



GETTING THE  
DEAL THROUGH 

# Domains & Domain Names 2018

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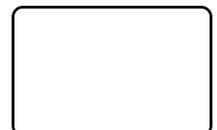


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# Preface

## Domains & Domain Names 2018

Fifth edition

**Getting the Deal Through** is delighted to publish the fifth edition of *Domains & Domain Names*, which is available in print, as an e-book and online at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

**Getting the Deal Through** provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Armenia and Australia.

**Getting the Deal Through** titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

**Getting the Deal Through** gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Flip Petillion of Petillion, for his continued assistance with this volume.

GETTING THE   
DEAL THROUGH 

London  
April 2018

# Netherlands

Manon Rieger-Jansen and Wieke During

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## Registration and use of domain names at ccTLD registry

### 1 Which entity is responsible for registration of domain names in the country code top-level domain (ccTLD)?

The Foundation for Internet Domain Registration in the Netherlands (SIDN) is responsible for the registration of the .nl ccTLD. The SIDN also provides registry services for .aw (Aruba), .amsterdam and .politie (police).

### 2 How are domain names registered?

The first step to registering a domain name is to contact a registrar of your choice. A registrar is an intermediary who will represent the applicant in dealings with the SIDN. There are over 1,350 registrars in the Netherlands and they are all listed on the website of the SIDN ([www.sidn.nl/registrars/](http://www.sidn.nl/registrars/)). The registrar will provide the applicant with the general terms from the SIDN and will submit the application. After receiving the application from the registrar, the SIDN will register the domain name, unless the domain name does not meet the technical requirements or is inconsistent with public order or decency. The SIDN may refuse to register a domain name if the applicant has failed to fulfil its obligations to the SIDN in the past. If all goes well, the registration procedure takes no longer than an hour.

### 3 For how long is registration effective?

The applicant will enter into an agreement with the SIDN and the registrar. The agreement with the SIDN does not have an expiry date; the period of registration is indefinite. The registrant may unilaterally terminate the registration by submitting a cancellation request through its registrar. The SIDN may terminate the agreement if the applicant fails to fulfil the obligations of the agreement and has failed to remedy that breach within 30 days after notification thereof. These obligations (included in the 'General Terms and Conditions for .nl Registrants') are mostly of an administrative or technical nature, but also relate to the use of the domain name (eg, its consistency with public order and decency). The duration of the agreement with the registrar may vary from one registrar to another.

### 4 What is the cost of registration?

A .nl domain name must be registered through an SIDN registrar. The applicant only needs to pay the registrar, because the registrar pays a contribution to the SIDN. The amount that the applicant has to pay to the registrar varies from one registrar to another and also depends on the services offered by the registrar. Generally the costs of registration are between €4 and €15 a year. The registrar may charge an additional one-time registration fee.

### 5 Are registered domain names transferable? If so, how? Can the use of a domain name be licensed?

#### Transfer to other registrant

A registered domain name is transferable and can be passed on from one registrant to another. From a legal point of view, changing the registrant involves cancellation of the existing agreement with SIDN and conclusion of a new agreement between SIDN and the new registrant. In order to transfer a domain name, the registrar must inform the SIDN about the new registrant so that the records can be updated. Like the

registration itself, the modification of the registration goes through a registrar, and therefore the procedure may slightly differ per registrar. The SIDN will send confirmation to the domain name's administrative contact(s) and to the registrar. The new registrant of the domain name can also choose to use the services of another registrar.

#### Transfer to another registrar

A domain name registration can also be transferred from one registrar to another. After selecting a new registrar the domain holder can ask the existing registrar for a transfer token. With this token the domain holder can ask the new registrar to transfer the domain. The SIDN will confirm the transfer.

### 6 What are the differences, if any, with registration in the ccTLD as compared with a generic top-level domain (gTLD)?

The SIDN is the sole registry in the Netherlands responsible for the registration of the Dutch ccTLD .nl. The SIDN also provides registry services for the ccTLD .aw (Aruba) and the gTLDs .amsterdam and .politie. Anyone can apply for a .nl domain name. However, for .nl registrants living or registered outside the Netherlands, the SIDN's office address serves as a domicile address for the purpose of legal proceedings relating to the domain name.

Many Dutch registrars also provide registration services with regard to some of the other gTLDs that are under foreign control. Similar to registration of .nl domain names, these registrars will in principle take care of the whole registration process. However, the terms, including fees, may vary depending on the gTLD in which registration is pursued.

