



Version 3 approved by GA8 on 3 December 2021

Appeals and Complaints Procedures

I. APPEALS PROCEDURES

1 General

- (1) The Executive Board shall establish an SWIPO Appeals Board to address any concerns in connection with a decision, action or inaction of a SWIPO governance body or authority, and render fair, neutral and competent decisions or resolutions.
- (2) Objections or concerns regarding the proposed remedial action or other final outcome ruling in connection with the Complaints process shall only be addressed as part of the separate Complaints process. However, an appeal in connection with any procedural decision, action or inaction of the Complaints Body (or some subset of that Body), the Secretariat or other SWIPO governance body relating to a Complaint may be made in accordance with this Appeals process.
- (3) The Appeals Board shall consist of at least four members. Individual Appeals Board members are appointed by the General Assembly for a 3-year term (which may be renewed by the General Assembly) and each member may resign at any time on written notice to the SWIPO Secretariat. At least three Appeals Board members must participate in any Appeals Board review and decision of a submitted appeal.
- (4) The Appeals Board shall make decisions by consensus and provide a written explanation as to the basis of its decision. If unanimity cannot be reached, then at least a majority of the Appeals Committee members participating in a specific appeal must agree on the outcome of the appeal and the related rationale for the decision to take effect.
- (5) Where the Appeals Board is not able to reach a decision as described above, at least one member of the Appeals Board who participated in the relevant appeal may refer any related procedural



issue to the General Assembly for a decision. However, under no circumstances shall the Appeals Board (or some subset thereof) refer a matter to the General Assembly if doing so would require, or result in, the disclosure of any confidential information to the members of the General Assembly (unless the relevant party agrees in writing to such disclosure). By way of further clarification, no issues or matters related to a Complaints-related process may be referred to the General Assembly without the prior, written approval of the relevant parties in order to ensure that confidential information is sufficiently respected and protected.

- (6) Members of the Appeals Board also shall not serve at the same time on the Executive Board or on a Sector Board, nor can they be employed by, or hold a leadership position in, the same member company or organization as any member of the Executive Board or a Sector Board.
- (7) The Executive Board shall broadly solicit applications from interested SWIPO members and other potentially qualified candidates when appointing or re-appointing members of the Appeals Board, and shall seek a balance among Providers, Customers and Sector Groups to the extent possible. Applicants will be asked to provide information regarding their experience and areas of relevant expertise, together with their reasons for seeking the position. As both the Executive Board and Appeals Board are governance bodies with fiduciary responsibilities to SWIPO AISBL, the Executive Board shall make every effort to select Appeals Board participants who have demonstrated that they are willing and able to act in the best interests of SWIPO and avoid any possible conflict of interest.
- (8) An Appeals Board member shall fully recuse themselves from any participation in connection with an appeal where there is any perceived conflict-of-interest.
- (9) If the Executive Board believes that there is sufficient reason to question whether the Appeals Board and/or one of its members may not be acting in an independent, objective and unbiased way, the Executive Board will solicit further information and views from the General Assembly as to how SWIPO should address the situation in order to ensure the Appeals Board's integrity in this regard.



2. Appeals Procedures

- (1) A SWIPO member who (a) has a direct and material interest in SWIPO's activities and (b) believes that it has been or will be adversely affected by any action or inaction of a SWIPO governance body or authority shall have the right to submit a timely, written appeal regarding such action or inaction and have such appeal adjudicated.
- (2) Such an appeal must be submitted to the SWIPO Secretariat on behalf of the Appeals Board within 30 days of the action being appealed, or at any time with respect to an inaction. The appeal shall include the following information:
 - a. The nature of the objection(s), including any direct and material adverse effect(s) on the appellant(s),
 - b. The relevant provisions of the applicable SWIPO AISBL procedures, processes or policies,
 - c. The alleged actions or inactions at issue,
 - d. The specific remedial action(s) that would satisfy the appellant's concern(s), and
 - e. Previous efforts to resolve the related issues and the outcome of those efforts.
- (3) As part of the appeals process, the SWIPO Secretariat shall notify the appellant as to the Appeals Board membership. Before any appeals-related documents are shared with the Appeals Board, the appellant shall be given the opportunity to raise concerns about the impartiality or possible conflict-of-interest of one or more Appeals Board member(s). The Secretariat, together with the Appeals Board, shall make every effort to sufficiently address such concerns (including, when there is the possibility that a conflict-of-interest exists, the recusal of such Appeals Committee member from the appeals process), and otherwise seek to ensure a fair and objective outcome. (Further references to the Appeals Board in these procedures refers to those members of the Appeals Board who have not been recused or otherwise excused from participating in the appeal.)
- (4) The appellant's appeal submission shall identify (a) the relevant action or inaction, (b) the basis for the objections, (c) the relevant procedures, policies, or legal principles, and (d) suggested remedial action(s) that the appellant believes would resolve the issues raised in the Appeal. In its discretion,



