

**DOMAIN NAME AS A MEANS OF
INDIVIDUALIZATION OF PARTICIPANTS IN CIVIL
TURNOVER OF UKRAINE**

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Abstract.

The article points out the lack of a unified approach to understanding the concept of a domain name, the legislative uncertainty of its legal regime, and place in the system of objects of civil law and intellectual property law. The paper purpose is to identify the legal nature of domain names as a means of individualization of participants in civil turnover, identify deficiencies in their legal regulation, provide suggestions for improving the current legislation regarding their protection. To achieve the purpose, the dialectical, comparative, systemic, historical, formal-logical, logical-normative, statistical and forecasting methods, were used. It is concluded that to provide legal protection to domain names, they must be properly registered, and the registration procedure itself should be phased in at the legislative level, preferably in a single unified normative legal act. The author also

proved that the domain name registration agreement is bilateral, consensual, reimbursable, gratuitous. And to overcome the legislative uncertainty on this issue, it is necessary to make appropriate amendments to the Civil Code, where the definition, content, essential terms of the relevant agreement should be specified.

Keywords: delegation of the domain name, domain name, domain name registration agreement, domain name registration contract.

INTRODUCTION

Today, domain names became the primary means of individualization of the website, so the issue of their legal protection is of particular relevance. Such objects act not only as a means of addressing on the Internet but also as a unique object of civil turnover. Domain names are of complex legal nature and are similar to trademarks and trade names. It often leads to legal conflicts related to exclusive rights to domain names. The author of the article points out the lack of a unified approach to the formulation of the concept of a domain name, the legislative uncertainty of its legal regime and place in the system of objects of both civil law and intellectual property law, and the existence of various approaches in judicial practice in resolving domain disputes. These problems require an immediate solution because Ukraine claims to be a developed and civilized country with the information society, which is typical for most developed countries of the world.

The domain names became a subject of scientific interest in different countries of the world. D. V. Boyko (2005) paid his attention to the legal nature of domain names. V. V. Bontlab (2006) investigated civil legal regulation of domain names. N. O. Majdanik (2009) revealed the features of the exercise of the right to a domain name on the Internet. S. S. Patrushev together with Ju. I. Filatov (2011) researched particularities of regulation of registration and use of domain names. N. M. Bulat

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(2016) made a successful attempt to periodize Ukrainian legislation in the field of domain name regulation. Following Z. Ju. Miljutin (2005), A. O. Kodinets, (2007), T.V. Semjonova (2012), O.S. Doroshenko, N.O. Minchenko (2013), we can talk about the similarity of domain names with other civil law objects, namely with means of individualization such as trademark and trade name. Nevertheless, the differences between these objects are very noticeable; therefore, they cannot be identified. Concluding the position of K. O. Zerov (2015), domain names have extraterritorial nature, and there is an absence of restrictions on the personal composition of these objects. R.A. Lidovets investigated contracts that are not fully regulated by special norms of civil law. Based on his studies, we can say that the domain name registration agreement belongs to such. Thus, it is possible to conclude that nowadays, the issue of legal nature of domain names as well as their legal regulation as means of individualization of participants in local circulation and their registration problems explain the topicality of this paper.

Purpose of the Study.

The purpose of the study is to determine the legal nature of domain names as a means of individualization of participants in civil turnover, to identify deficiencies in their legal regulation and to formulate proposals aimed at improving legislation to protect domain names as a means of individualization of participants in civil turnover.

Object and subject of the Study.

The object of the study is public relations regulated by civil law, arising in connection with the acquisition and implementation of domain name rights. The subject matter of the study is domain names as a means of individualization of participants in civil turnover.

Research methods.

The methodological basis of the study is the universally recognized scientific criteria of objectivity, as well as a set of research methods that provide a comprehensive analysis of domain names as a means of individualization of participants in civil turnover. The basis of the study is the dialectical method of scientific knowledge of the phenomena of reality in their relationship and development. Thanks to the application of a systematic approach, it became possible to establish the connection of domain names with related phenomena and determine their place in the system of civil law and intellectual property law. The author also used such methods as historical (made it possible to clarify the evolution of domain names); formal-logical (used to analyze and deepen the conceptual apparatus); classification and grouping method (for determining the object-subject composition in domain disputes). Using legal modeling and a comparative legal method, the approaches to understanding domain names, as well as the practice of resolving domain disputes in arbitration and courts, are investigated. The methods of analysis and synthesis, the synergistic method, provided an opportunity to comprehensively study the problematic aspects of the process of acquiring and exercising rights to domain names. The modeling method provided the development of proposals for improving legislation in terms of strengthening the protection of domain names.

