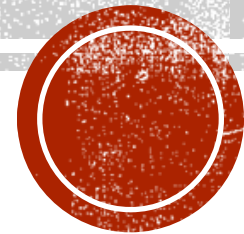


EU AND CZ DOMAIN



DOMAIN DISPUTES



HOW TO BE LEGALLY PROTECTED FROM SQUATTERS?

- Competition law
- Trademark law
- Geographical indications
- Commercial name (firma)
- Right for privacy



UNFAIR COMPETITION

- §2976 –
- "conduct in economic competition
- conflicts with the accepted practices of competition
- may be detrimental to other competitors or customers.

- Unfair competition is prohibited.



UNFAIR COMPETITION

- misleading marking of goods and services
 - svycarskehodinky.cz, google.com, wikipedia.org
- parasitic use of the reputation of another competitor's enterprise, products or services



DOMAIN NAMES AND RIGHT FOR PRIVACY AND PERSONALITY RIGHTS

- UDHR Article 12

- No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.
- Charter of human rights – Article 10(1)
 - Everyone has the right to demand that his human dignity, personal honor, and good reputation be respected, and that his name be protected.



POSSIBLE VIOLATIONS OF PERSONAL RIGHTS

- Paroubeknamars.cz
- bushsucks.com
- lhategates.com (inactive)

- Juliaroberts.com
- Britneyspears.com



PROTECTION OF COMPANY NAMES - § 423 CIVIL CODE

- FIRMA
 - FIRMA is protected by unfair commercial rules



TRADEMARK

- Exclusive right to use the trademark in connection with goods and services



EXAMPLE

- Squatter registers a domain sony.cz and offers it for sale
 - Can these companies rely on the protection on the company name claims?
 - **Sony Music Entertainment Czech Republic s.r.o.**
 - **Sony Music Entertainment Czech Republic s.r.o.**
 - **SONY Czech, spol. s r.o.**
 - **Sony Ericsson Mobile Communications International AB Branch Office Czech Republic,**



EXAMPLE



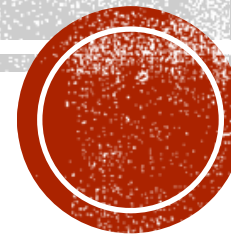
- Squatter registers the domain lego.cz
- He does not use this domain and offers it for sale for 200 000 Kč
- Can the trademark owner claim violation of his rights?
- Can the trademark owner claim transfer of the domain name?
- What if the owner is based in denmark, administrator is Czech and squatter Russian?



ALTERNATIVE DISPUTE RESOLUTION



.CZ DOMAIN



REGISTRY/ADMIN

- CZ.NIC, z. s. p. o.,
- operation of the domain name registry for the .CZ domain
- member of the EURid association



