CZ.NIC, z.s.p.o., a special interest association of legal entities, ID 67985726, with its seat at Milešovská 1136, Prague 3 (hereinafter referred to as "CZ.NIC"), which is the administrator of the national .cz domain, publishes this procedure for handling disputes related to the registration of a domain name in the .cz domain in order to facilitate the preparation and resolution of domain name disputes by the general and expert public before the courts.

THIS DOCUMENT DOES NOT CONSTITUTE LEGAL OR OTHER PROFESSIONAL ADVICE ON THE PREPARATION AND RESOLUTION OF LEGAL DISPUTES. IT MERELY PROVIDES A SUMMARY OF TECHNICAL INFORMATION CONCERNING DOMAIN NAMES AND INFORMATION ENSUING FROM THE JUDICIAL DECISIONS PUBLISHED TO DATE.

THE CZ.NIC ASSOCIATION DOES NOT WARRANT THE ACCURACY OR COMPLETENESS OF THIS DOCUMENT AND RECOMMENDS THAT EACH SPECIFIC CASE BE CONSULTED WITH EXPERTS ON DOMAIN NAMES AND INDIVIDUALS AUTHORIZED TO PROVIDE LEGAL SERVICES.

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

The CZ.NIC Association is the administrator of the top-level domain (TLD) .CZ. As part of this activity, the Association primarily maintains the central register (index) of second-level domain names within the .CZ domain. The position of the CZ.NIC Association is monopolistic by nature, as the requirement for the uniqueness of second-level domain names within the top-level domain requires the administration to be centralized so as to avoid duplicity that would inhibit the functioning of domain name-based services, such as Internet services.

Applicants for domain names create their own domain names from a pre-defined set of permitted characters, and then apply for the registration of the combination of characters they have created (which usually corresponds to common words, names or abbreviations) in the register of second- level domain names. Therefore, the CZ.NIC Association does not allocate domain names. In other words, by means of the registration of a domain name created by the applicant, the CZ.NIC Association guarantees that if a query (usually made automatically by another computer) is received, technical information regarding the second-level domain in question will be provided, thus making it possible to find the computer identified by the second-level domain or connect to another computer. The above requirement for the uniqueness of second-level domain names located in the top-level domain creates the basic condition of registration, according to which a domain name may not be registered if it is identical to another domain name that has already been registered.

When registering second-level domain names or at any point while the registration is in effect, the CZ.NIC Association does not check in any manner whether the domain names being registered violate third party rights. These rights may be very diverse and CZ.NIC cannot be fairly required, given the number of registered domain names, to check each and every domain name being registered for the violation of such rights. A conflict between a domain name and third party rights may occur in a number of rights, such as the right to trademarks, names of individuals or names/trade names of legal entities, or copyright if a

domain name is considered to be an original work. In principle, all of the above rights show that exclusivity is not a defining element of any of them. Therefore, if CZ.NIC were to check the domain name being registered for the violation of third party rights, it would also have to assess which of the holders of the two identical trademarks, or which legal entity with the same trade name (name), has a "greater" right to register an identical domain name. There may also be a conflict between a trademark and the trade name of a legal entity. This likewise applies to unfair competition. However, it is evident that CZ.NIC does not have any such right.

It is the obligation of the applicants for registration to ensure that the domain name they are registering does not violate any third party rights. The CZ.NIC Association acts only as a technical guarantor of registration ensuring the uniqueness of the registered domain names and safeguarding the operation of the computers responding to queries regarding technical information related to the queried domain names.

Therefore, the CZ.NIC Association cannot be held responsible if an applicant for registration of a domain name violates third party rights. As a private legal entity, CZ.NIC does not have the power to decide on the rights and obligations of domain name holders and other third parties who feel that a registered domain name has infringed upon their rights and legitimate interests. This is without prejudice to the fact that some violations of third party rights by virtue of a domain name registration are entirely obvious, as the CZ.NIC Association has no criterion to reliably determine the moment at which the violation of such a right became apparent.

