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Международные и межрегиональные организации доменных имен

Аннотация. В статье рассматриваются некоторые из существующих в настоящее время организаций по разрешению доменных споров. Деятельность организаций распространяется более чем на 66 стран, охватывая североамериканский континент и всю территорию Южной Азии. В статье использованы следующие методы: анализ, систематизация, статистика и другие. В рамках статьи устанавливается наиболее удобный порядок фиксации актов международных арбитражей, поскольку они различаются и в ряде случаев не содержат наиболее важную информацию в основной части содержания. Кроме того, в действующих актах не в полной мере отражена надлежащая последовательность разделов. Поэтому сделан вывод о необходимости упорядочивания разделов (6 основных) и сохранения порядка изложения. Основным направлением исследования стало выявление эффективности существования международных организаций по разрешению доменных споров. Установлено, что данные организации, безусловно, имеют преимущество перед национальными арбитражами. Удобство доступа к этим сервисам, несомненно, будет способствовать региональному сотрудничеству в сфере регулирования доменных имен, для которых отсутствует единое международное регулирование.

Ключевые слова: доменные имена, доменные споры, межрегиональное сотрудничество, межрегиональные организации, ВОИС.

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International and interregional domain name organizations

Annotation. The article examines some of the currently existing domain dispute resolution organizations. The organizations' activities extend to more than 66 countries, covering the North American continent and the entire territory of South Asia. The article used the following methods: analysis, systematization, statistics and others. Within the framework of the article, the most convenient procedure for fixing the acts of international arbitrations is established, since they differ and in some cases do not contain the most important information in the body of the content. In addition, the current acts do not fully reflect the proper sequence of sections. Therefore, it was concluded that it was necessary to organize the sections (highlighting 6 main ones) and maintain the order of the narrative. The main focus of the study was to identify the effectiveness of the

existence of international organizations for resolving domain disputes. It was found that these organizations certainly have an advantage over national arbitrations. Convenience of access to these services will undoubtedly contribute to regional cooperation in the field of regulating domain names for which there is no single international regulation.

Keywords: domain names, domain disputes, interregional cooperation, interregional organizations, WIPO.

Introduction.

The rapid development of innovative technologies does not seem surprising to the modern generation of people, but it was not always so. It was only in 1981 that the identification system of devices in the IP (Internet Protocol) network was invented, which was later replaced by a more open domain name system (DNS) when the first domain name “symbolics.com” was registered in 1985 [1]. Due to the development of the Internet network and the desire of states to provide themselves with innovative technologies, the world is coming to the point where many disputes arise on the Internet [1]. Although, until 2019 (the beginning of the COVID-19 pandemic), the number of disputes over domain names did not grow quickly enough, then after the global isolation, the problem of mass cybersquatting arose. Although this phenomenon originated about thirty years ago, it found its second life at the beginning of 2020. This phenomenon involves a controversial situation when an individual (company or organization) registers a domain name for themselves, which may contain word combinations protected by virtue of being included in a trademark. Or it may be an incomplete use of the name, and its analogue, for example, the American chain of coffee shops with a monosyllabic combination «Starbucks» (registration number 343144) is divided into parts “star” and “bucks”, but in Chinese the first part literally (according to palladium transcription or pinyin) will look like a combination «Xingbake», another coffee shop with such a name existed. In the dispute between Starbucks and Xingbake, according to Chinese law, preference in relation to a trademark is given to the one who registered it first, therefore, imitation of the originally registered trademark is considered illegal. Thus, having received registration in 1999 and 2001, Starbucks was able to prove its right to the trademark and prohibit another coffee shop from using the dubious and similar name in court as early as 2004. However, this was an example of a physical (in the real world, not online) violation of the borrowing of a trademark [2].

In addition, it is worth highlighting a separate category of use of trademarks and associations with them, which can mislead Internet users. For example, there is a Canadian entrepreneur Jeff Berger, who has more than 1,500 registered domain names (including the name of J. R. R. Tolkien, Einstein, S. Dion and other famous people). The problem with using a name is that in the 2000s there was no legislation to restrict the use of other people's names, but now it exists. In addition, the use of a well-known surname in itself violates the public interest, unless the user himself (registering this name for himself) is the owner of this surname or name. But the difficulty is that finding a defendant is always difficult. Obtaining information about the administrator is almost impossible from one jurisdiction to another, without a local representative office, since the documents by which such data is obtained must have legal force in the final jurisdiction where the information is requested. For example, disputes over domain names considered in arbitration courts affect defendants (who are domain name administrators) located either in the territory of Russia or the Republic of Belarus, other CIS countries require additional requirements for the persons themselves who request such data. In Kazakhstan, (To obtain the necessary information, it is necessary to have a special status, not lower than a legal adviser accredited in Kazakhstan, so that the documents with the signature are in principle accepted.)

