

SGNIC'S RESPONSE TO COMMENTS ON PROPOSED FRAMEWORK FOR RESOLVING DISPUTES OVER INTERNET DOMAIN NAMES

OBJECTIVE

1. To share with industry SGNIC's decision following its review of the responses received to its consultation paper on the "Proposed Framework For Resolving Disputes Over Internet Domain Names Registered Under .SG".

BACKGROUND

2. SGNIC issued a consultation paper on 20 July 2001 inviting industry comments on the proposed framework for resolving disputes over Internet domain names registered under .SG. Specifically, SGNIC sought views and comments on the following documents:
 - (a) The Singapore Domain Name Dispute Resolution Policy (the "Policy") – Annex 1;
 - (b) The Rules for the Singapore Domain Name Dispute Resolution Policy (the "Rules") – Annex 2; and
 - (c) The Supplemental Rules for the Singapore Domain Name Dispute Resolution Policy (the "Supplemental Rules") – Annex 3.
3. At the close of the deadline for submission on 17 August 2001, 3 responses were received from: The International Trademark Association (INTA), Speednames Inc and Calistra Research Labs Pte Ltd. SGNIC extends its thanks to the respondents for their considered and constructive views and comments.

SUMMARY OF COMMENTS

4. INTA and Speednames were supportive of the proposed Dispute Resolution Framework. INTA complimented and supported SGNIC's efforts in implementing the Dispute Resolution Framework.
5. Speednames commented on paragraphs 3(b) and 4(j) of the "Policy" and paragraphs 1 and 15(e) of the "Rules".
6. In relation to paragraph 3(b) of the "Policy", Speednames opined that it would be beneficial to provide details on how changes made to the status of a domain name will affect the administrative proceeding.
7. In relation to paragraph 4(j) of the "Policy", Speednames suggested that in exceptional cases where the Administrative Panel's decision will not be published in full and portions of the decision are edited, the publication should indicate which portions of the Panel's decision have been omitted or edited.
8. In relation to paragraph 1 of the "Rules", Speednames highlighted that as an administrative contact for overseas domain holders who had been given local representation rights by the overseas domain holders, it did not wish to take part in administrative proceedings and would instead send the complaint to the actual domain name holders and provide details of the domain name holders to the dispute resolution service Provider.
9. In relation to paragraph 15(e) of the "Rules", Speednames suggested that the Panel should review a complaint received and decide whether a Response is required from the domain name holder before the domain name holder is required to submit a Response. Speednames wanted this to serve as a filter to eliminate complaints that are brought in bad faith.

10. Calistra Research Labs commented that the "Policy" and its cost structure did not take into consideration the fact that the WIPO/ICANN procedures were designed for an international arena. It opined that in Singapore, it would only take a search at the trademark registry to determine whether there was a violation of trademark rights, and this costs less than the fees to be incurred under the dispute resolution process. It also suggested that where it can be proved that there is a case of cybersquatting, the cybersquatter be made to pay the fees for the dispute resolution service.
11. The full comments from the respondents can be found on SGNIC's website at <http://www.nic.net.sg/>.

SGNIC'S CONSIDERATION OF THE COMMENTS RAISED

Impact on Administrative Proceeding of Changes in the Status of Domain Names

12. Under the "Policy", the main situations where SGNIC will make changes to the status of a domain name registration are set out in paragraph 3(a) of the "Policy". Generally, SGNIC will only cancel, transfer or make other changes to the status of a domain name registration if it is authorised by the Registrant to do so, or is ordered by a Singapore court or an Administrative Panel to do so. Paragraph 3(b) of the "Policy" serves an entirely different purpose. It allows SGNIC to enforce the terms of the Domain Name Registration Agreement between SGNIC and the Registrant, for instance, by cancelling a domain name registration due to non-payment of the maintenance fees by the Registrant when they are due. It also gives SGNIC the flexibility to comply with any legal requirements imposed on SGNIC by the relevant authorities. Action taken by SGNIC under paragraph 3(b) is independent of what goes on in an administrative proceeding. In the event that such actions are taken by SGNIC, the parties should highlight the

actions taken to the Administrative Panel to enable the Administrative Panel to decide on the appropriate course of action.

Publication of Decisions by Administrative Panel

13. Paragraph 4(j) of the “Policy” gives the Administrative Panel the discretion not to include in the copy of the decision to be published over the Internet material which may be confidential. SGNIC’s assessment is that this discretion should be retained. Where it is appropriate, the Administrative Panel may indicate which portion(s) of the decision it has omitted or edited.

