



## **Notes on the Dispute Resolution Regulations for .nl domain names**

SIDN registers .nl domain names using an automated system, without monitoring whether the party registering the domain name – the ‘registrant’ – is infringing anyone else’s rights by doing so. All prospective registrants do, however, have to declare that they are not infringing anyone’s rights.

If another person or organization believes that a registration does infringe his/her/its rights, and if the matter cannot be resolved amicably, the aggrieved party can refer the matter to a court of law. The court will then decide whether to make the registrant cancel the domain name’s registration, or transfer it to the other party.

On January 29, 2003, SIDN introduced an arbitration system, as an alternative to court action. On February 28, 2008, that old arbitration mechanism was superseded by the Dispute Resolution Regulations for .nl Domain Names (‘the regulations’). The regulations aim to represent a speedy, straightforward and inexpensive alternative to the courts. Disputes are resolved by qualified independent specialists who specialise in the field of domain names and intellectual property rights. These specialists – known as ‘panelists’ – arrive at their own decisions, without interference from SIDN.

With effect from October 1, 2009, a mediation process has been made part of the regulations. This process, which can still be followed by a decision by a panelist, is being performed by SIDN. The precise rules governing the procedure are set out in the regulations and its annexes. Answers to a number of frequently asked questions are presented below. Decisions under the regulations are published at [www.wipo.int](http://www.wipo.int). On [www.DomJur.nl](http://www.DomJur.nl) you can find also some decisions under the regulations and also a number of court decisions concerning .nl domain names.

### **1. Which domain names are covered by the regulations?**

The regulations apply to all .nl domain names. In that respect, the current arrangements are different from the old arbitration scheme, which applied only to domain names registered, transferred or relocated after the scheme was introduced (January 29, 2003). The arbitration scheme was set up that way because anyone who opted for arbitration was required to waive the right to have their dispute settled in court.

The regulations allow for disputes to be referred to the courts – either in addition to going through the dispute resolution procedure, or as an alternative. A court judgement always takes precedence over a decision under the regulations.

### **2. Under what circumstances can the regulations be used?**

The regulations apply when:

- You are of the opinion that an existing .nl domain name is identical to a name to which you have rights, or that such a name or title is so similar that confusion can occur. The contention may, for example, relate to a trademark or trade name protected in the Netherlands or a personal name, the name of a governmental body, or the name of an association or foundation registered in the Netherlands.
- It can be established that the current registrant has no rights to or any other legitimate interest in the domain name.
- The registrant has registered or is using the domain name in bad faith.
- The regulations themselves provide for examples that can indicate legitimate interests at the side of the registrant or bad faith.



### **3. Which remedies can be requested under the regulations?**

The only remedy you can request for under the regulations is the change of registrant of the disputed domain name, so that you become the new registrant.

The panelist is not at liberty to decide on any other requested remedy.

### **4. What are the costs of a procedure under the regulations?**

If the registrant does not submit a response within the set time period, or if mediation is unsuccessful (see question 8 and following), the complainant is required to pay an administration charge and the panelist's fee. The applicable amounts are specified in annex 3 to the regulations. Other costs may be incurred, such as the cost of legal representation.

### **5. Is the party losing the procedure required to pay the other party's costs?**

No provision is made in the regulations for the award of costs, neither does it contain any provision to require the party losing the procedure to pay the other party's costs. This means for example that even if a complaint is upheld, the administration charge and the panelist's fee paid by the complainant shall remain for its own account. The same applies to any other expenses incurred, such as for example legal costs.

### **6. How do I submit a complaint?**

In order to submit a complaint, you need to complete the model complaint, which you will find in annex 1 to the regulations. The completed model complaint and supporting documents should be submitted to the WIPO Arbitration and Mediation Center ('the center') by e-mail in accordance with the practical guidelines published on the center's website (<http://www.wipo.int/amc/en/domains/cctld/nl/index.html>).

No payment obligation exists at this point.

### **7. What happens once a complaint has been made?**

As soon as the center receives the complaint, an acknowledgement of receipt is sent to the complainant.

The center will then check whether the complaint meets all the requirements (see the answer to question 2) of the regulations. If that is not the case, the complainant is given the opportunity to revise the complaint so that it does meet the requirements. If and when the center is satisfied that the complaint meets the requirements, the procedure will commence.

The center will then have copies of the complaint forwarded to the registrant and to SIDN. SIDN will make sure no change in registrant occurs neither that the domain name is cancelled.