And yet, why is it so important to study organizations that deal with various disputes? To understand, it is necessary to see the rapid growth of disputes related to domain names. The number of disputes has been rapidly increasing over the past 5 years, with most disputes concentrated in Europe, North America and Asia. These three regions are not chosen by chance. As stated in the study by Insider Monkey [3], which studied countries with a larger number of filed applications

for trademark registration, it is in these regions that exclusive rights are more often registered and more often violated. As you can see, the top 10 countries include not only countries with developed and developing economies, but also those that are among the most technologically advanced countries, which top the ratings among high indicators of innovation activity [4] (which contributes to scientific and technological progress and the use of scientific achievements for criminal purposes). Secondly, as D.Isenberg [5] notes, the creation of a larger number of domain dispute resolution organizations and the appeal to the right (most convenient) jurisdiction helps to quickly and inexpensively deal with all violators of domain disputes. However, it is noted that the appeal to the organization itself does not equal 100% success, since such specific disputes also require detailed study. As an example, it is said about the difficulty of determining the administrators of domain names. Let's assume that the organization has more than 10 well-known trademarks on its balance sheet, therefore, there will be quite a lot of violations in relation to them in different jurisdictions. In this case, the lawyer suggests that even if you apply to an interstate regulatory body, namely to the WIPO-based domain dispute court, then overloading one with dozens of domain names will only contribute to the fact that the dispute will not be so thoroughly studied. Instead, it is worth splitting up claims so that the total number of domains in one claim does not exceed ten or twenty (which contributes to a faster and more effective resolution of the dispute).

Results and Discussion.

The analysis of organizations should begin with the Asian Domain Name Dispute Resolution Centre (ADNDRC). The organization has 4 offices: Hong Kong (HKIAC), Seoul (IDRC), Beijing (CIETAC), Kuala Lumpur (AICA). The decisions of all offices are based on the same model, consisting of six sections. Section one: called "parties and domain name" - since it discloses which jurisdiction the plaintiff and defendant belong to, and also indicates the domain name and domain name registrar (with which the defendant registered the domain name). Indicating the registrar is very important, since it is he who will, in fact, execute the decision if the plaintiff receives satisfaction of his claims. However, it is worth understanding that within the framework of this process there is no need to establish a hosting provider, since it is secondary to the registrar.

Section Two: This section briefly describes the procedure for notifying the parties of the need to participate in the dispute. Obviously, the commission cannot independently find out the addresses of the parties, so the plaintiff provides them when filing the application, including in the list of documents a response about the administrator, which indicates the address data. Most often, the date of sending the correspondence or the date of sending the notification by e-mail is indicated. After this, a conclusion is made about whether the defendant is the right one. In addition, the UDRP rules are indicated - as those used by the commission when resolving the dispute.

Section Three: This section is quite short, it indicates the legal or other name of the copyright holder, information about the trademark that is being used in bad faith, the registration number, the class of the International Classification of Goods and Services, the date of registration. In relation to the defendant, information is indicated that can identify the person carrying out his activities on the page of the site, in the domain name of which the defendant's trademark is used. There may be options when there is no activity on the page, or it is carried out by a competitor or an unscrupulous manufacturer (seller) of pirated (counterfeit) products.

Section four: This section is necessary to present the arguments of the parties. The plaintiff (applicant), referring to the legislation and rules used by the arbitrators, substantiates and asserts that his/her rights have been violated. In this section, it is possible to substantiate that it is the plaintiff's trademark that is used in the domain name; to claim that the trademarks are used in bad faith; that the domain name was registered in violation of the plaintiff's rights; to claim that the website is carrying out activities that may harm reputation, honor, economic status, etc. It is worth noting that most often such disputes arise in relation to domain name administrators, and not to the persons who actually carry out activities on the website. This is because the dispute would not exist if the website user and administrator responded to the pre-trial (claim) dispute resolution procedure. But since this does not happen, applicants turn to specialized organizations for domain

disputes. And since the applicant is the initiator of the international proceedings, and therefore the stronger party, has the right to provide all the information it has about the respondent. The Commission and the arbitrators are not strongly bound by procedural requirements, so a simple notification by e-mail is considered sufficient notice to the parties.

