

DOMAINS & DOMAIN NAMES

Russia



Domains & Domain Names

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Quick reference guide enabling side-by-side comparison of local insights, including into registration and use of domains at the ccTLD registry; pre-litigation actions; transfer or cancellation; and recent trends.

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REGISTRATION AND USE OF DOMAINS AT CCTLD REGISTRY

Registry

Which entity is responsible for registration of domain names in the country code top-level domain (ccTLD)?

The administration authority (registry) for the ccTLD .ru (and for the Cyrillic .рф) is a non-profit organisation called the ANO Coordination Center for TLD RU (the Coordinator). It ensures the reliable and stable domain name system infrastructure operation of the Russian internet sector. The Coordinator accredits domain registrars (private companies), which provide commercial services – the registration and maintenance of domain names – to registrants. In this role, the Coordinator performs targeted functions controlling the activities of local registrars. Similar functions have been given to the Russian Fund of Internet Development, which is both a watchdog and another registry of the .su domain and related registration proceedings.

Law stated - 14 February 2022

Method

How are domain names registered?

To register a domain name, a prospective registrant files a registration application and enters into a contract with a registrar. Any person, either domestic or foreign, can apply for and own a domain name in the .ru, .рф and .su digital zones. There is no need for trademark registration to file for domain name registration in Russia, although trademark registration before domain name registration may provide certain additional benefits.

Law stated - 14 February 2022

Duration

For how long is registration effective?

Registration is generally effective for one year. Unlimited registration renewals are possible if the registrant sends renewal applications in due course. Failure to renew a domain name registration will result in the loss of rights related to the domain name at issue.

Law stated - 14 February 2022

Cost

What is the cost of registration?

The cost of registration varies from one registration to another. Usually, it ranges from approximately US\$5 to US\$30. Registrars sometimes provide rewards, bonuses or discounts associated with domain name registrations.

Law stated - 14 February 2022

Transfer

Are registered domain names transferable? If so, how? Can the use of a domain name be licensed?

Domain names are transferable. For transfer purposes, the current registrant must send the relevant application to the registrar, while the new registrant must enter into a contract with the registrar and consent to the transfer. Once the application is filed, the contract is entered into by the parties and consent is given – the registrar has three days to complete the domain name transfer process.

Transfer of the .ru domain name is not allowed under the following conditions:

- upon expiry of a one-year registration term;
- within 30 days of the moment the new registrant acquired the right to the domain name from the previous registrant;
- if the domain name is the same as one included in the blacklist;
- if the registrant fails to provide the registrar with the requested documents or information in the course of the registrar's monitoring process; and
- if there are certain restrictions imposed on the domain name (eg, a preliminary injunction granted by a court).

Strictly speaking, a domain name licence is not possible according to Russian law, since this particular legal tool applies to transactions involving intellectual property (IP) assets under the provisions of the Civil Code, while domain names are not within the list of protected IP rights. That does not mean, however, that the registrant cannot commercialise the domain name by allowing third parties to use it on the agreed terms.

Owing to the freedom-of-contract principle, the registrant may lease the domain name in favour of a third party. At the same time, in the case of an IP infringement dispute, the registrant will be engaged as the first defendant, while the actual user of the domain name (lessee) may stand as the co-defendant. In any event, the imposition of liability on a registrant that has leased the domain name to a third party, associated with the occurrence of an IP infringement, will depend on various factors and the facts of the case.

According to a ruling of the Russian IP Court, the registrant of the domain name cannot escape liability for IP infringement, or shift this liability to another person, by entering into a contract (including a domain name lease contract) (case reference A40-206553/2015). This position may be applied to all related domain name disputes where the registrant registers an infringing domain name and then, in the case of a dispute, argues in court that another person in fact uses the domain.

Importantly, if it has been proven that the registrant in no way contributed to the IP infringement committed by the lessee of the domain name (eg, if the lessee publishes an offer for sale of counterfeit products without the registrant's knowledge), the court may dismiss the claim against the registrant by holding liable only the lessee (the actual user of the domain name) (case reference A40-136427/2012).

Law stated - 14 February 2022

ccTLD versus gTLD registration

What are the differences, if any, with registration in the ccTLD as compared with a generic top-level domain (gTLD)?

