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HOW TO EFFICIENTLY PROTECT A DOMAIN NAME?

Abstract

Cybercrime rates are increasing in Poland and throughout the world. There are many types of offences concerning internet domains, among others, cybersquatting, typosquatting, cyber smearing, and cyberwildcatting.

The following article is a comparative study of the settlement of disputes concerning internet domain names taking as an example the Domain Name Court of Arbitration at the Polish Chamber of Information Technology and Telecommunications (PIIT) and the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center. Between the two processes of recovery of the domains there are many similarities. During the study legislation was sought in the Polish legal system, which is related to internet domains. In Poland, there is no particular legal regulation regarding internet domain names. One may search for protective measures in the Act on Combating Unfair Competition [o zwalczaniu nieuczciwej konkurencji], Industrial Property Law [Prawo własności przemysłowej], and the Civil Code [Kodeks cywilny]. This article commends the settlement of disputes through arbitration and describes them in detail.

Keywords

cybersquatting – typosquatting – cyber smearing – cyberwildcatting – disputes – internet domains

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1. INTRODUCTION

Today almost every company has a website. “A domain is the basic component of Internet identity. The domain is a part of an Internet address, which directs Internet users to the desired website”¹.

There is no particular legal regulation in Poland concerning domain names. One may search for protective measures in the *Act o zwalczaniu nieuczciwej konkurencji* [on Combating Unfair Competition], *Prawo własności przemysłowej* [Industrial Property Law] Act, and *Kodeks cywilny* [the Civil Code] Act.

Domain names from a formal perspective are not mentioned among intellectual and industrial property rights. However they constitute such rights and should be treated accordingly. They serve as identification, distinguishing goods and services, and they are starting to function as trademarks placed in a new area, i.e. the Internet².

A domain name is a sequence of names in the Domain Name System (DNS) which is used on the Internet. Domains create a hierarchy enabling cataloguing computers to enter into networks according to certain categories, so making Internet addresses orderly and possible to memorise.

It is much easier to remember a name consisting of words rather than a numerical IP address. “Every domain name may contain letters, digits or the ‘-’ character, whereas uppercase and lowercase letters are not distinguished”³. The procedure of registering domain names is neither complicated, nor expensive.

NASK (Research and Academic Computer Network) serves the function of a register of domain names. However, it is more and more frequent that domains are registered through intermediaries, with which the market is filled at the moment.

The registration of a domain entails the ability to use it for a certain period. An entrepreneur registering a domain does not become its owner. The conclusion of the Contract takes place at the moment the registrar

¹ www.domena.pl/pomoc/domeny/co-to-jest-domena [last accessed: 22.10.2016].

² K. Mania, *Rozstrzyganie sporów dotyczących domen internetowych w Polsce i w Nowej Zelandii – zarys ogólny* [Resolution of Disputes Concerning Domain Names in Poland and in New Zealand – General Outline], *Kwartalnik ADR* [ADR Quarterly] 2012, no. 3(19), p. 83.

³ <http://www.myhost.net.pl/drukuj.php?D=teksty/slownik.php> [last accessed: 22.10.2016].

accepts the offer, which is also connected with the generally accepted principle of first come, first served, the application of which results in the domain name subscriber being the one who first starts the procedure of its registration⁴.

Pursuant to p. 5 of NASK's Terms and conditions concerning .pl domain names of 18 December 2006 (wording binding from 1 December 2015): NASK does not analyse whether the Subscriber violates any third-party rights or legal regulations by concluding or performing the Contract. The conclusion of the Contract does not result in the Subscriber being granted any rights connected with the Domain Name, except for those explicitly indicated in the Contract, nor does it result in agreeing that the Offer or the Subscriber performing the Contract does not violate any third-party rights⁵.

NASK may refuse to register a domain, if the technical conditions listed on its website have not been met, or if NASK "is bound by a contract for Maintaining the same Domain Name which was indicated in the Offer, or the process of conclusion of such a contract is under way, unless the Offer was an option in the understanding of separate terms and conditions published on NASK's Website"⁶.