Section Five: consists of two blocks, «language» and «argumentation». The language part determines the proper language of the proceedings depending on the language of the parties. Usually, the language of the defendant is used, but if he does not appear, the applicant has the right to ask the commission to conduct the proceedings in his usual language (recall that the main languages are English, Korean and Chinese). However, since the commission carries out its activities for any region from which the parties could come, the commission includes persons who can independently or through an interpreter carry out the entire process. The second block is a comparison of the factual circumstances with the existing UDRP rules [6]. The commission considers the case, assessing whether the use is illegal, whether the domain name is similar to the applicant's trademark, whether the domain name and activity on the Internet page mislead users, whether any activity on the site harms the applicant, his honor, business reputation and other aspects. Next, the question of whether the defendant has the legal capacity to use the domain name, trademarks, etc. is considered. In this way, the legality of the registration of the domain name, who owns it and for what purpose it is used is examined, since it is not always possible to say with certainty that a phrase refers to a specific trademark. In this regard, it is necessary to examine the attached evidence, which will testify to the defendant's unfair use of the domain name.

Table 1 - popularity of the appeal in the organization

	HKIAAC	CIETAC	IDRC	AICA
TOTAL	1744	1282	232	31
Transfer	1573	1091	180	19
Denied	33	57	9	4
Cancelled	6		13	5
Dismissed	5		8	1
Withdraw	80	16	20	1
Case terminated	2			
Rejected	35	86		
No decision / results	10	4	1	
Pending		14		
Revoked		7		1
Settled			1	

Finally, in paragraph six, the final decision of the commission is indicated. This decision is published and sent to the domain name registrar so that it can take all necessary measures to stop the violation of the plaintiff's rights.

As can see in the table below, the Hong Kong and Beijing offices are popular. But this is understandable, since they started their operations in the early 2000s, while the Korean office and the Kuala Lumpur office started their operations after 2013 (table 1, figure 2).

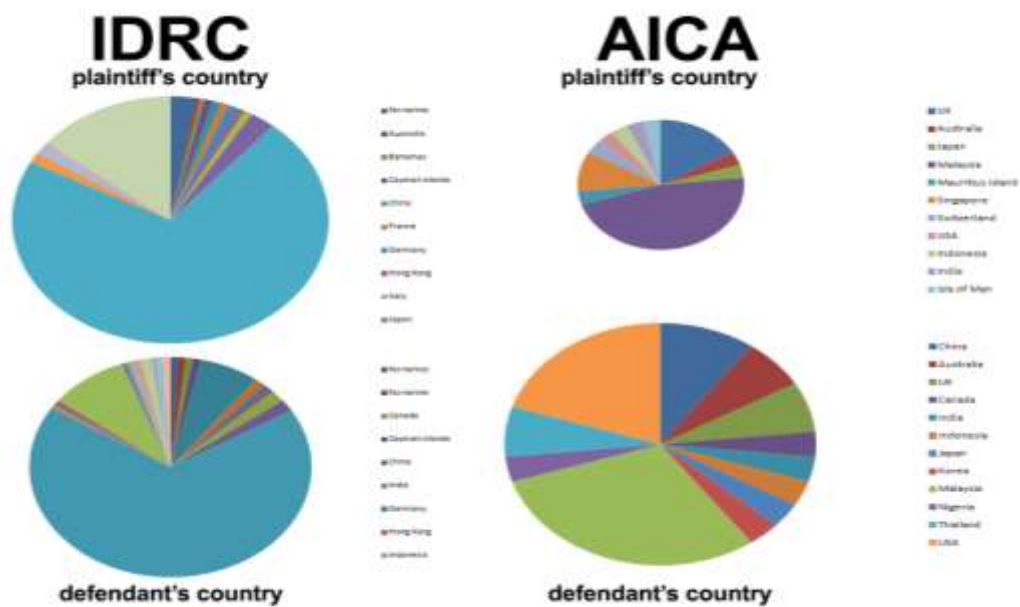


Figure 1. Statistics on organizational decisions (IDRC, AICA)

The results that these organizations bring to applicants also play an important role. Looking at the diagrams below, it can be noted that "Transfer" is in the leading position (from 70-92%), which indicates a favorable trend in dispute resolution in general. In view of which it can be said that appeals to interregional organizations contribute to the restoration of violated rights more effectively than national arbitration courts, which generally consider a wide range of economic disputes, and therefore can be ineffective.