The rules for the .ru ccTLD do not contain specific eligibility requirements for registrants. However, since domain name

registration is exercised based on a contract between a registrar and a registrant, the registrant must have legal capacity and be in good standing.

As for the selection of specific domain names, the rules for the .ru ccTLD do not allow the registration or use of domains that are contrary to the public interest and humane and moral principles (such as abusive words).

WHOIS records do not describe specific eligibility requirements.

Law stated - 14 February 2022

Registrants' privacy

Is the registrant's contact information freely available? Can the registrant use a privacy service to hide its contact information?

The registrant is obliged to provide the registrar with correct and up-to-date personal data (ie, full name, date of birth, residential address, passport details and contact information). Submission of fake or false information is not allowed under the rules for the .ru ccTLD. Owing to personal data legal restrictions, registrars will not publicly display this (personal) information. Therefore, the actual personally identifiable information is not always available for public access, including in WHOIS records.

Law stated - 14 February 2022

PRE-LITIGATION ACTIONS

Disclosure of registrants' private details

If a registrant's contact information is hidden, under what circumstances will it be disclosed?
What processes are available to lift a registrant's privacy shield?

The registrar is entitled to disclose a registrant's privacy-protected contact information (eg, full name and address) in the case of a written well-grounded request by a third party wishing to use the obtained information exclusively for filing a lawsuit.

In practice, the registrar provides the privacy-protected contact information based upon:

- a request by an attorney (an advocate);
- a request from a law enforcement agency (eg, the police); or
- a request from the court.

Therefore, registrants would not usually be able to hide such information from the prospective litigation action. Also, such information shall be obtained at the pretrial stage. If there are grounds to believe that the registrant used fake or incorrect information to hide the identity it is possible to launch verification procedure as per which the registrar will ask the registrant to confirm the submitted information (otherwise delegation of the domain name may be terminated).

Law stated - 14 February 2022

Third-party notification

Are third parties (such as trademark holders) notified of a domain name registration or attempt to register a domain name? If so, how? If not, how can third parties receive notice?

Third parties (including a trademark holder) are not automatically notified of domain name registrations or attempts to register domain names. Therefore, third parties may either monitor WHOIS themselves or hire commercial monitoring services. For new-era domains, the best option would be to use a reliable brand protection system.

Law stated - 14 February 2022

Notice to the registrant

Is there a need to notify the domain name registrant before launching a complaint or initiating court proceedings?

There is no need to notify the domain name registrant (infringer) about infringement before filing a lawsuit with the competent court if there are no monetary claims raised against the infringer. Also, the mandatory pretrial settlement procedure (ie, notifications through warning or cease-and-desist letters) does not apply to cases filed before courts of general jurisdiction when registrants are individual or physical persons.

Other rules will apply if a claim for reimbursement of monetary compensation is made against the infringer, and the subject matter case is filed with a commercial court (when, for example, the registrant is an individual entrepreneur or a legal entity). In this case, the plaintiff is obliged to send a cease-and-desist letter to the domain name registrant, and only upon the expiry of 30 calendar days from the date of the letter may the plaintiff bring the IP infringement or unfair competition case to the commercial court.

Law stated - 14 February 2022

Provisional measures

What provisional measures are available to prevent a domain name being transferred or cancelled during proceedings?

Before filing the lawsuit on the merits, the plaintiff may apply for pretrial measures to the registrar requesting restrictions to be imposed on the domain name – aimed at prevention of transfer or cancellation of the domain name when the plaintiff applies to court.

Having obtained those pre-trial measures, the plaintiff may file to the commercial court asking for court-imposed preliminary injunction – securing the provisional measures to prevent a domain name from being transferred or cancelled pending adjudication of the lawsuit on the merits.

Law stated - 14 February 2022

Can domain names be seized? If so, under what conditions?

Domestic conventions provide that domain names may be seized by the competent state authority in cases of phishing, use for harmful activities (control of a botnet), dissemination of pornographic materials involving minors and in other cases (eg, not receiving the requested information from the registrant).

Domestic conventions also provide for the special register to which domain names may be included if they breach Russian legislation, and that may result in blocking access to the website at the domain name address.

Restrictions on the domain name use may be applied within a pretrial procedure and court-granted PI measures. As a result of the court hearing on the merits, the domain name infringing the IP rights may be terminated, and the IP rights owner may register that domain name.

