

Rules of procedure for the Complaints Board

The following rules of procedure have been set up by the Complaints Board for Domain Names under Clause 2(2) of DIFO's "Rules on the Complaints Board for Internet Domain Names":

RULES:

Composition and competence of the Complaints Board

1. The Complaints Board comprises three members and three substitutes who are appointed by the Minister of Science, Technology and Innovation after consultation of the Complaints Board. The chairman and his or her substitute must fulfil the general conditions for eligibility to be appointed a High Court judge. The two other members and their substitutes must have provided proof of theoretical or practical expertise, including of name and trademark rights.
 - (2) The Complaints Board furthermore comprises two members and two substitutes with commercial and consumer expertise to assist in handling cases involving non-commercial users or non-commercial registrants and cases of fundamental importance.
 - (3) Cases involving non-commercial consumers or non-commercial registrants are cases in which the domain name which the complaint concerns are primarily of private and not commercial importance to one or more parties to the case.
 - (4) The chairman of the Complaints Board decides when a matter is of fundamental importance.
2. The Complaints Board is competent to deal with:
 - 1) Disputes between registrants and a third party
 - 2) Disputes between registrants and DIFO and/or DK Hostmaster
 - 3) Complaints of DIFO's and/or DK Hostmaster's decisions in accordance with Section 11(3) of the Danish Act on Internet Domains.
 - (2) The Complaints Board may decide to
 - 1) suspend, withdraw or transfer a domain name registered or used in contravention of
 - i) Section 12 of the Danish Act on Internet Domains,
 - ii) business terms and conditions determined in accordance with Section 11(1) in the Danish Act on Internet Domains or
 - iii) any other legislation and
 - 2) to uphold, cancel, change or remit a decision made by DIFO and/or DK Hostmaster.
 - (3) The Complaints Board has no competence to make decisions on payment of damages, remuneration or compensation.
3. The Complaints Board is independent of the administrator and the minister.
4. In its activities for the Board, the Complaints Board's secretariat is solely subject to the Complaints Board's powers of direction and is therefore in this activity independent of the administrator and the minister.
5. The Complaints Board's secretariat is responsible for the preparation of cases, participates in meetings as well as conciliation procedures and represents the Complaints Board in external affairs.
6. No one may participate in the hearing of a case when

- 1) the relevant person has a particular personal or financial interest in the outcome of the case or has previously in the same case represented anyone with such an interest;
- 2) the relevant person's spouse, relatives or in-laws in lineal ascent or descent or collateral kindred as close as cousins or other related persons has or have a special personal or financial interest in the outcome of the case or represents or represent a person with such an interest or
- 3) there are other circumstances that may cast doubt on the relevant person's complete impartiality.

(2) Any person to whom some of the circumstances in (1) apply, must immediately inform the chairman of the Complaints Board thereof.

(3) The chairman of the Complaints Board decides whether a person as a consequence of the provision in (1) cannot participate in the hearing of a case.

7. The chairman of the Complaints Board organises the Board's and the secretariat's work.

Submission of complaints

8. A complaint can be submitted by anyone having an individual and essential interest in the outcome of the case and by DIFO and/or DK Hostmaster.

(2). Complaints about decisions made by DIFO and/or DK Hostmaster must be submitted within four weeks of the date when the complainant was notified of the decision.

(3) If the complainant wishes to dispute a domain name registration, the complaint will be submitted against the person who according to DK Hostmaster's Whois database is the registrant of the domain name. If the complaint concerns a dispute between a registrant and DIFO and/or DK Hostmaster or a decision made by DIFO and/or DK Hostmaster in accordance with Section 11(3) of the Danish Act on Internet Domains, the complaint is submitted against DIFO and/or DK Hostmaster.

(4) Submission of a complaint must be accompanied by payment of a fixed complaints fee. The complaints fee is DKK 500. If, however, the complainant's interest in the domain name is mainly of a non-commercial nature, the complaints fee is DKK 150. A complaint will not be dealt with until the complaints fee has been paid.

(5) Complaints must be submitted to the secretariat of the Complaints Board on paper or electronically. Information on the address to which the complaint should be submitted and the place of payment of the complaints fee is available on the website www.domaeneklager.dk. The Complaints Board may decide that complaints and defences must be submitted using special forms prepared by the Complaints Board.

(6) The language of Complaints Board proceedings is Danish. Documents written in other languages must be accompanied by a translation which must be certified by a translator upon the request of the chairman of the Board or the opposing party. However, the chairman of the Complaints Board may allow one party to present process material written in other languages than Danish if the content is assumed to be immediately comprehensible to the other party as well as the Complaints Board. The chairman's decision may be brought before the Board.

