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来自中国和俄罗斯的概述

Domain Name: Regulation and Disputes  
The Overview from China and Russia

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## 摘要

互联网被成立之后出现的新法律上的问题，即域名的规制或网上的商标的法律保护体制是本论文的重点。本毕业论文提出涉及域名的司法判例的分析并现行的司法惯例。

探索域名争议的理由和问题解决的方法、是笔者最主要的目标。做研究时，由于定义解决域名冲突的方法，许多国际的，中俄的法律文件被进行了分析和比较。

目前，域名创注的案件数量的日益增加表示电子控件的权力侵犯由于互联网的传播越来越容易。笔者介绍某些域名发文件的总结。本毕业论文表示，在某些国家，电子控件还是一种未仲裁的领域。

**关键词：**互联网络，域名，域名抢注，商标。

## ABSTRACT

The paper focus on new legal problems that appeared with the Internet creation, viz regulation the domain name and protection trade marks in online sphere. It presents the analysis of legal precedents and the legal practice currently in force regarded to domain names.

The author also tries to explore the nature of disputes on domain names, reasons and approaches of its resolution. During research numbers of International legal acts, Chinese and Russian are analyzed and compared due to define the national ways to resolve domain name conflicts.

Increasing number of cybersquatting cases shows that rights violation in the cyberspace is becoming easier and more accessible due to penetration of the Internet. Author gives summary of the disparate legal acts on the domain name, which showed that the Internet space remains unregulated in some countries.

**Key Words:** Internet, Domain Name, Cybersquatting, Trade Mark.

## **ABBREVIATIONS**

**WIPO** - World Intellectual Property Organization

**ICANN** - Internet Corporation for Assigned Names and Numbers

**TLD** - the Top-Level Domain

**gTLD** – generic Top-Level Domains

**ccTLD** - country code Top-Level Domain

**SLD** - Second-Level Domain

**IDN** - Internationalized Domain Name

**DNS** - Domain Name System

**URL** - Uniform Resource Locator

**MI** - Ministry of Information Industry

**CNNIC** - China Internet Network Information Center

**ACPA** - Anticybersquatting Consumer Protection Act

**UDRP** - Uniform Domain Name Dispute Resolution Policy

**DNDRP** - China Internet Network Information Center Domain Name Dispute Resolution Policy

**CIETAC** - China International Economic and Trade Arbitration Commission

# Domain Name: Regulation and Disputes

## The Overview from China and Russia

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## INTRODUCTION

In 21 century, it is difficult to imagine the world without technological advances. It is due to Internet invention people, living in the different parts of the world, have opportunity to communicate with each other or find any information. Up to January 2016, China had 688 million netizens and its Internet penetration was 48.8%, up 0.9% point over the end of 2014, demonstrating a slower increase in overall netizen population. In the first half of 2015, China had 18.94 million new netizens, of whom 48.0% were rural netizens.<sup>1</sup> China connects more people to the Internet than any other country. In fact, every fifth person on the Internet is from China. Internet users in Russia are 88 million aged 16 years and older. By the end of 2015, Internet audience has grown by nearly 4 million people and Internet penetration rate reached 70.4% (in 2014 - 67.5%).

The diverse information that Internet contained is the main target and interest of the network users. They try to get access to music, movies, photos, news, articles, and more. Many users do not always realize that many content on the Internet is protected by copyright. Connection of two different spheres – legal and online – pushed law progress. The relations on the Internet are needed to regulate legally in order to avoid infringement of users rights. Moreover the new terms, as providers, registrar, domain name and etc., should be expressed in the legislation.

Nowadays even registration of the domain name should be followed by numbers of rules in order to avoid rights violation. Domain names became the new form of asset – online asset. But a controversial question is domain name a new kind of intellectual property?

Persons and enterprises can define their services or goods on the Internet using domain name. However, there are also participants of the Internet who are looking to make profit from other users' rights. Therefore, conflicts between trade mark holders and domain name registrants appear.

That is why the objective of the paper became the regulation of the domain name and how to resolve disputes that involved domain names. In this paper, the author gives various approaches

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<sup>1</sup> China Internet Network Information Center. The 36th Statistical Report on Internet Development in China, July 2015. P.1.



to define the domain name, according to the legislation of the countries like the United States, the People's Republic of China and the Russian Federation.

Author brings up the issue about the place of domain name in the system of intellectual property and connection between it and trade mark.

This paper uses the historical approach in order to analyze the problems that raised after the Internet and domain name creation, and first legal acts that regulates new field of law. The method of analyses is used to research legal acts and legal precedents. Moreover, the comparison method is applied to compare the legislation, legal practice and approaches to resolve disputes in the People's Republic of China and the Russian Federation.

The paper is organized as follows: introduction, main body, conclusion, bibliography list and appendix.