TRANSFER OR CANCELLATION

Procedure

What is the typical format for a cancellation or transfer action in court litigation (domains registered in either a ccTLD or a gTLD) and through ADR (ccTLD only)?

Alternative Dispute Resolution (ADR), such as the Uniform Domain Name Dispute Resolution Policy (UDRP) or the Uniform Rapid Suspension System (URS), does not apply to .ru ccTLDs and related infringement matters. Thus, domain name cancellations or transfers – in the case of disputes – are usually achieved based on the effective intellectual property (IP) infringement or unfair competition court decision.

In this regard, the forum will be a commercial court.

The IP infringement or unfair competition case must be filed in the court located at the residence of the defendant (the registrant). If there are several defendants (eg, the registrant and the person who uses the domain or website) resident in different regions (ie, giving rise to several courts potentially competent over the dispute), the plaintiff may choose one of them to establish jurisdiction.

Once the competent court institutes proceedings, there will be preliminary hearings and hearings on the merits. Each party is obliged to prove its arguments, and the court may ignore all pieces of evidence that were not provided in a timely fashion or duly provided during proceedings. Discovery proceedings at the pretrial stage are not available.

If the court acknowledges an IP infringement or unfair competition, the domain name is subject to cancellation based on the court decision, and the plaintiff has priority (pre-emptive right) to register the litigious domain name in its own name within 30 days from the moment the court decision has become effective.

For various gTLDs, including new-era domains, ADR proceedings (such as UDRP and URS) are generally available; however, it is also possible to litigate gTLDs in the Russian courts.

Law stated - 14 February 2022

Choosing a forum

What are the pros and cons of litigation and ADR in domain name disputes? What are the pros and cons of choosing a local forum to litigate a gTLD dispute compared with the ICANN ADR format for the gTLD?

ADR does not apply to disputes involving .ru ccTLDs. However, 'non-traditional' ADR proceedings (cease-and-desist letters, amicable (non-judicial) settlements, domain name transfer negotiations, etc) have proven to be quite effective brand protection mechanisms in terms of timing and costs in certain instances. Local forum and court proceedings are usually a more efficient and stronger enforcement option compared with other international ICANN or ADR proceedings, especially in terms of the ability to recapture the litigious domain name and obtain monetary relief from an infringer (domain name registrant).

Law stated - 14 February 2022

Appeal

What avenues of appeal are available?

The following appeal venues are generally available in consideration of the case by a commercial court:

- appellate courts, which review the evidence in the court files and new evidence if there is a reasonable excuse for not submitting it in the first-instance court;
- first cassation appeal – the Russian IP Court, which hears cases on the existing case records and does not re-evaluate the evidence and facts located in the court files;
- second cassation appeal – the Economic Board of the Russian Supreme Court, which has no power to re-evaluate evidence and facts located in the court files; and
- supervision appeal – the Supreme Court of the Russian Federation, which is entitled to review and ascertain whether there has been a substantial breach in law enforcement.

Law stated - 14 February 2022

Who may claim

Who is entitled to seek a remedy and under what conditions?

Generally, the valid rights holder (eg, trademark owner), its recorded assignee or recorded exclusive licensee are entitled to seek injunctive and monetary relief, provided their rights and legitimate interests are affected owing to the domain name registration or use. Non-exclusive licensees, distributors or other authorised IP users do not have the same privilege.

Law stated - 14 February 2022

Who acts as defendant

Who may act as defendant in an action to cancel or transfer a gTLD in local courts?

The first defendant in such an action will be the registrant. The actual domain name user (eg, website owner) may be the second defendant and will bear the joint and several liability associated with the IP infringement or unfair competition. Hosting providers and local registrars may also stand as co-defendants in certain exceptional cases (eg, a case involving a foreign registrant).

Law stated - 14 February 2022

Burden of proof

What is the burden of proof to establish infringement and obtain a remedy?

Russia does not adhere to UDRP. However, the national court system supports the international principle of unfair competition repression and applies the three-factor UDRP test through the implementation of article 10-bis of the Paris Convention for the Protection of Industrial Property. In other words, in a clear-cut IP infringement or unfair competition matter, the following factors must be proven by the plaintiff:

- the domain name is identical or confusingly similar to a trademark in which the claimant has rights;
- the respondent has no rights or legitimate interests in respect of the domain name; and

- the respondent's domain name has been registered and is being used in bad faith.

