

Procedures for disputes pertaining to domain name registration in the .cz domain

CZ.NIC, z.s.p.o., seated at Americká 23, Prague 2 (hereinafter „CZ.NIC“), the administrator of the .cz domain, hereby publishes these procedures for disputes pertaining to registration of domain names in the .cz domain with the goal of simplifying preparation for these disputes for both the general; public and professionals.

THIS DOCUMENT IS NOT A LEGAL OPINION OR A PROFESSIONAL ADVICE ON HOW TO PREPARE CASES. IT IS MERELY AN OVERVIEW OF TECHNICAL INFORMATION ON DOMAIN NAMES AND INFORMATION ON KNOWN COURT DECISIONS.

CZ.NIC DOES NOT WARRANT THE CORRECTNESS OR COMPLETENESS OF THIS DOCUMENT AND RECOMMENDS TO CONSULT EACH CASE WITH PROFESSIONALS IN THE AREA OF DOMAIN NAMES AND PERSONS AUTHORISED TO PROVIDE LEGAL SERVICES.

The position of CZ.NIC in the domain name registration system

CZ.NIC is the administrators of the .cz top level domain. As part of this, it maintains the so-called central registry of second level domain names within the .cz domain. The position of CZ.NIC is a natural monopoly, since the requirement for unique second level domain names within one top level domain means that administration must be centralised so that duplicity disabling services based on domain names, such as Internet services, is avoided.

Domain name holders, or potential holders, create domain names themselves by using a pre-defined set of allowed characters and then request registration of the name (usually corresponding to common words, names, or abbreviations) into the second level domain name registry. CZ.NIC therefore does not assign domain names. At the time of registration of a domain name created by its holder, CZ.NIC guarantees to provide technical information concerning the second level domain in reaction to a query (usually an automated query from another computer). Such information will enable the computer labelled with the name of the domain and/or a connection to another computer to be identified. The above requirement for uniqueness of a second level domain name results in the fact that a domain name identical to another registered domain name can not be registered.

During registration of second level domain names, CZ.NIC does not check in any way whether domain names being registered violate any third party rights in any way. Such rights may vary widely and with the number of domain names being registered, CZ.NIC can not be required to check every domain name for such third party right violation. A collision of a domain name and third party rights may pertain to different rights, for example registered trademark rights, natural entity name rights, legal entity name rights and/or the copyright where a domain name is considered copyrighted. The principle of all these rights means that none of them is exclusive. Should CZ.NIC be required to check whether a domain name being registered violates third party rights, it would have to decide which holder of identical trademark, or which legal entity with the same name has a „bigger“ right to register a domain name. Trademarks may also collide with company names, unfair competition may also play a role. CZ.NIC does not have the means or the right to decide such conflicts.

The applicants for domain name registration are obliged to ensure that their domain names do not violate third party rights. CZ.NIC only acts as a technical party in the registration process, ensuring uniqueness of all registered domain names and operation of computers which provide replies to queries for technical information concerning registered domain names.

CZ.NIC is therefore not responsible for applicants for domain name registrations violating third party rights. CZ.NIC does not have any right to decide on the rights and obligations of domain name holders and third parties which feel their rights and reasonable interests are affected by registration of a certain domain name or its use. This is also true for cases where violation of third party rights by registration of a domain name is obvious, since CZ.NIC has no criteria which would accurately determine the moment such violation becomes obvious.

1. Determining whether a domain name is registered

For a dispute concerning a domain name in the .cz domain (ccTLD .cz) to take place, the domain name must be registered, i.e. entered in a publicly accessible registry of domain names in the .cz domain. This registry is maintained by the CZ.NIC and available at www.nic.cz. Even when a name is registered, it may not be used to provide services or information. The fact that no website is accessible under a domain name does not mean that the name is not being used. A domain name may be used for services other than website, such as Email.