1 Verification of domain name registration

In order to allow for a dispute to be handled concerning a domain name within the .cz domain (ccTLD .cz), the domain name concerned must be registered, i.e. incorporated in a publicly accessible register of domain names registered within the .cz domain. This register, maintained by the CZ.NIC Association, is available at www.nic.cz. Even if a domain name is registered, it may be that no services or information are available via the domain name. However, the fact that no web presentation is available via the domain name does not mean that the domain name is not in use. A domain name can be used for services other than web presentations, such as e-mail.

A second-level domain name registered under the national top-level domain .cz is in the format "NIC.CZ", i.e. without the letters WWW separated from the domain name by a full stop. If a domain name is specified in the format WWW.NIC.CZ (the position of the letters WWW, which are an acronym for the World Wide Web, may be occupied by any combination of characters selected by the domain name holder, e.g. "KNIHY.NIC.CZ") , it is a third-level domain name (for more information on the hierarchy of domain names, see our website), and the CZ.NIC Association has no information on who uses the domain name or whether it is used by the entity that is also the second-level domain name holder (i.e. NIC.CZ). The CZ.NIC Association also lacks the technical capabilities to provide the necessary cooperation with respect to this domain name, as described in the Registration Rules (including the cooperation required by law) and in this document.

The record of a domain name registration has the structure of DOMAIN NAME – CONTACT, and the CONTACT may be administrative, technical, or have the role of HOLDER.

The Index of Domain Names maintained by the CZ.NIC Association is the only authentic and official source of information on the up-to-date status of the registration of domain names within the .cz domain.

However, the Index of Domain Names is not a statutory register as stipulated primarily by Act 111/2009 Coll. on basic registers, or a public list pursuant to Act 89/2012 Coll., Civil Code.

Only information concerning the current status of a registration is available to the public. Historical information, i.e., especially information about the former holder of a domain name, is provided by the CZ.NIC Association at the request of a court (of general jurisdiction and arbitration) or at the request of other public authorities.

If a domain name is not registered, no legal action regarding its registration may be conducted. If a domain name is not registered, any person can register it via one of the registrars. The CZ.NIC Association is neither the holder nor the owner of rights to domain names that have not yet been registered or whose registration has been terminated.

2 Verification of information about domain name holders

A domain name holder means a person to whom a domain name is registered. Unless an entry on the legal entity is made in the record of the holder (under the name), the person specified in the record of the holder ("name") is considered to be the holder; if a name of the legal entity is entered, the legal entity is considered to be the holder.

If the index does not contain information sufficient for the initiation of legal or arbitration proceedings (cf. Section 79 (1) of the Civil Procedure Code) or proceedings following the Rules of Alternative Dispute Resolution, this fact must be reported to the CZ.NIC Association, which will request the holder to correct or supply this information. Unless the information is corrected or supplied, the CZ.NIC Association may cancel the registration of the domain name in ccTLD.cz in accordance with Article 16.1. of the Rules for the Registration of Domain Names. If some of the information was designated by the holder as "non-public information" in the record of the contact, the CZ.NIC Association will provide such information if requested by the state administration authorities and/or courts, including an arbitration court or person resolving the case following the Rules of Alternative Dispute Resolution (see Article 14.4 of the Rules for the Registration of Domain Names in ccTLD.cz).

The CZ.NIC Association will provide the holder's address if it was marked as "concealed" in accordance with the provisions of Art. 14.3. of Rules for the Registration of Domain Names in the ccTLD.cz. This information will be provided upon a request submitted in writing; the applicant's signature must be certified and the applicant must state and substantiate the purpose for which the information is required.

3 Public arbitration offer

From 1 August 2004 to 1 March 2015, contractual documents included the so-called "public arbitration offer", on the basis of which it was possible to conduct a domain name dispute with the holder before the Arbitration Court attached to the Czech Chamber of Commerce and the Agricultural Chamber of the Czech Republic (hereinafter "Arbitration Court").