### 7 Can the registrant use a privacy service to hide its contact information?

The use of a privacy service is discouraged by the SIDN, but allowed. The SIDN has implemented several measures to meet the privacy concerns of domain name holders: the address of a domain name's registrant is not visible to the public and it is also possible to keep the names of private individuals out of public view. Domain name holders that have special reasons to prevent publication of their (business) name or the email address of their administrative contact person can file an opt-out request. An opt-out is only allowed in exceptional cases, and general reasons, such as spam, are not accepted. If SIDN decides to decline the request an appeal can be lodged with the Complaints and Appeal Board.

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## Pre-litigation actions

### 8 Under what circumstances will a registrant's privacy-protected contact information be disclosed? What processes are available to lift a registrant's privacy shield?

The SIDN shares privacy-protected contact information under certain conditions with parties with a legitimate interest, investigative and enforcement authorities and certification authorities:

- parties with a legitimate interest can fill in a form to request the full contact details. Three legitimate interests are mentioned by the SIDN:
  - to resolve a technical problem relating to the working of the internet;

- to protect intellectual property rights; or
  - to prevent or deal with illegal or damaging internet content.
- the police and others with similar powers can also request the SIDN to disclose full details of a registrant. Some investigative and enforcement authorities have made arrangements with the SIDN to look up personal data by an automated process; and
- certification authorities issue secure socket layer (SSL) certificates. Access is needed to verify the details. Some certification authorities have also made arrangements with the SIDN for automated access.

**9 Are third parties (such as trademark holders) notified of a domain name registration or attempt to register a domain name? If so, how? If not, how can third parties receive notice?**

The SIDN offers a domain name surveillance service. This is a monitoring service that identifies cybersquatting and other domain name registrations closely resembling trademarks. The service includes a profiler tool, which scans websites and categorises them, for example as phishing sites, normal sites or advertising sites.

Third parties may also consult the WHOIS facility, which contains a list of all the registered .nl domain names and is available at [www.sidn.nl](http://www.sidn.nl). To determine whether a domain name is available the WHOIS facility can be consulted. There are also other commercial parties that offer notification services for registrants.

**10 Is there a need to notify the domain name registrant before launching a complaint or initiating court proceedings?**

For ADR proceedings there is no need to notify the domain name registrant before launching a complaint. There is even a risk in notification, as it might lead to the domain being transferred to a new registrar or registrant (also known as cyberflight). When an ADR complaint is filed, the registrar will therefore be requested to lock the domain name. A lock means that any modification to the registrant and registrar information is prevented pending the proceedings.

For court proceedings it is common practice to notify the domain name registrant before initiating the proceedings. If the proceedings are initiated without any prior communication, the court may consider the proceedings to be premature (as a settlement might have been possible), which may also negatively affect the court's willingness to award reimbursement of reasonable and proportionate legal costs.

**Transfer or cancellation**

**11 What is the typical format for a cancellation or transfer action in court litigation (domains registered in either a ccTLD or a gTLD) and through ADR (ccTLD only)?**

The legal actions that can be instituted in respect of cancellation or transfer of a domain name are court proceedings (preliminary injunction (PI) proceedings or proceedings on the merits); and the UDRP-based dispute resolution system for .nl domain names (.nl ADR). ADR is generally preferred over regular court proceedings as it is considered a quick, efficient and cost-effective way to resolve domain name disputes (see also question 12).

**Court proceedings**

All Dutch district courts may have jurisdiction in respect of domain name disputes concerning a ccTLD or gTLD (to the extent that the website linked to the domain name is directed at the Dutch public). However, if the proceedings are based on an EU trademark, the District Court of The Hague has exclusive jurisdiction.

Most domain name disputes that are brought before a court are dealt with through PI proceedings in order to obtain a quick injunction or transfer of the domain name. In PI proceedings only preliminary measures can be imposed. Therefore, in principle no damages (and often also no ancillary claims) can be claimed. Furthermore, no counterclaim for nullification of invoked trademarks can be filed in PI proceedings. Nevertheless, usually the PI judges will also consider the (in) validity of the trademark when assessing the claimed injunction.

