



Domain Name Dispute Settlement

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□ Internet Address

Internet address: an information system comprised of figures, letters, codes or a combination thereof, enabling the identification of and access to a specific information system on the Internet in accordance with established communications protocols, following international standard methods and national standard methods, which falls under any of the following items:

- (1) **Internet protocol address:** Address which enables recognition by a computer and information communications facilities on the Internet;
- (2) **Domain name:** Label which helps people to remember Internet protocol addresses on the Internet;
- (3) Other matters prescribed by Presidential Decree

Internet Address Resources Act Sec.2


□ Domain Name

Every computer on Internet: unique numeric address (**a string of numbers**)  **IP Address**

- Network: '0-255' & '.(dot)'

Domain Name System (DNS): translates or associates

IP Address  **Domain Name**

192.0.34.163  www.icann.org

Domain Name: unique alphanumeric addresses

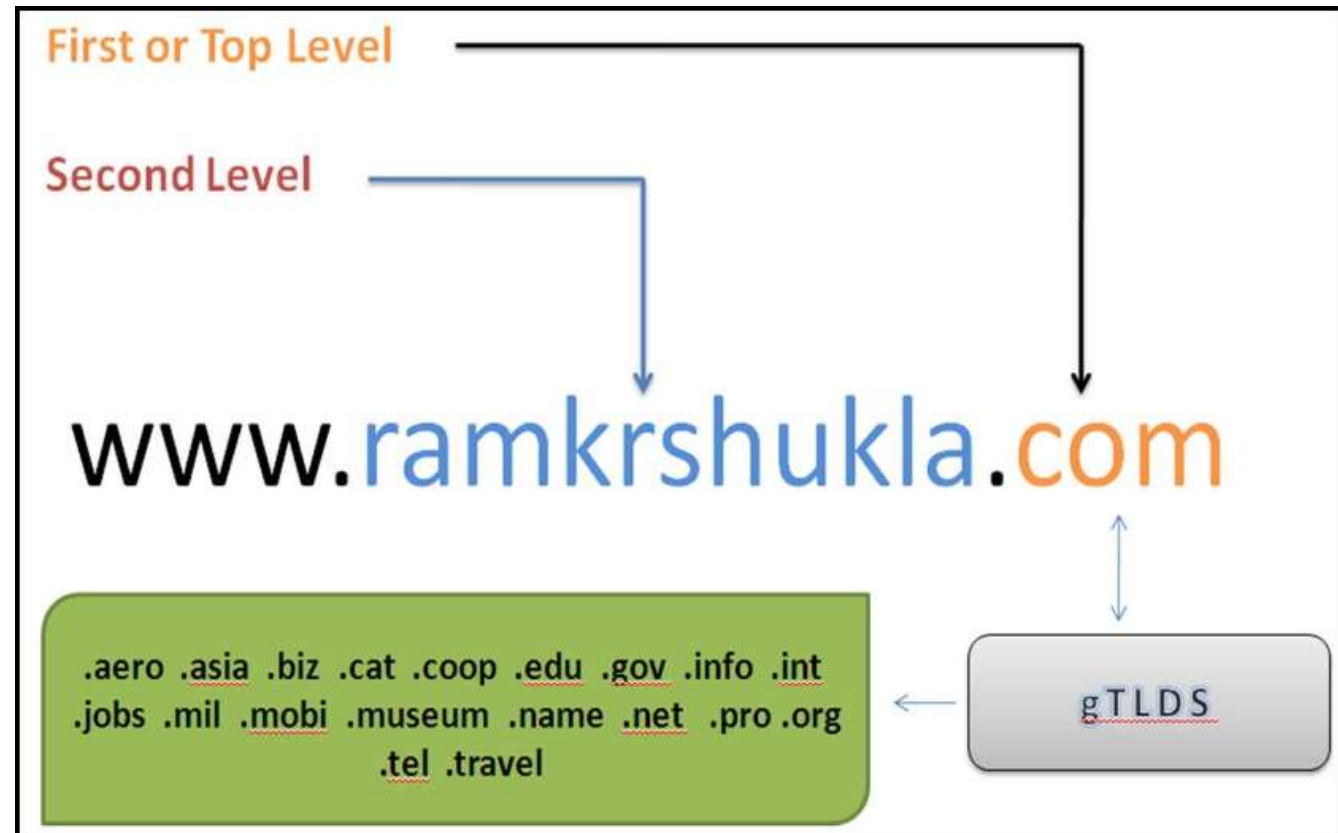
□ Domain Name

Hierarchical structure of Networks

TLD - SLD – TLD: www.korea.ac.kr

Top Level Domain

1. gTLD
2. ccTLD



□ generic TLD

- ▶ .com, .net, .org, .edu, .mil, .int, .gov
- ▶ .aero, .biz, .coop, .info, .museum, .name, .pro
- ▶ .asia, .cat, .jobs, .mobi, .tel, .travel, .xxx, .mail, .post

▶ New gTLD Program (since 2013)

- “集团” : Chinese for "group"
- “संगठन” : Hindi for "organization/sangathana"
- “дети” : Russian for "kids/deti"
- “삼성” : Korean for "Samsung/Samseong"
- “みんな” : Japanese for "everyone"

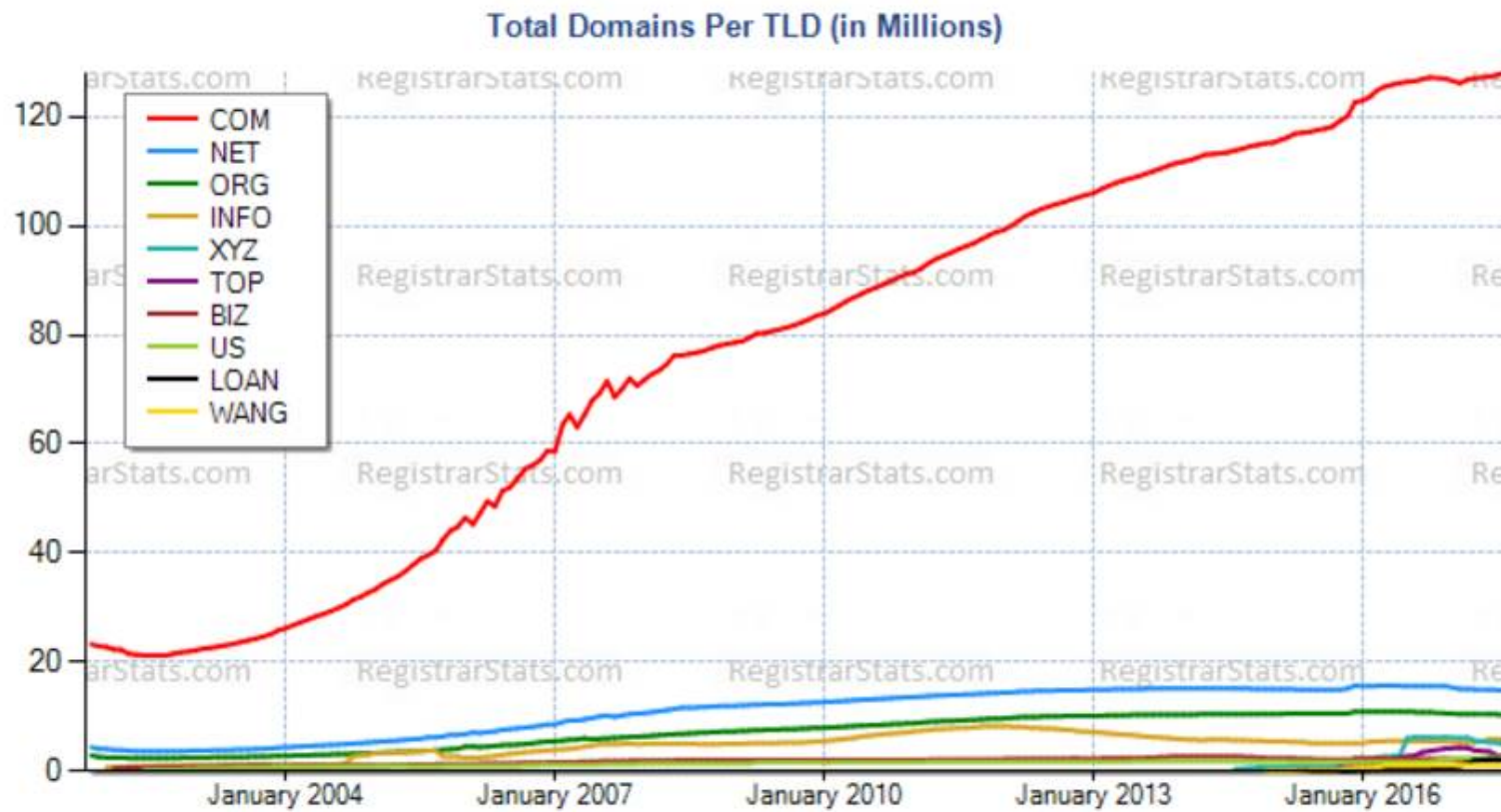
1226 New gTLDs (introduced into Internet)(As of June 30)

