if:
    - (i) the Registrant has repeatedly carried out a similar activity; or
    - (ii) the Domain Name has not been used in the appropriate manner for a period of no less than two years following the date of registration;
  - (c) the main aim of registration of the Domain Name was to disturb the activities of the Applicant; or
  - (d) the Domain Name was used intentionally for attracting Internet users with the aim of making profit on the Registrant's websites or in other online places, creating the risk of confusion with the Prior Right; or
  - (e) the Domain Name is the name of an individual and there is no connection between the Registrant and the Domain Name, which would justify the use of the name.

- 15.7. A decision of the Committee of three Members is adopted by simple majority.
- 15.8. A decision of the Committee is made in writing, contains the reasons for the decision, the date of the decision and the name(s) of the Member(s) of the Committee who made the decision. If the Committee decides that the disputed Domain Name is to be cancelled or transferred to the Applicant, it shall be noted in the decision that the EIF must enforce the decision within 14 calendar days after its entry into force, unless the Registrant informs the EIF of initiation of a further judicial procedure against the Applicant and submits to the EIF a respective court ruling on securing the action (see articles 15.2 and 16).
- 15.9. If the Committee comes to the conclusion that the dispute is not subject to its competence, the Committee shall declare so in its decision.
- 15.10. The Committee shall send the decision to the Parties, the respective Registrar and the EIF within one month after confirming the receipt of the Response to the Application, which complies with the formal requirements or expiry of the term of submission of a Response to the Application.
- 15.11. The full text of the decision is published on the website of the EIF.

## **16. ENTRY INTO FORCE AND ENFORCEMENT OF DECISION**

- 16.1. A decision of the Committee enters into force on the date of making the decision. The EIF does not enforce the decision before 14 calendar days have passed from the entry into force of the decision.
- 16.2. If the Committee decided to approve the Application, the Registrant shall have 14 calendar days from the date of making the decision in order to inform the EIF of the initiation of a judicial procedure against the Applicant and application of a measure securing the action, which prohibits the EIF from deleting the Domain Name or transferring it to the Applicant. Upon receiving such information and a ruling, the EIF shall not enforce the Committee's decision until the subsequent judicial procedure has come to an end and the judgment that has entered into force has reached the EIF.

## **17. FINAL PROVISIONS**

- 17.1. The EIF and the Members of the Committee are not liable before the Parties for their acts or omissions in the course of the procedure held on the basis of the Rules, unless the EIF or a Member of the Committee has committed an intentional unlawful act.
- 17.2. The Rules shall be applicable to any and all Applications filed as of 5 July 2010.
- 17.3. If the Rules are amended during a procedure, the Rules in force at the time of taking a respective procedural step shall be applied.
- 17.4. Amendments to the Rules enter into force at least 30 days after their approval by the Council of the EIF. The Council of the EIF may set a longer period for the entry into force of amendments.



In case of any wording misapprehensions between the English and Estonian version of this document, wording in Estonian is superior and legally binding.