the Appeals Board may ask for written comments on one or more related issues from other relevant or impacted members or bodies. Such request(s) for comments and any comments provided shall promptly be shared with each of the parties to the appeal, who may provide the Appeals Committee with a written response before any hearing take place.

- (5) No party shall communicate regarding the appeal with any individual member of the Appeals Board until a decision has been rendered. The appealing party has the burden of demonstrating that the appeal should be upheld. The responding party has the burden of demonstrating that SWIPO AISBL (and/or relevant individuals), acted in compliance with the relevant SWIPO governance rules, policies, and/or decisions or that the requested remedial action(s) would be ineffective or detrimental. Each party may introduce other relevant arguments.
- (6) The Appeals Board shall hold a hearing (with the appellant(s) invited and every attempt made to accommodate their schedule) within 45 days of SWIPO's receipt of the appeal. This may be a physical or electronically-held meeting. The Appeals Board shall render its reasoned, written decision, including any remedial action, within 30 days of the hearing.
- (7) The Appeals Board shall keep all related information and materials confidential to the extent confidential or other sensitive information was provided during the appeals process and identified as confidential.
- (8) Written records of appeals shall be kept and made available to SWIPO Members upon request, with redactions with regard to identified confidential information and/or information where there is sufficient justification for its confidential treatment.



II. COMPLAINTS PROCEDURES

Complaints Body

General

- (1) The Executive Board shall, with the approval of the General Assembly, create a Complaints Body composed of a separate and independent SWIPO Complaints Board Secretariat (the “Complaints Secretariat”) and a pool of at least five independent, neutral, competent and unbiased persons who will be available to make an assessment and decision regarding a formal complaint submitted by a cloud services customer (the “Complainant”) to the effect that a cloud service provider’s (the “Provider”) declaration of adherence to a SWIPO Code of Conduct (as reflected in such Provider’s Declaration of Adherence statement that such Provider submitted to SWIPO AISBL) is materially inaccurate.
- (2) The Executive Board shall propose the appointment and retention of an appropriate and independent Complaints Secretariat organization subject to final approval by the SWIPO AISBL General Assembly. Members of the Complaints Body shall be vetted and selected by the Complaints Secretariat. Each Complaints Body member may withdraw its membership at any time.
- (3) Members of the Complaints Body must individually meet the following requirements (and submit sufficient information to the Complaints Secretariat to substantiate this) to (a) be approved as a member of the Complaints Body and (b) separately, in connection with any specific Complaint submitted to the Complaints Body, in order to assist the Complaints Secretariat assess which Complaints Body members would be eligible to participate in a specific complaint review process (the “Eligible Complaint Body Members” for purposes of that specific complaint):
 - i. Sufficient understanding or expertise regarding one or more of the SWIPO Codes of Conduct and the related Transparency Statement requirements (including the distinction between (a)



- what is required for adherence and (b) what is recommended and therefore not required for adherence to a Code);
- ii. Sufficient understanding and experience regarding contractual negotiations between commercial parties;
 - iii. No possible or perceived conflict(s) of interest that could prevent or possibly endanger a fair and unbiased assessment or decision regarding an alleged infringement of a SWIPO Code of Conduct;
 - iv. Not employed by or affiliated with a SWIPO Member;
 - v. Not employed by an EU regulatory or adjudicative body.
- (4) The Complaints Body and Complaints Secretariat shall develop, publish in a clear manner, and implement appropriate procedures and safeguards according to its functions, powers, and responsibilities consistent with this Complaints process and subject to the approval of the Executive Board and General Assembly.

