

Effective help in domain conflicts



Since the Alternative Dispute Resolution (ADR) committee was founded in 2003, it has dealt with just over 200 complaints relating to domain names. Seven of ten complainants have won their cases. What do people complain about and which complaints are upheld?

"Complaints usually result from somebody registering a domain name to which others claim to have the rights, whether it be a trademark, a product name or a company name," Eirik Djønnø explains. He led the ADR committee from its foundation in 2003 until February 2010, when Kari Anne Lang-Ree took over.

Lang-Ree emphasises that the committee primarily handles the most straightforward cases. The committee's mandate is to turn down cases which, for legal or practical reasons, are too complicated. "The ADR committee is intended to reduce the load on the legal system by providing a service which is far quicker and cheaper than the court's, and with less strict requirements with regard to documentation. However, this also means that the committee is not qualified to resolve complex cases".

"Bad faith"

As registry for the .no domain, UNINETT Norid handles all applications for domain names. The regulations for the .no domain do not require an applicant to show that he has the rights to a chosen name. However, applicants must sign a declaration, confirming among other things that they are not violating another party's rights to the name. In other words, the registration system is based on trust.

A central concept in the ADR committee's handling of conflicts is the expression "bad faith". "If a complainant is to be successful, he must first be able to show that he has a right. Moreover, it must be clear that the other party has acted in bad faith – in other words with the intention of exploiting a registered name or trademark to his own advantage," says Lang-Ree.

Dog or tyres?

Some cases are cut and dried, as when the ADR committee received a complaint from Sharifs Dekksenter, a tyre dealer in Skedsmo, near Oslo. "When we looked into the case, we found that the domain name sharifs.no had been registered by a lady who maintained that she had chosen the name based on the name of her dog. However, the fact that her website contained advertisements for tyres clearly demonstrated that she had acted in bad faith according to the regulations. Her case was therefore not upheld, and the domain name was transferred to Sharifs Dekksenter, which already owned the domain name sharif.no," says Lang-Ree.

Other cases are more complex. For example, who has the rights to the domain name moller.no – the car dealer Møller Bil or Møller's, the cod-liver oil manufacturer? "This is an example of the sort of case which cannot be resolved by the ADR committee. Both parties may be entitled to the name, but only one can actually own the domain name," says the leader of the committee.

High level of competence

Annebeth B. Lange, a senior legal advisor at UNINETT Norid, explains that from the start there has been a steady increase in the number of complaints, and that the committee is handling more and more of them. "The committee has gradually become increasingly well-known and, because of its effective resolution of cases, it has become steadily better recognised and assured of its own competence. Whereas in its first year the committee turned down one complaint in three, in 2009 the rate was down to one in ten.

"The complaints procedure is a cheap and simple alternative to the legal system," says Lange, who refers to it as a low-threshold service. "You can get a complaint dealt with for around 3,500 Norwegian kroner by the ADR committee. If your case is upheld, your money is refunded."

UNINETT Norid functions as a secretariat for the ADR committee, but there is a clear separation between the secretariat function and the registration function. "Different countries have different systems for handling domain conflicts. The British

registry Nominet has its own department for handling complaints, while Sweden has an external committee similar to the Norwegian one. What most systems have in common is the aim of providing a quick and inexpensive solution to relieve the load on the legal system," explains Annebeth Lange.

Very few conflicts

In addition to the approximately 200 cases handled by the ADR committee, six cases have been brought before the courts since the committee was founded in 2003. The number of conflicts amounts to about 0.05 per cent of the total number of domain registrations during the period. "In other words, there are very few complaints, considering the number of registered domain names. It is evident that the Norwegian model, with automatic processing of applications and the subsequent handling of possible conflicts, functions very well," says Annebeth Lange.

- The ADR committee is an independent body which primarily handles disputes relating to rights to domain names.
- The committee currently has eight members, of whom seven are lawyers.
- According to the regulations, the committee primarily deals with straightforward disputes.
- The committee reaches its decisions on the basis of the Norwegian domain name regulations. The decisions of the complaints committee are published by the Lovdata Foundation.
- A complainant must document that he or she has rights to a name or trademark which are identical with or can be mistaken for the disputed domain name, and that the holder's registration or use of the domain name has occurred in bad faith.
- Bad faith is considered, among other things, to occur if the name is used in a way that takes unfair advantage of the complainant's rights or is in any way detrimental to the complainant's rights, or if the registration was performed to prevent the complainant from making use of his rights or with the intention of offering to allow the complainant or other parties to take over the name on payment of a fee.
- Public bodies may submit a complaint if the registration or use of a domain name gives an unwarranted impression of being connected with public administration or the exercise of authority.
- In 2009, the ADR committee handled a total of 55 cases. Of these:
 - 33 complainants had their cases upheld
 - 17 complainants were rejected
 - 5 complainants were rejected and referred to the legal system
- UNINETT Norid is the registry for the .no domain. This means that all domains directly under .no must be registered by Norid.
- Norid receives complaints and obtains case documentation from the parties. Norid does not provide recommendations or advice to the committee, but functions as a secretariat. See www.norid.no/domenekonflikter/index.en.html.