

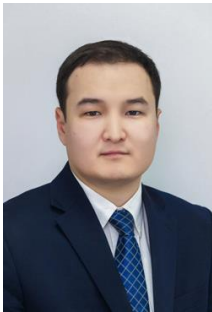
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Domain names regulations in Kazakhstan



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The purpose of this article is to address the issues arising between domain names and trademarks, trade names, appellations of origin, and copyrights. While most objects of intellectual property have been around for a rather long time, domain names are a comparatively recent phenomenon attracting public attention only since the rise of popularity of the Internet.

What is a domain name?

Recent definitions of Kazakhstani legislation provide us with a rather complicated information on what domain name is. For example, domain name is defined as "symbolic (alphabetical-numeric) identification formed in accordance with the addressing rules of Internet, intended for nominal reversion to the subject of the network, and corresponding to certain network address."

Notwithstanding the official definition of domain names they are basically the online equivalent of a telephone number, that initially have unique series of numbers called internet protocol (IP) address (e.g. 178.236.176.176). The main purpose of IP-addresses is to identify the path to the web-site or email address. However, as long IP-addresses are easy to forget the system of domain names was developed. Typing in the name required in the address line, for instance?, www.bmflegal.com allows your computer to connect with a relevant server that compares the typed in domain name with a list of registered domain names and then returns the IP-address corresponding to that name. Further the computer automatically follows after the received IP-address and connects with required web-site. Today such complicated process might take only few

seconds.

Domain names have their own system of "levels". For instance, "bmflegal.com" is the domain name of BMF Group LLP. The portion of the address taken by "bmflegal" is called second level domain. Mostly the problems arise with second level domain names as they might constitute someone's registered trademarks, limiting therefore the exclusive rights of a trademark owner to use his intellectual property object in the Internet.

The next part - .com - is the generic Top Level Domain (TLD) or first level domain. Other examples of TLDs are: .net, .org, .biz, .gov, .edu and etc. The TLDs identify the area of activity. For example, .com is used to identify commercial organization, while .org identifies a non-commercial organization.

The TLD can be supplemented with or replaced by another one, which is called Country Code Top Level Domain (ccTLD) or root domain name. The ccTLD identifies the country of origin of the domain name owner, and is situated on the right of TLD or replaces it. Kazakhstani domain names owners are offered to have .KZ or as a ccTLD.

Registration of domain names in Kazakhstan

Kazakhstani Network Information Center (KazNIC) is a Manager for supporting .kz domain names. KazNIC was nominated for its role by the Internet Assigned Numbers Authority (IANA), which is responsible for the global coordination of the Internet protocol resources. The main task of KazNIC is to administer its accredited domain name Registrars in Kazakhstan.

In order to register a .kz domain name in Kazakhstan it is enough to comply with the common procedure of personal filing an application with such an accredited Registrar. The application shall include the name of domain it is applied for, the name of organization or person that will use the domain, the information about administrative contact that will be linking the Registrar and domain name holder, the IP-addresses for domain name and the Domain Name System (DNS) servers linked to the IP-addresses. DNS-servers is a type of computer server that links the IP-address with corresponding domain name.

Contrary to the rest of the world's practice Kazakhstani legislation recently implemented its own trend of handling DNS-servers. Particularly, on 7 September 2010 the Rules of registration, use and distribution of domain space of Kazakhstani segment of Internet ("New Rules") were approved. According to the New Rules the DNS-servers for .kz domain names shall be

physically located in the territory of Kazakhstan, while most of .kz domain name holders, especially those located outside of Kazakhstan, have either their own servers or use the rented servers located outside of Kazakhstan. The non-compliance with the New Rules results in refusal in registration/re-registration of .kz domain names, suspension of domain name registration, or refusal in prolongation of registration. From commercial perspective such non-compliance might result in inability to connect the web-site or to corporate e-mail under certain .kz domain names.