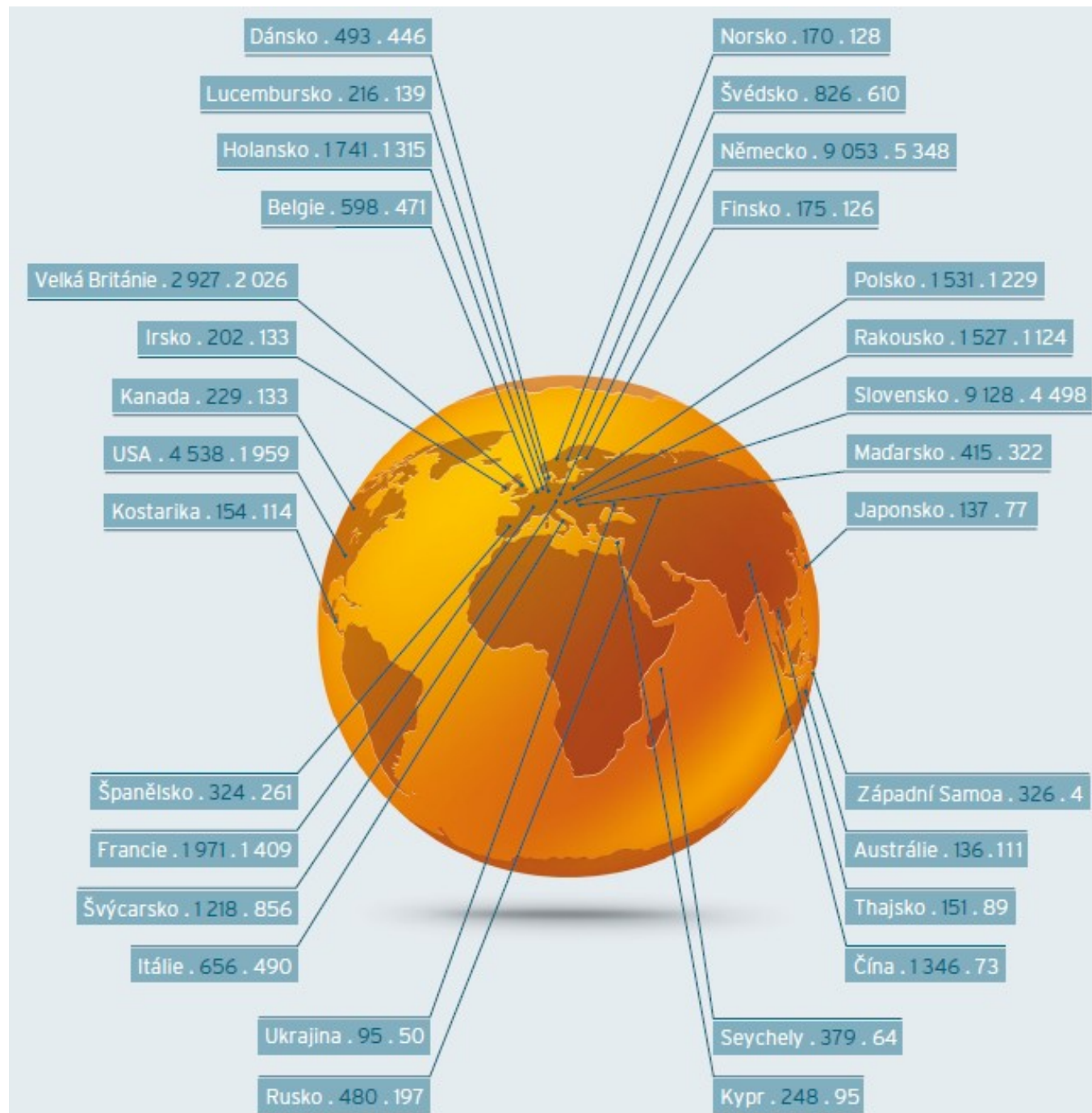
GEOGRAPHICAL LIMITATIONS

- NONE

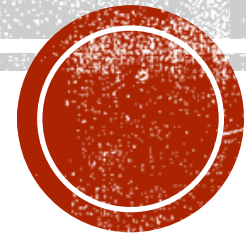
- Žádná

Země	Počet domén	Držitelé
Slovensko	9 128	4 498
Německo	9 053	5 348
USA	4 538	1 959
Velká Británie	2 927	2 026
Francie	1 971	1 409
Holansko	1 741	1 315
Polsko	1 531	1 229
Rakousko	1 527	1 124
Čína	1 346	73
Švýcarsko	1 218	856
Švédsko	826	610
Itálie	656	490
Belgie	598	471
Dánsko	493	446
Rusko	480	197
Maďarsko	415	322
Seychely	379	64
Západní Samoa	326	4





RULES OF REGISTRATION



REGISTRATION

- Domain Names are registered through a Registrar
- Registered for 1-10 years
- the has to applicant agree with
 - Rules of Registration
 - Rules of Alternative Dispute Resolution;
- Renewal on request



THE FOLLOWING WILL ALSO BE DEEMED A VALID CONSENT TO THE RULES OF REGISTRATION:

- 3.3.1. placing an order for a new or renewed registration of the Domain Name;
- 3.3.2. paying the price for ...;
- 3.3.3. the start of use of the Domain Name; or
- 3.3.4. any other act of the Applicant or Holder toward the Registrar or the CZ.NIC Association, provided that such an act pertains to changing records on the given Domain Name that are kept in the Central Register.