A domain name registration record has the following structure DOMAIN NAME – CONTACT INFORMATION, where CONTACT INFORMATION may be for administrative or technical contact, or holder.

The registry, maintained by CZ.NIC, is the only official and authentic source of information on the current status of domain names in the .cz domain.

Only information on current registration status are accessible for the general public. History information, i.e. information on who held the domain name before, are provided by CZ.NIC upon court request (general courts and courts of arbitration) or a request by other Government body.

A registration dispute may not be held for a domain name which is not registered. Domain names which are not registered may be registered using a registrar (<http://www.nic.cz/whois/registrars/>) by any entity.

2. Obtaining details on domain name holder

Domain name holder is the person to which the domain name is registered. If the ORGANIZATION field is completed in

the registration, the holder is the entity named there, in all other cases it is the person listed under NAME.

When information necessary to commence court or arbitration proceedings (see Section 79 Para 1 of the Civil Code of Procedure) are not present in the registry, concerned parties should notify CZ.NIC, which will request change or completion of this information from the holder. When the information is not corrected and completed following such request, CZ.NIC may, in keeping with Article 12.2 of the Rules for registration of domain names within ccTLD .cz domain, cancel the domain name registration.

3. Checking for existence of an arbitration public offer

As of 1/8/2004, the contractual documents include the so-called „arbitration public offer“, based on which disputes concerning domain names may be settled by the Court of Arbitration of the Chamber of Commerce and Agriculture Chamber of the Czech Republic (hereinafter the „Court of Arbitration“) – <http://www.soud.cz>

The amended version of Rules for registration of domain names within ccTLD .cz domain (hereinafter the „Rules of Registration“), mentions the arbitration public offer in Article 16.3 and the wording of the offer itself is contained in document titled „Rules for alternative dispute settlement“, which is an integral part of the Rules of Registration. According to the arbitration public offer, proceedings before the Court of Arbitration may be commenced against domain holder by a third person challenging any domain name registered to the holder within the .cz domain. The dispute shall be settled in keeping with the Arbitration Court's Rules for online arbitration proceedings (http://www.soud.cz/index.php?url=cz_rady.htm).

It must be noted that a person challenging registration of a domain name is not obliged to commence proceedings before the Court of Arbitration instead of a general court. It is that person's right to do so and the domain name holder is contractually bound to respect the decision of the Court of Arbitration.

The arbitration public offer MAY NOT be used to enter proceedings before the Court of Arbitration against CZ.NIC. The Registration Rules do contain a provision (Article 15), according to which any disputes between registration holder and CZ.NIC are settled before the Court of Arbitration, but this only applies to disputes between domain name holder and CZ.NIC and concerning domain names registered by that holder. A person whose rights were violated by a registration of domain name by a third person and who challenges such registration may commence proceedings before the Court of Arbitration based on arbitration public offer, but it can not commence proceedings based on this offer or on the provisions of Article 15 against CZ.NIC. The Court of Arbitration has already ruled in several cases that it is not competent to settle disputes against CZ.NIC.

4. Qualification of relevant claims

An action against a domain name may be based primarily on rights to registered trademarks, company names or names of physical persons, personal privacy, protection against unfair competition, copyright, etc.

When preparing for an action of this kind, it is highly recommended to consult decisions of Czech courts concerning domain names at http://www.nic.cz/files/nic/doc/soudni_rozhodnuti.ZIP. These decisions unveil the practice of Czech courts in the field of registration and use of domain names and thus help better preparation of a potential claim.

5. The Parties

The defendant is primarily the domain name holder, i.e. the person whose name the domain name was registered to (see points 0 and 2 above), other persons taking part in the use of the domain name may act as co-defendants (the domain name holder may not be, for example, the provider of the website which is available through the domain name).

