

# Dot TK Domain Name Dispute Resolution Policy

## § 1. Purpose

This Tokelau .TK Domain Name Dispute Resolution Policy (the "Policy") has been adopted by Taloha, Inc. ("Taloha"), registered as business in San Francisco, California, USA and doing business as "Taloha" and "Dot TK", and is incorporated by reference into your Registration Agreement, and sets forth the terms and conditions in connection with a dispute between you and any party other than Taloha (the registrar) over the registration and use of an Internet domain name registered by you. Proceedings under Paragraph 4 of this Policy will be conducted according to the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules of Procedure"), which are available at [www.icann.org/udrp/udrp-rules-24oct99.htm](http://www.icann.org/udrp/udrp-rules-24oct99.htm), as modified by this Policy and the selected administrative-dispute-resolution service provider's supplemental rules.

## § 2. Your Representations.

By applying to register a domain name, or by asking Taloha to maintain or renew a domain name registration, you hereby represent and warrant to Taloha that (a) the statements that you made in your Registration Agreement are complete and accurate; (b) to your knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party; (c) you are not registering the domain name for an unlawful purpose; and (d) you will not knowingly use the domain name in violation of any applicable laws, or regulations. It is your responsibility to determine whether your domain name registration infringes or violates someone else's rights.

## § 3. Cancellations, Transfers, and Changes.

Taloha will cancel, transfer or otherwise make changes to domain name registrations under the following circumstances:

- a. subject to the provisions of Paragraph 8, Taloha receiving written or appropriate electronic instructions from you or your authorized agent to take such action;
- b. Taloha receiving an order from a court or arbitral tribunal, in each case of competent jurisdiction, requiring such action; and/or
- c. Taloha receiving a decision of an Administrative Panel requiring such action in any administrative proceeding to which you were a party and which was conducted under this Policy or a later version of this Policy adopted by ICANN. (See Paragraph 4(i) and (k) below.)

Taloha may also cancel, transfer or otherwise make changes to a domain name registration in accordance with the terms of your Registration Agreement or other legal requirements.

Taloha will not transfer a domain name registration until it has from the proposed new nameholder all of the necessary information, including any fees, if any, and that person's commitment to the Registration Agreement, in the same manner as for a new name application.

#### **§ 4. Mandatory Administrative Proceeding.**

This Paragraph sets forth the type of disputes for which you are required to submit to a mandatory administrative proceeding. These proceedings will be conducted before one of the administrative-dispute-resolution service providers listed at

a.) Applicable Disputes. You are required to submit to a mandatory administrative proceeding in the event that a third party (a "complainant") asserts to the applicable Provider, in compliance with the Rules of Procedure, that

- (i) your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) you have no rights or legitimate interests in respect of the domain name; and
- (iii) your domain name has been registered and is being used in bad faith.

In the administrative proceeding, the complainant must prove that each of these three elements are present.

b.) Evidence of Registration and Use in Bad Faith. For the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

- c. How to Demonstrate Your Rights to and Legitimate Interests in the Domain Name in Responding to a Complaint. When you receive a complaint, you should refer to Paragraph 5 of the Rules of Procedure in determining how your response should be prepared. Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):
- (i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
  - (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
  - (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.
- d. Selection of Provider. You shall select the Provider from among those approved by ICANN by submitting the complaint to that Provider. The selected Provider will administer the proceeding, except in cases of consolidation as described in Paragraph 4(f).
- e. Initiation of Proceeding and Process and Appointment of Administrative Panel. The Rules of Procedure state the process for initiating and conducting a proceeding and for appointing the panel that will decide the dispute (the "Administrative Panel").
- f. Consolidation. In the event of multiple disputes between you and a complainant, either you or the complainant may petition to consolidate the disputes before a single Administrative Panel. This petition shall be made to the first Administrative Panel appointed to hear a pending dispute between the parties. This Administrative Panel may consolidate before it any or all such disputes in its sole discretion, provided that the disputes being consolidated are governed by this Policy or a later version of this Policy adopted by ICANN.
- g. Fees. All fees charged by a Provider in connection with any dispute before an Administrative Panel pursuant to this Policy shall be paid by the complainant, except in cases where you elect to expand the Administrative Panel from one to three panelists as provided in Paragraph 5(b)(iv) of the Rules of Procedure, in which case all fees will be split evenly by you and the complainant.
- h. Our Involvement in Administrative Proceedings. We do not, and will not, participate in the administration or conduct of any proceeding before an Administrative Panel. In addition, Taloha will not be liable as a result of any decisions rendered by the Administrative Panel.
- i. Remedies. The remedies available to a complainant pursuant to any proceeding before an Administrative Panel shall be limited to requiring the cancellation of your domain name or the transfer of your domain name registration to the complainant.
- j. Notification and Publication. The Provider shall notify Taloha of any decision made by an Administrative Panel with respect to a domain name you have registered with Taloha. All decisions under this Policy will be published in full over the Internet, except when an

Administrative Panel determines in an exceptional case to restrict publication of portions of its decision.