gTLD

TLD Domain Counts























Daily analysis/statistics on the top gTLDs in the marketplace (.COM, .NET, .ORG, .INFO, .BIZ, .US, .MOBI, .ASIA, .TEL, .NAME, .PRO, .XXX, .TRAVEL, .AERO, .COOP). Tracking total domain counts as well as new, deleted, transferred and grace period domain names.



gTLD

Top 30 new gTLDs

	TLD	Domains	±/±	% Share
1.	 .xyz	5,601,830	<u>-4,322</u> ↓	 20.92%
2.	 .top	3,519,598	<u>-23,567</u> ↓	 13.14%
3.	 .loan	2,165,092	<u>2,023</u> ↑	 8.08%
4.	 .club	1,093,412	<u>-1,150</u> ↓	 4.08%
5.	 .win	1,035,993	<u>-751</u> ↓	 3.87%
6.	 .vip	842,338	<u>442</u> ↑	 3.15%
7.	 .online	750,875	<u>148</u> ↑	 2.80%
8.	 .wang	656,409	<u>-1,910</u> ↓	 2.45%
9.	 .site	533,615	<u>304</u> ↑	 1.99%
10.	 .bid	469,217	<u>-397</u> ↓	 1.75%

□ ccTLD

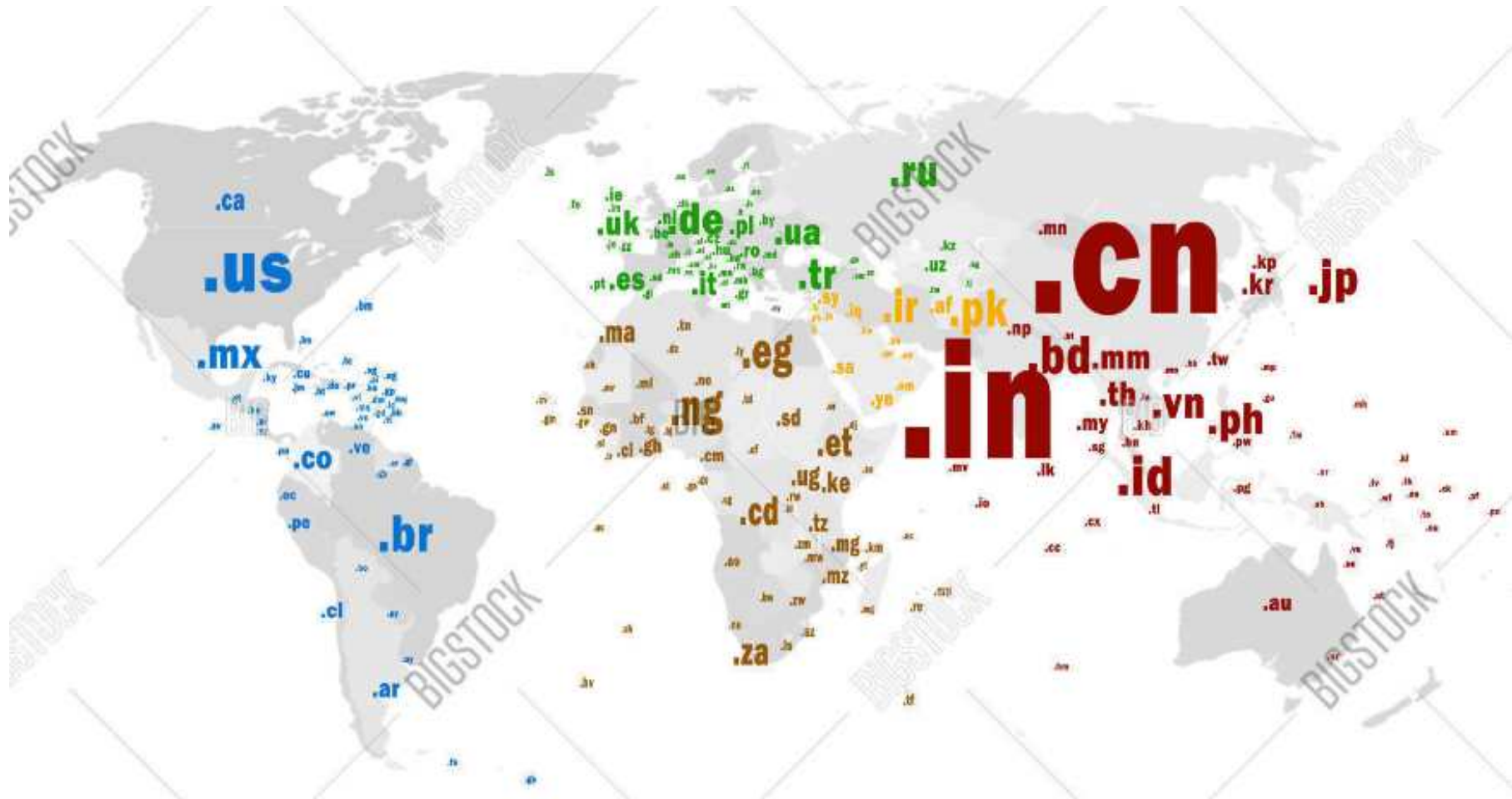
Two-letter ccTLD (ISO 3166-1 alpha-2)(some exception)

255 ccTLD (as of May 20, 2017)

Most popular ccTLD (mil.)

.DE (Germany) - 13.05, **.CN** (China) - 12.54, **.UK** (United Kingdom) - 7.83,, **.NL** (Netherlands) - 3.51, **.EU** (European Union) - 2.98, **.RU** (Russia) - 2.31, **.TK** (Tokelau) - 1.97, **.AR** (Argentina) - 1.85, **.BR** (Brazil) - 1.81, **.IT** (Italy) - 1.72, **.US** (USA) - 1.63, **.PL** (Poland) - 1.53, **.FR** (France) - 1.5, **.AU** (Australia) - 1.47, **.CH** (Switzerland) - 1.31, **.CA** (Canada) - 1.26, **.ES** (Spain) - 1.22, **.JP** (Japan) - 1.11, **.KR** (Korea) - 1.04, **.DK** (Denmark) - 1

