



Referral – ATF to WIPO

Introduction

The Internet Foundation in Sweden, IIS, is an independent public-service organization that acts to promote the positive development of the Internet in Sweden. We are responsible for the internet's Swedish top-level domain, .se, encompassing domain-name registration, and the administration and technical operation of the national domain name registry. Since September 2013, IIS has also managed the operation and administration of the .nu top-level domain.

This document comprises referral data aimed at gathering opinions regarding transfer of the administration of the movement of the alternative dispute resolution process (ADR) to the World Intellectual Property Organization (WIPO) in Switzerland.

Background

Alternative dispute resolution

A first come, first served basis is applied to the allocation of .se domain names. This means that the applicant for an available domain name is allocated the name with no testing applied. Any appeal against the allocation of a .se domain name is made after the fact through the alternative dispute resolution process (ADR). IIS offers ADR as an alternative to judicial proceedings. ADR is a legally secure, faster and cheaper alternative to a court action and can be used by all parties who believe that a name that they have rights to, for example, a brand or company name, has been registered as a .se domain name by another party.

IIS administers ADR cases, but the cases are determined by an arbitrator appointed by IIS. The lawyers are independent of IIS and determine cases independently based on the applicable rules and established practice. The process is exclusively in writing and the general rule is that the parties only submit one document each. On approval, the decision is implemented by IIS after 14 days. During this period, the domain owner has the possibility of referring the dispute to a court of law to have the dispute tried there. If such an action is commenced, then IIS stops the implementation of the ADR decision. The cost of the ADR is paid by the applicant, and half of the fee paid by the applicant for an ADR process is repaid if the applicant wins.

More information about ADRs is available here: https://www.iis.se/english/dispute_resolution/for-se/

Existing legal requirements

Under the National Top-Level Domains for Sweden on the Internet Act (the "Top-Level Domains Act") Section 7, second paragraph, the domain administrator is to provide an efficient procedure for resolving disputes regarding the allocation of domain names.

The legislative history states, inter alia, that the government is of the opinion that it is urgent that regulation of country code top-level domains for Sweden does not become more extensive than absolutely necessary. Therefore, the law should only prescribe that the domain administrator should provide an efficient procedure for dispute resolution. The rules for this procedure are left to the domain administrator to design. This allows flexibility and the procedure can be adjusted according to needs from one time to another.

The Swedish Post and Telecom Agency is the supervisory authority.

WIPO (World Intellectual Property Organization)

The WIPO Arbitration and Mediation Center offers a process for solving domain name disputes. This service includes WIPO's Uniform Domain Name Dispute Resolution Policy (UDRP), under which WIPO has administered more than 30,000 cases. IIS currently uses WIPO and its UDRP rules for dispute resolution for the .nu top-level domain.

WIPO can also administer domain name disputes based on the top-level domain administrator's own rules and policies, and using arbitrators appointed by the top-level domain administrator. WIPO currently administers top-level domains including .ch (Switzerland) and .nl (the Netherlands) applying their own rules and using their own arbitrators.

IIS has had two initial meetings with WIPO regarding handling the administration of ADRs for the .se top-level domain. WIPO has been positive toward administering dispute resolution for .se and envisages no obstacles to handling cases with the application of IIS's rules and established practices, and using arbitrators appointed by IIS. Nor does WIPO envisage any obstacles to administering ADR accelerated proceedings.

Transfer of the administration to WIPO would mean that WIPO manages all of the administration of cases, all contact with parties and contact with the arbitrators. However, the process will continue under IIS's rules (Terms and Conditions of Registration and the Instructions Governing Alternative Dispute Resolution) as well as established practice. Following any transfer, the administration will continue to be handled in both Swedish and English.

The parts that will remain with IIS will comprise the information on our website, some level of customer contact with regard to general questions about the procedure and annual meetings with the arbitrators.

The aim of investigating this issue is to free up internal resources without impacting the quality and availability of ADR administration. A prerequisite for moving the administration is that the parties' costs do not increase.

As yet, IIS and WIPO have not discussed details regarding the process nor any needs to adjust the rules or other issues, and this will be carried out after IIS has received any opinions from the parties concerned.

Aim of the referral

As part of preparing the case, the proposal was discussed with the IIS Policy Advisory Group, IIS Board of Directors and the Swedish Post and Telecom Agency.

The proposal is being communicated at this stage for transparency purposes and to create scope for discussions about the proposal as well as to provide opportunity to influence the decision, and also ask questions if anything is unclear.

With this referral, IIS aims to give as many people as possible the opportunity to get in touch, and the referral data is being distributed widely by e-mail. The information is aimed at promoting as wide a participation as possible.

Questions

IIS would like to receive your opinions, questions or comments on the proposal and, therefore is not setting any specific questions to respond to.

Comments should be sent to remissvar@iis.se by July 19, 2016.