The main body consists of four Chapters. Chapter 1 introduces the definition of domain name as well as overview of domain name regulation in China and Russia. Chapter 2 explains the essence of the domain name and its place in the system of intellectual property. Chapter 3 presents the nature of domain name dispute and ways of its resolution. Finally, Chapter 4 covers legal practice on resolving domain name disputes in two countries.

Appendix shows the recent statistics of increasing number of the Internet users, and the quantity of the registered domain names in China.

# CHAPTER I OVERVIEW OF DOMAIN NAME REGULATION IN CHINA AND RUSSIA

The chapter introduces the definition of domain name as well as its functions and levels in order to give general understanding of the legal issue. It also presents analyze of Chinese and Russian laws that regulate domain name in the countries. Chapter shows how the concept of domain name is expressed in the legal field.

## Section 1.1 Defining the Domain Name

Cyberspace is global and it cannot belong to a particular territory that it creates problems of application of national law to disputes arising out of infringement users' rights on the Internet, as well as the impossibility to establish the sovereignty of the information on the Internet.

Nowadays it is impossible to consider that Internet is a territory with international-mixed legal status. Laws enacted in traditional space are not completely applicable for cyberspace, especially when it comes to protection of intellectual property. The territory in the traditional sense belongs to a certain state or, at least, geographical boundaries, determining the competence and jurisdiction of the courts, but the difficulty is to determine jurisdiction, since the distribution of the Internet on the areas is rather arbitrary. This distribution occurs through a system of domains.

The concept of a “*domain*” and “*domain name*” are not the same. A domain name consists of a set of domains of several levels. These levels are hierarchical, separated by dots and legible from right to left. The right part is called the domain of the first or top level, after the domain of the second, the third level, and so on is followed. Each domain name is unique.

Computers are orientated to work with digital symbols' address. Internet address is expressed by four numbers, which combinations are named as Internet Protocol - addresses. These numbers say nothing to average user, besides they are difficult to remember. Therefore, this method of addressing is not effective for the orientation in cyberspace. To solve this problem, each IP-address is assigned to a combination of characters, the domain name, which may consist not only of numbers, but also of the letters, as well as a dash, suitable for human perception and, if

possible, easy to remember, which is an important element for achieve the goal of individualizing a specific resource.

The legal definition of the domain name is given at the US Trade Mark Law Act: *“The term “domain name” means any alphanumeric designation which is registered with or assigned by any domain name registrar, domain name registry, or other domain name registration authority as part of an electronic address on the Internet”*.<sup>1</sup>

Domain names include an exclusive form of online asset. They are the closest Internet analogy to real property. This is because, unlike other forms of digital property, they are rivalrous. This means that one domain name can only be held by one person or entity at a time. However, unlike real property, domain names exist across domestic boundaries so domestic property law has limited application. Even nationally focused intellectual property laws are limited in the face of global online assets. The closest analogy to domain names in intellectual property law is found in trade mark law.

The world first domain name in the .com zone was registered on March 15, 1985 (symbolics.com). The second one appeared one month later on April 24, 1985 (bbn.com). It took one year to register the first ten domain names. At present times, there are more than 120 million generic top-level domains at .com zone . Tokelau (.tk) has leadership among the country domains (around 27 million), while the German domain (.de) takes the fourth place, Chinese .cn – the seventh (around 8 million) and Russian .ru domain – the ninth place (more 4.5 million).<sup>2</sup> According to the rules of the Internet Corporation for Assigned Names and Numbers (hereinafter – ICANN)<sup>3</sup> any natural or legal person may register a domain name.<sup>4</sup>

Domain names consist of at least two levels, a top-level domain and a second-level domain. The top-level domain (TLD) is the letters at the right end of the domain name after the dot. There

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<sup>1</sup> The Lanham Trade Mark Act, 15 U.S. Code § 1127.

<sup>2</sup> <http://research.domaintools.com/statistics/tld-counts/>, last accessed 27.10.2015.

<sup>3</sup> The Internet Corporation for Assigned Names and Numbers is internationally organized on September 18, 1998, non-profit corporation with the assistance of the US government that has responsibility for coordinating the management of the technical elements of the domain name system to ensure universal resolvability so that all users of the Internet can find all valid addresses. It does this by overseeing the distribution of unique technical identifiers used in the Internet's operations, and delegation of TLD.

<sup>4</sup> Paragraph 3 of the Rules for Uniform Domain Name Dispute Resolution Policy, approved by the ICANN Board of Directors on 30 October 2009.

are two types of top-level domains: generic (gTLDs) and country code (ccTLDs). The most wide spread gTLDs are .aero, .biz, .com, .coop, .edu, .gov, .info, .int, .name, .net, and .org. However, distribution is approximate among the generic domains. Sometimes non-profit organizations registered in “.com” zone, and commercial - in “.org”.