RESULTS AND DISCUSSION

**THE ESTABLISHMENT AND DEVELOPMENT OF THE
DOMAIN NAME**

The rapid development of information and communication technologies in the last decade has become a vector of the technological formation of modern society. It was they which became the basis for the improvement of material means of production. The development of global information and worldwide telecommunication network, named the Internet played a unique role in this issue. Now the Network has become a medium of mass communication, without the use of which it is difficult to imagine modern human beings.

Improving web technologies and their widespread introduction into the daily life of society requires the development of unique methods and means of legal regulation of harmonious relations. That is why special attention is required to the domain name sphere, which is an integral part of the existence of the Internet space.

The domain name system (also DNS), according to the Ukrainian scientist V.V. Bontlab, is a completely logical result of globalization processes in the field of market relations, as a result of which the widespread use of the World Wide Web in all spheres of human social life has begun¹.

According to the author of this article, the establishment and development of the domain name system in Ukraine can be considered as its starting point the adoption of the Law of Ukraine "On Telecommunications", as well as the introduction of appropriate amendments to Law of Ukraine "On the Protection of Rights to Marks for Goods and Services".

¹ Bontlab, 2006, p. 9.

Back in 2002, the legislators enriched national legislation with the definition of a domain name. Namely, the Law of Ukraine "On Amending of Certain Laws of Ukraine on Intellectual Property Issues" of July 4, 2002, in article 1 indicated that domain name is the name that helps to address computers and resources on the Internet¹. Accordingly, the 2 main characteristics of the object under consideration, namely the addressing of computers and resources, were highlighted, while its legal nature has not got its explanation.

Further, the terms "domain", "domain.UA" and "second level domain" were defined in the Law "On Telecommunications", as well as the "Internet address"².

At the level of by-laws in this period were adopted:

in 2002 - the Procedure for connecting to global data networks, approved by the resolution of the Cabinet of Ministers of Ukraine³ and the Procedure for the functioning of the websites of executive authorities;⁴

in 2003 - Order of the CMU "on the administration of the .UA domain";⁵

in 2006 - the Concept of the development of telecommunications in Ukraine.⁶

Of great importance was the approval of the Basic Principles for the Development of the Information Society in Ukraine for 2007-2015. This legal act indicated that in order to increase the efficiency of the development of the

¹ On amendments to some laws of Ukraine on intellectual property issues. Law of Ukraine, No. 34-IV.

² On telecommunications. Law of Ukraine, No. 1280-IV, para. 12-14, art.1., para. 5 art. 1.

³ On approval of the Procedure for connecting to global data networks. Decree, No. 522.

⁴ The procedure for the functioning of the websites of executive authorities. Order, No. 327/225.

⁵ On the administration of the ".UA" domain. Order, No. 447-r.

⁶ On approval of the Concept for the Development of Telecommunications in Ukraine. Order, No. 316-r.

information society, a particular system of legislation will be created, which will also be harmonized with the requirements of international law.

Further, part 1 of article 20 of the Law of Ukraine “On the Protection of Rights to Marks for Goods and Services” has been replenished with the norm that the use of protected marks in domain names without the consent of the owner of the trademark violates his rights.¹ By such a norm, lawmakers established the priority of the rights of trademark owners over the rights of domain names owners. According to the opinion of scientists, this state of affairs places unequal legal conditions on the owners of such objects². From 2006 to 2014, inclusively, the lessors did not adopt more legal acts regarding the regulation of domains.

However, in 2015, the Decree of the CMU of October 21 approved the requirements for domain names of state bodies in the Ukrainian segment of the Internet. Thus, the next stage began in the organization of legal regulation of domains by Ukrainian legislation. We can say that it was this Resolution that recognized the legal status of the Cyrillic Ukrainian domain zone. YKP because now the registration of domain names of state bodies should have been carried out in it.

June 1, 2016, a new CMU Order appeared, according to which the Concept of reforming the state system of the legal protection of intellectual property comes into force in Ukraine. One cannot overestimate its role, because it is this document for the first time at the national level that directly indicates that the domain name belongs to the objects of intellectual property law. The same act provided for the creation of a particular national body on intellectual property issues, among whose functions activities for the protection of non-traditional objects of intellectual

¹ On telecommunications. Law of Ukraine, No. 1280-IV.

² Bulat, 2016.

property and other results of intellectual activity were also indicated, which included domain names.¹

Now the powers of the previously liquidated State Intellectual Property Service are performed by the Ukrainian Ministry for Development of Economy, Trade, and Agriculture; accordingly, an exclusive national authority in this area has not been created.

The lack of regulation of domain names for legal science requires an analysis of their definitions in existing national legislation and doctrinal teachings. But in order to avoid confusion in terms, it is first necessary to identify how the concepts of “domain” and “domain name” are related, as well as what is the role of ICANN in this.