2. ILLEGAL USE OF DOMAIN NAMES

As technology develops, cybercrime rates increase. They have grown as a result of noticing commercial value in domain names. There are various types of domain piracy. It includes such phenomena as, for instance, cybersquatting, which is also referred to as domain name grabbing or domain name piracy. The phenomenon consists in registering domain names of known brands, people, names which are identical with the name of a particular company or person. The registered domains are resold at an inflated price.

⁴ M. Grabiec, *AAA aby kupić domenę, czyli kto pierwszy ten lepszy* [AAA to Buy a Domain or First Come, First Served], Rzeczpospolita 18.04.2014.

⁵ <http://www.dns.pl/regulamin.html> [last accessed: 22.10.2016].

⁶ *Ibidem*.

A controversial case connected with cybersquatting was the action brought by “Microsoft sp. z o.o.” with its registered office in Warsaw and “Microsoft Corp.” with its registered office in Redmond, USA v. Robert Rudnicki conducting economic activity under the name “Microsoft” in Łódź. “The court ruled in favour of Microsoft Corporation with regard to the case of microsoft.pl and microsoft.com.pl domains. The former owner, who sold herbs under the name Microsoft, lost the domain whether he liked it or not”⁷. The former owner of the domain was also punished by imposing damages to be paid by him in the amount of PLN 30,000.

Another example of domain piracy is typosquatting, which is also referred to as URL hijacking. Its literal meaning is “hijacking” domains. This is a technique aiming to deceive Internet users. The person registering domains exploits typographic mistakes which are frequently made while entering Internet addresses in the browser address bar, e.g. by entering www.yahooo.com instead of www.yahoo.com. Such a mistake is referred to as a “fat-fingered error”. “People practicing typosquatting, which is considered unethical, to say the least, hope that many Internet users will make a mistake in case of one letter or more while entering the address of their favourite website”⁸.

Domain names may contain names combined with other words. Such a phenomenon is referred to as cyber smearing. It is often the case that people using a particular trademark want to create a negative association with it. For that purpose, they register domain names containing the particular trademark’s name and a word “which can be considered as offensive or as damaging the trademark’s reputation. An example of such activities is domain names consisting of a trademark and an English word «sucks», e.g. wal-martsucks.com or verizonsucks.com. The word «sucks» tends to be used solely in a negative context and only in colloquial language to identify something of low quality or in a very bad condition”⁹.

⁷ <http://di.com.pl/gmailpl-czy-bedzie-kolejna-wojna-o-polska-domene-15793> [last accessed: 22.10.2016].

⁸ <http://kopalniawiedzy.pl/typosquatting-Google-pozew-zbiorowy-DCMA,5901> [last accessed: 22.10.2016].

⁹ *Guide: Protection of Domain Names*, the project “Łódź knowledge transfer platform” co-financed using European Union (EU) resources under the European Social Fund (ESF), performed by the Entrepreneurship Department of Łódź Marshal Office, available at:

Such activities are referred to by representatives of foreign legal doctrine as “cyber smearing”. As an example, it is worth mentioning another Microsoft dispute. There were proceedings against a student from Canada, who registered the mikerowesoft.com domain. The student registered a domain which included his name and surname – Mike Rowe. Unfortunately, its phonetic representation was almost identical to the microsoft.com domain. Microsoft demanded a return of the domain. It proposed USD 10 as a compensation. The Canadian student demanded USD 10,000. The giant’s, i.e. Microsoft’s employees accused the student of acting with the intention of benefiting (cybersquatting). The Canadian lost the subject domain and in return he received an IT course and a tour of Microsoft’s headquarters.

Registration of numerous domain names containing certain words, including trademarks, with the intention of giving up the right to them to interested parties in return for a payment of an amount exceeding the cost or registration and maintenance of the aforementioned domains, is referred to as domain name speculation. There is also a phenomenon called storing domain names or “cyberwildcatting”. Cyberwildcatting is an activity on a larger scale than cybersquatting. People who are registering numerous domains hope that someone will be interested in buying them.