There are two types of ccTLDs: domains that correspond to a country, territory and other geographic location (e.g., .uk, .de, .us, .cn, .ru). As usual, ccTLDs consist of two letters according to the countries’ codes: RU, CN, US, UK, PL, FR, IT etc.

The second-level domain (SLD) name includes the top-level domain name. The SLD is the label immediately to the left of the top-level domain, separated by a dot. For example, “microsoft.com” is a second-level domain, as it includes the domain name “Microsoft” and the top-level domain “com”. So, in fact, the domain name registration is the registration of second level domain for a certain person in a certain area.

If person needs to further distinguish second-level domain name, he can use a third-level domain name, such as “xmu.edu.cn”. Typically, a third-level domain name is used to refer to different servers within different departments of a company.

Every year numbers of the new TLDs came into use. In 2014, ICANN initiated and encouraged the formation of community-based panels for different calligraphies for instance: Arabic, Chinese and Cyrillic (.中国, .PΦ<sup>1</sup>(hereinafter - RF). Before only Latin alphabets’ letters were allowed to use. They are called internationalized domain names (IDNs) and allow people around the world to access domain names in their local languages. At the current moment there 68 registered IDNs in the Internet.<sup>2</sup>

Russian domain “.ru” was created on April 1994 after the largest of the then existing Internet providers in Russia have signed a historic agreement “About administration of the “ru” zone” on December 4, 1993. This domain succeeded to “.su” domain (Soviet Union), which then temporarily ceased to exist, however, since 2002 both .ru and .su domains are active.

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<sup>1</sup> Cyrillic “PΦ” in Latin as RF, from the Russian Federation.

<sup>2</sup> According to the ICANN statistics, <https://newgtlds.icann.org/en/program-status/statistics> last accessed 31.01.2016.

On 13 May 2010, the first Cyrillic domain “.rf” became operational. In November 2009, priority reservation of names in the “.rf” zone has already begun, but only trade mark holders could get an Internet address in Cyrillic. The first two accessible sites were <http://президент.рф> (president.rf) and <http://правительство.рф> (government.rf). According to the Ru-center, one of the biggest registrar of domain names in Russia, there are more than 850 thousand registered .rf domain names.

Domain names ending with .中国 – the Chinese characters for China – became available in 2012. Owners of .cn domains applied firstly for the addition of .中国 domain. Now such domain as .公司, .网络, .网址 can be registered too. The recent statistics showed that on February 2016, there were more than 18.5 million registered domain names under .cn.<sup>1</sup>

Even as the number of available generic Top Level Domains and country code Top Level Domains has increased over the years (and will continue to increase)<sup>2</sup> only one person can hold any given iteration of a domain name at any one time.

All domain names make up the Domain Name System (hereinafter - DNS). It is a system of addresses and names linked by name servers establishes the signposts in cyberspace and serves as the basic infrastructure supporting navigation across the Internet.<sup>3</sup> The purpose of the DNS is to enable Internet applications and their users to name things that have to have a globally unique name. The obvious benefit is easily memorable names for things like web pages and mailboxes, rather than long numbers or codes. Less obvious but equitably important is the separation of the name from its location. Things can move to a different location in the network without changing their name. The one web page can access in various geographic locations at once. The DNS gives the domain names address in the cyberspace.

The Internet maintains two principal namespaces, the domain name hierarchy and the Internet Protocol address spaces. The DNS manages the domain name in hierarchy system and

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<sup>1</sup> See China Internet Network Information Center statistics on official website [http://www1.cnnic.cn/IS/CNym/CNymtjxxcx/cnymtjtb/cn2016/201602/t20160202\\_53363.htm](http://www1.cnnic.cn/IS/CNym/CNymtjxxcx/cnymtjtb/cn2016/201602/t20160202_53363.htm), last accessed 30.01.2016.

<sup>2</sup> ICANN, new gTLD Program to increase available generic Top Level Domains, available at [www.icann.org/en/topics/new-gtld-program.htm](http://www.icann.org/en/topics/new-gtld-program.htm), last accessed 30.01.2016.

<sup>3</sup> Signposts in Cyberspace: The Domain Name System and Internet Navigation Committee on Internet Navigation and the Domain Name System: Technical Alternatives and Policy Implications, National Research Council, 2005. P.20.

serves translation services between it and the address spaces. Internet name servers and a communication protocol implement the Domain Name System. The DNS name server is a server that stores the DNS records for a domain; the DNS name server responds with answers to queries against its database.

