COMPARISON OF PROCEDURAL RULES IN DISPUTE RESOLUTION OVER DOMAIN NAMES .GTLD, .CZ AND .EU

Poredenje proceduralnih pravila u rešavanju sporova preko naziva domena .gtld, .cz i .eu

Tomáš Gongol
Silesian University in Opava

Abstract

The paper is focusing on out-of-court dispute resolution policy and especially includes the ways of so called ADR (Alternative Dispute Resolution) used in domain name cases. The aim is to compare procedural rules which are used for solving disputes over domain names in several levels – generic top level domains (global domains as .com, .net, .org, etc.), regional top level domains (European domains .eu) and country top level domain (Czech national domain name .cz). For each level exists not only different substantive law but also volume of procedural rules which differs not only in details, but also in the nature of final decision.

Keywords: ADR, Alternative dispute resolution, Cybersquatting, Domain name, UDRP

1. Introduction

The legal area of Internet is primary self-regulated. The same method is used not only for substantive rules but for procedural rules as well. The registrars of individual domains issue procedural rules in dispute resolution for domains registered under a relevant GTLD (Generic Top Level Domain, e.g. .com, .biz or .org) or ccTLD (Country
Code Top Level Domain, e.g. .cz, .uk, .de). Although each and every domain administrator may issue own rules of registration, which is particularly used in cases of ccTLD, the rules issued by ICANN (Internet Cooperation for Assigned Names and Numbers) have an important status.

The first attempt to find an effective solution for dispute resolution related to the unauthorized domain registrations was a proposal by International Ad Hoc Committee (IAHC) that consisted of major organizations in the area of protection of industrial property (World Intellectual Property Organization – WIPO), some organizations involved in Internet problematic (Internet Assigned Numbers Authority – IANA, Information Security Operation Center – ISOC), and governmental agency of the United States of America – The Federal Communications Commission (FCC). The proposal was accepted as Memorandum of Understanding on February 28, 1997. 

Despite the fact that the proposal was never implemented in practice, it defined the fundamental principles of Administrative Domain Name Challenge Panels (ACPs) – see part VIII of the mentioned Memorandum.

2. Procedural rules of UDRP in dispute resolution over gTLD

The rules for gTLD were created in 1999 and are geographically and time-wise identical with Anticybersquatting Consumer Protection Act (ACPA) in the USA. There can also be seen a correlation of both sources since both legal acts apply to trademarks and not other property rights, such as company names, literary works, appellations of origin, etc. 

Firstly the Uniform Domain-Name Dispute-Resolution Policy (UDRP) adopted by ICANN, that regulates the fundamental rules for dispute settlement over gTLD. Subsequently there were also Rules for Uniform Domain Name Dispute Resolution Policy, adopted by ICANN as well, which provides more detailed rules for the fundamental rules of UDRP in dispute resolution. There must be added also so-called Supplemental rules that are issued by specific entities responsible for dispute resolution (hereinafter referred to as ADR providers).

Generally speaking there are three basic functions for UDRP (Mueller, 2002). Firstly, globally formalize the access to dispute resolution over trademarks by eliminating differences in approaches to domain-name conflicts in the environment of global Internet. Secondly, to reduce the costs of administrative proceedings so it is easily accessible and it discourages any cybersquatters from unwanted registrations. Thirdly, to limit the applicability by using adequate approach in replacing national law by the ‘global law’, i.e. deal only with the cases that are in the scope of standardized disputes and leave the more complex disputes to the courts.

All of this is ensured by accepting the registration conditions, in which is incorporated also mandatory proceeding by UDRP. The ICANN is the central ** Establishment of a memorandum of understanding on the generic top level domain name space of the internet domain name system (gTLD-MoU), available at http://www.itu.int/net-itu/gtld-mou/gTLD-MoU.htm [cit. 20.2.2015].

†† According to WIPO report from April 30, 1999 the reason for this limitation is the lack of international harmonization in the application of trademark laws, available at: http://www.wipo.int/amc/en/processes/process1/report/

‡‡ Opinion on whether UDRP are successful or not are various, see e.g. NATIONAL ACADEMY OF SCIENCES (2005, p. 264).
organization, which allows the registration of gTLD, which means that no registrant can avoid the regime of UDRP.

The UDRP and Rules of UDRP are primary designed for gTLD, however some of the national ccTLD registrars also adopted the same or similar rules and assigned Arbitration and Mediation Center of WIPO §§ as the ADR provider. Given the fact that the gTLD’s share on the total number of domains is 65% (Mueller, 2002), it might be said that it is overall the most common applicable rule for dispute resolution.

2.1. Fundamental rules of dispute resolution according to UDRP

There are several fundamental rules that may be observed not only in the area of dispute resolution to which the UDRP applies but also to other sources, as it will be explained below. The aim of this part is to find those fundamental principles that are the base of ADR on domain names.

Precautionary principle

The UDRP includes a general provision on applying to register a domain name. By giving a consent with a registration or renewing a domain name registration, the registrant obliges to give only statements that are complete and accurate; to the registrant’s knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party; it is not registering the domain name for an unlawful purpose; and it will not knowingly use the domain name in violation of any applicable laws or regulations. * * *

Principle of the domain administrator’s stronger position

The domain administrator (in the case of gTLD it is ICANN) reserves the right to cancel, transfer or otherwise make changes to domain name registrations under certain circumstances. These circumstances are for example receipt of an order from a court or arbitral tribunal, in each case of competent jurisdiction, requiring such action. Also registrar may fatherly clarify these conditions in the registration agreement. One of advantages of the administrator’s stronger position is also the right to enforce the mandatory agreement of the potential registrant with ADR rules.

Principle of the potential registrant’s mandatory agreement

This principle is reflected in two ways. Firstly, the potential registrar is obliged to agree with general agreement on applicability of UDRP rules and secondly there is a special type of agreement that establishes the obligation to follow the ADR rules.

The applicability of the UDRP is based on the fact that the potential registrant must agree with this policy in a case of dispute; as the UDR Policy is incorporated by reference into the registration agreement. † † † And it sets forth the terms and conditions in connection with a dispute between the registrant and registrar over the registration and use of an Internet domain name registered by registrant. Any proceedings will be

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§§ Full list of the countries in which the ccTLD is in the UDRP regime or similar is available at http://www.wipo.int/amc/en/domains/ccTLD/index.html [cit. 12.2.2015].

