

Instructions on solving a dispute concerning a domain name registration in the cz. domain

The CZ.NIC Association based at Americká 23, Prague 2 (hereinafter the "CZ.NIC" only) that administers the .cz national domain publishes these instructions on solving a dispute concerning a domain name registration in the cz. domain in order to help amateurs and professionals in their preparation for and participation in court proceedings concerning domain names.

THIS DOCUMENT DOES NOT CONSTITUTE ANY LEGAL OR ANY OTHER PROFESSIONAL ADVICE CONCERNING PREPARATION FOR OR PARTICIPATION IN COURT PROCEEDINGS. IT IS ONLY A SUMMARY OF TECHNICAL INFORMATION ON DOMAIN NAMES AND INFORMATION DERIVING FROM COURT DECISIONS PUBLISHED SO FAR.

THE CZ.NIC ASSOCIATION DOES NOT PROVIDE ANY GUARANTEE AS OF CORRECTNESS OR COMPLETENESS OF THIS DOCUMENT AND IT RECOMMENDS CONSULTING OF EVERY SPECIFIC CASE WITH DOMAIN NAME EXPERTS AND WITH PARTIES AUTHORIZED TO PROVIDE LEGAL SERVICES.

Position of the CZ.NIC Association in the domain name registration system

The CZ.NIC Association administers so called CZ top level domains. It mainly keeps so called central domain register of the second domain level under the CZ domain. The CZ.NIC Association's position is naturally monopolistic since there is a requirement for uniqueness of the second level domain located under the top level domain, therefore, its administration must be centralized in order to avoid duplicities that would prevent providing of services based on domain names, for example the Internet services.

Domain name applicants produce their domain names by themselves using a set of approved characters. Upon producing their domain name, they request its registration (that domain name usually comprises common words, titles, names or abbreviations) in the second level domain name register. The CZ.NIC Association, therefore, does not assign any domain name. Upon registration of the applicant's domain name, the CZ.NIC Association, in simple terms, guarantees that, upon request (made usually automatically by another computer), it will provide technical information concerning the requested second level domain. That will allow locating a computer marked with that second level domain or its connection with another computer. The aforementioned requirement for the second level domain uniqueness results into the basic registration condition – no other domain name identical with an already registered domain name may be registered.

During the second level domain name registration, the CZ.NIC Association does not check whether the registered domain name will breach third parties' rights. Those rights may be quite complicated and CZ.NIC cannot be really expected to check whether every registered domain name breaches those rights or not, especially considering the big number of domain names. A collision between a domain name and third parties' rights may occur in connection with numerous rights, for example the trademark rights, personal name rights or rights concerning legal entities' names, including the copyright, should any domain name be found an author's work. However, it derives from all of those specified rights, that they are not exclusive. Therefore, if CZ.NIC were to check, whether a registered domain name breaches third parties' rights, it would also have to evaluate which of the two holders of identical trademarks or legal entities with the same company names is "more" authorized to register an identical domain name. There may also be a mutual conflict between trademark and a legal entity's firm. It similarly applies to unfair competition. However, it is quite clear that CZ.NIC is not authorized to make those evaluations.

The domain name registration applicants are obliged to make sure their registered domain does not breach any third parties' rights. The CZ.NIC Association only acts as a registration technical guarantor that secures registered domain name's uniqueness and operation of computers who provide replies, as specified above, to requests concerning technical data associated with requested domain names.

As a result of that, the CZ.NIC Association cannot be found responsible for domain name registration applicants breaching third parties' rights. CZ.NIC is not authorized to decide on rights and obligations of domain name holders and third parties who feel that domain name registration or its usage negatively impacts their rights and rightful interests. Those facts are not affected even by the fact, that some cases of third party right violations via domain name registration are quite obvious, since the CZ.NIC Association does not have any criterion, based on which it could immediately and reliably identify a moment of obvious violation of those rights.

1. Verification of a domain name registration

In order to lead a dispute concerning a domain name in the cz. domain (ccTLD .cz), the domain name must be registered, i.e. recorded in the publicly available register (index, list) of the domain names registered in the cz. domain. This register is kept by the CZ.NIC Association and it is available at www.nic.cz (the precise link for the registered domain name search is - http://www.nic.cz/cgi-bin/browsing/domain?lang=en_us). Even if a domain name is registered, associated services or information do not have to be available yet. If no website is available through a given domain name, it still does not mean that such a domain name is not in use. A domain name may be also used for other services than websites, for example for e-mail.

