Appendix 11

INDRP Rules of Procedure¹

Posted: June 28, 2005

1. Definitions

In these Rules:

**Arbitrator** refers to the expert who has expertise on computer and / or laws, possess a high sense of professional ethics, and is capable of rendering independent and unbiased decisions in domain name disputes.

**Complaint** means a Complaint referred to in Paragraph 3 of these Rules of Procedure.

**Complainant** refers to the person who has complaint against the Registrant.

**.IN Registry** Wherever used in this policy and the rules hereunder .IN Registry refers to the National Internet Exchange of India (NIXI), a company registered under Section 25 of the Indian Companies Act, 1956.

**Dispute Resolution Policy** means the version of the .IN Domain Name Dispute Resolution Policy, which is in existence on the date of filing of the Complaint.

**Respondent** means the registered holder of a .IN domain-name against whom a Complaint is initiated.

**Response** means a Response referred to in Paragraph 5 of these Rules of Procedure.

2. Communications

a. When forwarding a Complaint to the Respondent, .IN Registry shall ensure to employ reasonably available means to serve notice of complaint to the Respondent. Service of notice, or employing the following measures to do so, shall discharge this responsibility:

i. sending the Complaint to all postal-mail and facsimile addresses shown in the domain name’s registration data through .IN Registry’s WHOIS database at www.registry.in; and

ii. sending the Complaint in electronic form (including annexes to the extent available in that form) by e-mail to:

A. the e-mail addresses shown in the domain name’s registration data through .IN Registry’s WHOIS function at www.registry.in; and

B. postmaster@[the contested domain name]

iii. sending the Complaint to any address the Respondent has notified to the .IN Registry in writing (including email) at which it prefers and, to the extent possible, to all other addresses provided to the .IN Registry by Complainant under Paragraph 3(b)(v).

b. Except the service of the notice of Complaint as provided in Paragraph 2(a), any written communication to Complainant or Respondent provided for under these Rules of Procedure shall be made

i. by facsimile transmission, with a confirmation of transmission; or

ii. by registered post and / or, speed post.

c. Communications shall be made in the language prescribed in Paragraph 10 of these Rules of Procedure.

d. Either Party may update its contact details by notifying to the .IN Registry.

e. Except as otherwise provided in these Rules of Procedure, or decided by an Arbitrator, all communications provided for under these Rules of Procedure shall be deemed to have been made:

i. if delivered through facsimile transmission, on the date shown on the confirmation of transmission; or
ii. if by registered post or speed post, on the date marked on the acknowledgement receipt or on the 3rd day from the date of its dispatch; or

iii. if via the Internet, on the date that the communication was transmitted, provided that the date of transmission is verifiable.

f. Except as otherwise provided in these Rules of Procedure, all time periods calculated under these Rules of Procedure to begin when a communication is made shall begin to run on the earliest date that the communication is deemed to have been made in accordance with Paragraph 2(e) above.

g. Any communication by:

i. an Arbitrator to any Party shall be copied to the .IN Registry and to the other Party;

ii. the .IN Registry to any Party shall be copied to the other Party and to the Arbitrator; and

iii. a Party shall be copied to the other Party, the Arbitrator and the .IN Registry.

h. It shall be the responsibility of the sender of a communication to retain records of the fact and circumstances of the sending, which shall be available for inspection by affected parties and for reporting purposes.

i. In the event a sender sends a communication and receives information of non-delivery of the communication, the sender shall promptly inform the Arbitrator, the .IN Registry and the relevant parties about the non-delivery of communication and reasons thereof if any. Further proceedings concerning the communication and any response shall be as directed by the Arbitrator, or if no Arbitrator is yet appointed, by the .IN Registry.

3. The Complaint

a. Any person or entity may initiate an arbitration proceeding by submitting a Complaint to the .IN Registry in accordance with the Dispute Resolution Policy and these Rules of Procedure. The envelopes containing the Complaint should be clearly superscribed on the right hand side corner “.IN Domain Names Dispute Complaint.”
The Complaint should be addressed to:

.IN Registry
c/o NIXI (National Internet eXchange of India)
Regd. Office: Incube Business Centre, 5th Floor,
18, Nehru Place
New Delhi 110019
India
Tel: +91 11 3061 4624/4625
Fax: +91 11 3061 4629
E-Mail: registry@nixi.in

Or any other address that may be published on the Registry’s website from time to time.

b. The Complaint and the annexures attached to it shall be submitted in hard copy and as far as possible in electronic form also and shall incorporate the following:

i. A request that the Complaint be submitted to arbitration in accordance with the Dispute Resolution Policy and the Rules framed thereunder,

ii. State the name, postal and e-mail addresses, and the telephone and facsimile numbers of the Complainant and of any representative authorised to act for the Complainant in the arbitration proceeding and also specify a preferred method of communication to it i.e. by email, postal mail or facsimile.