* * * Provision 2. of UDRP, adopted on August 26, 1999

† † † Regulation UDRP, § 1.
conducted according to the Rules for Uniform Domain Name Dispute Resolution Policy and the selected administrative-dispute-resolution service provider's supplemental rules. These proceedings will be conducted before one of the administrative-dispute-resolution service providers, such as Arbitration and Mediation Center at WIPO) whose decisions are final and must be followed.‡‡‡

**Principle of protection of identical or confusingly similar registration of third parties**

The registrants are required to submit to a mandatory administrative proceeding in the event that a third party (a "complainant") asserts to the applicable Provider§§§, in compliance with the Rules of Procedure, that the registrant have no rights or legitimate interests in respect of the domain name; and the domain name has been registered and is being used in bad faith.

**The principle of domain administrator’s limited liability**

This principle is partly based on the principle of prevention, i.e. the responsibility of the domain name registrant to register only a domain for lawful purpose and the domain does not infringe upon or otherwise violate the rights of any third party. It is the registrant’s responsibility to determine whether your domain name registration infringes or violates someone else's rights. In case of a dispute between a domain’s registrant and a third party, ADR is not involved.

**Principle of mandatory publishing of the decisions**

The decisions of the disputes over domain names through ADR, including the information about the progress of the proceeding must be published and publicly available on the Internet. Exceptions may only be granted by arbitrators in their specific administrative proceedings.

**Principle of unlimited availability of court proceedings**

The initiation of ADR does not mean a lis pendens obstacle in relation to legal proceedings. The initiation also does not limit either of the party to submit a proposal for a proceeding at court. Even if ADR has already taken place and its decision was implemented by the domain administrator. The mandatory administrative proceeding requirements shall not prevent any of the parties from submitting the dispute to a court of competent jurisdiction for independent resolution before such mandatory administrative proceeding is commenced or after such proceeding is concluded. If an Administrative Panel decides that your domain name registration should be cancelled or transferred, the registrar will wait ten business days (as observed in the location of our principal office) after the provider of Panel’s decisions are informed before implementing that decision.****

There can be added that court proceeding is the only way how to remedy the decision from ADR (see e.g. Cho 2001, p.14). To change a decision that has been decided in UDRP proceeding can’t be done even in arbitration. There were already

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‡‡‡ Regulation UDRP, § 4.
§§§ Regulation UDRP, § 4(a).
**** Regulation UDRP, § 4(k).
several cases in the USA whose decisions most often stated that UDRP proceeding was never intended to substitute for formal arbitral or court proceeding. Federal Arbitration Act determines the condition for reviewing arbitration award in court proceeding by the agreement of the parties. However there is no such information in UDRP because its creator, ICANN, didn’t intend to do such thing; to challenge the ADR decision with a Complaint at a court is sufficient.

2.2. Rules of UDRP

General rules of UDRP are fatherly described in UDRP Rules that were adopted by ICANN on October 24, 1999. UDRP Rules also include provisions on communication between parties and an arbitrator or a panel consisting of three arbitrators (hereinafter referred to as Panel), provisions on requirements of the claim, statement of the defendant, decisions, appointing the arbitrators, etc.

The communication between the Panel and the complainant or the defendant (domain name holder) is conducted both electronically and in writing. Therefore it is extremely important that the information provided is complete and accurate in case of an initiation of ADR.

Any natural or legal person may conduct initiation of ADR proceeding by submitting a statement of claim to any accredited ADR provider (see more information below). The complaint may be submitted either in writing or electronically and must include prescribed requirements; among others it must follow the UDRP and the UDRP Rules. That way both parties express agreement to implement ADR procedure, because the domain name holder agreed by signing the registration contract (see above the principle of mandatory consent of the interested party).

In complaint form the complainant also defines whether one arbitrator or a panel of three arbitrators conducts ADR. In case that the panel is chosen to deal with the complaint there must also be a list of the arbitrators who were picked from a list kept by a ADR provider.

In addition to the formal requirements that are listed in §3 of the UDRP rules there must be also a description of any special circumstances on which are based the complaint of the complainant; especially:

- your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- you have no rights or legitimate interests in respect of the domain name; and
- your domain name has been registered and is being used in bad faith.

The complainant must prove that each of these three elements is present. Once the claim is submitted to the administrative proceeding the ADR has the right to examine it from the formal requirements point of view if it meets all the mandatory requirements by UDRP rules and to announce the initiation of the proceeding to the domain name holder, i.e. defendant. In case there are some deficiencies in the form the complainant has to complete it in 5 calendar days from the day he is notified about it. The proceeding starts the day when the complaint form is sent to the defendant.

The ICANN rules that outline that responses must be filed within twenty days and that extensions may be granted either in exceptional cases or if the parties mutually agree to an extension; this period of time is sometimes criticised for being too short, for

‡‡‡‡ Complaint form samples available at www: http://arbiter.wipo.int/domains/complainant/form.html [cit. 20.2.2015].
example Geist (2001) either electronically or in writing. Based on the paragraph 5 of the UDRP this notice period may be extended by the decision of the panel or by a written agreement between the parties. There are known cases of the panel accepting a late statement, based on the fact that it wasn’t sent to the ADR provider but to the ICANN and the complainant. An arbitrator or a panel may issue the resolution of the dispute over a domain name. In case that it is issued by an arbitrator, ADR provider does its appointment within 5 calendar days from the delivery of the notification. In case of a panel, ADR provider chooses one of the arbitrator and each party involves chooses one as well.

The elementary competences of the Panel are:
- The Panel shall conduct the administrative proceeding in such manner, as it considers appropriate in accordance with the Policy and these Rules.
- In all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case.
- The Panel shall ensure that the administrative proceeding takes place with due expedition. It may, at the request of a Party or on its own motion, extend, in exceptional cases, a period of time fixed by these Rules or by the Panel.
- The Panel shall determine the admissibility, relevance, materiality and weight of the evidence.
- A Panel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules.

There shall be no in-person hearings, unless the Panel determines, only as an exceptional matter, that a hearing is necessary in order for it to make its decision. The Panel decides only based on the statements and evidences demonstrated by the parties in the official complaint. However the Panel may, according to the § 12 of the UDRP Rules request additional evidences. If the parties themselves without the request by the Panel demonstrate such additional evidences, it depends on itself whether or not it accepts such documents. If the defendant fails to submit the documents within the limit or fails to do so completely, the Panel may issue a decision in the favour of the claimant. The claimant succeeds if he manages to demonstrate all three evidences of unjustified interferences mentioned above (§4 et seq. of UDRP).

As far as the legal regulation goes, the Panel must follow the UDRP, the UDRP Rules and any rules and principles of law that it deems applicable. Generally those are primarily the principles of equity. According to the §15 of the UDRP Rules A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, UDRP Rules and any rules and principles of law that it deems applicable. In the absence of exceptional circumstances, the Panel shall forward its decision on the complaint to the Provider within fourteen days of its appointment. The Panel's decision shall be in writing, provide the reasons on which it is based, indicate the date on which it was provided.