☐ ccTLD

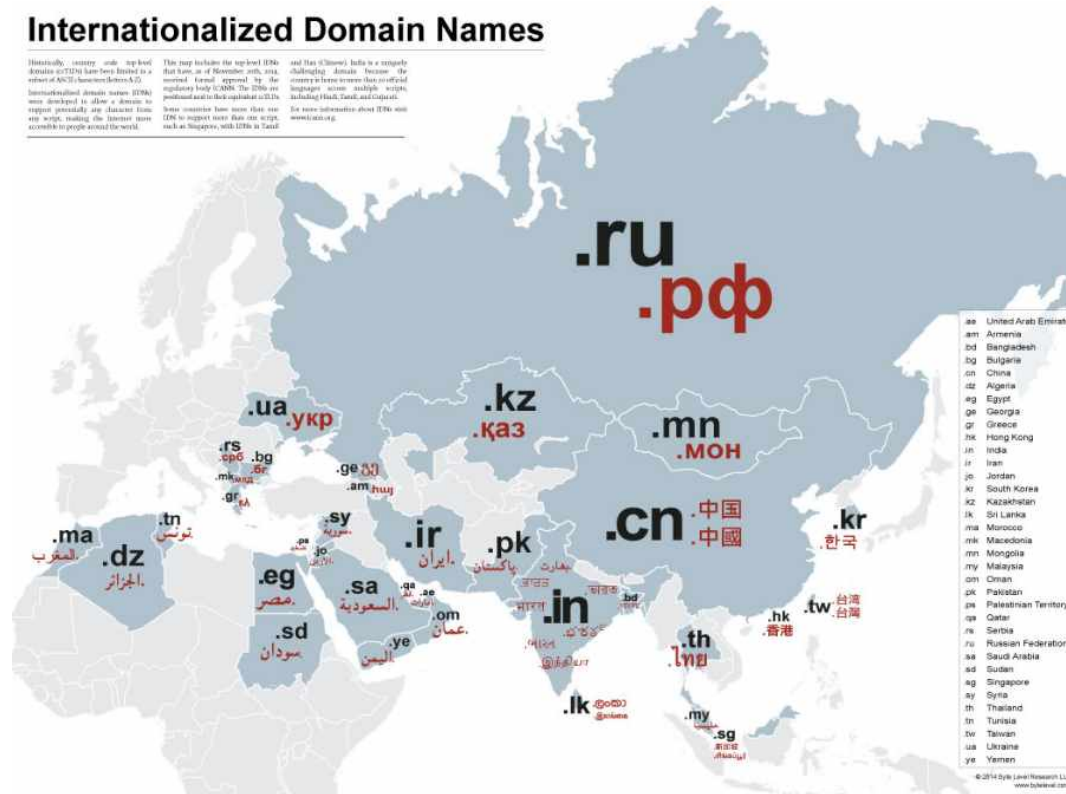


□ IDN ccTLD

Internationalized ccTLD

ccTLDs that use their native country's **non-Latin script**

Ex: Arabic, Hangeul, Hiragana, Kanji



□ Domain Name Disputes

Why disputes?

DN: Location on internet

➔ Need to let the public know the existence in the Cyberspace

- Use of **trademarks**, or **trade names**

<http://www.samsung.com>

<http://www.google.co.kr>

<http://www.chanel.com>

<http://www.nike.co.kr>

<http://www.coca-cola.com>



□ Domain Name Disputes

Why trademarks are preferred as domain names?

Need to register DN

- First come, first served
- Possible to register domain names based upon **others' trademarks**

Disputes between the **registrant** and the **owner of trademark**

□ Domain Name Disputes

Registrant vs. Trademark owner

1. Need to and how to resolve disputes

2. Difficult to settle with the **court procedure**

➡ **International Litigation vs. Alternative dispute resolution**

3. **ADR** is much better than litigation

➡ Conciliation vs. Arbitration

4. ADR in DN disputes

➡ Uniform Dispute Resolution Policy(**UDRP**)