Importantly, in a classic domain name dispute, the plaintiff must prove the following three fundamental factors:

- the priority of the trademark over the domain name;
- the similarity between the trademark and the domain name; and
- the similarity of the trademarked (registered) goods and the goods offered for sale (sold) on the website under the domain name.

If one of these factors is not properly demonstrated by the plaintiff – whether under the first or the second scenario – IP infringement or unfair behaviour will not be established by the court, and remedies will not be awarded.

Essentially, in asserting an IP infringement or unfair competition claim, the plaintiff must act in good faith to avoid unfair hijacking of the conflicting domain name. Abuse of rights will lead to dismissal of the case.

Law stated - 14 February 2022

Remedies

What remedies are available to a successful party in an infringement action?

In terms of remedies, an injunction would be the most appropriate legal relief according to local practice. Statutory damages (ie, compensation) are popular remedies as well. Publication of the court order is also regarded as a feasible relief, but it is not usually sought in domain name actions. Seizure and forfeiture of counterfeit or grey-market goods (in certain instances) will be available for serious IP infringements or unfair competition matters on the internet in cases involving domain name disputes.

Law stated - 14 February 2022

Injunctive relief

Is injunctive relief available, preliminarily or permanently, and in what circumstances and under what conditions?

Procedurally, the plaintiff is entitled, before filing a lawsuit or simultaneously with filing the lawsuit, to file a preliminary injunction motion with the court to block the potential transfer or cancellation of the domain name. The plaintiff must condition the granting of the preliminary injunction by arguing that not granting it may make it harder or even impossible to enforce the effective court decision. Prevention of substantial damages will also be regarded as a valid condition to obtain a preliminary injunction. Permanent injunctive relief will be awarded by the court if the plaintiff is able to evidence and prove IP infringement or unfair competition. The pre-litigation procedure taken before the respective domain registrar and aimed at freezing or locking the conflicting domain name is effective for 14 calendar days and will also be feasible, provided that a warranty for indemnification is given by the rights holder in the corresponding motion.

Law stated - 14 February 2022

Calculating damages

How is monetary relief calculated?

Monetary relief is normally claimed and awarded in domain name conflicts. While regular damages are rarely used in practice, statutory damages (ie, compensation) are very popular.

Indeed, to get regular damages the plaintiff (ie, trademark or company name owner) must prove the following factors:

- the amount of damage sustained (eg, lost profits) by disclosing the appropriate method of calculating them;
- the fact of the IP infringement by proving the illegal activities of the infringer; and
- the nexus between the calculated damages and illegal activities of the infringer.

If one of these factors is omitted or is not demonstrated by the plaintiff, damages will not be awarded by the court. At the same time, to receive statutory damages the plaintiff needs to prove only the fact of the claimed trademark infringement. In addition, it is not required to disclose any evidence by showing the method of calculation of losses, even though it may be useful to a certain extent, when large amounts are claimed.

Legally, there are three different avenues that trademark owners can select and follow when seeking to obtain monetary relief in domain name disputes:

- an amount between 10,000 and 5 million roubles;
- double the cost of the counterfeit goods; or
- double the cost of the lawful (licensed) trademark usage.

In practice, the choice of the appropriate monetary compensation formula will be vested with the trademark owner, although in the absence of a large quantity of counterfeits or grey-market goods (if applicable) being offered or purchased from the conflicting websites under litigious domain names, or the underlying recorded trademark licences with the stipulated licence fees, trademark owners will normally have to rely on the first scenario described above, while the court will finally decide on the concrete amount of the award based on the nature of the IP infringement (if established).

Company name owners are not entitled to seek statutory damages, although they can remedy regular damages (eg, lost profits).

Law stated - 14 February 2022

Criminal remedies

What criminal remedies exist, if any?

Criminal remedies associated with trademark infringement matters do exist and may be sought by the rights holders. The usual sanctions will be any or all of:

- a criminal fine;
- forced labour; and
- corrective works.

In exceptional cases, imprisonment may be imposed by the court. In practice, criminal remedies are sought in cases that are more related to counterfeit trademarks, or goods and products offered for sale and sold by counterfeiters in large quantities or repeatedly, including online (ie, under the conflicting domain names). In other words, substantial damages or repeated trademark infringement must be shown in these types of action.