Independence of the Complaints Body

- (1) The Executive Board shall equip the Complaints Body and Complaints Secretariat with reasonable financial support to perform its functions.
- (2) If a SWIPO AISBL member (who does not have a possible conflict of interest or other bias) has a substantiated reason to believe that one or more members of the Complaints Body has acted or is acting in a potentially biased and/or otherwise inappropriate manner, such party shall so notify the Complaints Secretariat in writing and provide related justification (regarding the complainant's lack of any possible conflict of interest/bias and the basis for the complaint). The Complaints Secretariat shall then cause a related investigation to be undertaken.
 - a. In connection with such an investigation, the identified member(s) of the Complaints Body is/are obliged to cooperate and has/have a right to be heard. Once all relevant facts are available and assessed, the Complaints Secretariat shall decide whether to revoke the appointment of the respective member to the Complaints Body or take some other



appropriate action, and communicate its decision and rationale to the relevant Complaints Body member in writing. Such decision may be appealed pursuant to SWIPO AISBL's appeals process.

Complaint Procedures

General

- (1) Previous, existing and prospective Customers who have already engaged in negotiations with a Provider in connection with a specific Service that the Provider has declared is adherent to a specific Code of Conduct (and has submitted the relevant Declaration of Adherence to SWIPO AISBL) have the right to submit a Complaint to the Complaints Secretariat under the following terms, conditions and procedures.
- (2) For the purposes of this Complaints mechanism, a previous, existing or prospective Customer is one who (a) has received the relevant transparency statement in connection with a SWIPO Code of Conduct from a Provider and (b) has sufficiently engaged with the Provider in related negotiations to establish that it is a genuine potential customer of the Provider's relevant cloud services.
- (3) A Complaint must assert one or more alleged non-compliances by the Provider with the requirements of the relevant Code of Conduct as further defined and reflected in the related transparency statement form.
- (4) Before a Customer initiates the Complaints process, the Provider and Customer shall each make every reasonable effort to resolve any dispute between themselves in a constructive and confidential manner.
- (5) Before finally completing their mutual obligations under Section (4) directly above, and at least two full weeks prior to initiating the formal Complaints process, the Customer must notify the Provider in writing of its intent submit a formal complaint to the Complaints Secretariat. As part of this notification to the Provider, the Customer must provide the Provider with (a) the proposed Complaint, (b) a description of the parties' efforts to resolve the issues together with any



- supporting documentation, and (c) an explanation why the Customer believes that it was not possible for the parties to resolve the relevant issue(s).
- (6) If the Customer and Provider cannot come to a final resolution of the related issues before or during this final two-week period, the Customer may submit the above-described materials to the Complaints Secretariat.
- (7) The Complaints Secretariat shall review the submitted materials and may reject any complaint that is incomplete, that does not meet all of the substance or procedural requirements set forth herein, or that is not within the permitted scope of SWIPO AISBL's governance documents, activities and/or competencies. The Complaints Secretariat shall notify the relevant Customer and Provider if the complaint is being rejected and why within 15 business days of the Secretariat's receipt of complaint.
- (8) If Section 7 directly above is not applicable (or no longer applicable once the Complaints Secretariat has received an acceptable Complaint), the Complaints Secretariat shall notify the Provider and Customer of the receipt of the Complaint and provide within 15 business days the Provider and Customer with a list of the Complaints Body members, their affiliations, qualifications, etc. The Secretariat shall ask that each of the Provider and Customer notify the Secretariat within 15 business days of any objection that it has with regard to one or more of the Complaints Body members participating in, or being informed of, the materials and/or substance of any aspect of the Complaint process because of (a) a possible conflict-of-interest, (b) an inappropriate exposure to the Provider's and/or the Customer's confidential information, or (c) other reason for good cause.
- (9) Once the process set forth in (8) above has been completed, the Complaints Secretariat shall propose in writing to the relevant Customer and Provider an appropriate panel of at least three neutral, objective and independent Complaints Body members with the necessary combination of skills and knowledge to expertly review and adjudicate the Complaint. The Provider and/or Customer may object to any identified Reviewer, and if the issue is not satisfactorily resolved, the relevant party may appeal the appointment of any such Reviewer (a "Reviewer Appointment"). The Appeals Board shall review and adjudicate this specific type of appeal relating to a Reviewer Appointment through a thorough but also expedited process so that it can render its decision on



the Reviewer Appointment issue(s) within two weeks of its receipt of the related appeals materials. Such expedited appeal must be completed before the Reviewer in question is permitted to engage in any way in the related Complaints process. (This process may be iterative.)