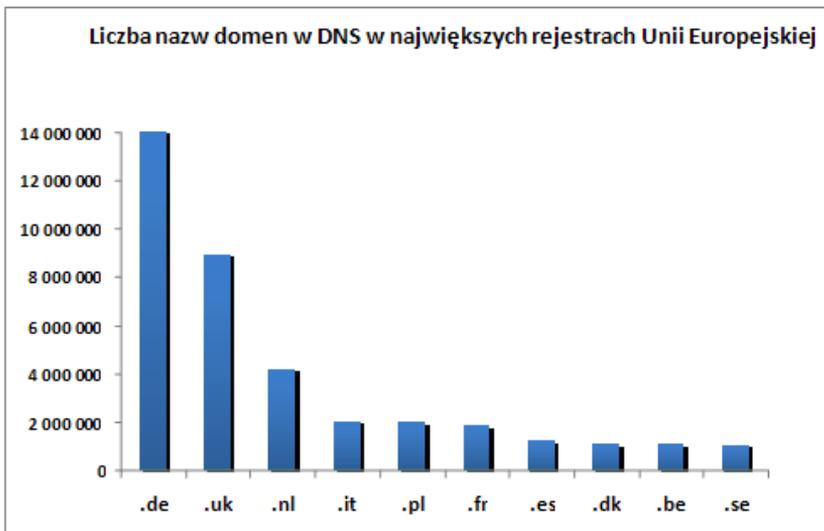
3. DOMAIN DISPUTE RESOLUTION

While proceeding to the analysis of the issue of domain dispute resolution, it should be pointed out that such disputes are mainly resolved through arbitration. The establishment of courts of arbitration dedicated to the resolution of domain name disputes is connected with issues occurring while pursuing claims resulting from these disputes, which are mainly the outcome of a lack of relevant norms in national legislation and of difficulty in the determination of the applicable law and jurisdiction (in Polish law, as well as in most EU states, there are no separate

regulations for the phenomenon of domain piracy and countermeasures for violations of distinctive signs on the Internet)¹⁰.

4. SELECTION OF A COURT IN THE CASE OF A .PL DOMAIN – THE CORE OF ARBITRATION

In 2011 the two millionth .pl domain name was registered. Poland was the fifth country in Europe to reach the level of two million registered domains. It ranked before France, Spain, or Belgium.



Picture 1 Two million names under the .pl domain¹¹

As the number of registered domains has increased, the level of “domain crimes” has also increased. Disputes concerning .pl domain names can be referred to arbitration courts or common courts. Amicable means of resolution of domain name disputes are a competitive measure

¹⁰ G. Bar, *Rozstrzygnięcie sporów domenowych przez Centrum Arbitrażu i Mediacji WIPO* [Resolution of Disputes Concerning Domains by WIPO Arbitration and Mediation Center], *Kwartalnik Naukowy Prawo Mediów Elektronicznych* [Academic Quarterly – Electronic Media Law], 01.2011, p. 33.

¹¹ <http://www.dns.pl/news/2milionydomen.html> [last accessed: 22.10.2016].

for eliminating conflicts between domain name operators and persons entitled to distinctive signs, compared to common courts.

There are courts of arbitration in Poland which handle .pl domain name disputes. They are the Domain Name Court of Arbitration at the Polish Chamber of Information Technology and Telecommunications (PIIT) and the Court of Arbitration at the Polish Chamber of Commerce in Warsaw (KIG). Arbitration proceedings are based on principles determined by the World Intellectual Property Organization (WIPO). Pursuant to Article 1157 of the Polish Code of Civil Procedure: “Unless otherwise specified in a special provision, the parties may refer disputes concerning property and non-property rights, which can be subject to court settlement, to a court of arbitration for resolution, excluding claims for alimony”¹². However, it should be kept in mind that courts of arbitration may consider cases solely if both parties consent to it.