Representation for Domain Name Holders

14. SGNIC appreciates that if there is a dispute concerning a domain name used by a foreign company, the local company to which that foreign company has given local representation rights may prefer not to be involved in the administrative proceedings.
15. SGNIC’s view is that if, according to SGNIC’s records, the registrant is the foreign company, the Singapore company to which the foreign company had given local representation rights need not participate in the administrative proceedings. However, if, according to SGNIC’s records, the local company is the registrant, the fact that it may have been acting under instructions from a foreign company does not absolve it from participating in the administrative proceedings. If the local company chooses to ignore the administrative proceedings, under paragraph 5(f) of the “Rules”, the Administrative Panel will decide the dispute based solely on the complaint.

Complaints Brought in Bad Faith

16. SGNIC appreciates the interests of domain name holders in being protected from frivolous complaints by a screening mechanism.

17. Under the Dispute Resolution Framework the Secretariat (established jointly by Singapore Mediation Centre and Singapore International Arbitration Centre) will act as the filter. Only complaints that comply with the requirements of the Policy and the Rules will be processed. If a complaint has complied with those requirements, it may not be possible to tell, just by looking at the complaint, that the complaint was brought in bad faith. However, the Administrative Panel may, after studying the registrant's response, decide that the complaint was in fact brought in bad faith.

Trade Mark Infringement and Dispute Resolution Fees

18. The registration of a domain name which is similar to a Singapore registered trade mark does not necessarily infringe the trade mark under Singapore trade mark law. Whether a particular domain name is "identical to or confusingly similar with" a Singapore registered trade mark is a matter of judgment. Thus, if an applicant represents that the domain name does not infringe any registered trade mark in Singapore or is not identical to or confusingly similar with a registered trade mark or company or business name in Singapore, he may not be violating the terms of SGNIC's Domain Name Registration Agreements.
19. Under SGNIC's current policy, SGNIC will not interfere in any domain name dispute. The disputing parties are required to bring their dispute to a Singapore court for determination. SGNIC would thereafter abide by the court order. The reasons for adopting such a policy are that SGNIC is not in a position to make exhaustive searches at the Intellectual Property Office of Singapore (IPOS) and the Registry of Companies and Businesses (RCB) to ensure that domain names registered with SGNIC are not similar to registered trade marks and business names, and SGNIC does not wish to decide such disputes. In the current system, if a complainant contends that he is entitled to a particular domain name, he would have to institute court proceedings, prove his claim and in the process incur legal costs in order to

get a transfer of the domain name to himself. He may or may not be able to recover those legal costs, depending on whether the registrant is within the jurisdiction or has the means to pay the legal costs.

20. The proposed dispute resolution framework, on the other hand, provides an alternative dispute resolution process that is faster and cheaper than court proceedings. On the issue of fee payment, SGNIC has adopted the ICANN approach where the complainant is responsible for payment of the fee (since it is the complainant who is seeking the service). The only situation when fees are collected from the registrant is when the complainant requests for a one-member panel and the registrant wants a three-member panel. In this case, unless the registrant pays his share of the fees, he will not get the services of a three-member panel. It should be noted that there is no requirement for employing lawyers to act for a party in an administrative proceeding. If a party wishes to engage a lawyer, it is only fair that the party concerned pays his own lawyers' fees.

SGNIC'S DECISION

21. SGNIC's assessment is that there is support for SGNIC to implement the proposed dispute resolution framework as a means of providing a quicker and cheaper way of resolving ".sg" domain name disputes. The comments SGNIC has received pertain largely to the procedures for implementing the framework. SGNIC has clarified its views and position on the issues raised, which SGNIC believes have been similarly experienced in the international scene and other jurisdictions. As the proposed framework follows closely international practices adopted by ICANN and the network information centres of other jurisdictions, SGNIC is of the view that it is unnecessary to make any significant changes to the "Policy", "Rules" and "Supplemental Rules". SGNIC therefore plans to implement the proposed framework for domain names registered on or after 15 November 2001 and for existing domain name registrations from 1 January 2002.

22. Notwithstanding this, SGNIC will from time to time review and make appropriate modifications to the “Policy”. SGNIC welcomes inputs from industry any time should they feel that circumstances have changed and that a review is warranted.