--- **Much less cost & time than** litigation

--- **Much more simple procedure** than litigation

□ UDRP

UDRP

- **A process established by ICANN** for the resolution of disputes regarding the registration of internet domain names
- Legal framework for the resolution of disputes over the **abusive registration and use of DN** in the **gTLD**
- Applies to some country ccTLD

□ UDRP

Is UDRP international law? **No.**

Then, **why, or how, can it be applied to DN disputes which are essentially international?**

➡ The **registrant** is supposed to **agree with the method of dispute resolution**, i.e., UDRP, when he or she registers the DN through **registration agreement**

Ex) 8. DOMAIN NAME DISPUTE POLICY

If you reserved or registered a domain name through us, **you agree to be bound by our current domain name dispute policy** that is incorporated herein and made a part of this Agreement by reference. **You also agree to submit to proceedings commenced under the Uniform Domain Name Dispute Resolution Policy ("UDRP")** and that these may be modified from time to time. The current version of this dispute policy may be found at our Web site...

□ UDRP

● Who applies and settles disputes?

Five service providers approved by ICANN

1. **ADNDRC** (Asian Domain Name Dispute Resolution Center)
 - Seoul, Hong Kong, Beijing, Kuala Lumpur
2. **NAF** (National Arbitration Forum)
3. **WIPO**
4. The **Czech Arbitration Court Arbitration Center** for Internet Disputes
5. **ACDR** (Arab Center for Domain Name Dispute Resolution)

-- Need to follow Rules for Uniform Domain Name Dispute Resolution Policy

-- Complainant may select one of 5

□ UDRP Procedures

Who may file a complaint?

-- Usually trademark owners

Where may the complainant file a complaint?

- Only among 5 providers

- Forum shopping?

If a complaint is filed against the registrant, what is the registrant options?

1. No response – default

2. Response- Procedure continues

□ UDRP

Applies to only **cybersquatting**

- **Cybersquatting**: registering, trafficking in, or using a domain name with bad faith intent to profit from the goodwill of a trademark belonging to someone else

Not applied to **trademark infringement, unfair competition, trademark dilution**

- In order to argue for those COA, the owners needs to bring a suit

□ UDRP: Cybersquatting

Art. 4 a. Applicable Disputes. You are required to submit to a mandatory administrative proceeding in the event that a third party (a "complainant") asserts to the applicable Provider, in compliance with the Rules of Procedure, that

- (i) your domain name is **identical or confusingly similar** to a trademark or service mark in which the complainant has rights; and
- (ii) you have **no rights or legitimate interests** in respect of the domain name; and
- (iii) your domain name has been **registered and is being used in bad faith**.

Complainant: must prove each of these three elements

□ UDRP Procedure: In General

1. The filing of a [Complaint](#) with an ICANN-accredited dispute resolution service provider chosen by the Complainant
2. The filing of a [Response](#) by the person or entity against whom the Complaint was made
 - The Response (a) **Within twenty (20) days** of the date of commencement of the administrative proceeding the Respondent shall submit a response to the Provider
3. The [appointment](#) by the chosen dispute resolution service provider of an Administrative Panel of one or three persons who will decide the dispute
4. The [issuance](#) of the Administrative Panel's decision and the notification of all relevant parties
5. The [implementation](#) of the Administrative Panel's decision by the registrar(s) concerned should there be a decision that the domain name(s) in question be cancelled or transferred

□ UDRP Procedure: Language

RUDRP 11. Language of Proceedings

(a) Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

(b) The Panel may order that any documents submitted in languages other than the language of the administrative proceeding be accompanied by a translation in whole or in part into the language of the administrative proceeding.

□ UDRP Procedure: Panel Decision

15. Panel Decisions

(b) In the absence of exceptional circumstances, the Panel **shall forward its decision on the complaint to the Provider within fourteen (14) days of its appointment ...**

(c) In the case of a three-member Panel, the Panel's decision shall be made by a majority

□ UDRP

Remedies

UDRP 4 i. **Remedies.** The remedies available to a complainant pursuant to any proceeding before an Administrative Panel shall be limited to requiring the cancellation of your domain name or the transfer of your domain name registration to the complainant

UDRP 3. We will **cancel, transfer or otherwise make changes** to domain name registrations under the following circumstances...