(7) If a case on the right to the domain name in question is pending between the parties before the courts or if either party has brought such an action before a court of law the Board can reject or defer the case. The Board must reject the case if it concerns a dispute covered by a valid arbitration agreement. However, this does not apply if the defendant responds in the case without invoking the

arbitration agreement.

Handling of cases

9. When the Complaints Board receives a complaint, the secretariat informs DK Hostmaster that there is a pending case about the relevant domain name before the Complaints Board and that the relevant domain name can therefore, while the case is pending, only be transferred to a third party with the approval of DIFO's CEO.

(2) The secretariat will review the complaint on its receipt. If, in accordance with Clause 2, there appears to be no doubt that the complaint cannot be heard by the Complaints Board the secretariat will inform the complainant of this together with the reason for the decision. The attention of the complainant will also be drawn to the fact that the decision can be brought before the Complaints Board if the complainant so wishes. The complaint will be brought before the Board by the secretariat.

(3) If a complaint is rejected in accordance with (2), the fee will be repaid to the complainant and DK Hostmaster will be informed of the rejection.

10. If the Complaints Board is competent to hear the complaint, or if nothing can be advanced to show that the Board is not competent, the secretariat will prepare the hearing of the case. The secretariat must – at no further cost to the complainant – place the complainant in a queue on DK Hostmaster's waiting list for the disputed domain name, cf. General Conditions Clause 5.3.1. However, this is not applicable to complaints regarding suspension of domain names.

(2) The secretariat informs the respondent about the complaint and encloses all the material received regarding this, with the exception of material that the respondent is undoubtedly already familiar with, together with a request that the person in question make a statement as soon as possible and no later than two weeks after receipt. The comments of the respondent shall then be presented to the complainant for comments with a similar deadline limit for response. The complainant's rejoinder will then be similarly presented to the respondent. If it is evident that the response of the respondent and the rejoinder of the complainant do not contain new information or evaluations and that the other party is undoubtedly familiar with the contents of this material, the secretariat need not present the response to the opposing party.

(3) The chairman of the Complaints Board, or a person authorised by the chairman, may in special circumstances decide that the deadlines mentioned in (2) must be prolonged; that further information must be obtained in order to make a decision in the case; or that the case must be stayed pending the outcome of another case before a court or an administrative authority concerning a legal issue of significance to the outcome of the case.

(4) If other persons than the complainant and the respondent have a direct and significant interest in the decision in the case, the secretariat ensures that the relevant person or persons is or are presented with the facts of the case and given an opportunity to make a statement within an appropriate deadline before the case is brought before the Board.

11. The secretariat may seek to reach a compromise between the parties. The conciliation procedure must not exceed four weeks. The efforts of the secretariat to obtain a compromise are confidential.

12. The secretariat closes the case if the complainant withdraws his complaint or a compromise is reached between the parties. Cases that have not been closed in this way are submitted by the secretariat to be heard by the Board when the secretariat has concluded its case administration, cf.

Clauses 10 and 11.

Hearing of the case by the Complaints Board

13. The Complaints Board forms a quorum when the Board's three members – or their substitutes – participate in the decision. In cases involving non-commercial users or non-commercial registrants or in cases of fundamental importance, the Complaints Board must furthermore be joined by two members representing consumer and commercial interests respectively or their substitutes. If the Complaints Board has not formed a quorum at a meeting due to the absence of a member of the Board, the Board is deemed to form a quorum if the absent member of the Board subsequently accepts the Board's decision, irrespective of whether this is done in writing.

14. The Complaints Board's decisions are made at meetings on the basis provided by the secretariat. Upon the request of at least two members or the chairman's decision, the case may be postponed to allow the secretariat to obtain further information from the parties.

(2) The Board's decisions are made by a simple majority of votes based on a legal and professional determination of the facts of the case.

(3) If a party's statements concerning the facts of the case are vague or incomplete or if he fails to comment on the other party's statements to this effect or he fails to comply with the requests of the other party or of the Complaints Board, the Board may decide for the opposing party in its assessment of evidence.

15. In cases that do not involve consumer and commercial representatives, the chairman of the Board can decide that the case must be settled in writing. In such case, the case will be submitted to the three members of the Board who will participate in the Board's decision with a recommendation prepared by the secretariat. The chairman determines the deadline within which the individual member's vote must be given and the order of the vote. Upon the request of two members that the case must be discussed orally or if the chairman so decides, the case will be subject to normal consideration at a meeting.