In the Rules for the Registration of Domain Names in ccTLD.cz (hereinafter "Registration Rules") valid until 1 March 2015, the public arbitration offer was mentioned in Article 24.2., and the wording of the public arbitration offer was contained in the "Rules of Alternative Dispute Resolution", which formed an integral part of the Registration Rules. Both documents, i.e. the Registration Rules and the Rules of Alternative Dispute Resolution, in their versions effective before 1 March 2015, are available here. According to the

public arbitration offer, it was possible to take a legal action before an Arbitration Court may be taken against the holder of a domain name by a third party challenging any of the domain names of the holder concerned within the .cz domain.

The decision of the Supreme Court of the Czech Republic under file no. 23 Cdo 3895/2011, which challenged the possibility of concluding an arbitration agreement in the described method, and with it the opinion to resolve domain name disputes through the Arbitration Court. In connection with the launch of the new system of the alternative solution of disputes on 1 March 2015, it is not possible to resolve domain name disputes through arbitration proceedings at the Arbitration Court (see also details provided here).

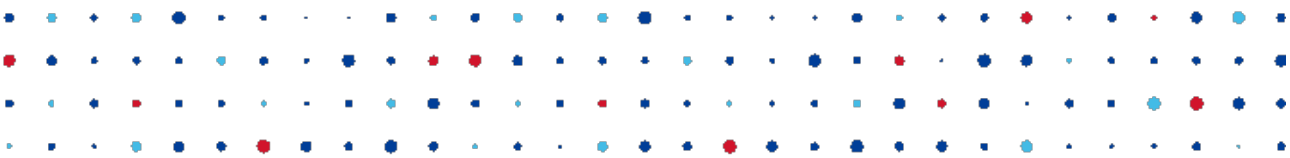
4 Considering the option of settling disputes out of court

From 1 March 2015, the Registration Rules include an entirely new document entitled Rules of Alternative Dispute Resolution. The system for resolving disputes following these Rules of Alternative Dispute Resolution does not represent arbitration proceedings as defined by law; the holder of a domain name undertakes to submit to it if the petitioner chooses this method of dispute resolution. Settlement of disputes in this case also utilises the platform managed by the Arbitration Court in accordance with the Code for the Resolution of Disputes Over .cz Domains. This method of dispute resolution has a contractual basis and cannot be used to claim anything other than the termination of a domain name registration or its transfer. No additional claims are acceptable, such as payment of the costs of the proceedings or compensation of damages. The issued decision does not represent a writ of execution; the settlement of disputes following the Rules of Alternative Dispute Resolution effective from 1 March 2015 does not limit the lis alibi pendens principle (i.e. ongoing proceedings in the same matter) and the conclusion of a dispute under this system is without prejudice to the res judicata rule. This means that in the course of the settlement proceedings or afterwards, it is possible to raise the same claims before a court of general jurisdiction. This system of dispute settlement is binding for those domain name holders who registered their domain or extended its validity on 1 March 2015 or afterwards.

The person contesting a registration is not obliged to settle the dispute over a domain name in this manner. It is the person's right to do so, in which case the holder is obliged to submit to this system of dispute resolution. If a third party decides to engage in legal proceedings at the competent court of general jurisdiction and not in the manner defined in the Rules of Alternative Dispute Resolution effective from 1 March 2015, the procedure anticipated in the Rules of Alternative Dispute Resolution effective from 1 March 2015 shall not apply.

5 Qualification of claims on which a dispute is based

A legal action (or a motion in the case of settling disputes out of court) regarding domain name registration may be based on the rights to trademarks, trade names or names of legal entities, personal protection, protection against unfair competition, copyrights, etc.



While preparing the legal action it is recommended that the list of resolutions of the Czech courts relating to domain names be reviewed at the website of the Association. The published resolutions indicate judicial precedent, especially the opinions of the courts as to which rights may be affected by domain name registration or use, and how a claim for the acknowledgement of protection of these rights should be formulated.