□ UDRP Procedure: Court Proceedings?

UDRP 4 k. Availability of Court Proceedings.

...If an Administrative Panel decides that your domain name registration should be canceled or transferred, we will wait ten (10) business days ... after we are informed by the applicable Provider of the Administrative Panel's decision before implementing that decision. We will then implement the decision unless we have received from you during that ten (10) business day period official documentation (such as a copy of a complaint, file-stamped by the clerk of the court) that you have commenced a lawsuit against the complainant in a jurisdiction ...

□ UDRP: Fees

Single Panelist

Number of Domain Names Included in the Complaint	Fee (United States Dollars)
1 to 5	1500 [Panelist: 1000; WIPO Center: 500]
6 to 10	2000 [Panelist: 1300; WIPO Center: 700]
More than 10	To be decided in consultation with the WIPO Center

Three Panelists

Number of Domain Names Included in the Complaint	Fee (United States Dollars)
1 to 5	4000 [Presiding Panelist: 1500; Co-Panelist: 750; WIPO Center: 1000]
6 to 10	5000 [Presiding Panelist: 1750; Co-Panelist: 1000; WIPO Center: 1250]
More than 10	To be decided in consultation with the WIPO Center

□ .kr & .한국 Dispute Resolution

Two methods for resolution

1. Litigation
2. ADR: Conciliation, Arbitration

Conciliation

Internet Address Resources Act

While it may be called **mediation or conciliation**, it is very similar to, or the same as, the UDRP procedure

□ .kr & .한국: Conciliation

Where complain?



인터넷주소분쟁조정위원회
Internet address Dispute Resolution Committee

IDRC (Internet address Dispute Resolution Committee)

-- also provides settlement services for gTLD (Seoul office of ADNDRC)

□ .kr & .한국: Conciliation

Causes of Action

1. Trademark infringement
2. Unfair competition
3. Trademark dilution
4. Cybersquatting

---- UDRP is limited to cybersquatting

□ Cases: UDRP

NHN Corporation v. NHN Corp., National Health Network

Case No. D2003-0939 (WIPO)

Complainant: NHN Corporation (Korea)

--- owner trademark "NHN" (registered before the registration of nhn.com)

Respondent: NHN Corp., National Health Network (US)

□ Cases: nhn.com

Correspondence between C & R

C: I would like to inquire about your domain <nhn.com>. To the best of my knowledge, your domain is now for sale. How much is the sales price? Is it negotiable? I look forward to hearing from you.

R: ...Please make a reasonable offer, if it is reasonable, we'll consider and let you know...

C: ...how can I make a reasonable offer? Is there any particular offer format? If so, I will try to make an offer according to that format...

[The Complainant then made an offer of **\$50,000** for the Domain Name.]

R: ... We are very sorry to tell you because **we are not satisfied your offer \$50,000 for this domain transaction**. We believe the value of this domain which is much higher than your offer....

□ Cases: nhn.com

C: ...It seems that **\$50,000** would meet your need. What would be the level of your expectation? If you let me know your expected level, I will contemplate if I can afford to pay it, and if it is a reasonable price. Does it make sense to you?

R: ... Actually, we were offered many times for this domain from USA, UK, Japan and Korea, the highest offer which was over **\$250,000**, however we haven't sold because we weren't satisfied...

... I'd like to know you are still interested, if you are still interested, please make a reasonable offer. If your offer is reasonable, I and my partners, we'll consider...

C: I initially contemplated about \$1,000~20,000, but heightened the maximal betting level to **\$50,000**. However, **\$250,000** is beyond the scope of my capability.