More information, e.g. decision WIPO No. D2001-0825 BILLERBECK.COM, where the period of time was extended by 14 days based on the written agreement of complainant and defendant. More information in decision WIPO No. D2000-0263 TRIDENTHOTELS.COM.

Based on an analysis from years 2001 and 2002 there are some differences between decisions issued by one arbitrator and a panel of three arbitrators. One arbitrator tend to agree with complainant in higher percentage of the cases. More information on this available at NATIONAL ACADEMY OF SCIENCES (2005, p. 269)

More for example decision WIPO No. D2000-0596 STING.COM, where the complainant was not allowed to give comments on the demonstration of defendant of his alleged acting in bad faith.

More information on decision of WIPO No. D2004-0755 MAGNARX.COM.
rendered and identify the name(s) of the Panelist(s). Panel decisions and dissenting opinions shall normally comply with the guidelines as to length set forth in the Provider's Supplemental Rules. Any dissenting opinion shall accompany the majority decision. Within three calendar days after receiving the decision from the Panel, the Provider shall communicate the full text of the decision to each Party, the concerned Registrar(s), and ICANN. The obligation of the registrant is to implement such decision, e.g. cancel the domain name or transfer it to the compliant in case the registrant is the one who didn’t succeed in the dispute.

Decisions of such disputes are limited to only cancellation, of the domain, its transfer or dismissing the claim altogether. In these proceedings damage claims are not possible. Complaint must turn to the court with these or similar claims.

If, before the Panel's decision is made, it becomes unnecessary or impossible to continue the administrative proceeding for any reason, the Panel shall terminate the administrative proceeding, unless a Party raises justifiable grounds for objection within a period of time to be determined by the Panel. If, before the Panel's decision, the Parties agree on a settlement, the Panel shall terminate the administrative proceeding. In the event of any legal proceedings initiated prior to or during an administrative proceeding in respect of a domain-name dispute that is the subject of the complaint, the Panel shall have the discretion to decide whether to suspend or terminate the administrative proceeding, or to proceed to a decision.

The procedural rules are adapted to the requirements of the ADR therefore they are simple and allow as fast achievement of the results as possible. For this purpose there are time periods for every single stage of the decisions process listed in the ADR Rules. Generally speaking the procedural rules applied in ADR dispute resolution in the regime of UDRP are very loose and its concept is wide enough to correspond to the general category of ADR and by its structure it is even similar to an arbitrary proceedings.

In summary the ICANN’s system of dispute resolution is established very effectively and according to the available information the average time of a dispute over domain name in the regime of UDRP Arbitration and Mediation Center at WIPO is 45 days (Mueller 2002, p. 17), which is incomparable to other similar procedures at courts.

2.3. Supplemental Rules for ADR providers

In addition to the UDRP and UDRP Rules described above, the procedural rules of dispute resolution over gTLD are also ruled by World Intellectual Property Organization Supplementary Rules for Uniform Domain Name Dispute Resolution Policy (hereinafter referred to as Supplemental Rules).

Currently there are four ADR providers who are accredited by ICANN:
- Asian Domain Name Resolution Canter (ADNRC) with three branches in China, Hong Kong and Korea,
- The National Arbitration Forum (NAF) settled in the United States of America.

****** Asian Domain Name Resolution Center. Began its activities on 28th of February 2002 and it is a cooperative project of China International Economic and Trade Arbitration Commission (CIETAC), Hong Kong International Arbitration Centre (HKIAC) and Korea Internet Adress Dispute Resolution Committee (KIDRC).

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- World International Property Organization (WIPO), which has a headquarters in Geneva, Switzerland,
- Prague-based The Czech Arbitration Court (CAC) attached to the Czech Chamber of Commerce and Agriculture Chamber of the Czech Republic.

Generally speaking the Supplemental Rules provide technical and administrative rules for the process in a more detailed manner. Based on the comparison of each ADR providers’ Supplemental Rules, the fact is that they tend to be quite similar. The ADR provider itself doesn’t decide on the dispute, the main tasks are administrative and towards appointing the arbitrators and providing effective communication between the parties and the Panel during the whole proceeding. Direct communication between the parties and arbitrators is not possible to ensure the maximum objectivity. Therefore ADR providers also appoint administrators to whom the parties may turn to in case of any questions.

Most commonly there are technical solutions of communication between the parties in the Supplemental Rules, with the preference of online communication. However its usage requires agreement from both parties involved. Each and every ADR provider also adds Annex with the applicable fees for the administrative procedure. Usually ADR provider provides a discount in case that there are multiple cases of domain names.

3. Procedural Rules in dispute resolution over ccTLD .cz

3.1. CZ.NIC Rules

According to ICANN every national ccTLD provider has the right to set their own rules for registration and therefore also for dispute resolution. The registration of Czech domains is governed by Rules of Domain Names Registration (hereinafter referred to as Registration Rules) under ccTLD .cz and also Alternative Dispute Resolution Rules (hereinafter referred to as ADR Rules). Therefore both of them rule any potential dispute.

The Registration Rules include provisions on disputes between the domain name holder (Holder) and the CZ.NIC Association as well as provision on disputes between Holder and third party. In both cases there is the obligation of the Holder to respect the jurisdiction of the arbitration court if the other party wishes so. And also may option for either court or arbitration proceeding.

Apart of it there is also in the chapter 24 of the Registration Rules an obligation of the Holder to make every effort that may reasonably be required from him to achieve an amicable settlement of dispute concerning Domain Names and/or their registrations that might arise between the Holder and other persons. The CZ.NIC also states that if the litigation does not settle the dispute in an amicable way, there are free to settle their...
dispute within the scope of valid legal regulations, i.e. through arbitration or municipal courts. However given the Holder’s obligation to respect the wish of the other party to settle the dispute in an arbitral proceeding, this provision tend to be only declaratory and unfeasible (more information about this problematic below).