RULES FOR A DOMAIN NAME

- Only characters [a-z,0-9,-];
- Themaximum Domain Name Length is 63 characters;
- must not begin or end with “-“ character;
- must not contain two characters “-“ in sequence.



TERMINOLOGY

- By registering the Domain Name, the Applicant will become the **Holder** and the Domain Name will be reserved for them for the specified period of time.



PRICE

- The price of the services provided by the Registrar to the Holder, including the price for the registration of the Domain Name or other services, is set by an agreement between the Registrar and the Holder.



RENEWAL

- 5.1. Domain Name registration may be renewed through the Appointed Registrar.
- 5.2. Domain Name registration may be renewed for whole years, also repeatedly, but for no more than 10 years.
- request for registration renewal at the latest on the Day of Expiration
- Holder agreed with the current version of the Rules of Registration
- CZ.NIC Association receives the respective price at the same time.



TRANSFERS

- upon request submitted through the Registrar
- The Registrar is obliged to acquire the consent of the future Holder to the current version of the Rules of Registration and the Rules of Alternative Dispute Resolution
- The transfer of the Domain Name does not affect the latter's Day of Expiration



TERMINATION

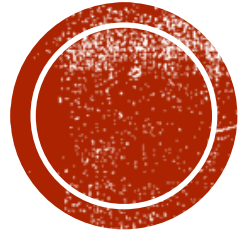
- Upon request (cancellation)
- Expiration
 - Protection period „60 days“
- the information is untrue, incomplete or misleading
- endangers the national or international computer security
- Violation of rules



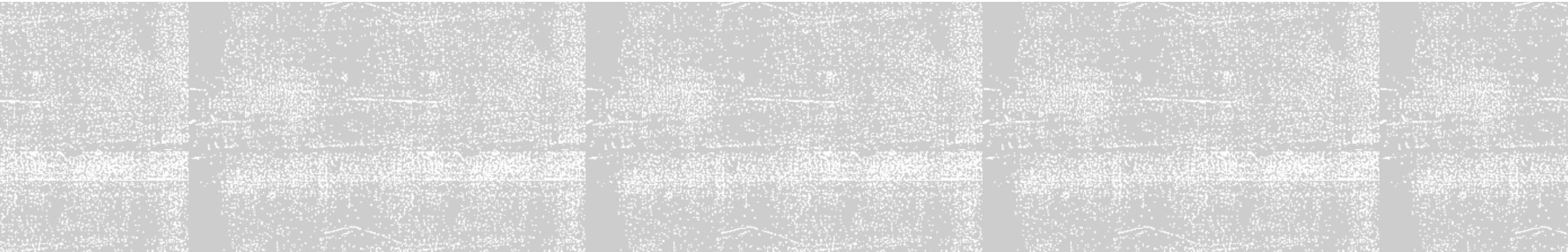
RIGHTS AND DUTIES OF CZ.NIC

- perform the Domain Name registration and maintain such a registration in compliance with defined conditions
- keep record of a registered Domain Name in the Central Register
- keep a record of the delegated Domain Name in the CZ zone; and
- make every effort that may be reasonably required to ensure a fault-free and smooth operation of the Central Register and the primary name server





JUDICIAL SOLUTION IN CZECHIA



TWO ALTERNATIVES

- Trademark dispute
 - The owner of a trademark has the exclusive right to use the trademark in connection with the goods or services for which it is protected.
 - The owner of a registered trade mark shall prove his right by an extract from the register or, where appropriate, by a certificate of registration. The proprietor of the trade mark shall be entitled to use the mark together with the trade mark
- Unfair competition
 - Anyone who, in the course of economic dealings, comes into conflict with the good morals of competition by acting in a manner likely to cause injury to other competitors or customers commits unfair competition.



REMEDIES TRADEMARK

Right to information

Right to restrain from activity by

- (a) by withdrawing products from the market,
- (b) permanent removal or destruction
- (c) the removal or destruction of materials, tools and equipment intended or used exclusively or principally in infringing or threatening activities.

compensation,

the release of unjust enrichment gained by the infringer as a result of the threat or infringement,

adequate compensation if the interference with the rights has caused non-pecuniary damage.