In order to institute PI proceedings, urgent interest is required. It generally takes about four to 12 weeks from the service of the writ of summons until a judgment is rendered. The proceedings commence by service of the writ upon the registrant. After the writ of summons has been served, generally only an oral hearing will take place even though

the defendant in principle has the right to file a written statement of defence. Both parties will, however, usually submit evidence to the court in the form of exhibits. This can be done until shortly before the hearing.

Unlike PI proceedings, proceedings on the merits result in a final decision. This means that damages and other ancillary claims can in principle also be claimed. Furthermore, in proceedings on the merits a counterclaim to nullify the invoked trademark rights could be filed. Urgent interest is not required in these proceedings.

The average duration of proceedings on the merits is about one to one-and-a-half years. Proceedings on the merits also commence by service of the writ. After the writ has been served, the defendant will have the opportunity to submit a written brief. In exceptional cases additional written briefs will be exchanged. Finally an oral hearing will take place.

In Dutch court proceedings there is no possibility to obtain evidence similar to the discovery and disclosure proceedings as in the United States and the United Kingdom. However, it is possible to obtain evidence prior to, or during, the court proceedings *inter alia* by means of a request for the inspection of specific documents. However, in practice these proceedings are not used in mere domain name cases, if only because evidence of registration and use is by nature available on the internet.

Usually in court proceedings an injunction will be claimed against the use of the domain name or similar names. In most cases, such a claim will be supplemented with a claim for cancellation or transfer of the domain name in dispute. However, the court has discretion over whether to grant such a supplemental claim even if the injunction is awarded, especially in PI proceedings. This has led to rather fragmented case law in which a transfer of the domain name is sometimes ordered and in other cases not. For example, in a judgment regarding the domain name [sitesupport.com](http://sitesupport.com), the PI judge in the District Court of Zeeland-West-Brabant not only awarded an injunction, but also held that 'the claimed transfer is to be regarded as an appropriate form of compensation for the damage caused and should therefore be granted'. A few months later, however, the PI judge in the District Court of Overijssel granted an injunction, but denied the transfer of the domain name [desmaakvantwente.nl](http://desmaakvantwente.nl). The judge reasoned that the plaintiffs no longer had a proportionate interest in the transfer of the domain name and that, in so far as transfer could be seen as a form of compensation for damages, PI proceedings are not a suitable forum, because in these proceedings the extent of any damage suffered cannot be established. In a more recent case, the defendant was ordered not to infringe a trademark, but the additional claim for cancellation of the domain name was denied. The PI judge held that the rights holder did not have a separate interest in cancellation in addition to an injunction on the use of the domain name.

**.nl ADR**

In .nl ADR proceedings only the change of registrant of the disputed domain name can be requested, whereby the complainant becomes the registrant. Consequently, in these proceedings the domain name cannot be cancelled, nor can other claims be granted.

The .nl ADR proceedings commence by submitting a complaint (complaint form) including attachments electronically to the World Intellectual Property Organization (WIPO). The SIDN has accredited the WIPO as the centre for .nl ADR (Center).

Within three days of receiving the complaint, the Center shall determine whether the complaint meets the requirements. If this is the case, the complaint will be forwarded to the SIDN. As soon as the SIDN receives this notice, the domain name in dispute will be locked. The effect of this is that the domain name cannot be cancelled or transferred by the registrant for as long as the proceedings are pending.

Once the WIPO has received the registrant's response (no later than 20 days after commencement of the proceedings), a free-of-charge mediation process commences. The mediation process involves a trained mediator (from the SIDN) contacting both parties in order to facilitate an amicable settlement of the dispute.

If the dispute is resolved during the mediation, the WIPO will terminate the proceedings. If the mediation is unsuccessful, the SIDN will inform the Center, the complainant and the respondent. The complainant then needs to pay an administration charge and panellist fee within 10 days. Within five days of receipt of the payment, the WIPO

will appoint a panellist. The panellist will assess the documents submitted by the parties and will reach a decision on the basis of the criteria set out in the Dispute Resolution Regulation for .nl Domain Names. In principle, there will be no in-person hearing. However, the panellist may invite parties to submit further statements and further submissions or order a hearing if the panellist considers it necessary for deciding the dispute.

The .nl ADR proceedings are in principle handled fully electronically. As regards the language of the proceedings, the Dispute Resolution Regulation for .nl Domain Names provides that the language of the proceedings is in principle Dutch if both parties reside or are registered in the Netherlands. In the event that one of the parties is established abroad, the language of the proceedings will be English. The panellist may, however, in exceptional circumstances, decide that the language of the proceedings will not be conducted in Dutch, but in English, or vice versa. The duration of .nl ADR proceedings is approximately three to four months from filing the complaint until the decision is rendered. Participation in the ADR proceedings does not prevent parties from submitting the dispute to a competent court.

