



INTRODUCTION TO ALTERNATIVE DISPUTE RESOLUTION AND ODR, DOMAIN NAMES WITHIN THE .CZ DOMAIN AND .EU DOMAIN

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DOMAIN NAME DISPUTES

MAIN PRINCIPLE

- **First comes – first served**
- **The domain name is immediately registered**
- **What if the holder of domain name is not the one who should own it?**
- **Cybersquatting, typosquatting, etc.**

THE STRUCTURE

Top level domain names (TLDs)

- Generic .com, .gov, .org, .biz, .edu
- National .cz, .uk, .de, .sk, .ru
- Specific .eu

Subdomains

- muni.cz, seznam.cz, google.com

Lower Subdomains

- law.muni.cz, mail.google.com

NEW GTLDS

New top level domain names (TLDs) from 2013

- <https://newgtlds.icann.org/en/>
- **List of all generic domain names (more than 1500):**
- <http://data.iana.org/TLD/tlds-alpha-by-domain.txt>

SQUATTERS ALLOWED?



**HOW
TO
SQUAT**

SQUATTERS ALLOWED? NO!



**HOW
TO
SQUAT**

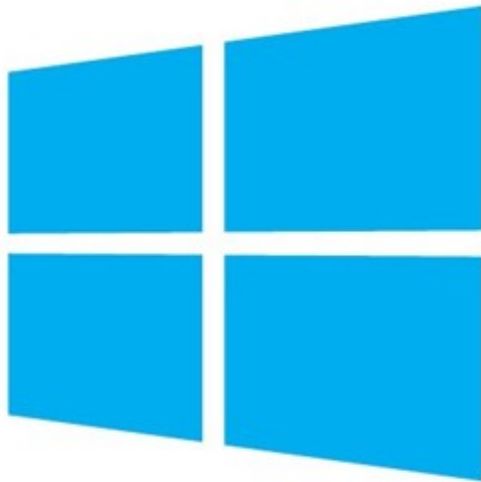
HOW TO BE LEGALLY PROTECTED FROM CYBERSQUATTERS?

- Competition law?
- Trademark law?
- Geographical indications?
- Commercial name (firm)?
- Right for privacy (e.g. EUHR)?

- COURT?
- ANOTHER MORE SUITABLE SOLUTION?

- WHAT WOULD YOU DO?

EXAMPLE



- **Someone would register the domain microsoft.cz**
- **He does not use this domain and offers it for sale for €200 000**
- **Can the trademark owner claim violation of his rights?**
- **Can the trademark owner claim transfer of the domain name?**
- **What if the owner is based in US, administrator is Czech and squatter Russian?**



#WWYD

Solution

~~Problem~~



ALTERNATIVE DISPUTE RESOLUTION



WHAT IS ADR?

ADR

- **Out-of-court dispute settlement**
- **Classical tool in history to settle commercial dispute**
- **Evolved into another fields**
- **Less formal than court proceedings**
- **Faster in specific cases**
- **Based on the agreement of the parties**

ADR

- Does not fit for „internet disputes“
- Judicial proceedings are not convinient as well
- **EVOLUTION?**



ADR IS OLD



!! ODR SHOULD BE THE FUTURE !!

REASONS?

- **Increased volumes of squatting cases**
- **Problems with international element**
- **Insufficient national regulation**
- **Low experience of judges with cybersquatting and IP law in general -> experts are deciding the case**

REASONS!

- **Dispute settlement clause in the terms and conditions of registrations**
- **Third parties have the right (not duty) to file a complaint at a selected institution**
- **These clauses are contained in the majority of domain names**
- **Usually it is not arbitration clause, but non-binding ADR clause!!!**

THE RULES - TLDS

- **Uniform Domain-Name Dispute Resolution Policy (UDRP)**
- **Top-level domain names**
- **<https://www.icann.org/resources/pages/help/dndr/udrp-en>**
- **List of providers:**
- **<https://www.icann.org/resources/pages/providers-6d-2012-02-25-en>**



ODR IN GENERAL
NOT ONLY DOMAIN NAMES BUT ALL
KINDS OF DISPUTES

The notion that most people want black-robed judges, well-dressed lawyers, and fine paneled courtrooms as the setting to resolve their dispute is not correct. People with problems, like people with pains, want relief, and they want it as quickly and inexpensively as possible.

Warren E. Burger

Former judge at US Supreme Court

BACKGROUND

Traditional judicial mechanisms... did not offer an adequate solution for cross – border electronic commerce disputes, and that the solution (providing a quick resolution and enforcement of disputes across borders) might reside in a global ODR system for small value, high volume ... disputes

Courts are resolving only a fraction of today's legal disputes (especially low - value) – **PROBLEM!!**

WHAT IS ODR?

- **It is difficult to provide a self - contained definition of ODR**
- **Dispute resolution, which uses electronic communication to exchange every information between the parties**
- **A growing number of cases (especially low – cost cases) are being resolved by online tools and sometimes lawyers and judges are not even involved**

WHAT IS ODR?