The non-profit organization Internet Corporation for Assigned Names and Numbers, also known as ICANN, according to Art. 1 of its Bylaws, coordinates global systems of individual identifiers of the World Wide Web to ensure the full and safe functioning of such systems. Among these unique identifiers are listed, including domain names. They form a DNS.²

According to ICANN, all computers on the Web have unique addresses in the form of a long string of numbers, known as an IP-address. They are difficult to remember. Therefore, domain name simplifies their use by transforming these numbers into letters familiar to us, i.e., a domain name. Accordingly, with the registration of such a name, a person creates a new domain in DNS and gives it a name that is a registered domain name.³

¹ On amendments to some laws of Ukraine on intellectual property regarding the fulfillment of requirements related to Ukraine’s accession to the WTO. Law of Ukraine, No. 254-VI.

² Bylaws for Internet Corporation for Assigned Names and Numbers, 2019, Nov. 28.

³ Domain Name Industry, n.d.

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The Corporation website strongly recommends that one does not confuse the domain name with the website and the uniform resource address (URL). So, many actors mistakenly believe that creating a domain name means getting a website, although this is not so. In order for the presence on the Web in the form of a registered domain name to become available to other users, one will need to order a web hosting and do several other manipulations.¹

Now back to comparing the concepts of domain and domain name. According to Article 1 of the Law of Ukraine “On the Protection of Rights to Marks for Goods and Services,” domain name is a name for addressing on the Internet.² However, Article 1 of the Law of Ukraine “On Telecommunications” indicates that the domain is considered part of the hierarchical address space of the World Wide Web. This part has a unique name for its identification, is subject to centralized administration, and is serviced by a group of domain name servers.³ Thus, each of the abovementioned legal acts contains concepts that interest us but does not indicate the relationship between them.

Both concepts are indicated only in the Decree of the Cabinet of Ministers of Ukraine No. 522 of April 12, 2002, On Approving the Procedure for Connecting to Global Data Networks. According to the document, the domain is recognized as part of the address space on the Internet, whose purpose is to identify a computer or group of such. According to the Decree, a domain name should be considered an alphanumeric expression to identify any computer on the Internet.⁴

¹ About Domain Names, n.d.

² On the protection of rights to marks for goods and services. Law of Ukraine, No. 3689-XII.

³ On telecommunications. Law of Ukraine, No. 1280-IV.

⁴ The procedure for connecting to global data networks. Resolution, No. 522.

THE SECOND TOPIC

LEGAL NATURE OF DOMAIN NAMES

The system of means of individualization, like other phenomena in the legal sphere, is directly dependent on the economic structure of the state and the changes associated with it. The purpose of such means of individualization is to ensure the identification of goods or services and their manufacturers. In the absence or with a significant restriction of competition, these means cannot correctly perform their functions. Therefore, they are replaced by other types of identifying designations.¹ Typically, the institution of means of individualization of participants in civil turnover covers such objects of intellectual property as trademarks, commercial legal names, and geographical indications of the origin of goods.

The ongoing development of information technology has led to disputes regarding the expansion of the system of means of individualization with the inclusion of domain names in it. The Ukrainian scientist V.V. Bontlab spoke on this issue. He is sure that the domain name should be considered as an independent object of intellectual property law, namely, as a means of individualization of participants in a civil turnover on the Internet.²

To prove that domain names belong to these means, first, we need to determine their place in the system of objects of civil law. So, according to Article 177 of the Civil Code of Ukraine, such objects include things, money, other property and rights to it, results of intellectual activity, information, and other tangible and intangible benefits.³

¹ Kodinets, 2007, p. 112.

² Bontlab, 2006, p. 7.

³ Civil Code of Ukraine, No. 435-IV.

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The latter, according to E. A. Sukhanov, include the results of intellectual activity and objects similar in nature (industrial designs, trademarks, service marks, commercial legal names, as well as personal non-property benefits that have received civil legal protection.¹ Objects of civil rights have distinctive characteristics, V. A. Lapach relates discreteness, legal binding, and systematicity to them.²

According to the researcher, T.V. Semenova, domain names have six features characteristic of civil law objects:

they can be attributed neither to things as objects of the material world nor to information or intangible benefits, because, unlike the latter, domain names have commercial value. They do not have a strict binding to the face of their owner, which can become an individual, legal entity or bodies of state power and local self-government;

when the objective (digital) form of the domain name is changed to written, the object will lose the addressing function, but will not stop individualizing the corresponding resource on the Web;

domain names cannot be considered objects of copyright, because they do not meet the mandatory requirement for an objective form of expression of the latter;

they do not meet the conditions of patentability for inventions, industrial designs and utility models;

copyright to the object arises upon the creation of the work and the provision of the material form, with no individual registration required. And the rights to domain names arise only after registration with the official registrar;

¹ Sukhanov, 2002, p. 295-296.

