



.ZA ADR

FREQUENTLY ASKED QUESTIONS

1. GENERAL FAQs

What is .za Domain Name Authority?

The .za Domain Name Authority (the Authority) is a not-for-profit entity established in terms of Chapter X of the Electronic Communications & Transactions (ECT) Act 25 of 2002. Its overall mandate is to manage the .za domain name space, including licensing registries and registrars.

What is a ccTLD?

ccTLD stands for “country code Top Level Domain”, and is a code given to each country for its online identity. South Africa’s ccTLD is .za. Country codes were established by the International Standards Organisation (ISO) before the domain name system was commenced, and they were chosen to make the DNS adhere to all International standards.

The DNS country codes are different from what is called “generic TLDs”, which are top level domains designed to be used by the Internet public regardless of their geographic location. Most common gTLDs include .com, .org and .biz.

What is a domain name?

Each computer on the Internet has a unique address which is a sophisticated string of numbers called “IP address” (IP stands for “Internet Protocol”). IP addresses are by their nature similar to telephone numbers and are therefore practically difficult to remember. As a result, a string of letters (called “domain name”) is provided by the domain name system to allow people to find their way around the Internet using names instead of IP addresses.

What is the domain name system?

The domain name system (DNS) allows Internet users to use domain names, instead of IP addresses, to find any computer on the Internet. The DNS is managed by the Internet Corporation for Assigned Names and Numbers (ICANN). ICANN is the global forum for developing policies for coordination of some of the Internet’s core technical elements, including the DNS. It out-sources the day-to-day administration of the ccTLD database, including the IP addresses, to the Internet Assigned Numbers Authority (IANA).

What is a sub-domain?

A sub-domain is a domain created under a top level domain. For example, org.za and co.za are sub-domains under the .za TLD.

How can I register a domain name under .za?

People can register domain names under any of the .za sub-domains which are open for domain name registrations. Each sub-domain has its specific eligibility requirements which registrants must satisfy before they can register names in that sub-domain. A list of .za sub-domains is can be found at <http://www.zadna.org.za/slids.html>.

In addition, it is usual practice that registrants register domain names through registrars, which are usually Internet service providers (ISPs). The Authority is yet to license registrars and registries, and publish them on its website.

2. SPECIFIC ADR FAQs

What is the purpose of the .za ADR Regulations?

The main purpose of the Alternative Dispute Resolution (ADR) Regulations for the .za domain is to resolve disputes over the registration of certain domain names under the co.za sub-domain. To achieve this, the Regulations stipulate that suitable service providers should be accredited to resolve co.za domain name disputes.

What is the role of the Authority in ADR Regulations?

Section 37 of the Regulations requires the Authority to accredit service providers which satisfy specific requirements, to resolve co.za disputes. In addition, the Authority is required to publish adjudicator decisions on its website, and to receive 10% of each dispute fee to set up a fund which should be used to provide financial assistance to the parties which cannot afford the ADR fees.

What is a domain name dispute?

A “domain name dispute” is a dispute regarding a registered domain name, which dispute is between a complainant and a person who registered a domain name (i.e. registrant). According to the Regulations, the basis of a domain name dispute can either be an abusive or an offensive registration.

What is abusive registration?

An “abusive registration” is basically a domain name registration which is registered to take unfair advantage of another person’s rights, or to be detrimental to, or infringing, another person’s rights. The complainant must show that the complainant has rights in respect of a name or a mark which is identical or similar to the registered domain name, and that in the hands of the registrant, the registration of the domain name is abusive.

Example:

An entity named ABC has DEF as its competitor. DEF decides to register abc.co.za as its domain name. This registration would constitute an abusive

registration in that by registering abc.co.za, DEF is preventing ABC from registering a domain name which is the same as ABC's company name.

Section 4 of the Regulations provides a number of factors which a complainant can use to prove abusive registration. These include:

- Circumstances showing that the registrant registered a domain name primarily to:
 - sell, rent or transfer the domain name to the complainant, its competitor or 3rd party for profit;
 - intentionally prevent the complainant from registering a mark or name to which the complainant has rights;
 - unfairly disrupt the business of the complainant; or
 - prevent the complainant from exercising their rights.
- Circumstances indicating that the registrant has registered the domain name to deceive the public into believing the name is registered, used or connected to the complainant.
- Evidence, when combined with other factors, shows that the registrant is involved in the pattern of making abusive registrations.
- Circumstance showing that the registrant registered the domain name as a result of a relationship with the complainant, and the complainant has been exclusively using the domain name and has paid for its registration or renewal

Section 5 lists a number of factors which the registrant may use to prove that the registration is not abusive.

What is offensive registration?

A domain name registration is offensive if the name is proven to be promoting hatred based on race, ethnicity, gender or religion, and/or is proven to constitute incitement to cause harm.

Example:

A domain name called men-are-dogs.co.za is offensive as it incites hatred against a certain gender.

What is cyber-squatting?

Cyber-squatting occurs mainly as a result of the simple first-come, first-served nature of registering domain names. It is primarily a pre-emptive registration of the names of trademarks, famous people or organizations by 3rd parties. Usually the registrant has no relationship with the famous people or trademark. The common aim of cyber-squatters is to auction the domain names or sell directly to the person or organization at cost which is much higher than the registration cost. There is also a tendency of not selling the

domain names associated with famous people, but rather to keep them to attract business for their sites.

Why do the Regulations apply only to the co.za sub-domain?

This is because the demand for the .za domain name ADR procedure has previously concerned commercial domain names under co.za sub-domains. There has been no previous demand to extend the application of the procedure to other .za sub-domains. However, should there be such need, the Authority is required by the ECT Act to advise the Minister of Communications on such issues.

