

Dispute Enhancement instead of Dispute Resolution

Dispute Policy under .de

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DENIC

- registry for .de
- eG (registered cooperative)
 - members: 200 Internet service providers
- not for profit
- currently around 8.7 million domain names registered (approx. 100,000 new registrations per month)
- around 80 employees
- very liberal registration rules

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Disputes

- domain name holder's right to domain name is challenged by complainant
- dispute between complainant and domain name holder; if necessary, before a court
- DENIC does not get involved

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DENIC and Disputes

- DENIC implements final result of dispute
 - voluntary cancellation of domain name or transferral of domain name to complainant by holder
 - commitment of holder not to use domain name
 - injunction and final acceptance of it by domain name holder
 - final court ruling
- DENIC has provided for this in registration contract

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DENIC's Dispute Policy I

- no need for dispute resolution process
 - high speed of German courts
 - average duration of court proceedings: 4.4/7months
 - injunction obtainable within hours
 - often domain name holder gives up immediately
 - low costs of court proceedings in Germany
 - e.g. claim value 10,000 € -> court fee 588 €
 - e.g. claim value 100,000 € -> court fee 2,568 €
 - „loser pays all“ principle under German law

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DENIC's Dispute Policy II

- no value of dispute resolution process
 - simple cases resolved quickly and satisfactorily anyway
 - complicated/high profile cases would end up in court anyway
- legally difficult if not impossible to implement dispute resolution into registration contracts
- but: DENIC offers „DISPUTE entry“

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DISPUTE Entry: Effects

- transferral of domain name no longer possible
 - holder of DISPUTE entry can start legal action without being in danger of losing his opponent
- in case of cancellation of domain name, holder of dispute entry becomes new domain name holder automatically
 - no problem with untimely or unnoticed cancellation of domain name
 - no need to ask court for transferral of domain name to plaintiff (holder of DISPUTE entry)

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DISPUTE Entry: Requirements

- applicant to present a plausible reason as to why he may have a right to the domain
 - just „first sight“ checking by DENIC
- applicant to take (legal) action against the domain name holder
 - no checking by DENIC
 - dispute entry limited to one year, prolongation possible
- use of form provided by DENIC
 - indemnification of DENIC

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DISPUTE Entry: Experiences

- well working
 - fast and simple
 - free of charge
- widely accepted
 - especially lawyers specialising in domain name law use it by routine
 - recognition of courts and German Federal Government
- nevertheless DENIC gets involved sometimes

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Supreme Court on DENIC

- two judgments on DENIC by Bundesgerichtshof (German Supreme Court), both in favour of DENIC
 - ambiente.de (BGHZ 148,13)
 - kurt-biedenkopf.de (BGH MMR 2004, 467)
- DENIC not generally obliged to check domain names for possible right infringements
- DENIC to intervene only when a court has issued a final decision or in absolutely obvious cases
 - absolutely obvious infringement if domain name is identical with famous trademark or name
- no „blocking“ of potentially infringing domain names

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Conclusions

- registry should
 - implement some dispute policy, not necessarily dispute resolution policy
 - also for public appearance
 - win when being sued
 - appeal when having lost
 - necessary because every case is a leading case
 - helpful because possible plaintiffs get discouraged

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