16. In special cases, the Complaints Board may upon one party's request or on its own initiative call the parties to an oral discussion. In the event that the complainant fails to appear or fails to provide the information requested by the Board, the Board can reject the case or hear it on the basis of the information available. If the respondent fails to appear or fails to provide the information requested by the Board, the Board may also hear the case on the basis of the information available.

17. The chairman of the Complaints Board determines the time and the place of the Board meeting and heads the proceedings at the Board's meetings. The Board's meetings are not public.

(2) The members/substitutes participating in a Board meeting must normally be convened giving at least two weeks' notice. This deadline can be departed from if required by special circumstances. If a member is prevented from participating, the Board's secretariat must be notified thereof as soon as possible.

(3) The Board's chairman may decide that cases that are not deemed to raise any doubt will be settled in a simplified procedure at a meeting. In such case, the case will be submitted to the members with a draft decision and may only be required to be discussed at the meeting if a member notifies the secretariat thereof, if possible no later than three weekdays before the planned meeting.

18. The cases are presented orally at the Board meeting on the basis of the material already

submitted by the head of the secretariat or a person authorised by him. The members of the secretariat may participate in the deliberation without voting rights.

(2) The Complaints Board may act as a mediator in the case.

19. Minutes are taken during the meeting and approved by the chairman of the Board. The minutes must contain information on the date and a list of the participants in the meeting. Furthermore, the minutes must contain the required identification of the cases considered at the meeting and their decisions. Minority votes are entered in the minutes.

(2) A transcript of the minutes is submitted to the members of the Board after the meeting, but not to the parties to the case.

Preparation of the Complaints Board's decisions

20. The Complaints Board's decisions must be made in writing. The decisions must be reasoned and signed by the chairman. In the event of a majority decision, the minority may request that this is stated in the decision and the minority may state the reasons for its position in the decision. A decision enters into force four weeks after the decision date, unless the Board decides otherwise.

(2) The parties to the case and DK Hostmaster must be notified of the decision as soon as possible. The parties to the case must be notified of the rules of bringing the case before the courts. The Complaints Board may prepare a standard form to this effect.

(3) If the case has been brought before the Complaints Board by referral from a court or an arbitration tribunal, the Board's secretariat must immediately submit a copy of the decision to the court (arbitration tribunal).

21. The Complaints Board's decisions are published on the Board's website (domaeneklager.dk) and via DIFO's website (difo.dk). The Complaints Board will decide if publication is to respect any request by the respondent to observe confidentiality surrounding personal details, cf. Clause 9 of the General Conditions.

22. Each year before 1 February, a report will be prepared on the Board's activities in the preceding year. The report is submitted to DIFO.

Costs

23. Apart from the complainant's payment of the complaints fee, the hearing of cases by the Complaints Board is not connected with any costs for the parties involved.

(2) If the Complaints Board allows the complainant's claim in full or in part, or if the case is settled on such terms, the complaints fee will be refunded to the complainant.

Judicial review

24. The Complaints Board's decisions are binding and cannot be brought before any administrative authority, cf. the Danish Act on Internet Domains, Section 16(1).

(2) The decision of the Complaints Board may be brought before the courts within eight weeks of the date on which the decision was communicated to the party concerned, cf. the Danish Act on

Internet Domains, Section 16(2).

(3) If a decision made by the Complaints Board is brought before the courts by the defendant, the Complaints Board may grant a stay of execution provided that before the date of enforcement of the decision, the secretariat of the Complaints Board is notified by the defendant of the action brought and with the necessary documentation for the institution of such proceedings. In other cases, the Complaints Board may grant a stay of execution where a matter is brought before the courts and this is found to be appropriate.

Reopening

25. The chairman may decide that a case on which the Complaints Board has made a decision is to be reopened if a request to this effect is made within eight weeks after notice of the decision has been given to the person concerned. Reopening is only possible if justified by special reasons, particularly in the event of:

- (i) the unavoidable absence of a party who has not spoken in the case, or
- (ii) new information which – had it been available during the hearing of the case by the Complaints Board – would probably have resulted in a different outcome of the case.

Legal force of the Complaints Board's decision

26. The Complaints Board's decision will not prevent either party from submitting a complaint to the Board concerning the same domain name but on a new basis.

Secrecy

27. With the exception of publicly available information, the members of the Complaints Board and the secretariat's employees must observe secrecy in relation to information disclosed during the Complaints Board's hearing of the case.

Copenhagen, 1 September 2009

For the Complaints Board for Domain Names