It is also worth noting the pattern in which 50% or more applicants are most often citizens of the country in which the commission is located.

Another dispute resolution center is the Canadian International Internet Dispute Resolution Centre (CIIDRC) [7] (figure 1).

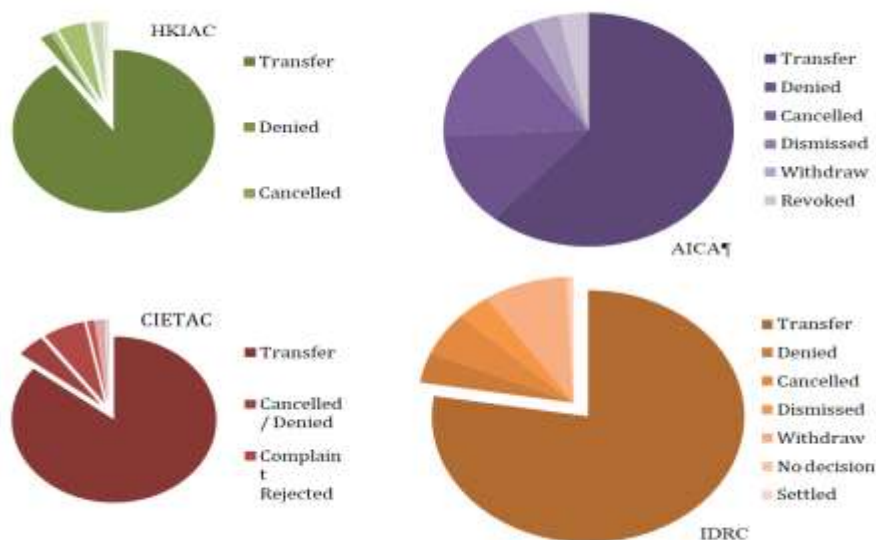


Figure 2. Statistics on organizational decisions (HKIAC, IDRC, AICA, CIETAC)

The Domain Name Dispute Resolution Centre was created in 2002, based on the Vancouver International Arbitration Centre (founded in 1986). The peculiarity of the Canadian domain name resolution centre is that most cases are resolved in relation to anonymously registered domain names. This is quite unusual for the Russian legal order, because minimal requirements are established. For example, when sending a lawyer's request to a domain name registrar accredited in the territory of the Russian Federation, you can receive a set of several data: the full name and surname of the administrator, place of registration, date of birth, contact phone number or e-mail address. In addition, the response may sometimes contain data on the series and number of the passport, but this happens rarely.

The CIIDRC decision includes several sections: an identification table with information about the case (case number, date of preparation, URL of the disputed domain name, representatives of the plaintiff). Next comes a section on the pre-trial dispute resolution procedure, namely, the process of notifying all parties to the dispute (registrar, defendant, etc.) of the plaintiff's intention to apply to a regional dispute resolution organization. The next section describes all the information about the plaintiff: name, type of activity, place of registration, and describes the rights to the trademark. If there is information about the defendant, it is also indicated.

A rare example of a case (23281-UDRP from August 16, 2024 [7]) where a domain name registrar provides information about the domain name administrator. Specifically, this was the US registrar "Go Daddy" - which is registered in the USA. It is worth noting that sending an attorney's request to foreign countries, especially such distant ones as the USA, even if there is an official response form on the official website of the registrar, makes almost no sense. The fact is that the powers of attorneys or patent attorneys do not extend to the jurisdictions of other countries. Due to which the registrar may not respond to such a request. However, if the plaintiff still intends to obtain such data about the defendant, then contacting the regional centers for the resolution of domain names may become one of the most favorable ways to stop the violation of intellectual property rights. The third section describes the plaintiff's arguments (the defendant's response to the complaint or claim, if any), the defendant's demand (transfer of the domain name to the applicant, termination of its registration, etc.). In the fourth section, the commission or sole arbitrator analyzes the case, based on the legal norms regarding the disputed domain name, after which the final decision is indicated in the fifth section. In total, 514 cases were considered from 2002-2024. It is worth noting that the peak of popularity of this organization came in 2019, and the number of appeals is only growing.