The literature refers to a court of arbitration as a non-state court, convened as a result of both parties to a civil law relationship consenting to it (by expressing their consent in the arbitration clause) to resolve a dispute which arose between them by issuing a judgment which is as valid as that of a state court. As an introduction, it is advisable to note, that the discussed institution, despite it having the word “court” in its name, is not considered a part of the judicial system. “The very definition of a court of arbitration indicates that arbitration is adjudicative in nature. However, a substantive judgment made by arbitrators, which is binding for the parties, is not issued on behalf of the state. A court of arbitration operates on the basis of both entities in conflict being willing to subject themselves to it”¹³.

“The doctrine emphasises that arbitration in Poland is an underappreciated way for eliminating all the faults of the Polish common judicial system with regard to economic disputes. In the United States of America and industrialised European countries most disputes between entrepreneurs are settled through arbitration. This is because arbitration

¹² Article 1157 of the Polish Code of Civil Procedure 17.11.1964, Dziennik Ustaw [Journal of Laws] 1964, No. 43, item 296, as amended – hereinafter as the Polish Code of Civil Procedure.

¹³ T. Strumiłło, *Zasady postępowania arbitrażowego* [Principles of Arbitration Proceedings], Kwartalnik ADR [ADR Quarterly] 2009, no. 3(7), p. 61.

has a long tradition. It is a way of resolving economic disputes by arbitrators who can be chosen by the parties both directly and indirectly”¹⁴.

A common court proves to be the competent court, if the subject of the dispute is a sign used as a trademark and a domain name. “In such cases the judgment of a common court will determine the entire legal situation within the scope of pursued claims resulting from all the ways in which the distinctive sign is being used. The principles of the amicable resolution of disputes concerning domain names do not allow ruling on the way the signs are used for a purpose other than using them in a domain name. However, this does not mean that the judgment of a court of arbitration does not affect the legal evaluation performed by a common court. If the judgment of a court of arbitration concerning a dispute about a domain name is final, the common court should consider that dispute as resolved and should be bound in that scope by the judgment made by the court of arbitration. In a case where a dispute about the same domain is being considered by a court of arbitration, the common court should suspend the proceedings (cf. Article 177 § 1 paragraph 1 of *Kodeks postępowania cywilnego* [the Code of Civil Procedure]), and, if a judgment is issued, it should close the case”¹⁵.

On the other hand, if the parties reside outside of the Republic of Poland, the disputes shall be referred to the World Intellectual Property Organization’s Mediation and Arbitration Centre in Geneva. The arbitration should be conducted in English. The formulation of claims may include demanding the deletion of the domain name from the register or transferring it to the aggrieved party. What is important, by referring the case to that court, the parties waive the possibility of lodging an appeal to a common court against the judgment¹⁶.

The use of ADR (Alternative Dispute Resolution) methods, i.e. alternative methods for resolving disputes consisting in a settlement

¹⁴ K. Świącka, J.S. Świącki, *Administrowanie domenami internetowymi a arbitraż* [Administration of Domain Names and Arbitration], *Kwartalnik ADR* [ADR Quarterly] 2009, no. 2(6), p. 87.

¹⁵ A. Szumański, P. Podrecki, *Rozstrzygnięcie sporów o nazwy domen internetowych* [Resolution of Disputes Concerning Domain Names], [in:] A. Szumański (ed.), *System Prawa Handlowego, Tom 8* [Commercial Law System, Vol. 8], Warszawa 2015, p. 986.

¹⁶ <http://znakitowarowe-blog.pl/jak-odzyskac-domene-internetowa-szantaz-domenowy/> [last accessed: 22.10.2016].

of conflicts concerning domains, has a significant influence on the decreased number of disputes before courts. “The World Intellectual Property Organization has been using arbitration to resolve domain disputes for several years now. A similar decision was made by numerous domain registrars around the world, including the Polish domain registrar, NASK, which established its own arbitration and mediation regarding domains”¹⁷.

