

Dispute Resolution Process Submission

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Alternative process for consideration by Internet NZ - Dispute consultation.

DENIC.de - Germany's domain registry (.de) has no DRS (Nominet) or UDRP (Wipo) process in place for domain disputes. They do however have a Dispute Entry System, that allows a complainant to lodge a claim to a domain based on Trademark rights. If successful, the name in question is suspended from being transferred to another owner and if the name is abandoned by the current owner, is passed to the Dispute Entry holder.

DENIC says:

“Compared with the total of over 8.4 million registered .de domains, the number of disputes is extremely low, and it would appear that little more than one domain in a thousand is affected by some sort of disagreement.”

“It is not DENIC's job to become involved in such disputes in any way. DENIC does not 'police' the contents and/or legality of domains; responsibility for any infringement of the rights of others resides entirely with the holder of the domain concerned.”

More here: <http://www.denic.de/en/domains/recht/index.html>

“The Uniform Domain Name Dispute Resolution Policy (UDRP) run by ICANN is only one of the available channels for settling disputes about domains. It thus does not follow that all domain registries have to opt for it automatically. In point of fact, very few of the country code Top Level Domains (ccTLDs) actually use ICANN's UDRP.

The motivation for setting up the ICANN dispute resolution procedure was that disputes involving generic Top Level Domains, such as .com, .net or .org, may result in an extremely complex mesh of international relations amongst the parties concerned. It is possible for the domain holder, the complainant and the registrar to be domiciled in three different countries, and it is even possible that the registry may be in a fourth country. Then it may happen that the competent court is not in the same country as the complainant, so the latter is forced to find an additional lawyer in that country, it may prove complicated to have official and court documents served, and the court hearing might be in a foreign language... The list of imponderables is virtually endless. Even assuming that all these hurdles can be overcome and the victorious party wins a court judgement, there is still the potential problem of getting that judgement executed on the territory of another country. From this brief description, it is clear that what is needed for tackling disputes concerning generic Top Level Domains is completely different from what is required when country code Top Level Domains, such as .de, are at stake.

In litigation involving .de domains it is usually the case that all the parties are based in Germany, the case can also be heard by a German court and a judgement can be secured quickly and for a moderate outlay.

The UDRP has another disadvantage in that it only comes into play for trademark infringements and malicious intent on the part of the domain holder, and the losing party still has the possibility of going before the ordinary courts afterwards. Moreover, in the case of the UDRP, it is the complainant who has to bear the costs of the procedure, whereas the practice of the German courts is for the losing party to bear the costs of litigation.

From the above it is clear that anyone holding rights to a name or a trademark would have no reason at all to want to opt for the UDRP procedure or a similar one for .de domains, since a German court hearing – combined with a DISPUTE entry at DENIC – represents an evidently superior alternative, given that it is both faster and cheaper.

Quite apart from all these considerations, the parties at dispute over a domain are perfectly free to refer their case to a dispute resolution procedure or even to a court of arbitration, if that is their preference.”

More here: http://www.denic.de/en/faqs/recht_dispute/index.html

So It would seem that if the second largest registry in the world (8,359,000 .de name registrations), in terms of name registrations behind .com's, has managed to operate without a DRS or UDRP, perhaps adopting the stance and policies similar to that of DENIC when it comes to a dispute over a domain name may be suitable for the NZ name space, especially as it's small size of approximately 170,000 names and only catering to a domestic market of 4 million people.