CZ.NIC Association suspend the possibility of cancelling domain name registration or its transferring to another person or temporarily block the possibility of transfer the domain name to another person if that’s the juridical or administrative decision or decision of arbitrator or arbitral tribunal. CZ.NIC Association will do so even if it wasn’t a part of the dispute itself, i.e. it does not have a direct obligation to do so. Despite that statement, in practice, the CZ.NIC is often a part of the proceeding, as the other defendant (see above the example of domain name ostrava.cz)

Based on this information the most important role in dispute resolution over domain names under ccTLD is arbitration. Specifically, these types of disputes are dealt with by the Arbitration Court attached to the Economic Chamber of the Czech Republic and the Agriculture Chamber of the Czech Republic. Provision 2.1. of the ADR Rules says that “The Holder is irrevocably and publicly subject to the authority of the Arbitration Court attached to the Economic Chamber of the Czech Republic and the Agriculture Chamber of the Czech Republic (hereinafter the “Arbitration Court”) in arbitration proceedings before this Arbitration Court pursuant to the Code for the Resolution of Disputes Over .CZ Domains published in the Commercial Bulletin (hereinafter the “.CZ Code”), in property disputes that can be resolved in which a third party challenges any Domain Name of the Holder entered in the electronic database of ccTLD .cz domain names maintained by the CZ.NIC Association, or its registration, if the third party expresses its willingness in writing to the Holder to submit to the authority of this Arbitration Court in the given matter by submitting the dispute in writing to the Arbitration Court in accordance with the .CZ Code.”

To apply this provision it is sufficient if the third party express its will towards the Holder to follow the jurisdiction of this court in the matter. CZ.NIC Association sets a mandatory obligation to all registrars to obtain agreements of each interested person with an updated version of ADR Rules.

The author of this text sees a potential problem with the application of this provision and that is a deficit of free will, which is typical for arbitration.

The legal document of arbitration is generally arbitration agreement, eventually arbitration clause (Bělohlávek 2004, p.27), which shifts changes, which changes the jurisdiction of this matter, from general courts to independent arbitrators. To draft any of the previously mentioned forms of arbitrator’s rights there must be free will of both parties involved to do so. However the ADR Rules grants free will only for the third party – complainant – while the Holder may not choose any other option from the moment of signing the registration agreement. It should be emphasized that the Holder does not have the right to not accept or to turn to “another national provider” where such “mandatory agreement” wouldn’t be required. By the registration itself, respectively economic or other need that made the domain name registrant to agree, it is settled that arbitration is not an option but the only way how to resolve a dispute. This practice is called arbitration public bid.

In this context it may be discussed if the right to a fair trial is not breached, namely that no one may be removed from the jurisdiction of his lawful judge.

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******** Art. 38 (1) of Charter of Fundamental Rights and Basic Freedoms of the Czech Republic from December 16, 1992
All the mentioned regulations on dispute resolution on domain names are strongly influenced by UDRP and UDRP Rules, which, although not used unconditionally, are reflected on each and every provision mentioned above. To provide an example, there is the mandatory ADR for all gTLD Holders. However despite the obvious fundamental similarities there may be seen major differences between the two mandatory procedures. In the case of UDRP it is a specific ADR that is an example of auto regulation of Internet and finding the fastest way for dispute resolution in terms of gTLD where it is supposed that the subjects are from different parts of the world. The important facts is, that ADR procedure if initiated in accordance with UDRP always gives the opportunity to both parties to turn to courts and demand a fair trial whenever they want.

In the case of proceeding under the conditions of ccTLD it is so called “pure form” of the arbitration that is ruled by legal regulations. Based on that it is clear that as soon as the arbitral award is determined it is no longer possible (except legal exceptions) to apply to court the same claim again. It can be recommended to revise ADR Rules in the way so it actually correspond to the real term of ADR in the manner that is used in ICANN definition and so it is not mistaken with arbitration that has significantly different impacts on rights and obligations of the parties. This all applies all the more now when the Arbitration Court attached to the Economic Chamber of the Czech Republic and the Agriculture Chamber of the Czech Republic has become an accredited ADR provider for gTLD, i.e. it has all necessary technical and administrative facilities to ensure such method of dispute resolution also for ccTLD domains.

### 3.2. Rules for online Arbitration Court attached to the Czech EC and AC

In case that the dispute is at the Arbitration Court attached to the Economic Chamber and the Agriculture Chamber of the Czech Republic it follows the ADR Rules and in accordance with online rules. Online arbitration is still relatively new form of arbitration that uses electronic means through Internet, however it is gradually introduced into arbitration courts all over the world.

Arbitration in the Czech Republic is regulated under Act No. 216/1994 Coll., on Arbitration Proceedings and Enforcement of Arbitral Awards. This law may also rule all disputes over property therefore also domain name disputes.

Provisions §13, art.2 of Act No.216/1994 Coll. on Arbitration Proceedings gives right to arbitral courts to issue statutes and regulations, which must be published in Commercial Bulletin. Statutes and regulations specify the method of appointment of arbitrators, their amount and other issues including the type of proceeding and decision-making. Under this provision the Arbitration Court attached to the Economic Chamber and the Agriculture Chamber of the Czech Republic publishes The Rules of the Arbitration Court governing Domestic Disputes and The Rules of the Arbitration Court

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For example American Arbitration Association Online Arbitration Supplementary procedures, available at [http://www.adr.org/sp.asp?id=22003#10](http://www.adr.org/sp.asp?id=22003#10) [cit. 15.2.2014], the Association of British Travel Agents (ABTA), BBBOnline, the Chartered Institute of Arbitrators, the Association of British Travel Agencies (ABTA), the CiberTribunal Peruano, the Commercial Initiative for Dispute Resolution, Cyberarbitration, Cybercourt, eResolution, the Honk Kong International Arbitration Center, IntelliCOURT, iCourthouse, Internet Ombudsman, MARS, NovaForum, ODR.NL, Online Resolution, the Resolution Forum, SettleTheCase, SmartSettle, SquareTrade, Trusted Shops, the Virtual Magistrate, Web Assured, Web Dispute Resolutions, WEBSITE.com, WebMediate et seq.
governing International Disputes. For the purposes of domain name dispute resolution ccTLD the most important legal publication is The Rules of the Arbitration Court governing Domestic Disputes that was in 2004 complemented on Additional procedures for on-line arbitration (hereinafter referred to as Rules of On-line Arbitration).

Domestic dispute in the sense of these Rules means any dispute in which all parties (participants) have their seats (domicile) within the territory of the Czech Republic, or any dispute in which organizational parts (branches) of foreign persons according to Section 21 of the Commercial Code and/or organizational parts (branches) exercising activities in accordance with a specific Act (e.g. Act No 21/1992, Coll., on Banks) have their seats (domicile) within the territory of the Czech Republic and are entered in the Commercial Register. Further conditions for arbitrating the dispute as domestic are application of Czech law on the dispute, written statements and pleadings of the parties in the Czech (Slovak) language, the venue of the proceedings in the territory of the Czech Republic, and the decision issued in the Czech (Slovak) language.