- (10) The final, approved set of Reviewers (a) shall be asked to investigate the submitted complaint and (b) prepare and finalize the final report and recommended course of action on behalf of the Complaints Board. In undertaking and completing this work, the Reviewers shall, at all times, be and act in a fair, unbiased and competent manner that both respects and protects the confidentiality of related information.
- (11) The Reviewers, on behalf of the Complaints Body, are restricted to reviewing complaints regarding a provider's adherence to the mandatory requirements as articulated in the applicable Code(s) and clarified in the transparency statement form. The sole objective of the Complaint process shall be to determine adherence to the relevant Code in this context, and to provide recommended remedial measures to the Complaints Secretariat, the Provider and the Customer in question. The full Complaints Body shall have no role in this process in order to (a) preserve the confidentiality of highly sensitive commercial and other confidential information and (b) avoid any possible conflict-of-interest scenario.
- (12) All information relating to any aspect of this Complaints process as described herein shall be treated as highly confidential. To the extent they are participating in any way in the process in connection with a specific Complaint and have access to such confidential information, the Complaints Secretariat, the Reviewers, and the parties to the Complaints process shall make every effort to ensure that any and all such information is communicated, discussed and/or reviewed under documented procedures and mechanisms designed to ensure that such confidentiality is protected and enforced to the maximum extent possible.
- (13) It is important to recognize that implementation of the Codes of Conduct and the discussions/negotiations between the Provider and a Customer regarding the transparency statements (including but not limited to commercial negotiations between the Provider and Customer) likely will involve the bilateral exchange of certain highly sensitive, private, confidential and competitive information that, if exposed to third parties, can have significant legal, commercial



- and competitive effects. Accordingly, it is imperative that SWIPO AISBL shall establish sufficient procedures and related mechanisms that will ensure that the confidentiality of related information is fully protected before, during and after any complaint resolution process and related appeals.
- (14) Once the Complaints Secretariat receives a formal Complaint, the Secretariat will propose in writing to the relevant Customer and Provider an appropriate panel of at least three neutral, objective and independent Complaints Body members with the necessary combination of skills and knowledge to expertly review and adjudicate the Complaint. The panel shall have both at least three and an odd number of members. The Customer and/or the Provider may submit within two weeks of receipt of such information a request to remove one or more of these members from the panel to avoid a conflict of interest scenario or for other good cause, and/or propose an alternative course of action. (This process may be iterative.) The Secretariat shall consider such requests and provide the parties with a written response. The Secretariat shall, to the fullest extent possible, seek to accommodate either party's request in this regard.
- (15) The sole objective of the Complaint process shall be to determine whether the Provider is materially not in compliance with the relevant Code(s) of Conduct as articulated in the complaint, and recommend remedial action if warranted and as appropriate.
- (16) A majority of the Reviewers must be in agreement in order for the panel to make a decision or take an action.
- (17) Before any proposed remedial action is imposed on a Provider, the Provider shall have sufficient time to exercise its right to appeal actions or decisions other than the substantive outcome of the Complaints process. An appeal in connection with any procedural decision, action or inaction of the Complaints Body (or some subset of that Body), the Complaints Secretariat or other SWIPO governance body may be made according to the Appeals Process.
- (18) Subject to the foregoing, the Provider shall implement any required actions in a timely manner and shall report back to the Complaints Secretariat and the Customer when such actions have been completed.
- (19) If the Provider has not implemented the required actions within the agreed timeframes, the Reviewers shall ask for a written statements from the Provider and Customer, undertake a review



of the situation, adjust the proposed remedies as needed, require additional actions by the Provider and/or take other reasonable action.

(20)SWIPO AISBL may establish a reasonable fee structure to be applied to each party to the complaint process to help offset related expenses.