

Legal News



Legal aspects of domains

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Dear clients and business friends

The Internet was originally only used by the military and universities for the exchange of data. With services such as e-mail and in particular with the introduction of web browsers and graphical websites some twenty years ago, however, the Internet began its continuous success story and neither the business world nor the private sector are conceivable without it today. Mutually interlinked websites enable an enormous volume of information and services to be accessed by mouse click. The easily remembered designations of websites, such as "www.ey.com", for example, which permit rapid finding of the desired information represent the primary element, the so-called domains. These not only fulfil a technical function, however, they are also legally relevant in that they convey (due to technical reasons) an exclusivity for the owner, which can in some circumstances come into conflict with the rights of third parties, e.g. with trademark, corporate or personal rights. These and other topics will be considered below.

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1. The domain

1.1. Function of the domain

Every citizen is assigned a social insurance number for clear identification. The situation is similar in the Internet: every computer or server connected to the Internet is allocated a unique number, the so-called Internet protocol address or IP-address, for example "199.52.9.62". By means of this Internet address this computer can communicate worldwide with other computers and the information stored on it and in particular the website can be accessed. Since expressions remain in the memory better than a series of digits, it is possible to assign a series of digits or an expression, the so-called domain name or domain, via the so-called Domain Name System (DNS) to an Internet address. Hence, for example, the website of Ernst & Young can be accessed by entering "www.ey.com", without having to key in the IP address of the corresponding server in the form of a series of digits.

1.2. Structure of the domain

A domain is always read from right to left, always to the next stop. The part at the far right is the so-called top level domain. On one hand there are the top level domains for the specific country, such as for example ".ch" for Switzerland or ".li" for the Principality of Liechtenstein, while on the other hand there are the generic top level domains, such as for example ".com" or ".org", which are not assigned to a specific country. The part to the left of the top level domain is the so-called second level domain. A specific register

administrator is responsible for all domains with the same top level domain. The endings ".ch" and ".li" for example are administered by the SWITCH foundation. The endings ".com" and ".org" are administered by the Internet Corporation for Assigned Names and Numbers (ICANN) in collaboration with other register administrators.

1.3. Legal nature of the domain

In simple terms a domain is based on a kind of lease agreement, by which the owner of a website obtains the right from a register administrator to assign the IP address of his server to a domain. In this way by entering the respective domain, third parties can access the website of the owner, which is located on the assigned server. For technical reasons every domain is unique, so that the owner obtains the exclusive possibility by registration of a domain to refer to an IP address specified by him, where his website is located. This ensures for example that when entering "www.ey.com" exclusively the website of Ernst & Young is displayed.

1.4. Protective effect of the domain

The domain owner has no further rights, apart from the afore-mentioned priority position, in particular no claim to exclusivity as would be the case for example for company names or intellectual property rights, as is the case with trademarks. It is therefore recommended under certain conditions to protect the domain or its identifying element as trademark and vice-versa also to register any trademarks on the company name as domain.

2. Registration

2.1. First come, first served

Every domain is unique and can only be assigned once. Assignment is made on a "first come, first served" basis – the person who first requests a domain is therefore registered as its owner. The register administrator, for example SWITCH for the top level domain ".ch", is not liable, however, to check the entitlement of the applicant.

2.2. Cyber- and typo-squatting

Owing to lack of examination of entitlement, therefore, it continually occurs that a malicious owner registers a domain mainly in order to sell, lease or transfer it in another way to a prospective interested party, for example the owner of the corresponding trademark, for an exorbitant price. This process is called cyber-squatting. The term is based on the English words "cyber", the prefix for the Internet and the like and "squatter", the term for an illegal house occupier. Examples are the registrations of the following domains: "youtube.ch", "feldschlössli.ch" and "luzern.ch".

A variation of cyber-squatting is so-called typo-squatting, the registration of frequent typing errors from famous domains. Examples of this are the registration of "amazong.com" (instead of "amazon.com") or "sunirse.ch" (instead of "sunrise.ch").

2.3. Violation of third party rights

Since the entitlement of the applicant is not checked when registering a domain, it is conceivable that the rights of third parties are thereby violated. This is frequently true for trademarks; for famous people or localities, however, it usually concerns personal rights involving the

names according to Art. 29 para. 2 ZGB (Swiss Civil Code). Violations against the federal law on unlawful competition (UWG) or corporate rights also come into question. For third parties there is either the possibility of reaching an amicable solution by negotiating with the domain owner or of taking legal action. In addition to appealing to the ordinary courts of law, most register administrators of top level domains provide for a special dispute settlement process based on the ICANN example (www.icann.com/en/udrp).

2.4. SWITCH process

The course of this process will be roughly outlined below as an example of the top level domains administered by SWITCH ".li" and ".ch" (www.nic.ch/reg). The World Intellectual Property Organization (WIPO) functions as dispute settlement office in this process. In a so-called arbitration attempt an arbitrator appointed by WIPO endeavours to find a solution during a telephone conversation between the third party who feels affected or violated by the domain registered and the current owner.

If no solution is reached, the third party can request a so-called expert decision in a second step. The expert appointed by WIPO reaches a decision in a summary process based on a single exchange of electronic communications without party negotiations on whether there is a violation of the rights mentioned above in section 2.3. No compensation for damages can be enforced, however, in this process. The request is either rejected or approved. In the latter case SWITCH registers the third party as new owner of the domain. If a party does not agree with the decision reached by the expert, it can still appeal to the ordinary civil courts of law within twenty days.

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