The specifics of this type of arbitral proceeding is that it may be conducted and dispute to be resolved via the Internet, where the parties have agreed to arbitration under these on-line rules. All the parties are provided submissions to be made online, the arbitral proceedings to be conducted on-line and the arbitral award to be rendered on-line, via the Internet.

It is typical for this type of disputes that meaning of some of the legal terms are shifted in comparison to the classic form of arbitral proceeding.

Administrative Site refers to the address of the Arbitration Court applied in the on-line arbitral proceedings on the Internet site www.arbcourtonline.cz. Unlike a classic proceeding in the case of on-line arbitral proceeding it is not possible to change the Administrative Site. It is due to the technical requirements for security measures and administering the domain.

Another difference is that the dispute is always resolved by one arbitrator only. In the classic form of proceeding the only time the dispute is resolved by one arbitrator is when the parties specifically wish to do so, otherwise it is always the Panel of three arbitrators.

The Rules of on-line arbitration limits the participants of the proceeding as well as at the Arbitration Court attached to the Economic Chamber and the Agriculture Chamber of the Czech Republic in a sense that it allows Internet as the only mean of communication. To file all of the parties´ submissions, as well as all of the arbitrator’s decisions and to maintain all documents related to the dispute must be done in an electronic form. On the other hand submissions to a regular court may also be done electronically however the obligation to provide some documents in hard copies and other requirements make it almost impossible to conduct the entire arbitral proceeding on-line.

The arbitrator may allow other means, provided that it is technically impossible. The Arbitration Court may decide, that the arbitral proceedings shall not be conducted under the on-line Rules where a party obviously lacks the capacity to participate in the arbitration in accordance with the on-line Rules (especially concerning the technical terms and conditions), or where the Arbitration Court otherwise finds, in its discretion, that an arbitration should not be conducted under the on-line Rules.

In addition to the regular terms the Statement of Claim in case of online disputes shall further contain the reference to the parties’ arbitration agreement on dispute resolution by electronic means, the indication of evidence, the e-mail address of the Claimant, for the purpose of the communication with the Arbitration Court and the last
known valid e-mail address of the Defendant; and postal addresses, and telephone and facsimile numbers of the parties (the Claimant and the Defendant).

Here it should be noticed that it is particularly interesting to require all the indication of evidence that must be sent with the Statement of Claim. Given the nature of on-line arbitral proceeding the evidence may only be in paper and in text form and scanned. It raises a question about credibility and authenticity of such evidence. If there are any doubts about the authenticity of the evidence it may be solved in two manners. The first option is to depositing the documents to the arbitral court and let the counter party to consult them or ordering a personal hearing. However it would mean not applying the on-line Rules (Bělohlávek 2014, 366). As an evidence in the proceedings on domain names could be used Registration Rules, a copy of the registry of domain names, copies of web pages available under the domain name (often such copies is a part of notarial certification of authenticity – the content of the web pages). If the evidence are any legal regulations, this may also be submitted: extracts from the list of trademarks, extracts from Commercial Codes, copies of newspaper articles, contracts, etc.

Once, the ruling of the on-line Rules shall not be issued, the Arbitration Court shall, within five business days, establish a Case Site upon which the Statement of Claim shall immediately be made available to the parties. At the same time, the Arbitration Court shall notify the parties by e-mail of the Internet address for the Case Site, as well as the access parameters (login and password) of the Case Site. The availability of the Case Site only through using login and password issues more security. Case site refers to a unique Internet address (site) exclusively established at the Administrative Site to conduct a particular dispute, to file all of the parties´ submissions, as well as all of the arbitrator´s decisions and to maintain all documents in an electronic form related to the dispute. No one other than the parties and the Arbitration Court shall have access to the Case Site. Within ten days following the notification of the establishment of the Case Site, the Defendant shall be free to submit a Statement of Defence. The Arbitration Court shall render the arbitral award by submitting it to the Case Site. The arbitral award shall be deemed to have been made when submitted to the Case Site. That date shall be stated in the arbitral award as well as in the confirmatory e-mail sent to the parties notifying them that the arbitral award has been submitted. The Case Site shall remain available to the parties for thirty days from the date upon which the arbitral award was submitted. After the expiry of that time period the Case Site shall be made unavailable.

Upon application of a party the Arbitration Court shall render the arbitral award in writing as well. The signature of the Secretary on the arbitral award in writing shall verify its authenticity as well as the signature of the arbitrator. It must be done in accordance with Act No. 227/2000 Coll. Act of 29 June 2000 on electronic signatures and on the amendment to certain other acts (Electronic Signatures Act) as subsequently amended. And as it said advanced electronic signature shall mean an electronic signature, which meets the following requirements:
1. it is uniquely linked to the signatory;
2. it is capable of identifying the signatory in relation to a data message;
3. it has been created and attached to a data message using means that the signatory can maintain under his sole control;
4. it is linked to the data message to which it relates in such a manner that any

subsequent change of the data is detectable.

The arbitrator must have so called qualified certificate, which is issued for the period of 12 months by accredited provider of certification services. A secure signature verification device must, by appropriate technical and software means and procedures, ensure at least that the data used for verifying the signature correspond to the data displayed to the verifier and that the signature is reliably verified and the result of that verification is correctly displayed. The use of an advanced electronic signature or electronic mark shall guarantee that in the event of interference with the contents of a data message after it was signed or marked such interference will be identifiable.

4. Legal base of ADR over domain names .eu

4.1. Normative regulations in Articles 21 and 22 of EC Regulation No 874/2004

In addition to Registration Rules in the EC Regulation No. 874/2004 there is also covered the problematic of dispute resolution in the case of speculative and abusive registrations of domain names. Articles 21 to 23 regulate the legal base for dispute resolutions using an appropriate extra-judicial or judicial procedure. The sequence of the procedures – extra judicial (amicable) first and then judicial procedure suggests where the preference lies, although it is not explicitly said in the regulation. Mandatory agreement with ADR in the Registration Agreement also confirms this assumption. However it is needed to say that extra-judicial way of dispute settlement does not mean that regular judicial proceeding is not possible. According to art. 21, point a) and b) of EC Regulation No. 874/2004, to consider a registration speculative or abusive, it must fulfil these criteria:
- the domain name is identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or Community law,
- it has been registered by its holder without rights or legitimate interest in the name,
- it has been registered or is being used in bad faith.

Conditions 1 and 2 are cumulative however a registration without a legal base or legitimate interest or registration or usage in bad faith – these are covered by alternative conditions. Among other things it is one of the specifics of rules of dispute resolution over domain names .eu by gTLD, which are in accordance with UDRP where all the conditions are cumulative. Therefore in the proceeding it is needed to prove how it was registered without rights or legitimate interest or used in bad faith.

