

# **Chinese Domain Names Dispute Resolution Policy**

## **(Trial Implementation)**

(Promulgated by the China Internet Network Information Center on November 1 2000 and effective as of 30 days after promulgation.)

Article 1: These Procedures have been formulated in accordance with relevant Chinese laws, administrative regulations and policies, and with reference to the methods and related rules of the international community concerning the resolution of domain name disputes, in order to resolve disputes arising in the course of registration and use of Chinese-language domain names.

Article 2: These Procedures shall apply to the resolution of disputes concerning conflicts between Chinese-language domain names and those trademarks that are protected by Chinese law, provided that the following conditions are met:

(1) The domain names complained against shall be limited to Chinese-language domain names that have been selected by the domain name applicants themselves and whose administration and maintenance is the responsibility of the China Internet Network Information Center ("CNNIC").

(2) Unless the subject matter of the request for protection has been recognized by the relevant authorities as a well known trademark, domain name dispute resolution authorities shall no longer accept a domain name dispute two years from the entry into effect hereof if the complained domain name was registered before the entry into effect hereof, and two years from the registration of the domain name if the domain name was registered after the entry into effect hereof.

(3) The only authorities in charge of the implementation hereof shall be Chinese-language domain dispute resolution institutions recognized and authorized by CNNIC, and these Procedures shall only be binding on the parties to a relevant dispute and on Chinese-language domain name registration service institutions.

(4) Domain name dispute resolution institutions shall only accept disputes in which the complainant is an owner of trademark rights and the respondent is the owner of the domain name. If a domain name owner has an objection to the use of a trademark, he shall seek a resolution through other channels.

Article 3: Chinese-language domain name dispute resolution institutions ("Dispute Resolution Institutions") are non-governmental institutions which, based on their recognition and authorization by CNNIC, are charged with the resolution of

Chinese-language domain name disputes pursuant to these Procedures. Dispute Resolution Institutions shall resolve domain name disputes based on the principles of independence, impartiality, expeditiousness and convenience and strictly abide by each provision on the resolution of Chinese-language domain name disputes hereof. Dispute Resolution Institutions shall formulate detailed procedural rules, which shall be published for implementation after approval by CNNIC, in order to ensure that each of the rules hereof is effectively implemented.

Article 4: Dispute Resolution Institutions shall implement a system whereby panels of experts are charged with the resolution of disputes. The experts available for selection by the parties to a dispute shall have full mastery of the specialized knowledge in the fields of networking, intellectual property and law, possess a high sense of professional ethics and be capable of rendering independent and unbiased judgments in domain name disputes. Lists of such experts shall be drawn up and widely published online by the Dispute Resolution Institutions.

Article 5: The award rendered by a Dispute Resolution Institution may only change the status of the registered domain name itself and may not involve any other remedy or measure. The award will unconditionally conform with judgments that were rendered by competent judicial authorities or arbitration institutions and that have become legally effective.

Article 6: Any owner of trademark rights who considers a registered domain name to infringe upon his trademark rights has the right to file a complaint with a Dispute Resolution Institution and petition the Dispute Resolution Institution to render an award in accordance herewith, in order to protect and realize his rights.

Article 7: Support of a complaint against a registered domain name is subject to the following conditions precedent:

- (A) the complainant enjoys trademark right protected by law;
  - (B) the complained domain name is identical with or confusingly similar to the complainant's trademark;
  - (C) the domain name owner does not have trademark right, or any other legitimate right or interest, in such domain name or other combinations of words and/or symbols that contain the domain name;
  - (D) the domain name registrant registered and uses the domain name in bad faith;
- and
- (E) the complainant's business has been or will be very likely adversely affected by the registration and use of such domain name.

The complainant shall submit valid proof attesting that each of the aforementioned conditions are concurrently met.

If the trademark for which the complainant is petitioning for protection has been recognized as a well-known trademark by the relevant institution, there shall be no need to provide separate proof for the condition stipulated in Item (E) above.

Article 8: Evidence attesting to the domain name being registered and Used in bad faith shall include but not be limited to the following:

- (A) the domain name registrant has offered to sell the domain name for profit, since the price demanded unreasonably exceeded the expenses for registration;
- (B) the domain name is not registered for registrant's use, but in order to prevent the owner of the trademark from reflecting the mark or a component thereof in a corresponding domain name;
- (C) the domain name registrant attempts to attract, for financial gain, Internet users to the domain name registrant's website or other on-line location, by creating confusion with the trademark of the complainant.

Article 9: If the domain name owner presents evidence of one of the circumstances set forth below, his registration and Use of the domain name will not be determined to be in bad faith:

- (A) the domain name registrant or a person closely connected therewith has a legally protected right or interest in the mark that constitutes the domain name;
- (B) before receipt of the notice concerning the dispute, the domain name owner had commenced legitimate use of the domain name, or made good faith use of a mark identical to the domain name in its supply of goods and/or services, and consequently gained considerable reputation.
- (C) the complaint of the owner of the trademark rights constitutes "reverse domain name hijacking".