## 12 What are the pros and cons of litigation and ADR in domain name disputes? What are the pros and cons of choosing a local forum to litigate a gTLD dispute compared with the ICANN ADR format for the gTLD?

As mentioned in question 11, in most cases ADR proceedings are preferred over regular court proceedings. ADR is relatively inexpensive, fast and efficient.

In order to decide on the right strategy for taking legal steps against a domain name registrant, it should first be established which rights can be invoked. Legal measures can in principle be sought if the domain name in dispute conflicts with a trademark, a trade name, a personal name, the name of a public legal entity or the name of an association or foundation. These categories can be found in both court and ADR cases.

However, the criteria for deciding these disputes in court proceedings or .nl ADR proceedings, respectively, are not the same for all categories. For instance, with regard to trademarks, the court will assess whether the trademark is infringed on the basis of the criteria for infringement in Benelux or EU trademark law. This means that measures can in principle only be obtained if the domain name is identical or confusingly similar to the domain name and there is also similarity between the goods or services for which the domain name is used. In .nl ADR the latter is not a separate requirement, which may favour in some cases .nl ADR proceedings.

On the other hand, the criteria that should be applied in .nl ADR proceedings comprise additional requirements that do not necessarily apply in infringement cases that are brought before a court. Complaints in .nl ADR proceedings are only allowable if it is established that the registrant has no rights to or legitimate interests in the domain name and the domain name has been registered or is being used in bad faith. In practice this means that the thresholds for establishing a conflict between right and domain name are slightly lower in court proceedings, especially in PI proceedings.

A further key factor for the determination of strategy is the type of measures that can be obtained in the proceedings. See question 17, from which it follows that if relief other than transfer of the domain name is sought, one should bring the case before a court. This will apply even more so in complex cases where the registration and use of a domain name is only one of the issues at stake. However, if the plaintiff has a strong need to actually use the domain name itself and wants to safeguard that the domain name will be transferred to it if the dispute is decided in its favour, the .nl ADR proceedings provide more certainty. Generally, .nl ADR proceedings are more favourable in true domain name-grabbing cases.

Other factors that should be taken into account relate to costs. Even though the costs of .nl ADR proceedings can be considerably lower (especially when no legal representation is sought), the actual costs may be retrieved in court proceedings, but not in .nl ADR proceedings (see question 26).

Finally, the timing is also relevant. If the matter is extremely urgent, one could obtain measures at very short notice in PI court proceedings (as quickly as one week, even though usually this would take between four and 12 weeks). However, if one is seeking a final decision,

the .nl ADR proceedings are generally quicker than court proceedings on the merits (see question 21).

## 13 What avenues of appeal are available?

In respect of court decisions of (the PI judge of) the Dutch district courts, appeal can be instituted at the court of appeal concerned and finally at the Supreme Court (on legal issues).

It is not possible to file an (out-of-court) appeal against the panellist's decision in the .nl ADR proceedings. However, during and after .nl ADR proceedings it remains possible for both parties to bring the case before the court. In the event that the registrant starts an action against the complainant before a Dutch court within 10 days of the day on which the SIDN received the panellist's decision, the SIDN will not implement such decision, but will await the court's decision.

Certain decisions made by SIDN can be appealed before the Complaints and Appeals Board, such as (in short):

- the decision to reject an application to register a domain name;
- the decision to reverse a registration or its decision to register, reverse or refuse certain amendments;
- the decision to cancel or limit the use of the registration; or
- the decision to refuse an opt-out request (see question 7).

## 14 Who is entitled to seek a remedy and under what conditions?

### Court proceedings

In court proceedings the rights holder is always entitled to seek remedies with regard to infringement. The position of the licensee is different for licensees of Benelux and EU trademarks.

The licensee of a Benelux trademark has the right to join as a party in the proceedings in order to request damages, but requires explicit authorisation of the rights holder to start proceedings for damages in its own name. The licensee does not have the right to request an injunction, unless it is acting on the basis of a power of attorney in the name of the Benelux trademark owner.