The Regulation also elaborates on how a legitimate interest (art. 21, part 2) or lack of good faith (art. 21, part 3) might be demonstrated. In comparison with UDRP it is clear that in case of art. 21, part 2 of the EC Regulation No. 874/2004 the creators literally used the text of §4, part c) of UDRP. Also in the matter of demonstrating the evidence for registrations and usage in bad faith, the rules are based on the UDRP, specifically §4, part b) which are fatherly expanded. In part 2 of EC Regulation No. 874/2004 this problematic is more specifically described in comparison to UDRP. Also the specification of intentions of the domain holder to block any potential third party who might have corresponding rights to this registration. Concretely it is done by setting time limits for inactivity of the domain in a relevant way (2 years, 6 months), after which it is assumed that this registration was made in bad faith.

EC Regulation No. 874/2004 also includes basic provisions on ADR. In art. 22
there is a basic description of procedural rules. The next sub-chapter further looks into the rules.

**4.2. Rules for dispute resolutions over .eu domains**

Specific methods of ADR are ruled by art. 22 of EC Regulation No. 874/2004 and it is governed by Rules of dispute resolutions over .eu domains (ADR Rules) and Supplemental Rules ADR. Both of these were issued for the purposes of dispute resolutions over .eu domains by Arbitration Court attached to Economic and Agriculture Chambers in the Czech Republic who is till nowadays the one and only ADR provider for .eu domain names.

It is necessary to add that some of the legal terms in the regulation of UDRP, for example complaint, complainant, ADR provider, etc. are in this regulation replaced with terms as arbitration proceeding, arbitrator, arbitration award and so on. The author of this text will hold on the already established terminology by Arbitration Court attached to Economic and Agricultural Chamber in the Czech Republic, however at the same time thinks that it would be better to use the terminology that is known from the dispute resolution regulations by gTLD, which are closer to the main principles of ADR and the differences between them and arbitral proceedings, as it was described in the chapter 3. Also it must be pointed out that there are inconsistencies in between of the English and the Czech terminologies used in the regulations and forms by ADR and decisions published on the websites of arbitral tribunals.

Rules of Alternative Dispute Resolution are divided into three parts: A, B and C. The first part is called « Introductory Provisions » and provides the definitions of basic terms, provisions on the method of communication and periods of time and also provision on languages used, amicable agreements and other possible terminations of the proceeding and the relation to the court and fees.

In the second, B, part there is the description of the whole ADR procedure starting with the claim, continuing with the demonstration of the evidence, appointing the Panel and arbitrars, setting the deadlines and periods of time to respect and ending with decisions and arbitration awards.

The third and last part contains only final provisions on exclusion of responsibilities of the Arbitration Court attached to Economic and Agricultural Chamber of the Czech Republic and arbitrators, as well as the type of changes of ADR Rules and its validity.

Also the Supplemental ADR Rules are divided into three parts. Part A contains general clauses, part B information on the procedure of proceedings and part C final provisions. In addition to this there are also three annexes with information on fees, list of forms and instruction for communication. Generally speaking the Supplemental Rules of ADR regulate more specific realization of some of the provisions in ADR Rules.

For the purposes of ADR proceeding over domain names the preferable way of communication is electronic communication through Internet. The Arbitration Court attached to Economic and Agricultural Chamber of the Czech Republic has an online platform built specially for these cases, of communication between the parties. None of the parties or anyone action on their behalf may communicate with the Panel. All communication, between the parties of the dispute on one side and the Panel on the other side, must be conducted through the administrator of the dispute who was appointed by the arbitrator; only in a way that is in accordance with the Supplemental Rules of ADR. In this case those are indifferent to the UDRP Rules and the online rules.
The language used in ADR proceeding has to be one of the official languages of the EU. If the parties do not specify otherwise or if it is not otherwise specified in the registration agreement, the language of the ADR proceeding is the language of the registration agreement for the domain name that is the subject of the dispute. If the parties do not come to an agreement the Panel may, under special circumstances, decide that the language of the dispute will be different from the language of the domain that is the subject of the dispute, however only based on a written proposal by the complainant.

The procedure of ADR proceeding does not fall into the obligation for judicial procedures excluded the cases when the Panel finds the dispute that is the subject of the complaint was legally decided on by an appropriate court or an authority for alternative dispute resolutions. In this case the Panel terminates the proceeding. ADR proceedings is considered to be terminated also in the case when the Panel receives a confirmation from both parties that they, with regards to the subject of the dispute, settled for amicable agreement.

4.3. Phase I Complaint

When it comes to the capacity to bring a claim, the ADR Rules do not set any special conditions for the complainant. The initiation of ADR proceeding may be done by any person (legal or natural) by sending an official complaint to the ADR provider that was chosen from the Registry of providers. As it was mentioned many times above, there is only one ADR provider for .eu domain names and it is the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic.

The complaint may be targeted either against the holder of the domain name or the Registry. The Rules also mention that if the domain name is not registered and activated a party may initiate ADR proceeding only against the Registry.

Complaint may be submitted either electronically or in writing and must fulfil certain criteria that are in provision B1 (b) of rules of ADR. Apart of providing the information about complainant, defendant, domain name and registrar and it is particularly important that the complaint also includes the clear manifestation of will, so it is in accordance with ADR rules, which also ensures the agreement of both parties with this type of dispute resolution. In the complaint the complainant may also specify a preferred method for communication with the defendant party in the ADR proceeding and also designate whether the complainant elects to have the dispute decided by a single-member or a three-member Panel and, in the event the complainant

******** For example an English language might be chosen if both parties demonstrate good level of that language, even though the contract was conducted in Korean. The possibility to change the working language of ADR was inspired by the experience with resolutions over UDRP disputes where it was found that registering persons with bad intentions choose the language about which they know that it causes communication problems and higher administration costs. More information, e.g. WIPO No. D2003-0679 DOREGI.COM.

††††††††† The Complainant is required to prepare a Complaint based on a form that is available as an annex to of Supplemental Rules.

‡‡‡‡‡‡‡‡‡ The obligation of the party is to send the arbitral court a hard copy may also be fulfilled by submitting the documents via Internet platform and signing the documents electronically based on a qualified certificate.

§§§§§§§§§ The consent of the defendant (resp. domain name holder) is acquired already by signing the Registration Agreement, as mentioned above.
Tomáš Gongol  
Comparison of procedural rules in dispute resolution over domain names .gtd, .cz and .eu

elects a three-member Panel, provide the names of three candidates to serve as one of the panellists.