iii. Provide the name of the Respondent and all information (including any postal and e-mail addresses and telephone and facsimile numbers) known to the Complainant regarding how to contact the Respondent including contact information based on any pre-Complaint dealings, to allow the .IN Registry to send the Complaint to the Respondent as described in Paragraph 2(a) above;

iv. Specify the domain name which is the subject of the Complaint;

v. Specify the trademark(s) or service mark(s) on which the Complaint is based and, for each mark, describe the goods or services, if any, with which the mark is used. The
Complainant may also separately describe other goods and services with which it intends, at the time the complaint is submitted, to use the mark in the future;

vi. describe, in accordance with the Domain Name Dispute Resolution Policy, the grounds on which the Complaint is made including, in particular,

1. the manner in which the domain name in question is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

2. why the Respondent should be considered as having no rights or legitimate interests in respect of the domain name that is the subject of the Complaint; and

3. why the domain name in question should be considered as having been registered and being used in bad faith.

vii. Specify, in accordance with the Dispute Resolution Policy, the remedies sought;

viii. Identify any other legal proceedings that have been commenced or terminated in connection with or relating to the domain name that is the subject of the Complaint;

ix. Conclude with the following statement followed by the signature of the Complainant or its authorised representative:

"The Complainant, by submitting the Complaint agrees to the settlement of the dispute, regarding the domain name which is the object of the Complaint by final and binding arbitration in India in accordance with the Arbitration and Conciliation Act, 1996, the .IN Domain Name Dispute Resolution Policy of .IN Registry; Rules of Procedure and any bye-laws, rules or guidelines framed thereunder."

"Complainant agrees that its claims and remedies concerning the registration of the domain name, the dispute, or the dispute's resolution shall be solely against the domain-name holder and waives all such claims and remedies against the .IN REGISTRY, as well as their directors, officers, employees, and agents and the arbitrator who will hear the dispute."
“The Complainant by submitting this Complaint agrees that the decision of the Arbitrator to be appointed in this matter may be made public and may be published on the website including without limitation other forms of publication of the .IN REGISTRY.”

“Complainant certifies that the information contained in this Complaint is to the best of Complainant’s knowledge complete and accurate, that this Complaint is not being presented for any improper purpose, such as to harass the Respondent etc.”

x. Annex any documentary or other evidence, including a copy of the Policy applicable to the domain name in dispute and any trademark or service mark registration upon which the Complaint relies, together with a schedule indexing such evidence.

c. A separate Complaint is required to be filed for dispute relating to each domain name.

4. Notification of Complaint

a. The .IN Registry shall on receipt of the prescribed fees, forward the Complaint to the Respondent, within three (3) working days if it is found in accordance with the Dispute Resolution Policy and Rules of Procedure.

b. If the .IN Registry finds the Complaint to be not in accordance with the Dispute Resolution Policy and the Rules of Procedure, it shall within three (3) working days notify the Complainant of the deficiencies identified. The Complainant shall have five (5) working days within which to correct any such deficiencies, failing which the arbitration proceeding will be deemed withdrawn without prejudice to submission of another Complaint by the Complainant in respect of the same domain name.

The .IN Registry on receipt of the complaint after correction of the deficiencies shall appoint an arbitrator from the list of arbitrators and forward the Complaint and documents to the Respondent and to the Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act 1996, Rules framed thereunder, Dispute Resolution Policy & rules framed thereunder.
c. The date of commencement of the arbitration proceeding shall be the date on which the Arbitrator issues notice to the Respondent as stipulated under Paragraph 5 (c) of these Rules of Procedure.

5. Appointment of the Panel and Timing of Decision

a. .IN Registry shall maintain and publish a publicly available list of arbitrators and their qualifications.

b. The .IN Registry shall appoint, within five (5) working days following receipt of the Complaint after removal of objections if any, an Arbitrator from the .IN Registry’s list of Arbitrators and shall forward to him the Complaint and documents annexed thereto. The fees shall be paid entirely by the Complainant.

c. Once the arbitrator is appointed the .IN Registry shall notify the parties of the Arbitrator appointed. The Arbitrator shall pass a reasoned award and shall put forward a copy of it immediately to the Complainant, Respondent and the .IN Registry. The award shall be passed within 60 days from the date of commencement of arbitration proceeding. In exceptional circumstances this period may be extended by the Arbitrator maximum for 30 days. However, the Arbitrator shall give the reasons in writing for such extension.

Within 3 days from the receipt of the complaint the Arbitrator shall issue a notice to the Respondent.

d. The Arbitrator shall ensure that copies of all documents, replies, rejoinders, applications, orders passed from time to time be forwarded to .IN Registry immediately for its records and for maintaining the transparency in the proceedings.

6. Impartiality and Independence

(i) An Arbitrator shall be and remain at all times impartial and independent and shall have, before accepting appointment, disclosed to the .IN Registry any circumstance, which could give rise to justifiable doubt as to the Arbitrator’s impartiality or independence. If, at any stage during the arbitration proceeding, new circumstances arise which could give rise to justifiable doubt as to the impartiality or independence of the Arbitrator, the Arbitrator shall promptly disclose such
circumstances to the .IN Registry. In such event, the .IN Registry shall have the discretion to appoint a substitute Arbitrator from the .IN Registry's list of Arbitrators.