- Adequate compensation may also consist of monetary compensation.



REMEDIES UNFAIR COMPETITION

- A person whose right has been threatened or infringed by unfair competition may require the infringer to refrain from unfair competition or to remedy the defective condition.
- It may also require:
 - reasonable compensation,
 - compensation for damages; and
 - payment of unjust enrichment.



IMPORTANT CASE 23 CDO 3407/2010 - GLOBTOUR

- The courts wrongly confuse a declaratory decision with a constitutive decision (a decision to change the domain holder). Constitutional court decisions are an exception and can only be issued in cases where the law expressly grants the court the power to establish a legal relationship (rights and obligations) between the parties. In the present case, if the court were to determine to whom the right to the domain belongs (whether to the applicant or the first defendant), the applicant would have to bring an action for a declaration before the court pursuant to Article 80(c) of the Civil Procedure Code, according to which an action may be brought to determine, in particular, whether or not there is a legal relationship or right if there is an overriding interest in law. Translated with www.DeepL.com/Translator (free version)



CLAIMS UNDER ADR/UDRP

- Domain name transfer
- Domain name cancellation
- URS (domain name blocking)



DIFFERENCE

ADR

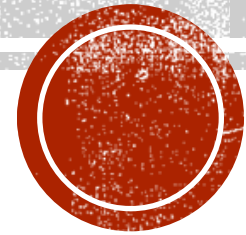
- Transfer
- Nothing else

Court

- Everything (Money, Information, Satisfaction)
- But not the transfer



DISPUTE RESOLUTION



OBLIGATION

- The Holder is obliged to make every effort that may reasonably be required from him to achieve an amicable settlement of disputes concerning Domain Names and/or their registrations that might arise between the Holder and other persons. If the litigants do not settle the dispute in an amicable way, they are free to settle their dispute within the scope of valid legal regulations, i.e. through arbitration, municipal courts or dispute resolution under the Rules of Alternative Dispute Resolution.



HOW WILL CZ NIC BEHAVE?

- The CZ.NIC Association will cancel the delegation and/or the registration of a Domain Name, transfer the Domain Name to a different person and suspend the option to transfer the Domain Name to another person if this is stipulated in an executable decision, even if CZ.NIC itself has not been a party to the proceedings in which such a decision was made.



HOW WILL CZ NIC BEHAVE?

- If the decision pursuant to Article 18 stipulates the obligation to cancel the registration of the Domain Name but not the duty to transfer the Domain Name, the CZ.NIC Association will not, for the period of 1 month, permit a repeated registration of the same Domain Name by a person other than the person who requested the cancellation of registration for Holder



BUT !!!!!!!!

- **23 Cdo 3407/2010 (Globtour)**
- **23 Cdo 3895/2011** - Vzhledem k dovolacím námitkám však i v případě, že by bylo zjištěno, že na daný právní vztah je třeba aplikovat obchodní zákoník, **nelze tzv. veřejnou rozhodčí nabídku v projednávané věci považovat za veřejný návrh na uzavření smlouvy, kterým by došlo k uzavření rozhodčí smlouvy mezi účastníky.**



BETWEEN HOLDER AND CZ.NIC

Before

- The CZ.NIC association **shall accept the jurisdiction of the arbitration court provided that the arbitration will be conducted in HK AK CR**
- Other disputes between the Holder and the CZ.NIC association are subject to the jurisdiction of general courts of the Czech Republic.

Now

The Holder is obliged to submit to the dispute resolution under the Rules of Alternative Dispute Resolution in relation to all domain names of the Holder listed in the electronic database of the domain names in the .cz ccTLD administered by the CZ.NIC Association, subject to the conditions specified in the Rules of Alternative Dispute Resolution.