In case the complaint is filed against the decision of the Registry, the Registry decision shall be identified and whether or not the disputed decision deals with the registration of a domain name within the Sunrise Period.

In addition to this the complaint shall also specify the names in respect of which a right is recognized or established by the national law of a Member State and/or Community law. For each such name, describe exactly the type of right claimed, specify the law as well as the conditions under which the right is recognized and/or established.

In case of an ADR proceeding against the domain name holder in respect of which domain name the complaint is initiated, it must be described the grounds on which is made, i.e. why the domain name is identical or confusingly similar to the name or names in respect of which a right or rights are recognized or established, why the domain name has been registered by its holder without rights or legitimate interest in respect of the domain name that is the subject of the complaint and why the domain name should be considered as having been registered or being used in bad faith.

In case of an ADR proceeding against the Registry, the reasons why a decision taken by the Registry conflicts with European Union Regulations must be described as well.

Of course it is also necessary to prayer for relief, i.e. what are the complainant demand. The complainant demands in ADR proceedings where the defendant’s party is the domain name holder, are limited only to either cancelling the domain name or its transfer to the other party. In case the complainant party demands the transfer, it must be demonstrated that the complainant party fulfils the fundamental criteria for it, according to art. 4(2)(b) of EC Regulation 733/2002. The main demand in the cases where the defendant party is the Registry is the cancellation of the disputable decision by the Registry. When appropriate, the Panel may also decide to transfer, cancel or assign to a relevant domain name.

One part of the Complaint is also the obligation of the complainant to note that in case of the complaint demands cancelling the decision or transfer to another person that was issued in ADR proceeding, it must be ruled by the jurisdiction of courts within at least one so-called mutual jurisdiction.

The Complaint must be submitted including all annexes or other documents proving the rights on which the complaint is based on. In addition to this there must also be a list of all annexes and demonstrative documents attached to the Complaint.

The Arbitral Court must confirm the complainant the receiving the Complaint after all the fees were paid. The appropriate fees are specified in the WIPO Center’s Schedule of Fees. Also, the arbitrators must notify the Registry about the identification of the complainant and the domain name within 5 days of the filing of the Complaint. As soon as the Registry is informed, the domain name will be blocked in accordance with the Registration Rules of the .eu domain name (see more information on this subject above).

Next steps of the procedure differ according to whether the Complaint meets all the prescribed criteria or not. The Panel shall review the Complaint for administrative

********** Mutual jurisdiction means territorial jurisdiction according to the main settlement of the business of the registrar or the address of the defendant as it is in the Whois database. In case of a Complaint against the Registry the territorial jurisdiction is based on the main settlement of the Registry.

†††††††††† Unless fee is not paid within 10 days from the notification by arbitral court, it is considered that the Complaint is withdrawn.
compliance with the rules and regulations and, if in compliance, shall forward the Complaint to the respondent – together with the explanatory cover sheet – within five working days following receipt of the fees to be paid by the Complainant.

If the Panel finds the Complaint not to be in administrative compliance, it shall promptly notify the complainant of the nature of the deficiencies identified. If the deficiencies are capable of being corrected, the complainant shall have seven days within which to correct any such deficiencies and submit an amended Complaint, after which, if not corrected, the provider shall inform the complainant that the ADR proceeding is deemed to be withdrawn due to administrative deficiency and without prejudice to submission of a different Complaint by the complainant.

Any ADR proceeding against the domain name holder that was initiated later but is concerned the same domain name shall be suspended until the decision of the ADR proceeding that was initiated earlier, is decided.

4.4. Phase II. The Response

The respondent shall submit a response to the provider within thirty working days of the date of delivery of the Complaint.

Also the response shall be delivered either in writing or electronically and it has its criteria. The response shall attach any document or other evidence, including any evidence concerning the rights upon which the respondent relies, together with a schedule indexing such evidence (in the appropriate language – the official language of the proceeding). It may be also specified whether the complainant or respondent prefer to elect a three-member Panel and if so, provide the names and contact details of three candidates to serve as one of the Panellists.

The provider shall confirm receipt of the response to the respondent. If the provider finds the response not to be in administrative compliance with the procedural rules, it shall promptly notify the respondent of the nature of the deficiencies identified. If the deficiencies are capable of being remedied, the respondent shall have seven days within which to correct any such deficiencies and submit an amended responses, after which the response shall be deemed not submitted by the respondent. The provided shall suspend the ADR proceeding until either of the two actions happens. Failure to submit such amended response may also be considered by the Panel as a reason to agree with the claim of the claimant.

Finally the court shall forward the administratively compliant response to the complainant without delay.

4.5. Phase III. Decision

Either one-member or three-member Panel issues the decision on the claim. Both parties may decide on which option – one-member or three-member Panel – is chosen. If either the complainant or respondent elects a three-member Panel, the proceeding will be held by one arbitrator who will be assigned by the arbitral court from the list of arbitrators.

In the event that either the complainant or the respondent elects a three-member Panel, the provider shall appoint one panellist from the list of candidates submitted by the complainant, one panellist from the list of candidates submitted by the respondent and one panellist from its list of panelists.
Once the entire Panel is appointed, the provider shall notify the parties of the identity of the panelists appointed and the date by which, absent exceptional circumstances, the Panel shall forward its decision on the complaint to the provider. Here it may be highlighted the difference in comparison to ADR Rules and UDRP Rules regarding the beginning of the period of time needed for submitting the response. According to art. 15, b) of the UDRP Rules the period of time starts by the day when the Panel was appointed. On the contrary in ADR Rules, art. 22, paragraph 1, EC Regulation 874/2004 says that the response must be submit within one month of receipt of the defendant’s evidence. Considering potential problems in searching for suitable independent candidates, especially when it comes to three-member panel, the most preferable option is not to use the moment of initiation of the period of time that is the moment of appointing the candidates, not the receipt the evidence from the defendant.

A Panelist shall be impartial and independent and shall have, before accepting appointment, disclosed to the Provider any circumstances giving rise to justifiable doubt as to the Panelist’s impartiality or independence. If, at any stage during the ADR Proceeding, new circumstances arise that could give rise to justifiable doubt as to the impartiality or independence of a Panelist, that Panelist shall promptly disclose such circumstances to the Provider. In such event, the Provider shall have the sole discretion to appoint a substitute Panelist. Apart from the above, the Parties can also challenge the appointment of a Panelist. The Party that challenges a Panelist should explain to the Provider his reasons for the challenge.

The Provider shall forward the file to the Panel as soon as the Panelist is appointed in the case of a Panel consisting of a single member, or as soon as the last Panelist is appointed in the case of a three-member Panel.