R: However, I'd like to know how much you would like to pay or maximum budget for the domain transaction of <http://nhn.com>. If it is reasonable, we'll consider. Although, **we won't sell \$50,000 for this domain**. And we have many information regarding nhn in korea too, so we'll wait or sell, we are considering

□ Cases: nhn.com

C: Regretfully, however, I am **unable to pay more than \$50,000** due to deficit of my budget. Sorry, but we seem to have no affinity with each other.

R: As you know, the past is the past, so we don't regret. By the way, **if you'll pay \$150,000**, I'll discuss with my partners and consider.

C: Your <nhn.com> domain coincides with our trade name "NHN Corp," which has been in use since September 2001. Your domain name also coincides with the trademarks and service marks registered in many countries including Korea. Thus, we believe that we deserve **a legal right under the Uniform Domain Name Dispute Resolution Policy (UDRP)** with respect to your <nhn.com> domain name. With that belief, we are now considering to proceed with legal actions under the UDRP. For mutually amicable and prompt settlement of this matter, we are willing to purchase your <nhn.com> domain at an amount of **\$5,000** including an expected VAT added to the **direct cost of \$1,500** to be incurred for the proceeding under the UDRP. Please take the above into your consideration. We hope to see a "win-win" result.

□ Cases: nhn.com

R: I am so sorry to hear that and we've been in the domain selling business since 1998. We do not know whether you have registered the trademark for nhn in your country or not. However, you have to know we haven't made any conjunction or confusion for your business with this domain. Also, **you have to know that if you registered with nhn for the trademark in your country and if you'll win WIPO of ICANN for the dispute case, We can go and appeal at my local court, which is in New York, USA.** Well, I personally am not happy to hear that too and we'll never reply.

C: We wish to make **a final offer** to your company. Our offer is \$10,000, and this is our final offer as mentioned above. This is for mutually amicable settlement. No higher price has been excluded from our consideration. **If you do not agree to our proposal, we will proceed with legal remedies in accordance with UDRP.** We hope to see a "win-win" result.

□ Cases: nhn.com

R: I know who you are, and you offered \$50,000 with possible negotiations for this domain transaction several weeks ago. **We purchased this domain at a much higher price than your offer from "http://buydomains.com" so we can't sell.** I'm personally so sorry to tell you that we sold this domain recently and we're transferring the ownership now. As you know, the domain selling business is on a first come first serve basis, therefore we have just a couple days. **If you are still seriously interested** in buying this domain, please make a reasonable offer.

□ Panel: nhn.com

1. Identical or Confusingly Similar

It is not in dispute that the Domain Name is identical or confusingly similar to a trademark in which the Complainant has rights and the Panel so finds.

2. Rights or Legitimate Interests

the Panel has no alternative but to conclude that the Complainant's contentions are correct and that the Respondent and its predecessor HBX were targeting the Complainant all along and with no genuine intention of trading under the names NHN and National Health Network. The Panel finds therefore that the Respondent has no rights or legitimate interests in respect of the Domain Name.

□ Panel: nhn.com

3. Registered and Used in Bad Faith

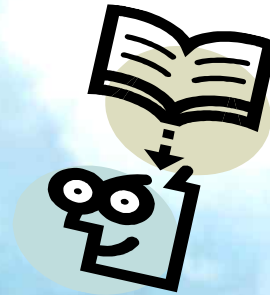
The Panel believes it probable that the Respondent's purpose was to extract a much larger sum of money from the Complainant. The Panel is less impressed with the Complainant's contentions that the Respondent's objective was to disrupt the business of the Complainant or to deceive Internet users. Accordingly, the Panel finds that the Respondent acquired the Domain Name in bad faith and is using it in bad faith within the meaning of paragraphs 4(a)(iii) and 4(b)(i) of the Policy.

Decision

In light of the foregoing findings, the Panel directs that the Domain Name <nhn.com> be transferred to the Complainant.

[T h e E n d]

Any Questions?



Feel free to contact at it-law@korea.ac.kr