The reason for implementing the New Rules was probably an attempt of local authorities to develop the services of Kazakhstani hosting providers; however such implementation also provoked certain negative reaction. In particular, after the prolongation of google.kz was rejected due to absence of DNS-servers physically located in Kazakhstan, Google Inc. on 8 June 2011 decided to redirect all visitors of google.kz to google.com?. This action meant that Kazakhstani users search requests were no longer processed with a glance to local specificity. At the same time routing the search queries through Kazakhstani servers meant for Google Inc. non-usage its data centers across the world and implementation of borders within the Internet, which is against company's policy.

On 14 June 2011 Google Inc. resumed its work under google.kz, after the Kazakhstani authorities published an explanatory note that the New Rules would be only enforceable for those domains that were registered after the New Rules came into force. Thus, the domains registered before 7 September 2010 may remain linked with the DNS-servers located outside of Kazakhstan.

Though the situation became rather stable, an explanatory note cannot be observed as a legal instrument purely legal interpretation of the New Rules remain unchanged and requirement to bring the domain name to Kazakhstani servers was not cancelled.

Nevertheless, while the situation with previously registered domain names remains uncertain, the newly registered as well as re-registered domain names shall be linked to domestic DNS-servers, which are, in most cases, not available for non-Kazakhstani entities. For resolving this situation today certain Kazakhstani law firms together with domestic hosting providers offer the Kazakhstani DNS-servers for running the .kz domain names effectively.

Dispute resolution

KazNIC is responsible for .kz domain names registrations in Kazakhstan.

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However, the domain names are registered by KazNIC, and its accredited registrars, on a "first come, first served" basis. Due to KazNIC does not determine the validity of domain name registration, or otherwise evaluate whether such registration infringes third party's rights, there might often happen that there is a conflict between two registrations for a domain name and for a trademark.

For such matter as disputes between domains and trademarks KazNIC provides its own Dispute Resolution Policy. The basic idea of the Policy is to promote the amicable settlement between the disputing parties.

Particularly, the Policy says that complainant (third party, whose trademark rights were infringed), before filing its complaint to KazNIC, shall connect with the domain name holder for a settlement. If within 30 days the domain name holder does not react and parties fail to resolve the dispute amicably, the complainant is entitled to file its claim directly with KazNIC. However, even in such case KazNIC would not provide a legal resolution of the matter but would send a request to domain name holder requesting whether or not he has a trademark, which can be possibly registered for other class of goods and services, and thus existing in parallel with the trademark of a third party.

Should the domain name holder fail to prove his connection with the trademark KazNIC puts the domain name on "HOLD", which blocks the domain from any use by any party and prohibits its deletion until the dispute is settled. Should any such trademark exist at domain name holder, and the date of its registration goes before the date of notice submitted to the third party on violation of its right over the trademark, KazNIC assists the registrant in registration of a new domain name, and within 90 days will enable him to switch subsequently to a new domain name.

Therefore, KazNIC provides following three options of dispute resolution: 1) amicable resolution, 2) placing the domain name on "HOLD" and waiting for settlement, and 3) assisting the domain name holder with registration of a new domain name.

A reasonable set of questions arises: "What happens if the parties did not resolve their dispute amicably, if the domain name holder does not want to register new domain instead of previous one, and what kind of settlement can be provided after domain was put on "HOLD"?"

According to the Policy KazNIC does not act as an arbiter and would not resolve the issue of validity or invalidity of someone's property either domain name or trademark. The New Rules provide that all disputes shall

be settled by courts of Kazakhstan. The legislation of Kazakhstan on trademarks (the Trademark Law) and on domain names (the New Rules) would be used accordingly. However, in practice the various conflicts appear (mainly connected with the lack of legislation and cases), which results in long-lasting court proceedings and inability of trademark owner and domain name holder to effectively use the disputed domain name for a rather long time.

The general advice of avoiding, or at least attempting to avoid, rise of such disputes and obtaining an effective protection of rights is to register the relevant trademark together with domain name for domain name holders wishing to protect their domains, and, vice-versa, to register the relevant domains together with trademark registration for trademark owners wishing to effectively protect their trademarks.

[Zhanat Nurmagambetov - www.country-index.com](http://www.country-index.com), October, 2011