

Netherlands

Manon Rieger-Jansen and Clemens Molle

Bird & Bird LLP

REGISTRATION AND USE OF DOMAINS AT CCTLD REGISTRY

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, inter alia, .aw (Aruba), .amsterdam and .politie (police).

Method

2 | How are domain names registered?

The first step to registering a domain name is for an applicant to contact a registrar of his or her choice. A registrar is an intermediary that will represent the applicant in dealings with the SIDN. There are about 1,200 registrars in the Netherlands and they are all listed on the website of the SIDN (www.sidn.nl/en/registrars/). The registrar will provide the applicant with the general terms of 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.

Duration

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.

Cost

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 must pay to the registrar varies from one registrar to another and also depends on the

services offered by the registrar. Generally, the cost of registration is between €4 and €15 a year. The registrar may charge an additional one-time registration fee.

Transfer

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

Transfer to another 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 the cancellation of the existing agreement with the SIDN and the conclusion of a new agreement between the SIDN and the new registrant. To transfer a domain name, the registrar must inform the SIDN of 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 contacts 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.

Licence

The General Terms and Conditions for .nl Registrants do not explicitly mention that the registrant is not allowed to license its rights under the agreement with the SIDN to a third party. In practice, it happens that the registrant is not the same party as the party exploiting the domain name. However, the registrant will remain responsible to the SIDN for the use of the domain name.

ccTLD versus gTLD registration

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 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 registrant is obliged to use the SIDN's office address 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 the 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.

Registrants' privacy

- 7 | Is the registrant's contact information freely available?
Can the registrant use a privacy service to hide its contact information?

The SIDN makes a distinction between private and business registrants. The only information about a private registrant given in the SIDN WHOIS is the administrative contact's email address. If the registrant is a business, the name is also shown. In addition, the registrant can voluntarily choose to have an address visible. The use of a privacy service is discouraged by the SIDN, but allowed. Domain name holders that have special reasons to prevent publication of their (business) name or the email address of their administrative and technical contact can file an opt-out request. An opt-out is only allowed in exceptional cases, and general reasons, such as spam, are not accepted. To make an opt-out request, a registrant sends a reasoned statement to his or her registrar, the registrar forwards the request to the SIDN and the SIDN will decide within three weeks whether or not the request is approved. If the SIDN decides to decline the request an appeal can be lodged with the Complaints and Appeal Board.

PRE-LITIGATION ACTIONS

Disclosure of registrants' private details

- 8 | If a registrant's contact information is hidden, under what circumstances will it be disclosed? What processes are available to lift a registrant's privacy shield?

The Foundation for Internet Domain Registration in the Netherlands (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 the 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. Certification authorities issue secure socket layer certificates. Access is needed to verify the details. Some certification authorities have also made arrangements with the SIDN for automated access.

If the SIDN chooses to disclose any information about a registrant in response to a request as mentioned above, they will notify the registrant.

Third-party notification

- 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 as, for example, 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. 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.

Notice to the registrant

- 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 may 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 freeze the domain name. This 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 if the proceedings were (partly) initiated on the basis of intellectual property rights.

Provisional measures

- 11 | What provisional measures are available to prevent a domain name being transferred or cancelled during proceedings?

The Uniform Domain Name Dispute Resolution Policy-based dispute resolution system for .nl domain names (.nl ADR) will lead to the domain name being frozen as soon as a complaint (which meets requirements) is received by the SIDN. In addition to a dispute being considered under the .nl ADR, the SIDN will also freeze a domain name if it is the subject of an attachment or seizure, if it has been pledged or if the SIDN deems it necessary owing to other types of dispute relating to the domain name.

- 12 | Can domain names be seized? If so, under what conditions?

Yes, domain names can be seized. General procedural rules apply with regard to such a seizure. A lawyer will need to be instructed, who will ask the court for an attachment or seizure order. If permission to attach is granted, the lawyer will instruct a bailiff, who will in turn contact the SIDN. The SIDN will then freeze the domain name.

There are different types of seizure with different conditions. One type of seizure is the pre-judgment attachment, which aims to attach the domain until an order to transfer is given by a judge. This type of attachment is possible with regard to a domain name. Generally, attachment of a domain name for recovery (eg, of money) is not permitted.

TRANSFER OR CANCELLATION

Procedure

- 13 | 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 the cancellation or transfer of a domain name are court proceedings (preliminary injunction (PI) proceedings or proceedings on the merits); and the Uniform Domain Name Dispute Resolution Policy-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.

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 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.

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 by, inter alia, means of a request for the disclosure of specific documents. However, in practice these proceedings are not used in cases concerning domain names, 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. The Dutch Supreme Court recently considered that the starting point is that a registrant can only be ordered to transfer a domain name to another party when he or she is obligated to do so by an agreement or when the registration or use of the domain name can be considered unlawful in relation to this other party. Recent case law shows that lower courts are willing to order the transfer of the domain name in the case of the infringement of a trade name or trademark rights unless the plaintiff no longer has an interest in the transfer or the defendant is no longer the registrant.

.nl ADR

In .nl ADR proceedings only a 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 Foundation for Internet Domain Registration in the Netherlands (SIDN) has accredited the WIPO as the centre for .nl ADR (the Centre).

Within three days of receiving the complaint, the Centre 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 frozen. 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 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 Centre, the complainant and the respondent. The complainant must then 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 Dutch if both parties reside or are registered in the Netherlands. If 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.