5. ARBITRATION BEFORE THE DOMAIN NAME COURT OF ARBITRATION AT THE POLISH CHAMBER OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS (PIIT)

It is worth mentioning the arbitration procedure before the Domain Name Court of Arbitration at the Polish Chamber of Information Technology and Telecommunications (PIIT) as an example.

Pursuant to paragraph 20 of NASK’s Terms and conditions concerning .pl domain names of 18 December 2006 (wording binding from 1 December 2015), “In a case where a third party brings an action against a Subscriber before a Court of Arbitration, pursuing a demand based on a claim that the Subscriber violated that person’s rights by concluding or performing the Contract, the Subscriber shall provide the Court of Arbitration with a signed arbitration clause within the deadline indicated on the call to sign that clause”¹⁸.

A third party may bring an action before a Court of Arbitration by sending a discovery request. The submission of an arbitration request is subject to a registry charge. The submission of a discovery request causes the domain name subject to the dispute to be blocked for the duration of the proceedings, which means that the domain user cannot assign rights or obligations resulting from the contract concluded with NASK¹⁹. Subsequently, both parties are provided with an arbitration clause and

¹⁷ M. Kondrat, *Ochrona znaków towarowych przed naruszeniami w internecie* [Protection of Trademarks Against Their Violation on the Internet], Warszawa 2008, p. 166.

¹⁸ <http://www.dns.pl/regulamin.html> [last accessed: 22.10.2016].

¹⁹ <http://prawo.gazetaprawna.pl/artykuly/924081,domena-internetowa-przed-sadem.html> [last accessed: 22.10.2016].

a list of arbitrators. In order for a proceeding to be initiated, the domain owner has to consent to it.

If the domain name subscriber fails to sign the arbitration clause, the contract is terminated, and, thus, the domain name is removed from the NASK Registry database, subject to paragraph 31 of NASK's Terms and conditions concerning .pl domain names. That point contains a representation that the provisions of the Terms and Conditions do not violate the rights of consumers resulting from legal regulations binding in the Republic of Poland.

The aforementioned clause clearly indicates that one must make sure whether the Subscriber is a natural person or a legal entity. In case of a natural person, failing to sign a contract shall result in removing him from the NASK Registry database.

If the Subscriber against whom the request to cease violation of rights was submitted is a natural person and does not sign the arbitration clause, the claims cannot be further pursued before a court of arbitration.

It is important to pay attention to the consumer protection stipulated in Civil Code. Pursuant to Article 22¹ of the Civil Code a consumer is a natural person performing a legal activity not directly connected with his economic or professional activity.

The terms of registration and NASK's Terms and Conditions constitute a model contract in the understanding of Article 384 § 1 of the Civil Code in the form of terms and conditions, because "the model contract prepared by one of the parties, its general provisions in particular, the model contract and terms and conditions are binding for the other party, if they were delivered to that party before the conclusion of the contract". Article 384 § 2 of the Civil Code stipulates that "in a case where it is commonly accepted for a model to be used in particular type of a relationship, it shall be binding also when the other party could easily become acquainted with its content. However, it does not concern contracts concluded with consumers, except for contracts commonly concluded with regard to small, everyday matters"²⁰.

²⁰ Article 384 of the Civil Code of 23.04.1964, Dziennik Usta [Journal of Laws] No. 16, item 93, as amended; hereinafter as the Civil Code.

As a result, a legal activity which is contrary to the provisions of the Act or which aims to bypass it is invalid, unless the relevant provision stipulates a different result, in particular that invalid provisions concerning the legal activity shall be replaced by the relevant provisions of the Act.