A domain name registration record has the following structure – DOMAIN NAME – SUBJECT – CONTACT. One of the SUBJECT types is the HOLDER. CONTACT is then always associated with a specific SUBJECT and it contains for example information on parties that are authorized to act on behalf of the given SUBJECT.

The register kept by the CZ.NIC Association is the only authentic and official source of information on the actual status of domain name registrations in the cz. domain.

Only the information on registration actual status is publicly available. Historical information, i.e. especially information on previous domain name holders is provided by the CZ.NIC Association when requested by courts (general or arbitration ones) or other state agencies.

If a domain name is not registered, no dispute on its registration can be possible. If a domain name is not registered, any party may register it via any of the registrars (<http://www.nic.cz/en/registrars/page.php?sid=18>).

2. Verification of a domain name holder's data

A domain name holder is a party for whom a domain name was registered. If the register does not contain holder's data necessary for initiation of court or arbitration proceedings (compare to Art. 79 par. 1 of the Civil Procedure Act), then this fact must be reported to the CZ.NIC Association that will ask the holder to correct its data or provide any missing information. If that data is not corrected or provided, the CZ.NIC Association may cancel that domain name in accordance with Art. 14.4.1 of the Registration rules applicable to the domain names in the cz. domain.

3. Verification of an arbitration public offer existence

As of 1 Aug, 2004, the Registration rules applicable to the domain names in the cz. domain (hereinafter the "Registration rules" only) claim that so called "arbitration public offer", based on which proceedings against a holder may be initiated at the Arbitration Court attached to the Economic Chamber of the Czech Republic and the Agricultural Chamber of the Czech Republic (hereinafter the "Arbitration Court" only) – http://www.soud.cz/en_index.php?url=en_obsah.htm . Such an offer is valid only the Registration rules were subject to an agreement. Regarding domains registered after 1 Aug, 2004, this agreement is automatically required and its is also obtained for other domains upon their registration extension. In these days (March 2007) almost all of the domains were subject to that agreement, therefore, an action may be filed both with a general court and the Arbitration Court.

Information on agreement with the Registration rules is available in the registered domain names information at http://www.nic.cz/cgi-bin/browsing/domain?lang=en_us in the "Agreement with the registration rules" item containing the name of a person who expressed its agreement, the Registration rules version subject to that agreement (the last valid version 20060101), and the date when it was provided.

It is necessary to mention, that a person questioning a domain name registration is not obliged to file its action at the Arbitration Court instead of a general court. It is that person's right and the domain name holder is obliged to conform to that arbitration court's jurisdiction.

Based on this arbitration public offer, it is NOT POSSIBLE to file an action against the CZ.NIC Association with the Arbitration Court. The Registration rules do contain a provision (Art. 17.4), based on which disputes between a domain name holder and the CZ.NIC Association are solved via the Arbitration Court, however, that provision only applies to disputes between a domain name holder and the CZ.NIC Association and it must be a dispute concerning a domain name registered by the given domain name holder. A party that feels negatively affected by a domain name registered by a third party and that questions that registration may file an action against such a domain name holder at the Arbitration Court on the arbitration public offer, however, it may not file an action against the CZ.NIC Association based on that arbitration public offer or based on the provision of Art. 17.4. The Arbitration Court already concluded a few times that its authority to decide actions filed against the CZ.NIC Association is not specified. This approach was selected in order to make sure the CZ.NIC Association is not a symbolic participant in these proceedings (see more information in part 5, please).

4. Qualification of claims supporting a dispute

An action concerning domain name registration may be supported especially by rights to trademarks, business firms or legal entity names, the right of privacy, protection against unfair competition, copyrights etc.

During preparation of your action, we recommend consulting of the list of decisions made by the Czech Republic's courts in connection with domain names. It is available at <http://www.nic.cz/en/domains/verdicts/> . The published decisions describe the courts' decision making, including their position on which rights may be affected by domain name registration or use and how a claim for recognition of protection of those rights is to be formulated.

5. Specification of proceedings participants

The defendant is the domain name holder, therefore, a party for whom a domain name was registered (see items 0 and 2 above). The action may also concern other parties who also use the domain name (for example, the domain name holder does not have to operate a website available via the domain name).