An often-used analogy to explain the Domain Name System is that it serves as the phone book for the Internet by translating computer hostnames into IP addresses. For example, the domain name `www.world.net` translates to the addresses `94.173.216.116` and `2505:2700:220:4d:34bf:1765:1088:aa6`. Unlike a phone book, DNS can be quickly updated, allowing a service's location on the network to change without affecting the end users, who continue to use the same host name. Users take advantage of this when they use meaningful Uniform Resource Locators (URLs), and e-mail addresses without having to know how the computer actually locates the services.

The registrant of the domain name (the person or organization who has initiated the registration process and who owns that domain name) shall bear the risk of possible ill effects associated with the choice of a domain name and its use. The registrar (organization accredited by ICANN and certified by the registry operators to sell domains) is not authorized to do a preliminary check of the claimed domain name. The registrant of the domain name choose domain name and make a use of it.

The registration process of the domain name starts when a registrant choose a domain name and submit the registration request to a registrar. It is worth mention that some registrants may register through a reseller. These are affiliated or under contract with registrars, and usually offer other services such as web hosting, email mailboxes etc. Resellers are bound by their agreements with the registrars whose services they sell. They are not accredited by ICANN. However, the registrar for whom they are reselling will still be the promoter for the domain name registration and accounted for the domains sold by the reseller. While registrars are contracted to handle the daily business of selling domain name registrations, registry operators are responsible for managing the registration for each TLD. The responsibilities of the registry operator include

accepting registration requests, controlling a database of the mandatory registration data and providing name servers to publish the zone file data throughout the Internet.

After registrar gets all necessary information (the desired domain name, the name and contact information, including email address, physical address and contact phone number, for the domain's registrant, administrative and billing contacts, the desired domain registration term and payment information), then he will initiate the domain name registration process. The registrar will send domain name request, and the contact and technical information of the domain name to the registry. The registry also adds domain zone files to the master servers. These master servers tell other servers on the Internet where website is stored. Finally, a new domain is considered registered and ready to use.

## **Section 1.2 Regulation of Domain Name in China**

Domain name industry in China has been unregulated for more than a decade, and the government recognizes the need to reign in control as Internet security has become a top priority for the new administration. In 1997, the State Council issued “the Provisional Measures for Administration of the Registration of Domain Name on China’s Internet” and “the Detailed Implementing Rules for the Registration of Internet Domain Names”, which provide detailed rules for the registration of domain names in China.

The principal law “China Internet Domain Name Regulations”,<sup>1</sup> adopted on September 30, 2002 on the 8th Minister Working Meeting of Ministry of Information Industry (hereinafter - MII), contains the basic rules for domain name registration process and use of domain names within territory of the PRC.

The Regulations determine the definitions of the domain name, Chinese domain name, DNS root server, operation entity of DNS root server, domain name registry, domain name registrar. According to the Chinese legislator, domain name is the character identification of hierarchical structure that identifies and locates a computer on the Internet and corresponds to the IP address

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<sup>1</sup> The text of the document is available on the official WIPO website [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=182419](http://www.wipo.int/wipolex/en/text.jsp?file_id=182419), last accessed 05.03.2016.

of this computer.<sup>1</sup> MII is responsible for the administration of the Internet domain names in China and its main responsibilities are:

- formulating the regulations and policies concerning the administration of the Internet domain names;
- establishing the system for .cn TLD and Chinese domain names;
- administering the operational institutions of DNS root servers, which set up and operate the DNS root servers (including mirror servers) within the territory of the People's Republic of China;
- controlling Domain Name Registry and Registrars within the territory of the People's Republic of China;
- supervising and administering domain name registration services;
- being responsible for international coordination related to domain names.<sup>2</sup>

It is noteworthy that the Regulations contain the provisions concerning the new TLD – Chinese domain name. Chinese Domain Name is an integral part of the Domain Names System of China.<sup>3</sup> The Ministry of Information Industry is in charge of registration process of a domain name. Due to register domain name in China, the applicant shall submit the following documents to MII:

- certificate of relevant fund and personnel;
- certificate of effectively operating domestic TLD name server;
- certificate that may prove the applicant's credit standing;
- business development plan and relevant technical solutions;
- certification of the measures for safeguarding the security of networks and information;
- the model agreement that proposed to be signed with Domain Name Registrars;
- the document that gives the promise of complying the relevant national laws, policies and the domain name system of China and signed by the legal representative of the Domain Name Registry applicant.<sup>4</sup>

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<sup>1</sup> Paragraph 1, Article 3 of the China Internet Domain Name Regulations, adopted on September 28, 2004.

<sup>2</sup> Article 4 of the China Internet Domain Name Regulations, adopted on September 28, 2004.

<sup>3</sup> Article 7 of the China Internet Domain Name Regulations, adopted on September 28, 2004.

<sup>4</sup> Article 13 of the China Internet Domain Name Regulations, adopted on September 28, 2004.



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