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New tool to help domain nameowners hold on to their names

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A domain dispute resolution policy is the third method domain name owners can now use to retain use of their domain names in Taiwan. It shares a lot with ICANN's policy.

Taiwan Network Information Center (TWNIC) on January 30 passed its Domain Name Dispute Resolution Policy. Although the policy went into effect on March 1, the dispute resolution mechanism isn't likely to begin functioning until late March. As explained in a previous issue of IPASIA ("Arbitration bodies to bring order to domain name disputes", Vol 13 Num 10,), the policy is intended to create a more effective channel for Taiwan country-code top-level domain name (ccTLDs--tw) dispute resolution than courts or the Fair Trade Commission (FTC), which up to now have been the only channels of redress for those seeking to take action against cybersquatters in Taiwan.

TWNIC, which is a non-profit organization funded by Taiwan's Directorate General of Telecommunications, Ministry of Transportation and Communications to oversee the registration of domain names in Taiwan, is currently calling for local neutral professional institutions or organizations to submit applications to serve as dispute resolution providers. The names of one or more providers approved by TWNIC will be announced by the end of March. TWNIC itself will not be involved in the dispute resolution process, except to carry out the decisions of dispute resolution panels (to be organized by the dispute resolution providers), which may order the cancellation or the transfer of domain names.

The policy is based on ICANN's Uniform Dispute Resolution Policy (UDRP), adopted August 26 1999. Under TWNIC's policy, a complainant may file a complaint with any of the TWNIC approved dispute-resolution providers if,

- 1) a domain name is identical or similar to the complainant's trademark, service mark, personal name, business name, or other emblem,
- 2) the registrant of the domain name has no rights or legitimate interests in respect of the domain name, and
- 3) the registrant has registered or used the domain name in bad faith.

A registrant will be considered to have legitimate interests in the domain name in question if each of the following elements exists:

- 1) The registrant used the domain name in good faith prior to receiving notice of a domain name dispute, or made demonstrable preparations to use the domain name to sell goods or offer services;
- 2) The registrant's use of the domain name is well known to the general public; and
- 3) The registrant is making legitimate noncommercial use of the domain name, and is not using it for commercial gain in such a way as to confuse or mislead consumers or detract from or harm the

trademark, mark personal name, business name, or other emblem at issue.

A domain name registrant may be determined to be acting in bad faith (and likely to have the domain name in question cancelled or transferred) if any of the following circumstances exists:

- 1) The registrant registered or acquired the domain name primarily for the purpose of making a profit from the complainant or a competitor either by renting or selling the domain name in question.
- 2) The registrant registered the domain name in order to prevent the complainant from using the trademark, mark, personal name, business name, or other emblem in a domain name registration.
- 3) The registrant registered the domain name primarily in order to disrupt the business activities of a competitor.
- 4) The registrant has intentionally sought to mislead network users into visiting a website or other online location by creating confusion with the trademark, mark, personal name, business name, or other emblem of the complainant.

Complainants will be responsible for covering the cost of the arbitration process, though the cost will be evenly split between the complainant and the registrant if the registrant opts for a three-member dispute resolution panel instead of a single-member panel.

The courts and the FTC will probably continue to play a key role in domain name dispute cases. To date the major actions regarding domain name disputes in Taiwan have been handled by the FTC, which issued its first domain name dispute ruling in February 2000, ruling against a company that had registered the domain name www.carrefour.com (see IPASIA, Vol 13, Num 4, "Taiwan makes first move against cybersquatters"), though the commission stopped short of ordering the domain name's cancellation or transfer.

A legal complaint filed with the FTC or through the courts with respect to a domain name dispute will be considered sufficient to terminate a TWNIC-sponsored dispute resolution proceeding. In addition, the policy states that after a dispute resolution decision is made, a registrant has 12 days to inform TWNIC that it has initiated litigation regarding the domain name at issue. Upon such notification, TWNIC will provisionally stay implementation (cancellation or transfer of the domain name). The exact role the courts will play in future domain name disputes is hard to gauge, but it is almost certain that alleged cybersquatters will challenge the dispute resolution panel decisions in Taiwan in court.

TWNIC officials seem to be under the impression that any existing domain name dispute could be resolved utilizing the new policy. Can TWNIC change the rules and then expect to enforce them on people or companies that registered their domain names prior to the change? It has been suggested that TWNIC's policy might have been more reasonable if it had specified that only domain names registered after the domain name dispute resolution policy went into effect could be resolved through its dispute resolution procedure.

Furthermore, some critics have pointed out that the policy would be more effective if it allowed complaints to be filed against would be domain name registrants during the application process so that cybersquatters might be stopped at an earlier stage.

These arguments may presage a challenge to Taiwan's nascent dispute resolution policy, but it should be noted that the ICANN UDRP (which covers all general top level domain names filed under ICANN) has been in use for more than a year, and has been seen as a viable alternative to court actions in the US and elsewhere. The TWNIC policy bears a strong resemblance to the ICANN UDRP, and could well be adopted as the domain name dispute route of choice with respect to Taiwan ccTLDs in the future provided its decisions are seen to be fair, and are not contradicted by subsequent court or FTC decisions.

For more information, consult the TWNIC website (www.twnic.net.tw). English translations of the domain name dispute resolution policy and its implementation rules are available from Winkler Partners (request via email translation@winklerpartners.com).

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