DISPUTES BETWEEN HOLDER AND THIRD PARTIES

- The Holder is irrevocably and publicly subject to the authority of the Arbitration Court attached to the Economic Chamber of the Czech Republic and the Agriculture Chamber of the Czech Republic



- The proceedings are initiated by filing a complaint in accordance with the .CZ Code. The proceedings are conducted in electronic form described in the .CZ Code using the on-line platform available at domeny.soud.cz; the arbitration proceedings shall be held in Prague, Czech Republic.



ARBITRATION

- Rules of Alternative Dispute Resolution - 1. January 2014 – 30. March 2015 (arbitration)
- RULES OF ALTERNATIVE DISPUTE RESOLUTION 1. april 2015
-



Vítejte na webové stránce Rozhodčího soudu pro řešení sporů týkajících se doménových jmen .cz.

Rozhodčí soud při Hospodářské komoře ČR a Agrární komoře ČR je od roku 2004 sudištěm pro spory o doménová jména .cz. Řízení o tato doménová jména probíhá u Rozhodčího soudu dle Řádu pro řešení sporů o domény .cz (Řád .cz).

Řízení je vedeno on-line prostřednictvím zabezpečené platformy, což umožňuje velmi rychlé projednání a vyřešení sporu. Pro podání žaloby je nutno se nejprve zaregistrovat v sekci Online rozhodčí platforma. **Doporučujeme Vám před podáním žaloby pečlivě prostudovat Řád pro řešení sporů o domény .cz (Řád .cz) a Pravidla alternativního řešení sporů, které naleznete v sekci Řízení / Pravidla alternativního řešení sporů. Máte-li dotazy k podání žaloby nebo jakékoliv jiné otázky týkající se řízení, můžete nalézt odpověď v sekci Řízení / Náповěda.**

Před Rozhodčím soudem lze také vést řízení o doménová jména .eu a jiná doménová jména nejvyšší úrovně (.aero, .asia, .biz, .cat, .com, .coop, .info, .jobs, .mobi, .museum, .name, .net, .org, .pro, .tel, a .travel). Informace o řízení .eu naleznete [zde](#), informace o řízení o ostatní doménová jména [zde](#).

Aktuální informace k doménám .CZ

Nejvyšší soud České republiky rozsudkem sp. zn. 23 Cdo 3895/2011 rozhodl, že není možné uzavření rozhodčí smlouvy podáním žaloby k Rozhodčímu soudu na základě veřejné rozhodčí nabídky obsažené v Pravidlech registrace doménových jmen v ccTLD .cz, vydaných sdružením CZ.NIC, z.s.p.o., a neztotožnil se tak se závěry Vrchního soudu v Praze vyjádřenými v rozsudku 3 Cmo 367/2010. Rozhodčí soud projednává všechna podání, která mu jsou předložena a u kterých rozhodci v souladu s Řádem, či Řádem pro řešení sporů o domény .cz, dospějí k závěru, že je dána pravomoc Rozhodčího soudu spor v rozhodčím řízení projednat a rozhodnout, ať již na základě rozhodčí smlouvy uzavřené před nebo po vzniku sporu nebo i v průběhu rozhodčího řízení. V případě žalob založených na existenci rozhodčí smlouvy uzavřené dle Pravidel registrace doménových jmen v ccTLD .cz je tak věcí rozhodce či rozhodčího senátu vypořádat se s uvedeným rozhodnutím Nejvyššího soudu ČR.

Domény .cz

- O doméně .cz
- Pravidla registrace

Řízení

- Pravidla alternativního řešení sporů a Řád .cz
- Sazebník
- Rozhodci
- Rozhodčí nálezy
- Náповěda

O nás

- O nás
- Kontakty
- Novinky



ARBITRATORS (TRIBUNAL) - FORMER

- The disputes shall be decided by the sole Arbitrator appointed by the President of the Arbitration Court
- Dispute may be decided by **three** Arbitrators if the Parties agree thereon and if the Party making such proposal pays the increased fee
- no personal or economic interests in the the dispute
- the Parties can also challenge the appointment of an Arbitrator



POWERS OF TRIBUNAL (FORMER)

- The Arbitral Tribunal is not obliged, but is permitted, to conduct its own investigations
- The Arbitral Tribunal shall ensure that the Proceeding **takes place with due expedition**
- There shall be no in-person hearings
 - (unless exceptional circumstances)



EXPENSES (FORMER)

- In addition to expenses connected with the payment of fees for the arbitration proceeding, parties in the dispute may also incur legal fees and other possible expenses resulting from participating in the arbitration proceeding.
- **The winning party can be awarded compensation of these expenses,** and the losing party can be ordered to pay this compensation to the winning party.