Definitions:

- ***dispute settlement which may or may not involve a binding decision being made by a third party, implying the use of online technologies to facilitate the resolution of disputes between the parties***
- ***dispute resolution carried out by combining the information processing powers of computers with the networked communication facilities of the Internet***

WHAT IS ODR?

- **ODR is NOT only modified ADR (alternative dispute resolution)**
- **The technology is the fourth party helping to settle the dispute**
- **Triad:**
 - **1) online communication**
 - **2) dispute settlement**
 - **3) software assistance**

HISTORY OF ODR

The first ODR forms started to evolve between 1996 and 1997 (software assistance)

The first experiments were created at the University of Massachusetts in the USA and Canada

Those projects were later transformed for commercial use

One of the first official systems providing ODR was *The Virtual Magistrate*

- it never fulfilled expectations of the founders
- it was mainly caused by *“limited scope of disputes, a lack of advertising and the fact that the project was voluntary so that the case managers had no way to force the defendant to take part in the proceedings or to enforce the decisions.”*

BACK TO UDRP

What is it?

What it serves for?

Why is it binding (or is it)?

THE RULES - CCTLDS

- National authorities (does not have to be governmental)
- Contract with ICANN
- In Czech Republic – CZ.NIC
- <https://www.nic.cz/page/314/pravidla-a-postupy/>

THE RULES - .EU



- **Not an arbitration clause!
(again)**
- **Competence of arbitration
courts enacted by
regulation 874/2004/EC**
- **<https://eurid.eu/en/>**

THE RULES - .EU



- **Set of eu regulations:**
- **http://ec.europa.eu/ipg/basics/urls/doteu_en.htm**

LEGAL FRAMEWORK IN EU

- **Regulations**
 - 733/2002/EC; 874/2004/EC; 1654/2005/EC; 1255/2007; 560/2009
 - http://ec.europa.eu/ipg/basics/urls/doteu_en.htm
- **Including**
 - .eu domain name registration rules
 - Domain Name Registration Terms and Conditions
 - Sunrise period Rules for .eu domains
 - .eu Domain Dispute Resolution Rules (ADR Rules)
- **Rules of Procedure of the ADR provider (adr.eu - based in Prague!)**

DOMAINS .EU

- **boost e-commerce in the EU**
- **create a clearly identifiable link between the domain name holder and the EU**
- **EURid administrator**

AUTHORISED USERS

entrepreneurs with their registered office or place of business within the EU

organisations established in the EU

natural persons permanently resident in the EU

DOMAIN NAME DISPUTES IN .EU

Litigation against speculators

- **Active legitimation: trade mark owner**
- **Passive legitimation: Domain holder**

Disputes against the domain administrator

- **Active legitimation: Domain name registrant**
- **Passive legitimation: Domain administrator**

DISPUTES AGAINST SPECULATORS

Article 21 of Commission Regulation (EC) No 874/2004 of 28 April 2004 laying down public policy rules concerning the implementation and functions of the .eu Top Level Domain and the principles governing registration

A registered domain name shall be subject to revocation, using an appropriate extra-judicial or judicial procedure, **where that name is identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or Community law, such as the rights mentioned in Article 10(1), and where it:**

- (a) has been registered by its holder without rights or legitimate interest in the name; or**
- (b) has been registered or is being used in bad faith.**

LEGITIMATE INTEREST X BAD FAITH

- **Article 21/2,3**

<https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex:32004R0874>

DOMAIN NAME DISPUTES .CZ

cz.nic

LEGAL BACKGROUND

- **Primarily rules (binding between the parties)**
- <https://www.nic.cz/page/314/pravidla-a-postupy/>
- **The possibility of appealing to the courts afterwards:**
 - *Usnesení Nejvyššího soudu ČR ze dne 26. ledna 2010, sp.zn. 29 Cdo 3580/2009*
 - *Rozsudek Nejvyššího soudu ČR ze dne 17. prosince 2013. sp.zn. 23 Cdo 3895/2011*

ANNEX 3: RULES FOR ALTERNATIVE DISPUTE RESOLUTION (ARTICLE 3)

- **The Holder agrees to submit to dispute resolution in accordance with these ADR Rules and the Regulations, in the event that the Complainant files a claim with the Administrator claiming that the Holder's Domain Name is identical or confusingly similar with the Protected Designation to which the Complainant has rights, if at the same time:**
 - **3. 1.1. such Domain Name has been registered or acquired without the Holder having rights to the Domain Name or Protected Marking pursuant to Section 3.3; or**
 - **3.1.2. such Domain Name has been registered, acquired or used in bad faith.**

CZECH COURT DECISIONS

- Suzuki.cz (sp. zn. 23 Cdo 3895/2011)
- Globtour.cz (sp. zn. 23 Cdo 3407/2010)
- Ceskapojistovna.cz (dostupné zde:
<http://www.itpravo.cz/index.shtml?x=218427>)
- And many more

- https://ictjudikatura.law.muni.cz/wiki/Kategorie:Dom%C3%A9nov%C3%A1_jm%C3%A9na

- <http://www.adr.eu/>

UDRP vs NATIONAL SOLUTION OR .EU?

Did you understand how it works?

What is the relationship?

Please discuss..



THANK YOU FOR YOUR ATTENTION!

QUESTIONS?