In order to achieve one of the most frequent goals of court proceedings concerning domain names, i.e. transfer of a domain name to the claimant is not necessary to file an action against the CZ.NIC Association. The CZ.NIC Association publicly declared (see <http://www.nic.cz/en/domains/page.php?aid=148&sid=17&wid=1>) that it would take steps ordered to the domain name holder by the court even if it is not subject to any action and if that action was filed only against the subject domain name holder.

IN CONNECTION WITH THIS, THE CZ.NIC ASSOCIATION WARNS THAT IT DOES NOT FIND ITSELF PASSIVELY LEGITIMATED IN DOMAIN NAME DISPUTES. IT ACTIVELY DEFENDS ITSELF AGAINST ITS DISPUTE PARTICIPATION AND IT ALWAYS REQUIRES THE COURT TO AWARD IT COMPENSATION FOR COURT PROCEEDINGS EVEN IF THE COURT SETTLES THE DISPUTE AGAINST THE CZ.NIC ASSOCIATION.

6. Court jurisdiction

Considering the claims usually supporting filed actions, the first level decision is to be usually taken by a pertinent regional court, unless the claimant utilizes an arbitration public offer and files his/her action with the Arbitration Court.

7. Preliminary measures

Since it takes only a few minutes to transfer a domain name to a third party, the CZ.NIC Association recommends the claimants to carefully consider filing a proposal on a preliminary measure order that would prohibit any domain name handling, especially its transfer, until a proper decision in the matter is made. However, it is also necessary to mention that upon filing a proposal on a preliminary measure, the claimant must deposit (at the court) a security which, in case of business matters (disputes concerning domain names will be mostly found business matters), equals CZK 100,000 – for more information see Art. 75 b of Act No. 99/1963 Coll., the Civil Procedure Act. A general court decides on its preliminary measure order even if the Arbitration Court will decide the dispute itself.

As far as the preliminary measure text is concerned, we recommend consulting the list of decisions made by the Czech Republic's courts in connection with domain names. It is available at <http://www.nic.cz/en/domains/verdicts/>. The published decisions describe the courts' decision making, including their position on how the preliminary measure orders should be formulated and justified. In connection with this we warn that the courts often consider how long the claimant had to cope with the domain name registration by and if that period exceeded a few months, the courts usually conclude that there is no reason for any preliminary measure order since there is no need to settle the participants' relationships on a temporary basis.

Preliminary measures usually contain obligation to refrain from transferring a domain name to a third party except for its transfer to the claimant. The specified exception can be recommended in order to reach out-of-court settlement during court proceedings and to transfer the domain name despite an existing preliminary measure.

If a preliminary measure is also directed against the CZ.NIC Association, it is delivered to the Association by a court and based on that preliminary measure, the CZ.NIC Association blocks the domain name in order to prevent its transfer. If a preliminary measure is not directed against CZ.NIC, the claimant must immediately mail it (original or its certified copy) to the CZ.NIC Association in order to block the domain name. In connection with this, the CZ.NIC Association warns that domain names can be blocked even if a preliminary measure is not directed against CZ.NIC. The CZ.NIC Association will block a domain name also on the basis of a preliminary measure issued only against the domain name holder (see <http://www.nic.cz/en/domains/page.php?aid=148&sid=17&wid=1>).

8. Decision wording

As far as a decision wording proposal is concerned, we recommend consulting the list of decisions made by the Czech Republic's courts in connection with domain names. It is available at <http://www.nic.cz/en/domains/verdicts/>. It is clear from the published decisions what decision wordings were found clear and feasible by the courts.

Decisions usually contain a verdict, based on which the holder must refrain from domain name usage and transfer that domain name to the claimant (or possibly in more precise terms – it specifies an obligation to change the domain name registration at the .cz top level domain in order to register the claimant as a domain name holder in the .cz top level domain name register).

9. Proper evidence

The following items are usually used as evidence in proceedings concerning domain names: the Registration rules, excerpt from the domain name register, copy of websites available under the given domain name (that copy is often included in the notarial registration of certification of a specific fact – website contents). If an action is based on the claimant's specific rights, excerpts from trademarks registration, excerpts from the Register of companies, newspaper article copies, concluded agreements etc. are usually submitted.

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