CHANGE !

Instead of „Arbitration clause“ er have „alternative resolution clause“

Instead of „arbitrator“ we have „expert“

Instead of „finding“ we have „Experts professional decision“.

Instead of legal rules, the decision arises from the Rules

The decision is not enforceable by national authorities



The Holder agrees to submit to the dispute resolution if the petitioner lodges complaint that:

A) Domain Name is identical with or confusingly similar to a Protected Designation

- B1) such Domain Name has been registered or acquired without the Holder holding the right to the Domain Name
- B2) Domain Name has been registered, acquired or is being used other than in good faith



Holder can keep the domain if

- the Holder holds the right to the Protected Designation which is identical with the Domain Name,
- the Holder used the Domain Name before being notified of the initiation of the dispute, for fair dealing in connection with the offering of goods or services, or demonstrably made arrangements for such use,
- the Holder is generally known under the Domain Name, even in the event that the Holder does not enjoy the right to the Protected Designation,
- the Holder uses the Domain Name for fair dealing without intending to mislead third parties or to harm the reputation of the Petitioner or its Protected Designation



Bad faith

- the Domain Name was registered or acquired in order to prevent the Petitioner from using such Protected Designation :
 - (i) the Holder engaged in such wrongdoing repeatedly; or
 - (ii) the Domain Name was not properly used for at least two years from the date of its registration,
- the Domain Name was registered or acquired primarily with the intention to disrupt the economic activities of the Petitioner,
- The Domain Name was intentionally used to direct Internet users to a website or some other online resource for the purpose of achieving profits, by creating a likelihood of confusion with the Protected Designation belonging to the Petitioner



.EU DOMAIN

- Established „by law“
 - 733/2002/EC
- To accelerate e-commerce
- Promote common market
- Accelerate benefits of information society



STRUCTURE OF THE .EU DOMAIN

REGISTRY

REGISTRARS

USERS



REGISTRY (SPONSOR)

- Administers the .eu domain
- EURid
 - Non profit company
 - Established under Belgian law



Register your .eu domain today!

www.ambitionhasanaddress.eu

EURid
www.eurid.eu

.eu
Your European Identity



REGISTRARS

- Independent entities
- Have to be accredited by the registry
- Do not have to be European
- Currently cca 900 accredited registrars



USERS - ELIGIBILITY CRITERIA (ART 3)

undertaking having its registered office, central administration or principal place of business within the Community, or

organisation established within the Community without prejudice to the application of national law, or

natural person resident within the Community;



POLICY RULES (874/2004)

- Requirements for domain name applications
- Requirements for registrars
- Requirements for registrar accreditation
- Languages
- Registration procedures



LANGUAGE

- For any communication by the Registry that affects the rights of a party in conjunction with a registration, such as the grant, transfer, cancellation or revocation of a domain, the Registry shall ensure that these communications are possible in all official languages.



PROTECTION OF RIGHTS IN .EU DOMAIN



PROTECTION OF RIGHTS

1. “sunrise periods”

2. Alternative dispute resolution



SUNRISE PERIODS

- 1st period
 - only registered national and Community trademarks, geographical indications, public authorities
- 2nd period
 - names that can be registered in the first part as well as names based on all other prior rights
- 3rd period – all other users