Who are the accredited ADR providers?

The Authority has initially accredited the Arbitration Foundation of Southern Africa (<http://www.arbitration.co.za/>) and the South African Institute of Intellectual Property Law (<http://www.domaindisputes.co.za/>) to resolve co.za domain name disputes. In terms of the Regulations, more service providers can be accredited if they satisfy the requirements listed in section 38.

How do I lodge a domain dispute?

A complainant can lodge a dispute by first selecting a service provider from those accredited by the Authority. Then the dispute should be submitted to the selected provider in the manner outlined in Chapter III of the Regulations. In addition, the complainant may be required by the service provider to satisfy supplementary requirements used by the provider in administering disputes.

Do I need a lawyer?

Not necessarily. However, due to their specialized legal training, lawyers may be used to assist the complainant in submitting documentary evidence. Legal representation is not necessary as the Regulations do not allow for oral submissions.

How soon can I expect a dispute to be resolved?

The Regulations stipulate a number of administrative steps and checks which complainants, respondents and service providers must satisfy before the actual resolution of a dispute. Delays may arise as a result of incomplete dispute submissions and of registrants not being accessible immediately to respond to complainants' claims. As a result there is no certain timeline within which disputes should be resolved. The Authority expects the entire dispute resolution process, on average, to last for plus or minus 8 weeks.

What are the costs involved?

It is up to the parties to a dispute to choose if they want their dispute to be resolved by a single adjudicator or a three adjudicator panel. For a single adjudicator, the complainant must pay R10,000 and R24,000 for a three adjudicator panel. If the registrant chooses to have the dispute resolved by a three adjudicator panel instead of a single adjudicator panel, the registrant and complainant must each pay R12, 000.

Are not these fees expensive?

The stipulated ADR fees are meant purely to cover administrative costs incurred by the accredited service providers in administering and resolving disputes. These costs are much cheaper compared to resolving domain name disputes through the normal court processes, which can cost up to R200, 000 and is usually a much lengthy process.

They are also much cheaper than the costs involved in having disputes resolved under other countries' ADR procedures and under generic TLDs such as .com. Another rationale behind these costs is to avoid having the ADR procedure abused through frivolous and unclear disputes.

What if I have a valid dispute but cannot afford the required fees?

According to Section 34(5), ADR providers must pay 10% of each dispute fee to the Authority, which the Authority must use exclusively to fund other complainants and registrants seeking financial assistance. To avoid abuse of this ADR financial assistance option, the Authority has prepared eligibility criteria which will be used to evaluate applications. This can be found at <http://www.zadna.org.za/adr/financialassistance.htm>. Applications should be emailed to adrfinancialassistance@zadna.org.za or be faxed to 086 688 7109 or 011 234 5022.

What kinds of relief can I expect?

There are 3 kinds of decisions an adjudicator may make in resolving a co.za domain name dispute:

- In the case of abusive registration, the dispute may be refused (i.e. the decision goes against the complainant) or the disputed domain name may be transferred from the registrant to the complainant (i.e. the decision goes in favour of the complainant).
- In the case of offensive registration, the dispute may be refused or the domain name may be deleted and prohibited from future registration.
- The dispute may be refused on the basis that it constitutes reverse domain name hijacking (i.e. the use of the Regulations in bad faith to attempt to restrain the registrant from using the disputed domain name).

Can I recover the ADR fees if I get a favourable decision?

No, the Regulations do not provide for the recovery of costs by any of the parties, and this is regardless of which party wins the dispute.

Can I appeal the adjudicator decision?

Yes, adjudicator decisions can be appealed but this is limited to single adjudicator's decisions. Three adjudicator panel decisions cannot be appealed. A party seeking to appeal must lodge a statement of intention to appeal together with the required appeal fee, and must within 15 days of lodging the intention to appeal submit an appeal notice.

What are the appeal costs?

The stipulated cost for an appeal is a fixed sum of R24,000.

Can parties to a dispute choose to refer the dispute to court?

Yes, at anytime during the dispute proceedings, a party may choose to refer the dispute to the high court of South Africa. In such case, the adjudicator will no longer proceed with the dispute.

Can I recover my costs in the case the dispute is referred to the high court during its consideration by adjudicators?

No, the ADR fees are primarily intended to cover administrative costs incurred by the providers. The fees cannot be refunded.

What powers does the Authority and co.za administrator have to implement adjudicator decisions?

Once the adjudicator makes a decision, the service provider must in writing notify the parties and the Authority. It must then notify the co.za administrator, which should implement the decision.

Can I access previous .za ADR decisions?

The accredited providers and the Authority are all required to publish the decisions on their websites.

Are there accredited ADR providers outside Gauteng?

The Authority is not restricted to accredit only service providers in Gauteng; it is willing to accredit service providers from other provinces provided they satisfy the application requirements.

Of primary importance is that the disputes are resolved using documentary submissions made by complainants and respondents using physical and/or on-line dispute lodgment. Oral submissions are not permitted by the Regulations. This then makes the geographical location of accredited adjudicators of secondary importance.

In the meantime, the Authority has accredited the Arbitration Foundation of Southern Africa (AFSA) and the South Africa Institute of Intellectual Property Law (SAIPL) to resolve co.za domain name disputes. These 2 service providers, although primarily based in Gauteng, are national organizations with adjudicators located in different parts of the country.

What assistance does the Authority offer to organizations interested in accreditation?

It is the responsibility of interested organizations to study the Regulations and satisfy the stipulated requirements. The Authority is available, if contacted, to assist applicants in understanding the requirements before they submit applications.