Law stated - 14 February 2022

Limitation period

Is there a time frame within which an action must be initiated?

The general limitation period is three years, starting from the moment the plaintiff became aware or should have become aware of the infringement of its IP rights or unfair competition. Domain name action is not an exception.

Law stated - 14 February 2022

Expiry of rights and estoppel

Can a registrant's rights in a domain name expire because of non-use? Can a registrant be estopped from bringing an infringement action? In what circumstances?

A registrant's rights in a domain name will not expire because of non-use. The registrant will keep domain-related rights for as long as the domain name registration is renewed. At the same time, a registrant cannot be recognised as an IP infringer on the grounds of expiry of the limitation period, abuse of the plaintiff's rights, non-extension of asserted trademark rights or in other material and procedural circumstances.

Law stated - 14 February 2022

Time frame for actions

What is the typical time frame for an infringement action at first instance and on appeal?

The typical time frame for an IP infringement action to be taken at the first-instance court will be around four to six months. Appeal proceedings, if commenced later, will add another three to four months to the action. Further cassation or appeal proceedings, if continued, will make it a year for the domain name litigation.

Law stated - 14 February 2022

Case law

Is a case law overview available on procedural or substantive issues? Does the case law have a precedential value?

Russia is not a case-law country. In other words, a court decision will not have a precedential value, or be treated as a source of law. At the same time, the Supreme Court of the Russian Federation, as well as the former Supreme Commercial Court of the Russian Federation, has (or had) competence to issue clarifications, guidance and orders, which must be treated as binding for all lower courts. In practice, lower-instance courts prefer to follow the approaches developed and tested by the local high courts. Domain name litigation is a good example of this point.

Law stated - 14 February 2022

Appointment of panellists

Can parties choose a panellist in an ADR procedure involving a ccTLD? Can they oppose an appointment?

ADR procedures, such as UDRP or URS, are not applicable to .ru ccTLDs. Domain names involving .ru (or other local) zones must be litigated before the commercial courts or courts of general jurisdiction (as applicable). The appointment of a panellist (judge) by the parties is not applicable in either national commercial or civil dispute resolution procedure, although they can oppose this by trying to disqualify (recuse) the appointed judge during the court trials.

Law stated - 14 February 2022

Costs

What is the typical range of costs associated with an infringement action, including pre-litigation procedures, trial or ADR, and appeal? Can these costs be recovered?

There is no typical or standard range of costs associated with IP infringement actions, unfair competition claims and cases involving pre-litigation procedure or amicable settlements towards conflicting domain names. These costs will usually be based on court fees, professional lawyers' or attorneys' fees, expert fees (if any) and other disbursements (eg, travel and accommodation expenses). Each particular domain name case must be individually reviewed and assessed depending on the circumstances surrounding it. Legal costs (including attorneys' fees) are recoverable, although always within reasonable limits and at the discretion of the court.

Law stated - 14 February 2022

UPDATE AND TRENDS

Hot topics

Are there any emerging trends or hot topics regarding domains and domain names in your jurisdiction?





One of the current hot topics is imposition or recovery of compensation from the defendants in the domain name disputes. With its Ruling of 3.12.2020 N 305-ЭС20-18701 in case N A40-16604/2019, the Russian Supreme Court confirmed recovery of joint compensation from both the registrant of the infringing domain name and the entity who used the website for offers for sale.

Russian judicial practice has recently recognised a possibility of litigation against domain name registrars to terminate delegation of the conflicting domain names. Claims addressed to registrars shall be qualified as special remedies that are available to brand owners. The landmark precedent in this regard is the Decision of the Intellectual Rights Court of 04.07.2018 N C01-506/2018 on case N A40-132026/2017, which has been further upheld by the Russian Supreme Court.

Jurisdictional venue (forum shopping) is still a point of attention. In 2018, with its Ruling No. 305-ЭС15-4698 on case N A40-155357/2012 the Russian Supreme Court confirmed that if the plaintiff is a foreign company and the dispute at issue relates to enforcement of a trademark illegitimately used by domain registration, the dispute is subject to consideration by a commercial court irrespective of whether the defendant has registered as individual entrepreneur.

Law stated - 14 February 2022

Jurisdictions

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