² Lapach, 2002, p. 167.

and only means of individualization can be considered those objects to which domain names can be attributed¹.

The author of this article agrees with the latter statement since domain names are used to recognize the address space on the Internet and allow us to distinguish one website from another. On this occasion, D.V. Boyko points to ontological characteristics, as a result of which he suggests attributing domain names to means of individualization. Indeed, for the latter, the ability to distinguish one person and their goods and services from other persons and their goods (services) is of paramount importance.²

Scientists S. S. Patrushev and Yu. I. Filatov believes that, depending on the circumstances of registration and use of a domain name, it can be considered either as a means of individualization or as an identifier of a part of information space. This approach is a compromise and will help to take into account the opinion of all parties.³

Consideration of domain names from the standpoint of means of individualization requires that they are distinguished from other means of individualization. These include signs for goods and services and commercial legal names since they often become objects of misuse.

If we compare the trademark with the domain name, then both objects are designed to ensure the identification of goods and services or business entities. According to K. O. Zerov, the trademark and domain name are connected by such standard features as an individualization function, the urgent nature of registration, commercial value. Also, there are grounds for their termination; they

¹ Semenova, 2012, p. 163–164.

² Boyko, 2005.

³ Patrushev, Filatov, 2011, p. 60.

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should comply with the principles of humanity and morality and are subject to alienation.¹

According to O. Doroshenko the main task of a trademark is to identify the subject of economic activity; respectively, such a sign will be a guide for the purchaser of the goods. The purchaser will be able to think about alternatives and, choose favor of competitor's products while understanding the manufacturer in question. A domain name is not intended to guide the customer in the market of goods and services. It is possible to provide services and produce goods without registering a trademark while posting information on a website without a domain as a name is not possible from a technical point of view.²

The legal regimes of these objects also vary. A trademark receives legal protection based on the principle of the national regime, as well as territoriality and specialization principles. Accordingly, such legal protection applies only to the territory of a particular state and applies only to those classes of goods and services that are indicated in the application for the mark or the certificate issued for it. Thus, in other states and for other classes, identical trademarks can receive legal protection. Accordingly, the novelty criterion for such designations has a relative character.³

Domain names have different principles of legal regulation. So, it must necessarily be unique in the corresponding domain zone, while the nature of the information resource where the specified object will be used, or its specialization is not essential.⁴

¹ Zerov, 2015, Sept. 13.

² Doroshenko, Minchenko & Berestjuk, 2013, p. 18.

³ Nagornyyak & Sklyarov, 2014, p. 223–224.

⁴ Doroshenko, Minchenko & Berestjuk, 2013, p. 18.

Also, the requirement for mandatory use, which is declared by Part 4 of Article 18 of the Law of Ukraine "On the Protection of Rights to Marks for Goods and Services" for trademarks, is not put forward for domain names. According to the indicated norm, the non-use of a trademark in Ukraine for three years gives any person the right to demand in court to terminate the certificate for the trademark ahead of schedule.¹

As K.O. Zerov notes, a domain name can only be used by one person, although a trademark may belong to a group of persons. The scientist points out the extraterritorial nature of domain names, as well as the absence of restrictions on the personal composition of these objects.²

Now, let us compare domain names and commercial (company) names (trade names). According to S. Yu. Milyutin, both objects are very similar, since domain names often perform an identifying function for a legal entity. The value of the domain name for the Internet promotion of products is also essential because it is easy to remember; it is very informative. Today, a well-chosen domain name is a valuable commercial asset of an enterprise, often as valuable as a trademark or trade name.³

The author of the article considers domain names and company names to be completely different objects. So, the first of them identifies an address resource on the World Wide Web. And if there is a certain indication, it is possible to distinguish not only legal entities but also individuals, as well as goods and services that are offered on the website under a domain name.

¹ On the protection of rights to marks for goods and services. Law of Ukraine, No. 3689-XII.

² Zerov, 2015, Sept. 13.

³ Milyutin, 2005.

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Also, domain names can be registered without the purpose of achieving a specific commercial goal, while commercial (company) names are used by subjects in civil or economic circulation for a specific commercial purpose.

The term of existence of the right to both objects under consideration is also their difference. As for the domain name, such a period is determined by a public agreement (offer) on the provision of paid services for the delegation of the specified object. This period may increase with the extension of the period of the delegation of rights to the domain. Concerning the company name, the rights to it have no term; that is, they are unlimited.