- k. Availability of Court Proceedings. The mandatory administrative proceeding requirements set forth in Paragraph 4 shall not prevent either you or the complainant from submitting the dispute to a court of competent jurisdiction for independent resolution before such mandatory administrative proceeding is commenced or after such proceeding is concluded. If an Administrative Panel decides that your domain name registration should be canceled or transferred, Taloha will wait ten (10) business days (as observed in the location of Taloha' s principal office) after Taloha is informed by the applicable Provider of the Administrative Panel' s decision before implementing that decision. Taloha will then implement the decision unless Taloha has received from you during that ten (10) business day period official documentation (such as a copy of a complaint, file-stamped by the clerk of the court) that you have commenced a lawsuit against the complainant in a jurisdiction to which the complainant has submitted under Paragraph 3(b)(xiii) of the Rules of Procedure. (In general, that jurisdiction is either the location of our principal office or of your address as shown in our Whois database. See Paragraphs 1 and 3(b)(xiii) of the Rules of Procedure for details.) If Taloha receives such documentation within the ten (10) business day period, Taloha will not implement the Administrative Panel' s decision, and Taloha will take no further action, until Taloha receives (i) evidence satisfactory to it of a resolution between the parties; (ii) evidence satisfactory to it that your lawsuit has been dismissed or withdrawn; or (iii) a copy of an order from such court dismissing your lawsuit or ordering that you do not have the right to continue to use your domain name.

## **§ 5. All Other Disputes and Litigation.**

All other disputes between you and any party other than Taloha regarding your domain name registration that are not brought pursuant to the mandatory administrative proceeding provisions of Paragraph 4 shall be resolved between you and such other party through any court, arbitration or other proceeding that may be available.

## **§ 6. Our Involvement in Disputes.**

Taloha will not participate in any way in any dispute between you and any party other than Taloha regarding the registration and use of your domain name. You shall not name Taloha as a party or otherwise include Taloha in any such proceeding. If Taloha is named as a party in any such proceeding, Taloha reserves the right to raise any and all defences deemed appropriate, and to take any other action necessary to defend itself.

## **§ 7. Maintaining the Status Quo.**

Taloha will not cancel, transfer, activate, deactivate, or otherwise change the status of any domain name registration under this Policy except as provided in Paragraph 3 above.

## **§ 8. Transfers During a Dispute.**

- a. Transfers of a Domain Name to a New Holder. You may not transfer your domain name registration to another holder (i) during a pending administrative proceeding brought pursuant to Paragraph 4 or for a period of fifteen (15) business days (as observed in the location of our principal place of business) after such proceeding is concluded; or (ii) during a pending court proceeding or arbitration commenced regarding your domain name unless the party to whom the domain name registration is being transferred agrees, in writing, to be bound by the decision of the court or arbitrator. Taloha reserves the right to cancel any transfer of a domain name registration to another holder that is made in violation of this subparagraph.
- b. Changing Registrars. You may not transfer your domain name registration to another registrar during a pending administrative proceeding brought pursuant to Paragraph 4 or for a period of fifteen (15) business days (as observed in the location of our principal place of business) after such proceeding is concluded. You may transfer administration of your domain name registration to another registrar during a pending court action or arbitration, provided that the domain name you have registered with us shall continue to be subject to the proceedings commenced against you in accordance with the terms of this Policy. In the event that you transfer a domain name registration to Taloha during a court action or arbitration, such dispute shall remain subject to the domain name dispute policy of the registrar from which the domain name registration was transferred.

## **§ 9. Policy Modifications.**

Taloha reserves the right to modify this Policy at any time with the permission of ICANN. We will post our revised Policy at [.....](#) at least thirty (30) calendar days before it becomes effective. Unless this Policy has already been invoked by the submission of a complaint to a Provider, in which event the version of the Policy in effect at the time it was invoked will apply to you until the dispute is over, all such changes will be binding upon you with respect to any domain name registration dispute, whether the dispute arose before, on or after the effective date of our change. In the event that you object to a change in this Policy, your sole remedy is to cancel your domain name registration with Taloha, provided that you will not be entitled to a refund of any fees you paid to Taloha. The revised Policy will apply to you until you cancel your domain name registration.