Other possible guidelines are published arbitration awards related to domain names, which are available at the website of the Arbitration Court.

6 Identification of the parties to proceedings

In the case of a dispute being heard before a court of general jurisdiction or in the event of an alternative solution of disputes, the participant is typically the domain name holder, i.e. the person to whom the domain name is registered (see items 1 and 2 above); in proceedings at a court of general jurisdiction, complaints can also be filed against other entities, namely those involved in the use of the domain names (the domain name holder is not necessarily the provider of the web presentation available via the domain name).

In order to achieve one of the most common purposes of judicial proceedings in the matter of domain names, i.e. the transfer of a domain name to the plaintiff[1*], it is not necessary to file a complaint against the CZ.NIC Association. Pursuant to the Registration Rules (Article 18.1 and 19.1), the CZ.NIC Association shall take the steps imposed on the domain name holder in the resolution even if the Association is not the defendant and the legal action was only taken against the domain name holder concerned.

IN THIS CONTEXT, THE CZ.NIC ASSOCIATION NOTES THAT IT DOES NOT CONSIDER ITSELF TO BE PASSIVELY LEGITIMIZED IN DOMAIN NAME DISPUTES; INSTEAD, IT ACTIVELY DEFENDS ITSELF AGAINST BEING INVOLVED IN THE DISPUTE AND, IN ANY EVENT, REQUESTS THAT THE COURT AWARD THE ASSOCIATION COMPENSATION OF EXPENSES EVEN IF THE COURT FINDS IN FAVOUR OF THE PLAINTIFF WHO BROUGHT THE COMPLAINT AGAINST THE CZ.NIC ASSOCIATION.

In the case of out-of-court dispute resolution following the Rules of Alternative Dispute Resolution effective from 1 March 2015, it is only possible to file a motion against the domain name holder (see sections 1 and 2 above). The CZ.NIC Association is not a party to such dispute resolution proceedings.

7 Court jurisdiction

Given the nature of the claims on which legal actions are typically based, the court competent to resolve the dispute in the first instance is usually a regional court, unless the plaintiff opts for the public arbitration offer and brings the legal action before the Arbitration Court or chooses the option of settling the dispute out of court (if the conditions listed under section 4 have been met).

1 Please note the decision of the Supreme Court of the Czech Republic under file no. 23 Cdo 3407/2010 (see also an article on the blog of the CZ.NIC Association)

8 Possible restrictions placed upon the holder in using the domain in the course of the dispute – preliminary injunctions, disabling the domain at the request of a third party

Due to the fact that the transfer of a domain name to a third party may be a matter of a few minutes, the CZ.NIC Association recommends that the plaintiffs carefully consider whether or not to make a motion for preliminary injunction prohibiting the use of the domain name, in particular, its transfer until a resolution on the merits of the case is made. At the same time, it should be noted that when applying for a preliminary injunction, the applicant is required to make a deposit as collateral amounting to CZK 50,000 in commercial matters (in general, domain name disputes are considered to be commercial matters) – for details see Section 75b of Act 99/1963 Coll., the Civil Procedure Code. The application for a preliminary injunction shall be decided by a court of general jurisdiction, even if the dispute itself is to be decided by the Arbitration Court.

As regards the wording of the preliminary injunction, it is recommended that the list of resolutions of the Czech courts relating to domain names be reviewed at the website of the Association. The published preliminary injunctions reveal judicial precedent, in particular, the opinion of the courts as to how the applications for preliminary injunction shall be formulated and justified. Please note that the courts often assess how long the plaintiff was aggrieved by the domain name registration made by the holder, and if this was for several months, the courts usually rule that there is no reason for a preliminary injunction, as there is no need to provisionally regulate the relationship between the parties.

