

RULES OF PROCEDURE

laid down by the Complaints Board for Domain Names in accordance with clause 3 of the regulations of the Complaints Board for Domain Names; see Danish Act No. 164 of 26 February 2014 on Internet Domains (Domain Names Act)

Submission of a complaint, defence and other correspondence

1. In disputes between registrants and third parties about the registration and use of domain names (see section 28(1) of the Domain Names Act), the complaint is submitted against the person who according to [Punktum dk's] Whois database is the registrant of the domain name(s) which the complaint concerns (the defendant). If this registrant is anonymous in the Whois database this is stated in the complaint.

(2) Complaints about decisions made by DIFO and/or [Punktum dk] (see section 28(2) and (5) of the Domain Names Act) are submitted against DIFO and/or [Punktum dk] (the defendant).

2. A complaint in accordance with clause 1 must be submitted by using the digital case management portal that the Complaints Board makes available (the case portal of the Complaints Board). The case portal of the Complaints Board is accessible via the website of the Complaints Board www.domaeneklager.dk.

(2) The complaint must contain the information that is stated in the complaint form that has been made available on the case portal of the Complaints Board. As part of the information, the complaint must contain a complete statement of the circumstances on which the claim is based and the documents and other documentation on which the complainant wishes to rely must be attached.

(3) Any written inquiry concerning the case, including submission of a defence, must be made via the case portal of the Complaints Board.

3. Where the chairman or vice-chairman of the Complaints Board considers that there are special circumstances which have the effect that a party cannot be expected to use the Complaints Board's case portal, the chairman or deputy chairman can decide that the party in question be exempted from using the Complaints Board's case portal.

(2) The chairman or vice-chairman of the Complaints Board, or a person authorised by the chairman or vice-chairman, can generally decide that under special circumstances a complaint or a pleading or other document does not need to be submitted via the Complaints Board's case portal.

(3) A party who is exempted from using the Complaints Board's case portal (see sub-clause (1) above) must submit a pleading, exhibits and other documents to the secretariat on paper. In that case, the secretariat will make the pleading, exhibits and other documents available on the Complaints Board's case portal.

(4) A complaint submitted in accordance with sub-clause (3) above must at least contain

- 1) The name and address of the complainant,
- 2) The name and address of the defendant; see clause 1,
- 3) The complainant's claim; see section 28(4) of the Domain Names Act,
- 4) A complete statement of the circumstances on which the claim is based, and

5) The documents and other documentation on which the complainant wishes to rely.

(5) The Complaints Board can decide that complaints and defences be submitted using special forms prepared by the Complaints Board.

(6) The Secretariat sends notifications from the Complaints Board and the other documents of the case on paper to any person who is exempted from using the Complaints Board's case portal

4. The language of Complaints Board proceedings is Danish; however see sub-clauses (2) and (3) above.

(2) A party can produce pleadings, exhibits and other documents drawn up in English, Norwegian or Swedish unless the chairman or vice-chairman of the Complaints Board requests that they be accompanied by a translation. The translation must be certified by a translator at the request of the chairman or vice-chairman of the Complaints Board.

(3) Pleadings, exhibits and other documents drawn up in languages other than Danish, English, Norwegian or Swedish must be accompanied by a translation that must be certified by a translator at the request of the chairman or vice-chairman of the Complaints Board. However, the chairman or vice-chairman of the Complaints Board can allow a party to produce evidence drawn up in languages other than Danish or English if the contents of the evidence must be presumed to be immediately comprehensible to both the opposing party and the Complaints Board.

(4) Decisions made by the chairman or vice-chairman of the Complaints Board in pursuance of sub-clause (2) or (3) above can be brought before the Complaints Board.

5. Where a case concerning the right to the domain name in question is pending between the parties before the courts or where either party brings such an action, the Complaints Board can reject or postpone 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 submits a defence without invoking the arbitration agreement.

Case handling

6. The secretariat reviews the complaint on receipt. If the complaint does not meet the requirements mentioned in clause 2(2) or clause 3(4) and if it is thereby not suited to form the basis for hearing of the case, the secretariat will inform the complainant of this and fix a deadline for correction of the inadequacies. The secretariat can postpone this deadline if circumstances so warrant. If, after the expiry of the deadline, the complaint is still not adequate, the secretariat will reject the complaint and inform the complainant of this, stating the reasons for the rejection.

