

Arbitration proceedings for the TLD .at¹

In two spectacular decisions² the Austrian Supreme Court (OGH) adjudicated that the Austrian domain-registrar “nic.at Internet Verwaltungs- und Betriebsgesellschaft mbH”³ has – subject to certain limitations – responsibility for allocation of domains under the TLD .at.⁴ As reaction nic.at decided to implement arbitration proceedings by October 1st, 2002. Shortly before this date, the implementation was postponed to January 1st, 2003.

Although every national domain-registrar can voluntarily implement the UNDRP-Proceedings of the WIPO for the TLD it is delegating, nic.at decided to not adopt them but to draft its own rules of arbitration.

A comparison of nic.at- and UDRP-rules shows that any similarities are reduced to the common purpose of the proceedings: Both intent to offer a fast and efficient way to adjudicate upon domain-disputes. Going into the details, essential differences can be spotted:⁵

- UDRP proceedings are – due to a submission clause in the registration contracts – mandatory for .com-, .org- or .net-domain-owners. In contrast, nic.at proceedings are not compulsory for

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² OGH 13.9.2000, 4 Ob 166/00s, „fpo.at“ MR 2000, 328 = ÖBI 2001, 30 = wbl 2001/69 = RdW 2001/157 (decision in the preliminary injunction proceedings) as well as OGH, 12.9.2001, 4 Ob 176/01p, ecolex 3/2002, 189, online under http://www.it-law.at/papers/Anderl_Umfang_Haftung_Vergabestelle.pdf available, (final judgement). More details are online available under <http://www.it-law.at/papers/anderl-domainvergabe.pdf>.

³ In short nic.at. The official website of the Austrian Domain-Registrar is available under www.nic.at.

⁴ See http://www.it-law.at/papers/Anderl_Umfang_Haftung_Vergabestelle.pdf.

⁵ The arbitration rules of the UDRP-Proceedings can be found under <http://arbitr.wipo.int/domains/rules/index.html>, those of nic.at are available under http://www.nic.at/en/service/recht/ss_streitschlichtung.asp (both documents are in English language).

owners of .at-domains. Therefore the nic.at procedure is only applicable when both parties voluntarily agree on its application.

- The scope of the UDRP proceedings is very limited: Its aim is protection of lawful holders of trade marks against infringement by unauthorised persons registering a trademark as domain-name. The nic.at procedure in contrast will encompass all infringements caused by domains no matter on what legal grounds the claim is based. Therefore, the entire provisions of Austrian law are the basis of the arbitrage, not simplified arbitration rules, as in UDRP proceedings. Under these circumstances, it seems to be intractable to arbitrate within the three months stated in nic.at's rules of arbitration if and when the arbitrage should comply with the essential provisions of a fair trial.
- With submission to the nic.at procedure, the violated person waives his claims against nic.at, the domain-registrar. Thus a great opportunity to satisfy claims is abandoned, as nic.at is usually better funded and more easily to catch than the direct violator. This point shows the intention of nic.at very clearly: With the implementation of – at least in theory – fast arbitration proceedings the claimant shall be prompted to waive his claims against the domain-registrar. The domain-registrar tries to exclude the liability established by the judgements mentioned above.

In my opinion a better solution for the problem of infringement caused by unauthorised registration of domains would have been the implementation of some kind of procedure which verifies the authorisation of the person registering a domain.⁶

Regarding the facts it is very uncertain if the nic.at-Proceedings will prevail in practice and will become an useful alternative to court proceedings.

⁶ In some countries the national domain-registrars have already implemented such procedures: For example in France, Sweden and Australia the Applicant has to proof his authorisation to register a name as domain-name. Therefore in those countries domain-disputes are very rare.