Article 10: Instances of "reverse domain name hijacking" whereby an owner of trademark rights uses the Chinese-language domain name dispute resolution procedure in bad faith with the intention of appropriating the domain name held by a legitimate domain name owner shall include but not be limited to the circumstances set forth below:

- (A) registration and use of the domain name have no negative effect on the registered trademark or the trademark owner or such effect constitutes normal business competition;
- (B) the complainant had registered a completely different domain name before registration of the complained domain name and fails to submit convincing evidence to Dispute Resolution Institution that he had legitimate reasons for not registering the domain name at the outset;
- (C) at the time the disputed domain name was registered, the trademark for which protection is requested had not yet been registered in China and had not been

recognized as a well-known trademark by the relevant institution.

Article 11: For the purposes of these Procedures, the term "Use" of a domain name means only the making operational of a registered domain name, whereby the domain name serves as the external code for an Internet address and, after decoding by the network system, leads Internet subscribers to a specific website or web page. Any use of a domain name other than as the external code of an Internet address, such as use as a personal identifier, a product identifier or a website or web page identifier, etc. does not constitute Use for the purposes of these Procedures.

Article 12: After accepting the complaint of a complainant, the Dispute Resolution Institution shall form an expert panel within the stipulated time and such expert panel shall handle the relevant dispute in accordance with the stipulated procedure.

Article 13: If a complainant files complaints against multiple domain names owned by the same domain name owner, the complainant and the respondent both have the right to request that the Dispute Resolution Institution consolidate the multiple disputed domain names into one dispute case to be handled by the same expert panel.

Article 14: While a dispute is pending before the expert panel, if either party believes that any of the experts on the expert panel has a material interest in the opposite party that could have an effect on the rendering of an impartial award in the case, he has the right to request the Dispute Resolution Institution to ask such expert to withdraw.

Article 15: During the domain name dispute resolution process, the domain name registration service institution shall not participate therein in any capacity or manner other than to submit information on the registration and Use of the domain name at the request of the Dispute Resolution Institution.

Article 16: Provided that it has upheld the complaint of the complainant, the result of the action taken against the registered domain name by the Dispute Resolution Institution shall be limited to the following:

(1) cancellation of the registered domain name; or

(2) transfer of the registered domain name to the complainant.

Article 17: Before a party files a complaint pursuant to these Procedures, or during the dispute resolution proceedings, or after the expert panel has rendered its award, either party may institute an action concerning the same dispute with the judicial authorities or, on the basis of an agreement, submit the dispute to an arbitration institution for arbitration. If the Dispute Resolution Institution rules in its award to

cancel the registered domain name or to transfer it to the complainant, the domain name registration service institution will wait 30 working days before enforcing the award. If during such waiting period either party submits valid proof attesting that a competent judicial authority or arbitration institution has accepted the relevant dispute, the domain name registration service institution will not enforce the award rendered by the Dispute Resolution Institution and will decide its subsequent action according to the following circumstances:

(1) if the party that instituted the judicial action or applied for arbitration has withdrawn his action or complaint or the relevant action or complaint has been rejected, the domain name registration service institution shall enforce the Dispute Resolution Institution's award;

(2) if the judicial authority or arbitration institution has rendered a judgment or award that has become legally effective, the domain name registration service institution shall enforce such judgment or award;

(3) if the parties have reached an agreement upon mediation by the judicial authority or arbitration institution that accepted the dispute or reached a settlement agreement by themselves, the domain name registration service institution shall enforce such agreement.

Article 18: A Dispute Resolution Institution shall establish a dedicated website, receive complaints concerning domain name disputes online and make all materials concerning domain name dispute cases publicly available. However, the Dispute Resolution Institution may keep confidential materials and information that it is of the opinion could prejudice the interests of a party if made publicly available, if it is requested to do so by a party.

Article 19: CNNIC has the right to amend these Procedures in accordance with such circumstances as the development of the Internet and the domain name system and changes in relevant Chinese laws, administrative regulations and policies, etc. The amended Procedures will be published on the website and be implemented 30 days after the date of publication. The new Procedures will not apply to domain name disputes that had been submitted to a Dispute Resolution Institution prior to the amendment of these Procedures.

The amended Procedures will automatically become a part of existing domain name registration agreements. If a domain name owner does not agree to be bound by the Dispute Resolution Procedures or an amended version thereof, he shall notify the domain name registration service institution in a timely manner. The domain name registration service institution will continue the domain name services for the domain name owner for 30 days after the receipt of such notification and cancel the relevant domain name after the passage of the 30 days.

If a domain name is assigned, the assignee shall, as the owner of the domain name, unconditionally accept all the terms of the existing agreement between the domain name assignor and the domain name registration service institution.

Article 20: CNNIC is in charge of interpreting these Procedures.

Article 21: These Procedures shall be implemented 30 days after the promulgation hereof.

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