The busiest dispute resolution organization is the WIPO Arbitration and Mediation Center. A quick search from 1999-2024 yielded 58,588 decisions in the search and 67,625 in the WIPO reports [4]. At present, in cooperation with the regional community, WIPO can offer quite a large selection of appeals to other regions through its regional connections, as 66 countries currently participate in the ADR program for domain names. Unfortunately, it is not possible to analyze all decisions and compile statistics on them by decisions within the framework of the study. The study regarding WIPO is based on the results of the reports (which are presented on the website [4]). Thus, you can see how the number of disputes increases with each passing year, and their total amount per year exceeds the number of appeals to any other organization considered earlier.

From the chart below, it can be seen that the number of unfair use of trademarks in names is quite high. Then, if 6,192 cases were considered in 2023, almost 5,000 of them were transferred to the applicant as a result of a court decision. Moreover, it is clear that WIPO is the most convenient organization within the framework of international cooperation [8] for resolving disputes over domain names in terms of territorial coverage. Firstly, it is this organization that has developed all the legal regulations used by other regional organizations. Here are some of their provisions: in order to determine the bad faith of the person using your trademark, it is necessary to identify the abuse of rights. The burden of proof of bad faith belongs to the plaintiff, not the defendant. The evidence must meet one of the criteria:

- The defendant registered the domain name in advance (prudently) with the purpose of further sale and profit due to the fact that the plaintiff himself would want to buy it (since in the event of the acquisition of this domain name by third parties, a conflict of interest and a situation of unfair competition may arise) or, in general, announce the sale of this name for an amount clearly exceeding the actual cost (in this case, the sale itself is not a violation, here the registration factor will be taken into account, whether the defendant could have known or knew about the existence of this domain name, whether typos were intentionally made in the name, etc. - all this will be the subject of study by the commission, in addition, it is necessary to consider the fact of use of the domain name, because registration is one thing, and the use of hosting services is quite another). In addition, disputes are received in WIPO after pre-trial (independent, extra-jurisdictional method of protecting violated rights), since the legislation often provides for a claim procedure for dispute resolution. In view of which it is also worth presenting to the court, as evidence, the defendant's actions recorded on paper or electronic media. Perhaps the defendant will threaten to register more similar domain names using the defendant's trademark, when the page with this domain name directly indicates links to competitors or provides information that may harm the plaintiff's business reputation;

- The defendant registered a domain name to create unreasonable obstacles for the plaintiff in carrying out his commercial or other activities (here it is important to take into account the defendant's behavior over time, since the establishment of this fact is based on whether the defendant participated in similar cases or not, i.e. at least two similar cases of registration are needed);

- The defendant is a competitor of the plaintiff and his actions are a direct obstacle (based on public interests, most likely, some assessment of the correlation of activities will be carried out to determine whether there is competition);

The defendant registered a domain name for fraudulent purposes, posing as another person (the plaintiff), with the aim of obtaining commercial benefits (in this case, not only trademarks in domain names are mixed, but also other components of the web page, which will be subject to examination) [6].

Conclusions.

In conclusion, it is absolutely certain that the number of disputes related to domain names will only increase, since at present the potential of not all countries in the scientific, technical and innovative sphere is developed. Now, countries with the current high level of domain disputes will only increase the quantitative ratio of disputes to the number of registered trademarks. Since the criminal element comes up with new ways of illegally borrowing and using other people's trademarks, it also expands the list of trademarks used, especially those that become economically profitable for use.

Currently, there are about 5 main interregional organizations that resolve domain disputes, but there were organizations that disappeared forever. But in fact, each country also has its own dispute resolution chambers under the local organization that accredits domain name registrars with domain territories.

In addition, in order for the organization's decision to be complete and easy to understand, it is necessary to follow the procedure for entering information. Information on the case and information about the parties and third parties (domain name registrars), the language of the proceedings, and domain names should be indicated in the first section. Further, in the same section, the second block should contain information about the pre-trial notification and notification of the current dispute. And only after that, state the factual circumstances of the case and the arguments of the parties. They should be followed by the commission's reasoning, in which it would be better to introduce more references to specific points of the rules, due to the fact that the reasoning is usually abstract, without a clear justification. By developing dispute resolution rules and drafting documents (for the purpose of unification), organizations will be able to continue to be popular among intellectual property owners.

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