Characterization of domain names as a means of individualization of participants in civil turnover allows the author to talk about their intangible nature. Thus, they can be attributed to benefits, because they, firstly, satisfy the needs of society, and secondly, they have a particular value expression.

However, at the same time, with the above, it is worth considering that domain names have an urgency and a contractual nature of the emergence of law, respectively, they can be attributed to the intellectual property of a property nature. Moreover, such specific features make the object of consideration worthy of allocation to it of a separate place in the system of intellectual property rights. It is also worth noting once again that domain names should not be identified with related objects such as trademarks and trade names.

THE THIRD TOPIC

LEGAL REGULATION OF OBTAINING AND EXERCISING RIGHTS TO DOMAIN NAMES

For more comprehensive review of domain names as a means of individualization of participants in civil turnover, it is vital to study the procedure and features of their registration. So, the registration of these objects is possible only after the conclusion of an agreement on the appropriate registration. From that moment, the domain name can be considered as an object of intellectual property. At the same time, the registrant subject acquires the right to it.

Each domain has its practice and rules for registering names. They are similar to each other; however, it is always essential to take into account the rules directly related to the features of the domain zone.

For Ukraine, there are general rules for registering domain names in .UA and .YKP zones. Nevertheless, before proceeding to their consideration, it is worth exploring the term "domain name registration". So, following the current .UA Policy, such a term is not provided, but there is the term "delegation" (it is specified in clause 1.6. Of the .UA Policy).¹ At the same time, it is worth mentioning the Policy of public domain (version 3.5), which is used by the relevant authorities in the technical interaction of the registry and the registrar and is also binding on the relevant subjects of the relationship, namely, the registry operator, registrar and domain administrator. It states that the registration of a domain name should be understood as a set of technical measures necessary to create a record of a domain name in the registry.²

¹ Center of Ukrainian Internet Names, n.d.

² Policy of public domain, 2020, Jan. 24.

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The terms of registration and delegation are divided in the Provisional Rules for the Registration and Use of Domain names in the .YKP domain (hereinafter - the Provisional Rules). According to paragraph 16 of this document, the registration of a domain name will be considered the creation by the registrar for a certain period and per the terms of the contract with the registrant in the domain registry. YKP records of the domain name and its direct registrant and domain delegation. At the same time, the delegation itself is represented by paragraph 5 of these Rules as the transfer of domain name management rights in the interests of the registrant by creating a record of domain name servers that address the corresponding name of this domain and which (servers) are owned and / or used by persons responsible for the functioning of this domain.¹

The above makes it possible to conclude that it is impossible to identify as the same the concepts of registration of a domain name and its delegation. The last term involves the creation of a record about domain name servers, with the help of which redirection from this particular domain is provided. And the registration involves the creation of a record of a name in which, in addition to delegation information, there is other data, including about the person of the registrant and the period of registration. We can say that the term registration and the term delegation are correlated as general and particular. But the role of delegation is very important. Because from the moment of its implementation, the administration function of the domain in which the name assigned is transferred to another administrator.

Usually, domain names are registered subject to several requirements, namely:

registration of domain names is performed no higher than the second level of the domain;

¹ Rules of registration and use of domain names in the domain .YKP, 2013.

the domain name must have the distinguishing ability;

the independence of the registrant determining the domain name and domain name whose registrant he wants to be. Usually, the administrator considers applications for registration in the order of their receipt. At the same time, the principle “first-come-first-served” applies in .YKP (clause 4.1.3), and in .UA - the “simultaneity period” when all subsequent applications for the same domain name are considered to be received simultaneously with the first.¹ This time is 168 hours (clause 3.11).

availability for registration of any domain names that are free and not included in the stop list;

use for writing a domain name the letters of the alphabet of the given language and special characters. So, in the .YKP domain it is allowed to register names only using the letters of the Ukrainian and Russian alphabet, apostrophe, and also Arabic numerals.² For comparison, in the .UA domain, the name is written in letters of the Latin alphabet;³

independence of the choice of the registrar;

the urgency of registering a domain name. Typically, the registration period is indicated in the contract between the registrant and the registrar by the contract. However, other terms may be implemented by the rules of various domains. For example, in paragraph 4.1.7 of the Provisional Rules, the mentioned term can be from 1 to 10 years.⁴ The .UA Policy stipulates that the term of the contract registrant-registrar can not be more than two years;⁵

¹ Center of Ukrainian Internet Names, n.d., clause 2.5.

² Rules of registration and use of domain names in the domain .YKP, 2013, clause 4.1.2.

³ Center of Ukrainian Internet Names, n.d., clause 2.6.1.

⁴ Rules of registration and use of domain names in the domain .YKP, 2013.

⁵ Center of Ukrainian Internet Names, n.d., clause 6.5.