### **8. How does a registrant respond to a complaint?**

After being notified about the complaint filed with the center, the registrant will have twenty calendar days to submit a response in reply to the complaint. This response has to be made using the model response in annex 2 to the regulations. The completed response and the supporting documents have to be submitted by e-mail to the center in accordance with the practical guidelines published on the center's website (<http://www.wipo.int/amc/en/domains/cctld/nl/index.html>) and to the complainant.

After receiving the response, the center will acknowledge receipt of the response to the respondent and the complainant.



**9. Why is the registrant advised to respond?**

There are three reasons why it would typically be wise to submit a response. First, it helps the complainant to understand why you registered the domain name, which in turn may provide a basis for a solution. Second, submitting a response allows you to make use of the mediation offered by SIDN, which can lead to a confidential and relatively speedy settlement of the dispute. Third, by submitting a response you can elucidate your side of the story to the mediator or thereafter the panelist that, when the dispute reaches that phase, will make a decision whereby your response is taken into account.

**10. What can the registrant indicate in the response?**

In the complaint, the complainant is required to show that it has 'rights', that the disputed domain name is identical, or confusingly similar, to these rights, that the registrant has no rights to or legitimate interests in the disputed domain name, and that the registrant has registered or is using the domain name in bad faith. In the response the registrant can therefore allege that the complainant does not have rights, and/or that the domain name is not identical, or not confusingly similar, to those rights, and/or that it does have a right to or a legitimate interest in the domain name, and/or that it did not register, nor uses the domain name in bad faith. The regulations provide for examples of possible evidence in this regard.

**11. What happens once a response has been made?**

Once a response has been submitted, the case is referred to SIDN, which will commence the mediation process. Mediation involves a specially trained mediator (working for SIDN in this case) contacting both parties to the dispute to try and aid them in resolving the dispute. The mediation process is free of charge. Mediation is confidential and participation is voluntary. Normally the mediation process will take about two weeks. Answers to a number of frequently asked questions about mediation can be found at [www.sidn.nl](http://www.sidn.nl).

If the parties cannot find a mediated settlement, SIDN shall inform the center thereof, copied to the complainant and the respondent. From that moment the complainant is required to pay within ten calendar days a fixed fee to the center, whereafter the center shall continue to appoint a panelist, which will decide the case. An overview of the fee to be paid by the complainant can be found in annex 3 to the regulations.

**12. What happens if no response is made?**

If the registrant does not submit a response within the time period set by the center, the center will inform the complainant thereof and will request the latter to pay the administration charge and the panelist's fee to the center. Once the relevant amount has been paid, the center shall appoint panelist to decide the case on the basis of the complaint alone. Under such circumstances, there is a good chance that the requested remedy will be granted, unless the panelist finds it to be without basis in law or in fact.

**13. How long will it take the panelist to reach a decision?**

The panelist will aim to decide the case within fourteen calendar days. Within three days of the decision, it will normally be send to the parties and SIDN by the center.

**14. On what is the panelist's decision based?**

The panelist assesses the documents submitted by the parties and reaches a decision on the basis of the criteria set out in the regulations. The panelist has the power to invite parties to elucidate certain points of view and/or to make further submissions. This will happen however only in exceptional cases.

**15. How is a decision implemented?**



If the panelist decides that the registrant of the domain name should be changed, SIDN will normally implement that decision by cooperating to a request to change the registrant, submitted by the complainant.

However, SIDN will not implement the decision when the current registrant, within ten calendar days of SIDN receiving the decision, starts legal proceedings with regards to the disputed domain name, in accordance with article 20 of the regulations. The current registrant needs to provide proof thereof within the abovementioned period to SIDN.

**16. Can a decision under the regulations be appealed?**

No, the regulations themselves contain no possibility for an appeal. Please also refer to the answer to the next question.

**17. What happens if one of the parties also takes the matter to court?**

Participating in a procedure under the regulations does not prevent either party to refer the same dispute to a court of law, before, during or after that procedure.

During legal proceedings it will be up to the center, the mediator or the panelist to decide on the implications that would have for the procedure.

Furthermore, SIDN will not implement a decision under the regulations when the current registrant, within ten calendar days of SIDN receiving the decision, starts legal proceedings in the Netherlands concerning the disputed domain name against the complainant. The registrant needs to provide proof thereof within the abovementioned period to SIDN. Under such circumstances, SIDN will await the court's decision.