In a case where the content of the contract is different than that of the model contract, the parties shall be bound by the contract. The model contract should be formulated unambiguously and clearly. Ambiguous provisions should be interpreted to the benefit of the consumer. Article 385¹ § 1 of the Civil Code contains a stipulation stating that provisions of a contract concluded with a consumer which were not agreed upon individually shall not be binding for him, if they shape his rights and obligations in a manner contrary to good practices and constitute a gross violation of his interests. An example of such an imposed contractual clause in the Civil Code is an arbitration clause (Article 385³ paragraph 23 of the Civil Code). Therefore, it is much more difficult to pursue claims against natural persons who are consumers according to NASK's Terms and Conditions.

Arbitration is initiated as a result of filing a suit. "The plaintiff must file a suit and pay the relevant fees within 14 days from the moment the court informs him about the reception of the arbitration clause signed by the subscriber"²¹. The suit is most frequently based on a form available on the court's website. The defendant should respond to the suit and consent to the consideration of the dispute by the indicated arbitrator within 7 days from the date of delivery of the suit.

"During a proceeding before a court of arbitration, the principle of discretionary nature as well as the assessment of credibility and qualification of the evidence by the arbitrator is applied"²². Pursuant to Article 25 of PIIT's Terms and Conditions: The arbitrator shall make decisions based on his convictions about the party's requests to consider evidence. In particular, the arbitrator may admit documents, hearing of the parties, witnesses, and expert witnesses as evidence.

"The arbitrator may issue a judgment based on collected evidence, if none of the parties exercised the right to present additional evidence

²¹ Szumański, Podrecki, *supra* note 15, p. 995.

²² J. Ożegalska-Trybalska, *Adresy internetowe [Internet Addresses]*, Kraków 2003, p. 426.

within the deadline determined by the arbitrator. The arbitrator shall close the proceeding, if he decides that all the circumstances which are important for the resolution of the dispute have been considered and explained. The arbitrator should make every effort to ensure that that occurs no later than within 30 days from the date the arbitrator consented to settle the particular case. The arbitrator should immediately notify the parties and the court about the conclusion of declaratory proceedings. At the same time, he should determine a deadline for submitting any remarks, including requests for reimbursement of legal costs of the proceedings²³.

This confirms that arbitration is an excellent alternative to costly, time-consuming settlements at common courts. "Pursuant to paragraph 24 of NASK's Terms and Conditions, a final judgment issued by a court of arbitration or a common court, which confirms that the subscriber violated third party rights, constitutes a basis for NASK to terminate the contract with that subscriber with immediate effect"²⁴. Pursuant to NASK's Terms and Conditions the notice period is 3 months.

Regardless of reasons indicated in other provisions of Terms and Conditions, NASK may terminate the Contract with immediate effect in a case where the Subscriber violates provisions of those Terms and Conditions. NASK has prepared procedures for actions to be undertaken after a judgment confirming a violation of third party rights by the subscriber of a domain name is issued.

If the judgement is issued by a court of arbitration, the party whose rights were violated by the domain name subscriber as a result of the registration or use of the domain name shall provide NASK with the final decision of the court confirming such violation. The party must submit the final decision of a common court which accepts the judgment of the court of arbitration confirming such violation. "Subsequently, NASK provides the party with an Application for a possibility to submit an Offer of conclusion of a Contract" together with an instruction on further actions

²³ Szumański, Podrecki, *supra* note 15, p. 996.

²⁴ *Ibidem*.

and indicates the date for the delivery of a properly filled in and signed Form, and informs of the consequences of failing to meet the deadline”²⁵.

Then, NASK’s partner, through whom the domain name will be registered and who will be then maintaining it, is selected and the relevant agreements are made with it with regard to the registration and maintenance of the domain name. The choice is made by the party which received the application from NASK.

After receiving a properly filled in and signed form, NASK allows the partner indicated in the form to present an offer for the registration and maintenance of the domain name to the applicant. In case the domain name is not registered by the partner within the deadline indicated by NASK, it shall be included among available domain names. After registering the domain name through the partner selected by the applicant, NASK begins maintaining it for the applicant.