The licensee of an EU trademark may start legal proceedings in its own name with the permission of the rights holder, and an exclusive licensee may even start legal proceedings without permission if the rights holder does not, even after being given a reasonable term, initiate proceedings. If the owner of the trademark does start proceedings, the licensee may intervene in order to request damages.

### .nl ADR

Anyone who has rights in a trademark or trade name and who is of the opinion that a domain name constitutes an infringement may request transfer of a domain name in .nl ADR proceedings. Also, natural persons, public legal entities and foundations may request the transfer of a domain name when identical or confusingly similar to their names. In all cases additional requirements are that the registrant does not have rights or legitimate interest in the domain name and that the use or registration of the domain name is in bad faith.

## 15 Who may act as defendant in an action to cancel or transfer a gTLD in local courts?

With regard to domain name cases brought before a Dutch court, including gTLD cases, the appropriate defendant would either be the registrant, or the registrant together with the actual user if these would be different parties. If the case is about more than the mere registration and use of a domain name, other parties might be involved as well.

Even though in principle the plaintiff will decide which parties it will involve in litigation as defendants, there is no point in involving the registrar or registry in proceedings with regard to the cancellation or transfer of a domain name. These parties will in principle not be considered relevant users of the domain name (unless the registrar and registrant are the same entity).

## 16 What is the burden of proof to establish infringement and obtain a remedy?

In general, the burden of proof rests with the complainant or plaintiff. In ADR proceedings the balance of probabilities or preponderance of the evidence is often applied. An asserting party typically needs to establish that it is more likely than not that the claimed fact is true. In court proceedings the plaintiff needs to make it sufficiently plausible that the domain name has been or will be used in an infringing manner.

### Update and trends

SIDN has announced that it will become even more active in the fight against abuse of domain names for malware and phishing. For several years, SIDN has been one of the few registries in the world to have its own notice-and-take-down procedure. In context of the Abuse204.nl initiative ('abuse to zero for .nl'), SIDN receives information from a specialist abuse detection organisation and notifies registrant, registrar and hosting provider if malware or phishing is detected. Most stakeholders take prompt action, but a small percentage of abuse sites are still active after several days. SIDN has now announced that it will itself remove the domain name from the zone if no appropriate action has been taken by the stakeholders within 114 hours.

In PI proceedings the judge will make a provisional assessment of the case, which may include a balancing of the parties' interests.

### 17 What remedies are available to a successful party in an infringement action?

In .nl ADR proceedings only transfer of the domain name may be requested. In court proceedings, depending on which rights are being invoked, a broader spectrum of measures may be granted: injunction, cancellation or transfer of the domain name, rectification, rendition of accounts, damages or transfer of profit, reimbursement of reasonable and proportionate legal costs and penalties for non-compliance with court orders.

### 18 Is injunctive relief available, preliminarily or permanently, and in what circumstances and under what conditions?

Yes, but only in court proceedings. A permanent injunction will be granted in proceedings on the merits if the court holds that (absolute) rights of the rights holder have been infringed. In preliminary proceedings an injunction may already be ordered if there is a threat of infringement.

### 19 How is monetary relief calculated?

When infringement has been established by the court, it may award payment of actual damages or a transfer of profits. In principle, no damages may be claimed in preliminary proceedings. Orders to pay compensation do not have a punitive character. However, the court will usually refer the claim for damages to follow-up proceedings aimed specifically at damages assessment. Such referral does not require the claimant to prove that it has actually suffered damage; the plausibility of damage suffices. In practice, such follow-up proceedings are rarely litigated, since they may take a long time and it often proves very difficult to establish the actual amount of damage suffered or which profits of the infringer should be attributed to the infringement. More often than not, parties will reach a settlement on damages after the court has established infringement.

### 20 What criminal remedies exist, if any?

Disputes about infringement of intellectual property rights are mainly settled in civil proceedings. However, under some circumstances the use of a domain name – not the mere registration – may constitute an act of counterfeit, which is a criminal offence and may be punished with imprisonment not exceeding one year or a fine of the fifth category (€82,000). The use of the domain name for other criminal activities may also lead to criminal sanctions. However, if a case is merely about domain names, any report thereof to the public prosecutor will almost certainly not get any priority.

### 21 Is there a time frame within which an action must be initiated?

In principle, there is no specific time frame for instituting court proceedings. However, in respect of PI proceedings urgent interest is required. Also in respect of the .nl ADR there are no specific requirements as regards timing. In exceptional cases, the owner of a prior trademark who has tolerated the use of a later-registered trademark during a period of five consecutive years may no longer object to the use of the later trademark, which may also comprise use as a domain name.