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compliance of domain names that are registered with the general requirements of the rules and technical standards of the Network.

The procedure for registering a domain name is usually the same. So, first, the registrant chooses the desired domain name. Then, at his request, he chooses a registrar accredited by the administrator of the corresponding domain. After that, the registrant carefully studies the terms of the relevant agreement with the registrar; then, he agrees with the rules in force in the domain. Now the registrar provides him with the opportunity to check the availability of registration of a specific name, taking into account the stop list.¹ Now the registrant agrees to the terms of the contract and applies for registration of the desired name.

It is important to note that, according to the .UA Policy, the registrar fills up the application for the delegation of a domain name in the form of a record of the domain name by the requirements of clause 4.19 of these Rules.² Everything ends with paying for the registrar's services at the rates that he set.

Based on the results of the consideration of the application for registration of a domain name, the latter may be refused. When studying paragraph 4.1.8 of the Provisional Rules and paragraph 2.17 of the .UA Policy, the author of the article identified such grounds for the mentioned refusal:

name mismatch to established requirements. So:

for .YKP domain (clause 4.1.1, 4.1.2, 4.1.5) - this is the registration of a domain name outside the second level of the domain or the non-use of the letters of the Ukrainian and Russian alphabets in its structure, as well as violations of Internet rules and technical standards;

¹ Rules of registration and use of domain names in the domain .YKP, 2013, clause 4.2.4.

² Center of Ukrainian Internet Names, n.d., 2.15.5.

for .UA domain (clause 2.17.1, 2.17.4) - application mismatch with requirements or its syntactic incorrectness;

the domain name already has a registration for another registrant;

it contains words or expressions that violate the current legislation of Ukraine, do not meet the requirements of public morality (.UA domain), or are fully or partially included in the stop list (.YKP domain).

Besides, there are other grounds for refusal that contain domain rules. In the .YKP domain these are the following reasons:

concerning the domain name, there is an unfinished dispute, which is considered by the courts of Ukraine or international judicial organizations, or other authorized organizations;

there is an appropriate decision of the above bodies;

the application form does not comply with clause 4.2.7 of the Interim Rules for the registration and use of domain names in the .YKP domain.¹

As for the domain. UA, then its Rules provide for such grounds for refusal of registration:

the application was not received from the registrar;

the registrar did not provide documentary evidence of the facts regarding the registrant (if necessary);

the technical operability of the domain name, according to verification by its administrator, is not provided.

¹ Rules of registration and use of domain names in the domain .YKP, 2013, clause 4.1.8.

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So, among the grounds for refusing to register domain names, one can name both general, characteristic for most cases, and exclusive, particular for individual domains, in connection with their specifics of functioning.

Corresponding registration may also be canceled. The general reasons for this are as follows:

the term for registering a domain name or contract for such registration has expired;

such is the registrant's desire, expressed in writing;

the appropriate decision of the competent authority.

Concerning the latter condition, the Provisional Rules among the above bodies are called the Commission for the Pre-Trial Resolution of Domain Disputes, Ukrainian courts, international judicial institutions, whose decisions are binding on the territory of Ukraine.¹ As for the .UA Policy, it only speaks of the decision of the competent court as the basis for the cancellation of a domain name, which can be made based on the results of a domain dispute and under the current legislation of Ukraine (clause 9.2). Clause 9.17.4 of the act mentioned refers to arbitration courts (clause 9.17.4). Also, in clause 2.20.3, it is stated that registration for a domain name is subject to cancellation in case of repeated and repeated technical errors, as a result of which the use of the domain name is impossible.²

Based on the preceding, the author of the article is confident in need to improve the procedure for registering domain names in Ukraine. It will require the following:

¹ *Ibid.*, clause 4.1.9.

² Center of Ukrainian Internet Names, n.d., clause 2.21.

introduce a particular procedure for checking the domain name indicated by the registrant at the time of registration for identity and similarity with registered trademarks. For this purpose, automated analysis of the Ukrainian Register of Trademarks and the Database of International Trademarks will be used;

the registrar should be involved in this procedure, and he is responsible if it is discovered that a domain name registered is similar to a registered trademark;

put in place the procedure for attracting the registrar as a defendant in cases involving the illegal use of the mark for goods and services, as well as a commercial name, the rights to which are owned by 3-rd persons.

It is important to note that the content of the right to a domain name is not sufficiently regulated in the relevant agreements on their registration, as well as many of the powers of the owners of the rights to the object in question. In fact, these powers act as norms-customs.