Choosing a forum

14 | 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?

In most cases, ADR proceedings are preferred over regular court proceedings. ADR is relatively inexpensive, fast and efficient.

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 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 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 means .nl ADR proceedings may be favourable in some cases.

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 the right and the 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. If relief other than the transfer of the domain name is sought, the case must be brought before a court. This will apply even more so in complex cases when 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 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 cost of .nl ADR proceedings can be considerably lower (especially when no legal representation is sought), the actual cost may be retrieved in court proceedings, but not in .nl ADR proceedings.

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.

Appeal

15 | 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 panelist'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. If the registrant starts an action against the complainant before a Dutch court within 10 days of the day on which the SIDN received the panelist's decision, the SIDN will not implement this decision, but will await the court's decision.

Certain decisions made by the 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.

Who may claim

16 | 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 initiate proceedings, even after being given a reasonable term. If the owner of the trademark does start proceedings, the licensee may intervene to request damages.

.nl ADR

Anyone that has rights in a trademark or trade name and that is of the opinion that a domain name constitutes an infringement may request the transfer of a domain name in .nl ADR proceedings. In addition, natural persons, public legal entities and foundations may request the transfer of a domain name when it is 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.

Who acts as defendant

17 | 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.

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 not be considered relevant users of the domain name (unless the registrar and registrant are the same entity).

Burden of proof

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

Remedies

19 | What remedies are available to a successful party in an infringement action?

In .nl ADR proceedings only the 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.

Injunctive relief

20 | 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 the (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.

Calculating damages

21 | 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. This referral does not require the claimant to prove that it has actually suffered damage; the plausibility of damage suffices. In practice, the follow-up proceedings are rarely litigated, as 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.

Criminal remedies

22 | 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 (€87,000). 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 most likely not get any priority.

Limitation period

23 | 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. In addition, in respect of the .nl ADR there are no specific requirements as regards timing. In exceptional cases, the owner of a prior trademark that 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.

Expiry of rights and estoppel

24 | 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 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 to be successful. However, 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. If the domain name is purely descriptive, additional circumstances are required to act against a confusingly similar domain name. 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 if the domain name is not actually being used.

Time frame for actions

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

Case law

26 | 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. More than 1,350 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.

Appointment of panellists

27 | Can parties choose a panellist in an ADR procedure involving a ccTLD? Can they oppose an appointment?

The WIPO Centre 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 Centre may choose another panellist if it is of the opinion that there are reasons to do so.

Costs

28 | 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 needed 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 the use of the domain name and should the case 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.

These 'reasonable and proportionate' costs can only be recovered if the domain name claim is based on the infringement of an IP right, such as the infringement of a trademark or tradename. If the claim is merely based on the registrant's domain name, the costs that can be recovered are significantly lower (dependent on various factors) and are roughly between €1,000–€2,000.

.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 panelist's fee of €1,000) and for six up to and including 10 domain names are €2,000 (€700 of administration charges and a €1,300 panelist's fee). If an amicable settlement is reached before a panelist is appointed, the panelist'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.

UPDATE AND TRENDS

Recent developments

29 | Are there any emerging trends or hot topics regarding domains and domain names in your jurisdiction?

In light of the European Union's General Data Protection Regulation (GDPR) the Foundation for Internet Domain Registration in the Netherlands (SIDN) has limited the information that is published about .nl domain names. Nevertheless, the SIDN still publishes the email address of the administrative contact person (admin-c) of the registrant. In practice, this email address can be a helpful way to contact the registrant.

In accordance with the General Terms and Conditions for .nl Registrants, the registrant is required to submit complete and correct information when applying for a .nl domain name and the registrant should ensure that its details are up to date in the SIDN's database. In practice, however, it is not uncommon that the name of the registrant is incorrect or outdated, in which case it can be difficult to look up the contact information of the registrant. In addition, not all registrants publish their contact information on their website. This can be a hurdle for rights holders trying to act against the infringement of their rights.

In cases of infringement, rights holders can fill in a form and request the full contact details of a registrant. However, this might not always be the most suitable approach, for example, in extremely urgent cases or when further research is required. In these situations the email address of the administrative contact person can be a helpful way to immediately contact or gather further information about the registrant.

Bird & Bird

Manon Rieger-Jansen

manon.rieger.jansen@twobirds.com

Clemens Molle

clemens.molle@twobirds.com

Zuid-Hollandplein 22

2596 AW The Hague

Netherlands

Tel: +31 70 353 8800

www.twobirds.com

In discussions about gTLDs it has been considered that the administrative contact information should no longer be recorded nor published. The SIDN decided otherwise because it acknowledges the importance that the registrant can be reached by others. With regard to discussions about the GDPR, the SIDN has noted that the email address can be anonymous and does not have to be the email address of the registrant itself. Nevertheless, the SIDN will continue to monitor the WHOIS related developments at ICANN and in neighbouring countries and is open to alternative ideas.

The SIDN strives towards a safe .nl domain and, therefore, proactively monitors the .nl domain for counterfeit online shops. In 2019 the SIDN – in co-operation with, inter alia, the .nl registrars and a large credit card issuer – took down over 4,300 counterfeit stores from the .nl domain. By scanning the .nl websites by means of machine learning tools, the SIDN tries to take down the fake stores as soon as possible.