The Panel shall conduct the ADR Proceeding in such manner, as it considers appropriate in accordance with the Procedural Rules. The Panel is not obliged, but is permitted in its sole discretion, to conduct its own investigations on the circumstances of the case. The same principle also works in cases of ADR proceedings when the Panel shall determine in its sole discretion the admissibility, relevance, materiality and weight of the evidence. In addition to the Complaint and the Response, the Panel may request or admit, in its sole discretion, further statements or documents from either of the Parties. The Panel shall conduct the ADR Proceeding in such manner, as it considers appropriate in accordance with the Procedural Rules.

There shall be no in-person hearings (including hearings by teleconference, videoconference, and web conference). The decision will be handled based on documents or other types of written evidence unless the Panel determines, in its sole discretion and as a matter of exceptional circumstances, that such a hearing is necessary for rendering a decision on the Complaint.

The Panelists shall have no personal or economic interests in the results of the dispute, and they undertake to resolve the dispute under the principles of good faith, fairness and due diligence. They are bound by national law (esp. in questions of assessing the rights upon which the claim relies) and/or Community law (compliance with mentioned regulations).

In the event that a Party does not comply with any of the time periods established by these ADR Rules or the Panel, the Panel shall proceed to a decision on the Complaint and may consider this failure to comply as grounds to accept the claims of the other Party.

Unless provided differently in these ADR Rules, if a Party does not comply with any provision of, or requirement under, these ADR Rules, the Supplemental ADR Rules
or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

The Panel’s decision shall be in writing, provide the reasons on which it is based, indicate the date on which it was rendered and identify the name(s) of the Panelist(s). If the Panel decides that the disputed domain name be revoked or transferred to the Complainant, it shall state that the decision shall be implemented by the Registry within thirty (30) days after the notification of the decision to the Parties, unless the Respondent initiates court proceedings in a Mutual Jurisdiction.‡‡‡‡‡‡‡‡‡‡ The decisions of the Panelists will be final, not subject to appeal.

Within three working days after receiving the final decision from the Panel, the Provider shall communicate the full text of the decision to each Party, the concerned Registrar(s) and to the Registry. The Provider shall publish the full decision on a publicly accessible web site.

The implementation of the decision shall follow the Terms and Conditions of the registration of .eu domain name issued by the Registry. The Registry executes the decision if no legal action will be initiated.

5. Conclusion

In the context of the information described above it could be stated that the biggest influence on the ADR Rules making had UDRP Rules, which is obvious by skimming the text of both procedural rules. They are very similar to each other in both the structure and the content. The differences might be seen rarely, e.g. different period of time for submission of documents by the defendant (30 days in ADR Rules and 20 days in UDRP Rules).

What is also described above is the legal procedure for dispute resolutions over .cz domain names that are led by the Rules for online arbitration. Issuing ADR Rules as well as Rules for online arbitration is in the jurisdiction of the Arbitration Court attached to the Economic Chamber of the Czech Republic and the Agriculture Chamber of the Czech Republic. Rules for online arbitration (2004) was issued one year before the ADR Rules (2005). Considering the fact that ADR proceedings over .eu domain names as well as arbitral proceedings over .cz domain names are dealt with by the same arbitral court, it can be expected that even there might be some similarities.

ADR Rules for ccTLD .eu are the ones issued the last if compared to UDRP Rules for gTLD and Online Rules for ccTLD. Based on the previous analysis of procedures in ADR proceedings according to the ADR Rules used in dispute resolutions over .eu domains it can be said that they are strongly influenced by both the UDRP Rules and the Rules for online arbitration.

When it comes to the method of communication the UDRP Rules as well as ADR Rules contain the obligation to submit the Complaint both in writing and electronically. Another method of communication is up to the parties to decide. Rules for online arbitration only set the communication method using Internet.

‡‡‡‡‡‡‡‡‡‡ Mutual jurisdiction means territorial jurisdiction according to the main settlement of the Registry considering that the court is within the European Union or the address of the defendant noted at the registration of the domain name at the time of filing the Complaint. In case ADR agains the Registry: the place of business is within the EU – Belgium.

Difference may be seen in the period of time for response to the Complaint. While according to ADR Rules it is 30 days, the UDRP Rules set 20 days and the online rules only 10 days.

The period of time needed to decide on the dispute according to UDRP Rules and ADR Rules is the same, one-month, but its initiation differs. Whereas the UDRP Rules set the day of initiation the day when the Panel was appointed, the ADR Rules say that the decision must be provided within one month after the receipt of the response of the defendant. Considering potential problems in searching for suitable independent candidates, especially when it comes to three-member panel, the most preferable option is not to use the moment of initiation of the period of time that is the moment of appointing the candidates, not the receipt the evidence from the defendant.

Both the ADR Rules and UDRP Rules set the obligation of the ADR providers to publish all decisions on their websites. Such obligation cannot be done by the Online Rules since their arbitral proceedings are principally private.

The character of the decision according to ADR Rules, UDRP Rules and Online Rules is given by the character of the method of dispute resolution. While a proceeding according to ADR Rules or UDRP Rules is fundamentally ADR type, therefore it does not exclude a potential court arbitration in the future on the same case. Proceedings according to the Online Rules are by its character an arbitral type, which does exclude an arbitral proceeding on the same case in future.

Generally speaking the ADR Rules are the closest ones to UDRP Rules; they clearly are made from the same base, even some of formulations are reproduced literally (e.g. on the method of notifying the defendant about the Complaint).

References

4. ICANN (2010) Uniform Domain-Name Dispute-Resolution Policy
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10. WIPO No. D2000-0263 TRIDENTHOTELS.COM
11. WIPO No. D2000-0596 STING.COM
12. WIPO No. D2004-0755 MAGNARX.COM.
13. WIPO No. D2003-0679 DOREGI.COM
Apstrakt

Rad se fokusira na vansudsku politiku za rešavanje sporova, a naročito obuhvata tзв. ARS (alternativno rešavanje sporova) koje se koristi u slučajevima imena domena. Cilj je da se uporede proceduralna pravila koja se koriste za rešavanje sporova preko imena domena u nekoliko nivoa – generički domeni vrhunskog nivoa (globalni domeni kao .com, .net, .org itd.), regionalni domeni vrhunskog nivoa (evropski domen .eu) i domeni vrhunskog nivoa zemalja (češki nacionalni domen .cz). Za svaki nivo postoji ne samo materijalno pravo već i obimna proceduralna pravila koja se razlikuju ne samo u detaljima već i u prirodi končne odluke.

Ključne reči: ADR, alternativno rešavanje sporova, cibersquatting, ime domena, UDRP