### 22 Can a registrant's rights in a domain name expire because of non-use. Can a registrant be estopped from bringing an infringement action? In what circumstances?

No use is required in order to maintain the domain name registration. If a registrant of a domain name is bringing an infringement action as a plaintiff, he or she will need to invoke a right such as a trademark or trade name in order to be successful. The Dutch Supreme Court has held that the owner of a domain name can also take action against the use of a name that is similar to its domain name, without relying on a trademark or trade name, if the use leads to confusion and if the designation is not purely descriptive. Domain name registrations as such – without any use – do not provide for an (absolute) right to bring an infringement action. Non-use by the plaintiff or registrant may also be relevant if the defendant is arguing that the plaintiff or registrant has no rights in its trademark on account of non-use of the trademark (including use as a domain name). In proceedings where the plaintiff is the owner of a trademark or trade name, of which genuine use is made, non-use of the domain name of the defendant may be relevant.

In .nl ADR proceedings, non-use of the attacked domain name could play an important role in establishing that the registrant thereof has no rights to or legitimate interest in the domain name and that the domain name has been registered in bad faith. This is different in court proceedings, as infringement will generally not be assumed in the event the domain name is not actually being used.

### 23 What is the typical time frame for an infringement action at first instance and on appeal?

The typical time frames for an infringement action at first instance and on appeal are as follows:

- court proceedings, PI, first instance: four to 12 weeks;
- court proceedings on the merits, first instance: one to one-and-a-half years;
- court proceedings, appeal: one to one-and-a-half years (slightly shorter in PI); and
- .nl ADR: three to four months.

### 24 Is a case law overview available on procedural or substantive issues? Does the case law have a precedential value?

The website domjur.nl publishes judgments and literature on domain names and .nl domain names in particular. Almost 1,300 judgments are included in the database. The website is an initiative of the SIDN in cooperation with Tilburg University.

The Netherlands has a civil law system, in which lower courts are in theory not bound to precedents established by higher courts. However, judgments should be predictable, which means that lower courts usually submit to judgments from higher courts.

### 25 Can parties choose a panellist in an ADR procedure involving a ccTLD? Can they oppose an appointment?

The WIPO Center chooses the panellist in the .nl ADR proceedings. The panellist must declare that he or she has no personal or business connection to any of the parties. The parties cannot oppose the appointment of the panellist, but the WIPO Center may choose another panellist if it is of the opinion that there are reasons to do so.

### 26 What is the typical range of costs associated with an infringement action, including pre-litigation procedures, trial or ADR, and appeal? Can these costs be recovered?

The legal costs in court proceedings are highly dependent on the circumstances and complexity of the case. A typical range of costs can therefore not easily be provided. As court fees are quite low in the Netherlands, the costs mainly consist of costs for legal representation.

An indication is provided by the 'indicative fees in IP cases'. On the basis of the IP Enforcement Directive, the winning party is entitled to a reasonable reimbursement of its legal fees by the losing party. As the courts were in need of guidelines for determining which claimed legal costs are reasonable to award, the administration of justice has provided the indication fees for IP cases (excluding patent cases).

According to the indication fees, in first-instance PI proceedings a maximum of €6,000 for simple cases, €15,000 for normal cases and €25,000 for complex cases is considered reasonable. In proceedings on

the merits these amounts are €8,000 for a simple case, €20,000 for a normal case and €40,000 for a complex case.

Should the infringement action only concern use of the domain name and should the case furthermore be quite straightforward, this will probably be regarded as a simple case. In this event, the actual costs may in a given case even be lower than €6,000. However, if the domain name issue forms only part of the dispute, the actual costs may be considerably higher. Roughly the same indication fees apply to appeal proceedings.

#### **.nl ADR**

The total fees for .nl ADR proceedings for one up to and including five domain names are €1,500 (a €500 administration charge and a panellist's fee of €1,000) and for six up to and including 10 domain names €2,000 (€700 of administration charges and a €1,300 panellist's fee). If an amicable settlement is reached before a panellist is appointed, the panellist's fee will be reimbursed to the complainant. In addition to the above-mentioned fees, other costs may be incurred, such as costs for legal representation.

The regulations of .nl ADR proceedings do not provide for an award of costs to the winning party.

# Bird & Bird

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