



WHAT TO DO WHEN YOUR DOMAIN NAME IS STOLEN?

What are the legal procedures for cancelling the registration of an illegal domain name or transferring it to the actual owner of the right? In other words, what should you do when a “domain hunter” takes the domain name that shall belong to you?

In parallel with the growth of importance and place of internet in our daily lives, web-sites and domain names began to be of vital importance for companies. Even small companies are setting-up websites in order to advertise their products and services. Nowadays, where internet sites are considered to be the most efficient marketing tool, companies are increasing their recognition and customer potential through the use of internet sites, leaving other companies not using the internet within this context far behind in the race.

In accordance with the recent acknowledgement of importance and significance of the internet, new legislations have been passed. For instance, in order to prevent unfair competition between commercial companies, ensure transparency of companies and to create a balance within the commercial world the Bill of Turkish Commercial Code emphasizes the importance of the aforementioned subject-matter.

In line with the Bill of the Turkish Commercial Code which is due to take effect soon, all companies will be obliged to set up their own websites and this regulation seems to be a positive development for the purposes of ensuring transparency and is coherent with technology and the present conditions. However, on the other hand this obligation embodied by the legislator could become the centre of conflicts in-between companies. However, on the other hand, this has the potential to become the focal point of the disputes as, despite majority of companies using web-sites actively nowadays, there are still thousands of corporations that are not aware of the importance of internet and do not even have a registered domain name.

It is an indisputable fact that firms will consider their company names, business names and trademarks and will prefer to register their own names within the internet while registering



their domain names on the websites. Furthermore, this is also an important necessity for the registration of a legal domain name. However, majority of companies will face great astonishment and despair at this point as they will come to realize that the domain names that should belong to them are formerly registered by several other people and that there is no longer the opportunity to register it even though they are the holders of the right.

Moreover, the issues that may arise from illegal registration of domain names are not limited to matters that may arise from legal necessities arising from the new regulations. As a matter of fact, domain names are commonly used unfairly with bad faith by registering names and surnames of well known people within the society or registering domain names of famous brands with various extensions even when companies have previously registered their domain names in accordance with their business titles or trademarks and are using them actively.

What are the legal ways of revoking illegal registration of domain names or transferring it to the main owner of the right?

Likewise with all other inequalities, there is always the option of using general legal procedures and applying to relevant courts in order to find solutions. However, the length of time the trials may take both in our country and abroad and the lack of a respondent due to the case' s international characteristic complicates the process, usually leaving the case unsettled. Moreover, at times when the illegal registrant of the domain name is a foreign resident, it is required for the case to be filed in the country of the party and this will have heavy financial burdens.

Even though the lack of legal resolution methods within judicial authorities regarding the arising disputes in recent years within the internet field may seem like a handicap in respect of internet law, the developing internet arbitration can be considered as an alternative to conflicts of the internet field. 'Domain Name Dispute Resolution' methods developed by ICANN can be regarded as an effective dispute resolution method for the purposes of time and cost especially for generic Top – Level – Domain Names (gTLDs).



By registering generic Top Level domain names through its intermediary authorized institutions, ICANN (Internet Corporation for Assigned Names and Numbers) aims to improve the dispute resolution methods by means of authorising some institutions regarding the efficiency of this process.

The National Arbitration Forum, (NAF), the Czech Arbitration Court and the World Intellectual Property Organization Arbitration and Mediation Centre (WIPO) are some of the aforementioned institutions.

WIPO Arbitration and Mediation Centre was authorised by ICANN on 1st December 1999 regarding the domain name resolution methods. Being an institution comprehending details of trademark law, WIPO has become a popular institution for resolutions of domain name disputes.

In accordance with the exceeding developments of internet in recent years, demands towards WIPO have increased as companies and persons have become more concerned regarding the protection of their domain names. The resolution of the dispute by means of cancelling or transferring the domain name is fulfilled and provided to the actual owner of the right within approximately 60 days as from the date of application by companies/persons regarding the infringement of their rights. Therefore, WIPO's most important characteristic of arbitration can be considered as its rapid completion of the process.

The relevant authorities not being informed or the lack of awareness regarding the former may be an explanation for the number of applications towards WIPO in Turkey. The presently pending cases and the continuation of the newly filed cases within the Turkish Courts regarding the aforementioned is a clear indication of the lack of knowledge regarding WIPO within the legal and business fields as otherwise an institution with such mechanism providing advantages of time and costs would be used.