As mentioned above, the basis for acquiring the right to a domain name is an agreement on its registration. However, legislative uncertainty on this issue is visible in Ukraine. Local normative legal acts do not disclose the content of this concept and do not contain an indication of the terms of the relevant contract. The same uncertainty is observed at the level of acts developed by domain administrators of the higher Ukrainian segment of the Internet.¹

Part 1 and 2 of Article 6 of the Civil Code provides for the right of counterparties to conclude an agreement that is not provided for by acts of civil law but meets the general principles of civil law. It is also allowed for

¹ The agreement on the provision of domain name registration services on a public offer, 2019, Febr. 19.

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counterparties to settle in this agreement their relations not regulated by acts of civil law.¹

It is worth anything doctrinal sources to formulate a definition of this agreement based on its inherent features. The scientist Bontlab V.V. in this context speaks of a public law agreement, under which the registrar, for a certain fee, takes on the responsibility to provide the registrant with domain registration and technical support services. In turn, the second party is obliged to provide the materials and information necessary for delegation, pay a fee for the services of the registrar and always comply with the requirements established by the administrator of the Ukrainian national domain.²

N.I. Maydanik is sure that the registrar under the domain name registration agreement is obliged to provide delegation and technical support services for domain names on behalf of the registrant, and the other party must pay the amount specified in the agreement.³

Because of the previous, it can be said that the domain name registration agreement belongs to the category of bilateral and reciprocal because it involves two parties, each of which acquires both rights and obligations.

We can also talk about the consensuality of such an agreement, given the provisions of Part 1 of Art. 640 Civil Code. According to this norm, the contract is considered concluded from the moment the person who sent the proposal to conclude the contract receives a response on the acceptance of this proposal.⁴

¹ Civil Code of Ukraine, No. 435-IV.

² Bontlab, 2006, p. 7.

³ Maydanik, 2009, p. 63.

⁴ Civil Code of Ukraine, No. 435-IV.

Also, this contract should be considered onerous because of part 5 of Art. 626 of the Civil Code of Ukraine. It determines that the contract is onerous unless otherwise provided by the document itself or by law. As mentioned earlier in relation to the Provisional Rules and .UA Policy, the fee must be paid by the registrant. However, in some cases, it is possible to register a domain name for free. It is a domain .GOV.UA, in the framework of which its administrator provides registration and renewal of names without payment.¹

As to Part 1 of Art. 633, the treaty in question can be classified as public since its conclusion is mandatory for one of the parties. According to this norm, a civil contract should be considered a public contract, according to which one party has taken upon itself the obligation to sell goods or provide services to anyone who turns to it.²

It is also worth mentioning the statement Lidovets R.A. about contracts not prescribed by law, that is, contracts that are not fully regulated by special norms of civil law, and therefore are not allocated to them as such.³ Such agreements, also known as unnamed, can include a domain name registration agreement because it is not provided for by applicable Ukrainian legislation.

Earlier in this article, it was said that the created domain name is the result of human intellectual activity. Therefore, these objects should be classified as intellectual property. The creation of such an object is the purpose of the domain name registration agreement. Therefore, we can conclude that, by their legal nature, a domain name registration agreement is a service agreement.

Given the classification of the considered treaty as named, it can be said that the norms of civil law do not define its content. Therefore, we turn to the general

¹ Frequently Asked Questions. Hostmaster LLC, 2019.

² Civil Code of Ukraine, No. 435-IV.

³ Lidovets, 2003, p. 102.

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provisions applicable to all contracts. Under Art. 628 of the Civil Code, the content of the contract consists of conditions determined at the discretion of the parties and conditions mandatory under acts of civil law. Also, Art. 638 of the Civil Code indicates agreement as concluded if the counterparties agree on its essential terms. It is customary to include the subject matter of the contract, defined by law as essential and conditions requiring consent upon the application of one of the parties.¹

It is worth mentioning the opinion of the scientist V.V. Luts, who, in addition to the subject matter of the contract, also refers to the essential conditions the price and conditions, on the consensus of which at least one of the parties insists.²

The subject matter of the domain name registration agreement is the service for registration and support of the name itself. Often, the subject matter of the agreement also includes service for providing access to the settings of a registered domain name through a particular management system.³

Domain rules have added their binding contract terms to the price and subject matter. The .UA Policy in clause 6.1 determines that the contract must specify an accurate and comprehensive description of the registrar's services in favor of the registrant, the timing of the provision of services, the rights and obligations of counterparties, their responsibility for the improper fulfillment of their obligations, the duration of the contract and the procedure of its termination.⁴

Because of the foregoing, the essential terms of the contract under consideration, in addition to the subject matter, should include:

¹ Civil Code of Ukraine, No. 435-IV.

² Kuznetsova, 2010, p. 158.

³ Public contract for the provision of domain name registration and support services, 2019, April 10, para. 1.3.