The beginning of maintenance of the domain name constitutes the moment of conclusion of a contract between the party and NASK, pursuant to the terms stipulated in Terms and Conditions concerning .pl domain names. “NASK may refuse to conclude a contract, in particular in a case of failing to deliver a properly filled in and signed form within the deadline set by NASK, the partner selected by the applicant failing to observe formalities, and in cases stipulated in Terms and Conditions concerning .pl domain names”²⁶.

If a judgment is issued by a common court, the party shall provide NASK with the final decision confirming such violation. Subsequent stages of the procedure described on NASK’s website are analogous to those regarding the procedure after issuing a judgment by a court of arbitration.

Pursuant to the Code of Civil Procedure, a judgment of a court of arbitration issued in the Republic of Poland can be overturned solely by way of a proceeding initiated as a result of submitting an application to overturn the contested judgment.

²⁵ NASK’s Terms and Conditions, <https://www.dns.pl/spory-faq.html> [last accessed: 22.10.2016].

²⁶ Ibidem.

6. WHAT ABOUT MEDIATION?

It is worth adding, that apart from arbitration, there is also the possibility of performing mediation before the court. “Every person pursuing a claim against a domain subscriber consisting in ceasing the violation of their rights may submit an application for initiation of mediation at the Polish Chamber of Information Technology and Telecommunications (PIIT). The mediation may precede arbitration. In order for mediation to be performed, it is necessary to obtain the domain name holder’s consent. Mediations are not frequently used to resolve disputes. There were 55 mediation proceedings conducted before the Domain Name Court of Arbitration at the PIIT from 2003 until 2007, and only 6 ended in a settlement”²⁷.

“Mediation is performed before a mediator designated by PIIT. Mediations should be concluded within thirty days from the date of submission of an application for their performance”²⁸.

The parties may ask the mediator for mediation to be conducted:

1. directly – the parties meet directly in the presence of the mediator;
or
2. indirectly – the parties undergo mediation sessions separately; each of the parties meets individually with the mediator.

The mediator may propose the content of the agreement. Also, the parties may propose the content of the agreement.

After the conclusion of the mediation, if the parties settle, they sign an agreement concerning the domain name. The mediator also signs the agreement. Such an agreement is binding for both parties and is delivered to NASK, in order for NASK to execute it. In the case of a failure to reach an agreement, PIIT confirms it in writing. A lack of agreement does not preclude the possibility of initiating arbitration.

²⁷ <http://kompendiumprawne.pl/2009/10/26/spory-o-domeny-internetowe-czesc-iii-%E2%80%93-mediacje/> [last accessed: 22.10.2016].

²⁸ Ibidem.

7. RECOVERY OF .COM, .NET AND OTHER DOMAIN NAMES. PROCEEDING BEFORE THE WIPO ARBITRATION AND MEDIATION CENTER

The Rules for Uniform Domain Name Dispute Resolution Policy (UDRP) were written down by the Internet Corporation for Assigned Names and Numbers (ICANN) in 1999 and they are binding for .com, .net, .org and other domains. They are very important for case law and the application of uniform principles in that area.

“Pursuant to UDRP, the highest level disputes concerning domain names are resolved by courts of arbitration around the world which are accredited by ICANN, including the World Intellectual Property Organization (WIPO)”²⁹, the Asian Domain Name Dispute Resolution Centre (ADNDRC), the National Arbitration Forum, and the Czech Arbitration Court.

The main objective of the principles adopted by ICANN was to ensure a quick and relatively cost-effective procedure for recovering domain names by owners of trademarks which are similar to them in cases against entities which registered domains in bad faith and with no justified legal interest³⁰. A proceeding according to the agreed principles is an alternative to long court proceedings. “The UDRP procedure, as a precursor of arbitration, is considered in the literature as a hybrid of mediation and arbitration”³¹.

The entities which hold rights to a trademark may pursue their rights against entities using a domain name which is identical or a similar to the trademark.