Preliminary injunctions typically include an obligation to refrain from using the domain name and/or transfer the domain name to a third party, with the exception of its transfer to the plaintiff. The above exception may be recommended so that an out-of-court settlement may be reached during the court proceedings and so the domain name may be transferred despite the existing preliminary injunction. Please be advised that the CZ.NIC Association is not capable of taking any action beyond limiting the holder's disposal of the domain name (disabling the domain name) and/or its use (exclusion from the .cz zone), such as removing text located at the domain name, limiting the holder's disposal of the domain name in a certain way and the like.

If the preliminary injunction is also aimed at the CZ.NIC Association, the preliminary injunction shall be delivered to it by the court, and the CZ.NIC Association shall consequently disable the domain name so that it cannot be transferred. If the preliminary injunction is not aimed at CZ.NIC, the plaintiff is required to send the preliminary injunction (original or certified copy) to the CZ.NIC Association without undue delay so that the domain name may be disabled. The CZ.NIC Association advises that the disabling of the domain name is not conditioned by a preliminary injunction aimed at CZ.NIC; the CZ.NIC Association shall disable the domain name even on the basis of a preliminary injunction issued solely against the domain name holder (see section 5 above).

In addition to cases of out of court settlements (see section 4) in which the application for a preliminary injunction is not an option (in particular due to the provisions of Section 77 (1) (a) of the Civil Procedure Code), the plaintiff/petitioner may also request the domain name to be disabled pursuant to Article 20 of the Registration Rules. The request must be submitted on a special application form. This application is free of charge, but its duration is limited to a maximum of 4 months without the possibility of extension; the same domain name may be disabled repeatedly after the expiry of 12 months from the termination of the previous disabling. Therefore, if the plaintiff believes that the dispute will take longer, it is appropriate for

the limitation of the holder's use of the domain name to be addressed by a motion for a preliminary injunction.

9 Ruling

As regards the wording of the ruling, it is recommended that the list of resolutions of the Czech courts relating to domain names be reviewed at the website of the Association. Published resolutions indicate which rulings were found to be definite and enforceable by the courts.

The resolutions usually feature an award requiring the holder to refrain from using the domain name and the obligation to transfer the domain name to the plaintiff (or, more precisely, the obligation to change the domain name registration within the top-level domain .cz so that the plaintiff is incorporated in the domain name index of the top-level domain .cz as the domain name holder).

We would once again like to refer in this context to the decision of the Supreme Court of the Czech Republic from 19 April 2012, under file no. 23 Cdo 3407/2010, according to which the plaintiff's request to terminate the registration is in accordance with the law, whereas the transfer of the domain name is not.

10 Evidentiary means

The evidence used in domain name proceedings is usually the Registration Rules, a printout from the domain name index, a copy of the website accessible under the domain name (such a copy is often included in a notarial deed certifying certain facts, i.e. website content). If the legal action is based on certain rights of the plaintiff, the documents submitted include, as a rule, extracts from the register of trademarks, extracts from the commercial register, copies of newspaper articles, contract/agreements, etc.

11 Enforcement of resolutions

Resolutions of a court of general jurisdiction or arbitration awards issued by the Arbitration Court in arbitration proceedings represent an order to enforce the judgment (writ of execution). In accordance with Article 18 of the Registration Rules, the CZ.NIC Association performs the obligation imposed by the resolution on the domain holder (termination of registration, domain name transfer) even if the Association itself is not a party to the dispute; the decision shall be presented to the Association in its original or officially certified copy with a clause attached certifying its legal effect and enforceability. However, claims raised by plaintiffs are often beyond the technical capability of the CZ.NIC Association, which is why we strongly recommend reading the information at http://www.nic.cz/page/314/pravidla-a-postupy/, in particular the interpretation of Article 18.1. of the Registration Rules, before formulating the claim. The above also correspondingly applies to preliminary injunctions.

In the case of out of court dispute settlement (see section 4), the CZ.NIC Association is not a party to the dispute. If proceedings following this method of dispute resolution result in the decision to terminate the registration or to transfer the domain name, the CZ.NIC Association shall perform this action in accordance with the provisions of Article 6.2. of the Rules of Alternative Dispute Resolution effective from 1 March 2015.

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