(2) If there is no doubt (see section 28 of the Domain Names Act) that the case cannot be heard by the Complaints Board, the secretariat will inform the complainant of this, stating the reasons for this decision. At the same time, the attention of the complainant is drawn to the fact that the decision can be brought before the Complaints Board if this is requested by the complainant. The decision will be brought before the Complaints Board by the secretariat.

(3) If the complainant has paid a complaint fee for the hearing of a complaint that is rejected in accordance with sub-clause (1) or (2) above, the complaint fee will be refunded to the complainant.

7. When there is an adequate complaint which the Complaints Board is competent to hear or for which nothing can be advanced to show that the Board is not competent to hear it, the secretariat will prepare the hearing of the complaint. However, a complaint will not be dealt with until the complaint fee has been paid; see clause 1 of the regulations of the Complaints Board for Domain Names.

(2) When the secretariat starts preparing the case, cf. clause 7(1), the secretariat notifies [Punktum dk] that a case is pending concerning the domain name(s) in dispute.

(3) After receipt of an adequate complaint which is suited to form the basis for hearing of the case (see clause 6) the Board's secretariat will inform the defendant of this by sending a notification by e-mail. If the complaint concerns registration and use of a domain name (see section 28(1) of the Domain Names Act) the notification is sent to the registrant's e-mail address which appears from [Punktum dk's] Whois database. If the complaint concerns a decision made by the administrator (see section 28(2) of the Domain Names Act) the notification is sent to [Punktum dk...]. In that connection, the secretariat gives guidance to the defendant on the use of the Complaints Board's case portal.

(4) The secretariat presents the complaint to the defendant with a request to the defendant to present a statement (defence) as soon as possible and at the latest two weeks from receipt of the complaint. The defendant's comments must then be presented to the complainant for a statement with a corresponding response deadline. The complainant's response is presented to the defendant in the same way. If it is obvious that the defendant's reply and the complainant's response do not contain new information or assessments and that the opposing party is thus undoubtedly aware of their contents, the secretariat need not present the reply to the opposing party.

(5) The chairman or vice-chairman of the Complaints Board or a person authorised by the chairman or vice-chairman can, if circumstances so warrant, decide that the deadlines set out in sub-clause (4) above be postponed, that additional information be obtained for the purpose of deciding the case or that the case be postponed pending the decision of a different case pending before a court or an administrative authority concerning a legal matter of importance for the outcome of the case.

(6) Where parties other than the complainant and the defendant have a direct and significant legal interest in the decision of the case, the secretariat ensures that the case file is presented to the party or parties in question and that they are given an opportunity to make a statement within a suitable response deadline before the matter is presented to the Complaints Board.

8. The secretariat can seek to facilitate a settlement between the parties. The conciliation procedure must not exceed four weeks. The secretariat's endeavours to facilitate a settlement are made in confidence.

9. The secretariat closes the case if the complainant withdraws his/her complaint or if the parties accept a settlement. Cases that have not been closed in this way are subsequently presented to the Complaints Board for a decision on the basis of the information available when the secretariat has concluded its case administration; see clauses 7 and 8 in this context.

Hearing of the case by the Complaints Board

10. The Complaints Board forms a quorum when the chairman or vice-chairman of the Board and two members with legal expertise – or their alternates – take part in the decision. In the hearing of cases involving non-commercial use of domain names and cases of fundamental importance, it is also a specific requirement that the Board is joined by the two members representing consumer and commercial interests or their alternates.

(2) If the Complaints Board has not formed a quorum at a meeting as a result of absence of a member, the Board is deemed to form a quorum if the absent member subsequently endorses the Board's decision, even if such an endorsement is solely on a written basis.

11. The decisions of the Complaints Board are made at meetings on the basis provided by the secretariat. The case can be postponed until the secretariat has obtained additional information from the parties when this is requested by at least two members or when it is decided by the chairman or vice-chairman.

(2) The decisions of the Complaints Board are made by a simple majority of votes.

(3) Where the statements of a party concerning the facts of the case are vague or incomplete or where the party fails to comment on the statements of the opposing party to this effect or to comply with requests of the opposing party or the Complaints Board, the Board may, in the assessment of evidence, draw adverse inferences from this.

12. The chairman or vice-chairman of the Complaints Board can decide that a case be decided in writing without the holding of a meeting. In that case, the case is submitted to the Board members who are to participate in the Board's decision with a recommendation prepared by the secretariat. The chairman or vice-chairman of the Complaints Board determines the deadline within which the individual member must have voted and the order of voting. Where two members request that the case be discussed orally or where the chairman or vice-chairman so decides, the case is discussed at a meeting according to standard procedure.