The procedure enables the execution of a request to transfer the domain, maintain the domain, or deregister it from the DNS system without the possibility of pursuing compensation. The person lodging a complaint is obliged to meet all three conditions set forth in Article 4(a) of the UDRP:

²⁹ Mania, *supra* note 3, p. 83.

³⁰ M. Kondrad, *Znaki towarowe w internecie. Wybrane zagadnienia dotyczące domen internetowych* [Trademarks on the Internet. Selected Issues Concerning Domain Names], Warszawa 2001, p. 105.

³¹ L. Brancus-Cieślak, *Szanse arbitrażu w rozwiązywaniu sporów na tle domen internetowych* [Arbitration Opportunities in Dispute Resolution Concerning Domain Names], *Zeszyty Prawnicze UKSW* [Cardinal Stefan Wyszyński University’s Legal Notebooks] 2006, no. 6.2, p. 186.

1. The domain of the third party is identical or misleadingly similar to the trademark or service mark to which the applicant holds a right,
2. The owner of the domain does not have rights or any justified legal interest with regard to the domain,
3. The domain was registered and is being used in bad faith³².

A UDRP proceeding is conducted based on UDRP, Rules for Uniform Domain Name Dispute Resolution Policy Updated WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy established by the Center.

A proceeding based on UDRP before the Center begins after the plaintiff files a suit. Then, the defendant must respond to the suit. A panel is appointed after the response is received or, in case it is not received and the deadline for its submission has expired.

Pursuant to the Procedural Rules, if the defendant fails to deliver a response to the suit within the deadline, it will be construed as a voluntary subjection to the decision (default)³³. In case of extraordinary circumstances, the panel may decide to allow a submission of the response after the deadline.

The arbitrator should be impartial and independent, and he must disclose any circumstances which may constitute a reason for justified doubt as to his impartiality or independence prior to being appointed (see Article 7 of Procedural Rules) The list of arbitrators is kept by the Provider, i.e. an organisation resolving disputes which was approved by ICANN. "An arbitrator is practically free with regard to the evaluation of the permissibility, validity, importance, and significance of evidence submitted by the parties".

Pursuant to Article 8(a) of the UDRP it is impossible to assign rights resulting from the registration of a domain name during arbitration and within 15 days after its conclusion.

³² <http://lookkreatywni.pl/kategorie/nowe-technologie/zagraniczne-systemy-rozstrzygania-sporow-o-domeny-internetowe/> [last accessed: 22.10.2016].

³³ M. Rogowski, *Arbitraż w przedmiocie nazw domen internetowych na podstawie Uniform Domain Resolution Policy* [Arbitration Regarding Domain Names Based on the Uniform Domain Resolution Policy], Rynek-Społeczeństwo-Kultura [Market-Society-Culture] 2014, no. 2(10), pp. 12-20.

It is possible to issue three types of decisions based on UDRP: a decision upholding the plaintiff's claim, as a result of which the right resulting from the registration of the domain name is assigned to the plaintiff; a decision upholding the plaintiff's claim, as a result of which the right resulting from the registration of the domain name becomes void; or a decision disregarding the plaintiff's claim.

The content of the decision made by arbitrators is then passed to a relevant domain registrar within 3 days from the date it was made, in order for it to be implemented. The registrar is obliged to immediately inform parties to the dispute of the date by which it will be implemented (see Article 16 letter a of Procedural Rules).

8. CONCLUSIONS

To sum up, this article presents the purpose of domain names and cases of Internet crimes. It is rare to come across international regulations concerning solely domain names. The existing alternative dispute resolutions could be the basis for the elimination of domain conflicts.

The Polish legal system does not contain norms, which would apply to the matter of domain names, and hence the content of contracts concluded with operators must be analysed every time the legal relationship must be evaluated. "The resolution of conflicts between domain name operators and those holding a right to trademarks proves to be difficult to perform using ordinary court proceedings"³⁴. This article explicitly commends the resolution of disputes through arbitration.

³⁴ Brancus-Cieślak, *supra* note 29, p. 171.