ALTERNATIVE DISPUTE RESOLUTION



2 POSSIBLE ADR PROCEDURES

Rightholder
vs. domain
name holder

Domain name
applicant vs.
registry

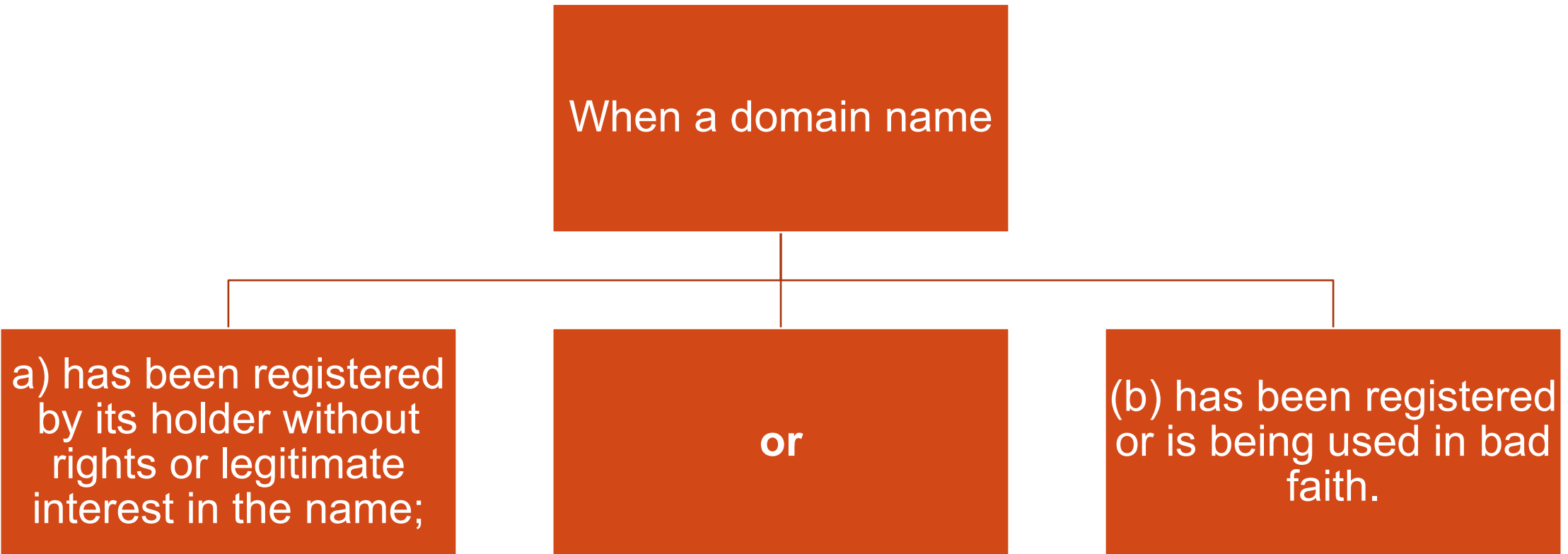


RIGHTHOLDER VS. USER

- Compulsory for the holder of a domain name and the Registry.
 - Not for the Rightholder
- Question of “speculative or abusive registration”



SPECULATIVE OR ABUSIVE REGISTRATION IS



LEGITIMATE INTEREST

- (a) the holder has used the name for the offering of goods or services
- (b) the holder has been commonly known by the name,
 - even in the absence of a right recognised by law
- (c) the holder is making a legitimate and non-commercial or fair use of the domain name,
 - without intent to mislead consumers
 - or harm the reputation of a name on which a right is recognised or established by national and/or Community law.



BAD FAITH

- (a) registered primarily for the purpose of selling, renting, or transferring to the holder of a protected name
- (b) prevent the holder from reflecting this name in a corresponding domain name,
 - provided that:
 - (i) a pattern of such conduct by the registrant can be demonstrated;
 - (ii) the domain name has not been used in a relevant way for at least two years
- (c) primarily for the purpose of disrupting the professional activities of a competitor; or
- (d) intentionally used to attract Internet users, for commercial gain, by creating a likelihood of confusion
- (e) the domain name registered is a personal name for which no demonstrable link exists



COMPARISON ADR AND UDRP

UDRP

1. Confusing similarity
2. No legitimate interest
3. Bad faith

ADR

- 1. Confusing Similarity
- 2 No legitimate interest

- or

- 1 Confusing Similarity
- 2 Bad Faith



LANGUAGE

- Language of the proceedings is the language of the agreement between the registrar and the user