⁴ Center of Ukrainian Internet Names, n.d.

the term for the provision of services - the period during which the registrar is required to register a domain name;

contract price - the registrant's fee for registering a domain name and its support by the registrar;

the rights and obligations of the parties, which are the registrar (executor) and the registrant (customer, applicant).

Although the contracts of various registrants provide a section on the responsibility of the parties, in fact, they only establish the responsibility of the registrant. It is often stated in it that the registrar disclaims any responsibility for the consequences of the use or inability of the registrant to use the services under the contract, as well as for the content of any materials published under the registrant's domain name.¹

In addition to the above conditions, the .UA Policy is considered essential if there is an arbitration agreement in the contract on the consent of the parties to resolve domain disputes in the manner provided for in section 9 of this act.² In practice, such a requirement is rarely complied with, obviously, because of its advisory nature.

Now we turn to the issue of the effective legal protection of such a means of individualization as a domain name. The presence of such protection is the key to the introduction of innovative technologies in public circulation and the progressive rise of the economic condition of Ukraine as a civilized state.

The issue of resolving domain disputes, as well as searching for preventive and judicial remedies, is very acute and often becomes the main topic of discussion in relevant scientific circles. Citizens of Ukraine have the opportunity to contact

¹ Domain name registration and support agreement, 2015.

² Center of Ukrainian Internet Names, n.d., clause 6.3

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international institutions protecting the right to a domain name. Therefore, it is worth characterizing the most common types of violation of the rights of owners of a domain name, as well as the means of appropriate protection of violated rights.

March 19, 2019, an agreement entered into force between the registry of the first level domain .UA (LLC Hostmaster) and the World Intellectual Property Organization (hereinafter - WIPO). The subject matter of the agreement was the possibility of resolving domain disputes using the Uniform Domain Name Dispute Resolution Policy (hereinafter - UDRP). Ukrainian courts are very busy; besides, the servants of Themis in the country have a low level of awareness in the field of information law. Accordingly, the consideration of the dispute may drag on for a long time. UDRP, however, allows parties to resolve the dispute in just two months, while the application of the procedure will cost them much less money. Arbitrators at the WIPO Arbitration and Mediation Center will review the case.

CONCLUSIONS

An analysis of the approaches to understanding domain names confirms the absence in the legal acts of a single definition of a domain name, which is reflected at the level of legal doctrine. In particular, scientists propose three approaches to understanding a domain name, namely: technical, civil, and mixed. The last of the proposed is considered the most successful, because it makes it possible to determine the domain name, taking into account the technical requirements for them, as a means of individualization of participants in civil turnover for its legal nature. This characteristic made it possible to assert the non-material nature of domain names, which allows them to be understood as benefits (they satisfy the needs of society, have a value expression). At the same time, the contractual nature of the emergence of the right to a domain name and the urgent nature make it possible to attribute them to objects of intellectual property rights. Domain names having specific features occupy an independent place in the system of such objects.

They are not identified with related objects, in particular, marks for goods and services and trade names.

Registration of a domain name is vital for acquiring the right to a domain name; only after the fact of registration, it is possible to conclude a contract on registration of a domain name. Such registration requires the registrant to fulfill certain conditions, in particular: a domain name registration application must be submitted; the selected domain name should be checked for the possibility of registration; registrant information must be provided; payment must be made to the registrar. The grounds for a refusal to register domain names are determined by the rules that apply within the corresponding domain. Among them, it is possible to single out general grounds that occur in different domains, as well as particular grounds that are characteristic of individual domains and reflect the specifics of their functioning. All these grounds should be fixed at the legislative level, preferably in a single unified normative legal act.

The leading acquisition of the right to a domain name is a domain name registration agreement. Such an agreement is bilateral, consensual, reimbursable, or gratuitous. We can state legislative uncertainty on this issue. Civil law does not disclose the content of this concept and does not contain an indication of the terms of this type of contract. Therefore, it seems necessary to make appropriate amendments to the civil law, namely to the Civil Code of Ukraine, where the definition and content of the relevant agreement should be specified, its essential terms should be listed and fixed.

When using a domain name, domain disputes arise, most often associated with offenses such as unfair competition, cybersquatting, and domain re-seizure. For the settlement of domain disputes, jurisdictional and non-jurisdictional forms of protection are applied (judicial protection, appeal to the bodies of the Antimonopoly Committee, the WIPO Arbitration and Mediation Center,

negotiations/mediation, as well as a written request to terminate the offense). One of the main forms of domain name protection that is used in Ukraine is judicial protection. At the same time, the spread of the UDRP procedure for .UA and .COM.UA domains gives reason to argue that the use of out-of-court (arbitration) procedures for resolving domain disputes is the most effective and fastest way to protect.

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