To reach one of the most frequent objectives in actions concerning domain names, i.e. transfer of the domain name to the claimant, it is not necessary to file an action against CZ.NIC. CZ.NIC shall, in line with the Registration Rules (Art. 16.4), take steps required by the decision of the domain holder regardless of the fact it is not the sued party and regardless of the fact that the claim was made solely against the domain name holder.

IN THIS REGARD, CZ.NIC REFUSES THIS PASSIVE ROLE IN PROCEEDINGS CONCERNING DOMAIN NAMES AND ACTIVELY RESISTS TAKING PART IN PROCEEDINGS. MOREOVER, CZ.NIC REQUESTS THE COURT TO GRANT CZ.NIC DAMAGES TO COVER THE COST OF ACTION AGAINST THE SUCCESSFUL CLAIMANT IN CASE THE COURT HAD DECIDED TO RULE IN FAVOR OF A CLAIM AGAINST CZ.NIC

6. Competence of Court

Due to the character of claims the actions are usually based on, the 1st instance decision usually pertains to the competent regional court, unless the claimant decided to use arbitration and take the action to the Court of Arbitration.

7. Preliminary measures

Since transferring a domain name to a third person is a matter of minutes, CZ.NIC recommends that the claimants consider filing for a preliminary measure to ban any handling of the domain name, in particular its transfer, until a decision will have been made. Upon filing a motion for a preliminary measure, it is, however, obligatory to deposit a guarantee of CZK 100,000 (a sum common in business cases, which cover, among other, domain actions). For more information, see Act No. 99/1963 Coll, Civil Code of Procedure, Para 75b. The decision on a preliminary measure is made by a common court even though the case itself may be heard by a Court of Arbitration.

As far as preliminary measure text is concerned, we recommend consulting Czech courts' decisions in domain name disputes at: http://www.nic.cz/files/nic/doc/soudni_rozhodnuti.ZIP. The preliminary measures listed therein show the courts' decision-making practice and indicate how to formulate and justify a motion for a preliminary measure. Please note that the Czech courts often take into account for how long the claimant suffered damage under the registration of the domain name by the holder. Should it be more than several months, the courts usually decide that a preliminary measure is not necessary for there is no need for any transitional regime between the parties.

Preliminary measures usually contain an order to refrain from any transfers of the domain name to a third person with the exception of a transfer to the claimant. The exception is recommended since it allows for an out of court settlement and subsequent transfer of the domain name to the claimant at any time in the course of the court proceedings.

Should the preliminary measure be targeted also at CZ.NIC, the court shall serve it to its address and CZ.NIC, based on the respective preliminary measure, shall freeze the domain name so that no transfers may be possible. Should the preliminary measure not be targeted at CZ.NIC, it is necessary that the claimant sent, without any undue delay, the preliminary measure (original or a certified copy) to CZ.NIC for it to freeze the domain name. CZ.NIC highlights that for the domain name to be frozen it is not necessary that the preliminary measure be filed against CZ.NIC, CZ.NIC will freeze the domain name also based on a preliminary measure filed against the domain name holder (see above part **Chyba! Nenalezen zdroj odkazů.**).

8. Judicial decisions

In respect to judicial decisions, we recommend consulting Czech courts' decisions in domain name disputes at: http://www.nic.cz/files/nic/doc/soudni_rozhodnuti.ZIP. The respective decisions show which judicial decisions have been found by courts as conclusive and enforceable.

The decisions usually rule that the holder shall refrain from using the domain name in question and, subsequently, transfer its title to the claimant (in more exact terms – to change the domain name registration in the .cz top level domain so that the claimant's name was entered to the .cz top level domain registry).

9. Evidence

In proceedings concerning domain name disputes, the courts usually admit Registration rules, an excerpt from the Register of domain names, and copies of websites accessible via the domain name (such a copy is often a part of the notarial registration of facts – in this case the respective web page content). Should the claimant wish to support its case by its particular rights, it shall submit to the court excerpts from the Register of trademarks and the Business register, newspaper clippings, relevant contracts, etc.

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