13. In exceptional cases, the Complaints Board can, at the request of a party or on its own initiative, convene the parties for oral proceedings. If, for no lawful, notified reason, the complainant fails to attend such proceedings or does not provide the information requested by the Board, the Board can reject the case or hear the case on the basis of the information available. If the defendant fails to attend or does not provide the information requested by the Board, the Board can also hear the case on the basis of the information available.

14. The chairman or vice-chairman of the Complaints Board fixes the time and place for the holding of the meetings of the Board and decides on all matters relating to the proceedings of the meetings of the Board. The meetings of the Board are not public.

(2) The members/alternates who are to participate in a meeting of the Board must normally be convened at a notice of at least two weeks. This deadline can be dispensed with if necessitated by special circumstances. If a member is prevented from attending a meeting, the Board's secretariat must be notified thereof as soon as possible.

(3) The chairman or vice-chairman of the Complaints Board can decide that cases deemed not to give rise to doubt be decided at a meeting according to a simplified procedure. If so, the case is sent to the members with a draft decision and a discussion of the case at the meeting can be demanded only if a member notifies the secretariat of this, as far as possible not later than three weekdays before the set meeting time.

15. The cases are discussed orally at the meeting of the Board on the basis of the material submitted in advance. The members of the secretariat have the right to attend the meeting of the Board without voting rights.

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

16. Minutes are taken of the business transacted at the meeting which are approved by the chairman or vice-chairman of the Complaints Board. The minutes must contain information on the date and a list of the participants of the meeting. In addition to this, the minutes must contain a required identification of the cases considered at the meeting and the decisions made with respect to the cases. Minority votes during voting are entered in the minutes.

(2) After the meeting, a transcript of the minutes is sent to the members of the Board, but not to the parties to the case.

Drawing up of the decisions of the Complaints Board

17. The decisions of the Complaints Board must be in writing. The decisions must be reasoned and be signed by the chairman or vice-chairman of the Complaints Board. If a decision is based on a majority decision, the minority can request that this be stated in the decision and the minority can state the reasons for its position in the decision. Decisions take effect four weeks after the date of the decisions of the Board, unless the Board decides otherwise in the decision.

(2) The parties to the case and [Punktum dk] are notified of the decision as soon as possible. The parties to the case must be notified of the rules for bringing the case before the courts. The Complaints Board can prepare a standard form for this.

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

Reopening

18. The chairman or vice-chairman of the Complaints Board can decide that a case in which the Complaints Board has made a decision be reopened if a request for this is submitted not later than eight weeks after the party in question was informed of the decision. Reopening is possible only if special reasons so warrant, including, in particular, in the event of:

- 1) lawful absence of a party who has not expressed his/her opinion in the case, or
- 2) new information which – had it been available during the hearing of the case by the Complaints Board – would presumably have resulted in a different outcome of the case.

Legal force of the Complaints Board's decision

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

Secrecy and impartiality

20. With the exception of information that is publicly available, the members and alternates of the Complaints Board as well as the staff members of the secretariat must observe secrecy in relation to information disclosed during the Complaints Board's hearing of complaints.

21. No one is permitted to participate in the handling of a case

- 1) who has a special personal or financial interest in the outcome of the case or, in respect of the same case, has previously been a representative of someone with such an interest,
- 2) whose spouse, relatives by blood or by marriage in ascending or descending line or in the collateral line as close as a cousin, niece or nephew or other related parties has/have a special personal or financial interest in the outcome of the case or is a representative/are representatives of someone with such an interest, or
- 3) whose complete impartiality can be questioned on account of other circumstances.

(2) Any person to whom any of the circumstances mentioned in sub-clause (1) above apply must immediately notify the chairman or vice-chairman of the Complaints Board thereof.

(3) The chairman or vice-chairman of the Complaints Boards decides whether, as a result of the provision of sub-clause (1) above, a person must be excluded from participating in the handling of a complaint.

22. These rules of procedure take effect on 19 December 2017 and replace the rules of procedure of the Complaints Board of 8 August 2017.

(2) Cases that were brought before the Complaints Board before the commencement of the rules of procedure are handled according to the existing rules of procedure.

Copenhagen, 1 December 2017

On behalf of the Complaints Board for Domain Names
