



New regulations aim to resolve South African domain name disputes

8th May 2007 – The .za Domain Name Authority (.za DNA) – the organisation that oversees all the South African domain names on the Internet – has announced a formal, regulated process that aims to provide an inexpensive, fast and easy way to resolve domain name disputes without the need to employ a lawyer.

The process utilises new regulations signed into power by the Minister of Communications, Dr. Ivy Matsepe-Casaburi on 22 November 2006, called “The Alternative Dispute Resolution Regulations”.

A domain name refers to the name that identifies a specific website or e-mail address on the Internet. Domain names are attached to particular top level domains (TLDs) on the Internet such as “.com” or “.org”. These TLDs can also be country-specific such as “.za” indicating South Africa, or “.uk” identifying the United Kingdom.

Increasingly, South African businesses, especially in the burgeoning SME sector, are registering their domain names as one of the first steps they take when planning their business.

Imagine the shock when they go to register their .co.za domain name, only to find out that it has already intentionally been taken by another person or business.

Even worse is when somebody has “hijacked” their online brand by registering a domain name that is very similar to the business’s name, or has even registered an abusive domain name that aims to defame their company.

“One of the most common problems we see is when a person or business registers a competitor’s name online for financial gain, or to get an unfair advantage over their competitor by denying them access to a domain name,” says Dr. Hasmukh Gajjar, chairman of the .za DNA. “They may also register an offensive domain name, which could bring another person or organisation into disrepute.”

Prior to the new regulations, many South African domain name disputes were left unresolved, due to the lack of a regulated process. This meant the only way to get a domain name back or to close down an abusive website was to spend anything up to R250 000 employing the services of expensive lawyers for drawn out legal proceedings that could last years. Many companies were forced to admit defeat rather than go to court because of the high costs.

There is, however, light at the end of the tunnel for individuals and businesses that have had nowhere to turn to when a problem arises regarding a disputed domain name.

The new process, which is, in essence, a “domain name claims court”, aims to reduce the amount of time and money spent on lodging a formal dispute in the courts over a domain name. If people or businesses find that somebody has taken their domain names or registered an abusive domain name, the new regulations allow for a complaint to be lodged with independent adjudicators.

“The case is overseen by a panel of accredited and impartial adjudicators, which will make a ruling based on the evidence that is presented,” says Gajjar.

The regulations currently apply to domain name disputes under the co.za sub-domain only, as it is the sub-domain that in the past has had to deal with domain name disputes. Depending on demand, the Authority may consider advising the Minister of Communications to extend the application of the regulations to other .za sub-domains.

“If people or businesses want to lodge a complaint, the process requires that they are able to provide sufficient evidence proving that a domain name registration is abusive or offensive. The current owners of that name are also given the opportunity to prove why they should keep the name up and running.”

The regulations also allow for an appeals process if one party is unhappy with the adjudicators’ ruling. The final ruling is legally binding and the relevant authorities are obliged to enforce the decisions of the adjudicators within a prescribed amount of time.

Lodging a dispute with the Authority will cost between R10 000 for a one-adjudicator panel and R24 000 for a three-adjudicator panel. An appeal will cost a further R12 000. The whole process from application to enforcement of the final verdict should take no more than two months.

“These fees are far lower than those incurred by taking the matter to court,” says Gajjar. “The fees are also in place to prevent abuse of the dispute process and to help build up a fund that will be offered to businesses or individuals who qualify for financial assistance to lodge a dispute. The Board of the Authority has recently approved strict eligibility criteria to be used to assess applications for financial assistance.”

The process prescribes that 10% of all fees paid are set aside for the exclusive use of individuals or business that require financial assistance to lodge or defend a domain name dispute.

“In the past, there have been very few ways for businesses or individuals to resolve domain name disputes,” concludes Gajjar. “The regulations launched today will hopefully change that and give all South Africans and businesses a better chance to establish their brands’ online presence.”