(ii) After an Arbitrator has been appointed, but before rendering a decision, the Arbitrator dies, or is unable to act, or refuses to act, the .IN Registry shall, upon written request by either Party, appoint a replacement Arbitrator from the .IN Registry's list of Arbitrators.

(iii) A Party may challenge an arbitrator's impartiality or independence by filing a written request to the .IN Registry within seven (7) calendar days of the date of receipt of the notice of appointment of the Arbitrator in question, stating the circumstances likely to give rise to justifiable doubt as to the relevant Arbitrator's impartiality or independence, together with specific reasons therefore. The .IN Registry, in its sole discretion, shall decide whether such doubts are justified, and if the .IN Registry so finds, the .IN Registry may remove the Arbitrator against whom the challenge was made and replace such Arbitrator with another arbitrator from the .IN Registry's list of arbitrators.

7. Communication Between Parties and the Arbitrator

No Party or anyone acting on its behalf may have any unilateral communication with an Arbitrator. All communications between a Party and the Arbitrator, or between a Party and the .IN Registry shall be made in the manner prescribed in these Rules of Procedure.

8. General Powers of the Arbitrator

a. An Arbitrator shall conduct the arbitration proceeding in such manner as it considers appropriate in accordance with the Arbitration and Conciliation Act 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed thereunder.

b. In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case.

c. Every Arbitrator shall ensure that the arbitration proceedings takes place with due expedition.

9. Language of the Arbitration Proceedings

a. The language of the arbitration proceedings shall be English.
b. Any documents submitted in a language other than English shall be accompanied by a true copy of its translation in English.

10. **In-Person Hearings**

There shall be no in-person hearings (including hearings by teleconference, videoconference, and web conference), unless the Arbitrator determines, in his sole discretion and as an exceptional matter, that such a hearing is necessary for deciding the Complaint.

11. **Default**

a. In the event that a Party, in the absence of exceptional circumstances as determined by the Arbitrator in its sole discretion, does not comply with any of the time periods established by these Rules of Procedure or the Arbitrator, the Arbitrator shall proceed to decide the Complaint in accordance with law.

12. **Arbitrator Decisions**

a. An Arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed thereunder and any law that the Arbitrator deems to be applicable.

b. In the absence of exceptional circumstances as determined by the Arbitrator in its sole discretion, the Arbitrator shall forward its decision on the Complaint to the .IN Registry within Sixty (60) calendar days of commencement of the Arbitration Proceedings.

c. An Arbitrator’s decision shall be in writing, provide the reasons on which it is based, indicate the date on which it was rendered and identify the name of the Arbitrator.

13. **Communication of Decision to Parties**

Within five (5) working days after receiving the decision from the Arbitrator, the .IN Registry shall communicate the full text of the decision to each Party and shall also communicate to each Party, the date for the implementation of the decision.
14. Settlement or Other Grounds for Termination

a. If, before the Arbitrator’s decision, the Parties agree on a settlement, the Arbitrator shall terminate the arbitration proceeding and enter the settlement as the decision of the Arbitrator.

15. Fees

a. The Complainant shall pay to the .IN Registry the prescribed fee, in accordance with the .IN Registry’s schedule of fees, within the time and in the amount required. All cheques/drafts towards the .IN Registry administration charges and payment of the Arbitrator’s fee shall be drawn in favour of ‘NATIONAL INTERNET EXCHANGE OF INDIA.’

b. No action shall be taken by the .IN Registry on a Complaint until it has received from Complainant the prescribed fee.

c. The fees for adjudication of the dispute shall be payable as per the schedule given below. In case the Arbitrator calls for personal hearings, the fees for personal hearing shall be shared by the parties equally. However, if any party requests for personal hearing and that request is allowed by the Arbitrator, the fees for personal hearing shall be payable by the party making such request.

<table>
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<tr>
<th>.IN Registry’s</th>
<th>Rs. 1,000/-</th>
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<tbody>
<tr>
<td>Administration Fee</td>
<td></td>
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<tr>
<td>Arbitrator’s Fee</td>
<td>Rs. 9,000/-</td>
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<tr>
<td>For personal hearing</td>
<td>Rs. 2,000/- per hearing</td>
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<tr>
<td>Maximum TWO hearings</td>
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d. In case the arbitration proceedings are deemed to be withdrawn as stipulated under Paragraph 4 (b) above, the Registry Administration Fee shall be forfeited by the .IN Registry.

e. No interest whatsoever shall be payable by the .IN Registry in respect to any money deposited with it in accordance with this policy.

f. Venue of personal hearing will be the notified address of the arbitrator.
16. **Exclusion of Liability**

Neither the .IN Registry nor the Arbitrator shall be liable to a Party for any act or mission in connection with any arbitration proceeding under these Rules of Procedure.

17. **Amendments**

The version of Dispute Resolution Policy and these Rules of Procedure in effect at the time of the submission of a Complaint to the .IN Registry shall apply to the arbitration proceeding commenced in accordance with such Dispute Resolution Policy and Rules of Procedure.

These Rules of Procedure may be amended from time to time by the .IN Registry in its sole discretion.