

FREQUENTLY ASKED QUESTIONS

1. To which disputes does the China Internet Network Information Center Domain Name Dispute Resolution Policy (CNDRP) apply?

Answer: The China Internet Network Information Center Domain Name Dispute Resolution Policy (CNDRP) applies to disputes involving registered CN domain names and Chinese domain names.

2. If one wishes to file a complaint regarding a registered .CN domain name and Chinese domain name, what kind of actions can be taken?

Answer: Under the China Internet Network Information Center Domain Name Dispute Resolution Policy (CNDRP), to file a complaint regarding a registered CN domain name and Chinese domain name, one should file a Complaint with a domain name dispute resolution provider appointed by the China Internet Network Information Center (CNNIC), such as the Hong Kong International Arbitration Centre (HKIAC) in accordance with the CNNIC Domain Name Dispute Resolution Policy (CNDRP), its related Rules of Procedure and the Supplemental Rules of the domain name dispute resolution provider.

3. Who is entitled to commence an administrative proceeding under the CNNIC Domain Name Dispute Resolution Policy (CNDRP) and its related Rules of Procedure?

Answer: Any person or company is entitled to commence such a proceeding.

4. On what grounds can an administrative proceeding regarding a registered CN domain name or a Chinese domain name be based?

Answer: Article 8 of the China Internet Network Information Center Domain Name Dispute Resolution Policy (CNDRP) states that the Complainant commencing a registered CN domain name or a Chinese domain name administrative proceeding must prove the following:

- i. the disputed domain name is identical with or confusingly similar to the Complainant's name or mark in which the Complaint has civil rights or interests;
- ii. the disputed domain name holder has no right or legitimate interest in respect of the domain name or major part of the domain name;
- iii. the disputed domain name holder has registered or is using the domain name in bad faith.

It should be noted that in order to succeed in an administrative proceeding under the China Internet Network Information Center Domain Name Dispute Resolution Policy (CNDRP), the Complainant must prove that all three (3) elements are present.

5. What constitutes "bad faith" in the registration and use of a registered CN domain name or Chinese domain name?

Answer: Article 9 of China Internet Network Information Center Domain Name Dispute Resolution Policy (CNDRP) provides several examples showing evidence of bad faith. It is important to note that these examples are only indicative and do not constitute an exhaustive list:

- i. The purpose for registering or acquiring the domain name is to sell, rent or otherwise transfer the domain name registration to the Complainant who is the owner of the name or mark or to a competitor of that Complainant, and to obtain unjustified benefits;
- ii. the disputed domain name holder registered the domain name in order to prevent the owners of the name or mark from reflecting the name or the mark in a corresponding domain name, provided that the domain name holder has been engaged in a pattern of such conduct;

- iii. the disputed domain name holder has registered or acquired the domain name for the purpose of damaging the Complainant's reputation, disrupting the Complainant's normal business or creating confusion with the Complainant's name or mark so as to mislead the public;
- iv. other circumstances which may prove the bad faith.

6. What is the role of the Hong Kong International Arbitration Centre (HKIAC) in the CN domain names or Chinese domain name dispute resolution process?

Answer: The Hong Kong International Arbitration Centre (HKIAC) has been appointed by the China Internet Network Information Centre (CNNIC) as one of two (2) dispute resolution providers. As such, the HKIAC administers the administrative proceedings brought under the CNNIC Domain Name Dispute Resolution Policy (CNDRP) in accordance with the Rules for the CNNIC Domain Name Dispute Resolution Policy and the HKIAC's own Supplemental Rules.

7. What are the steps in a CN domain name or Chinese domain name administrative proceeding?

Answer: Generally, the steps are as follows:

- i. The Complainant files a Complaint with the Hong Kong International Arbitration Centre (HKIAC);
- ii. The HKIAC notifies the registered holder of the CN domain name or Chinese domain name in question of the Complaint and sends a copy of the Complaint to the registered holder;
- iii. The registered holder of the CN domain name or Chinese domain name in question files a Response;
- iv. The HKIAC selects the Panel of one (1) or three (3) persons, depending on the circumstances of the case, who will then make a determination in regard to the dispute;

- v. The Panel conducting the administrative proceeding renders its decision;
- vi. If the decision of the Panel requires that the CN domain name or Chinese domain name in question be cancelled or transferred, the decision is implemented.

For additional information, please refer to the Flow Chart of Proceedings.

8. How long should a .CN administrative proceeding process take?

Answer: Under normal circumstances, after a Complaint is duly filed with the Hong Kong International Arbitration Centre, the Panel should notify the Parties and relevant Registrar of the decision within 60 days.

9. In what language is a CN administrative proceeding conducted?

Answer: Article 8 of the Rules for the CNNIC Domain Name Dispute Resolution Policy states that unless otherwise agreed between the Parties, the language of the administrative proceedings shall be Chinese, subject always to the authority of the Panel conducting the administrative proceeding to determine otherwise, considering all the circumstances of the administrative proceeding in question. In addition, a Panel conducting an administrative proceeding may order that any documents submitted in a different language than the language of the administrative proceeding shall be accompanied by a translation in whole or in part into the language of the administrative proceeding.

10. What is the cost of a CN domain name or Chinese domain name administrative proceeding?

The costs of the administrative proceedings are set by the domain name dispute resolution provider in consultation with the China Internet Network Information Center (CNNIC).

According to Article 15 of the Supplemental Rules for the CNNIC Domain Name Dispute Resolution Policy, the fees are as follows:

| Panel | Domain Name Number | Total Fees (RMB) | Administration Fee (RMB) | Fee for Panelists (RMB) |
|--------------------|---------------------------|-----------------------------|---------------------------------|--|
| Single Panelist | 1 | 8,000 | 4,000 | 4,000 |
| | 2 to 5 | 12,000 | 6,000 | 6,000 |
| | 6 to 10 | 16,000 | 8,000 | 8,000 |
| | 10 or more | (to be determined by HKIAC) | (to be determined by HKIAC) | (to be determined by HKIAC) |
| Three Panelists | 1 | 14,000 | 6,000 | Presiding Panelist: 4,000 8,000 Each Co-Panelist: 2,000 |
| | 2 to 5 | 20,000 | 8,000 | Presiding Panelist: 6,000 12,000 Each Co-Panelist: 3,000 |
| | 6 to 10 | 24,000 | 9,000 | Presiding Panelist: 7,000 15,000 Each Co-Panelist: 4,000 |
| | 10 or more | (to be determined by HKIAC) | (to be determined by HKIAC) | (to be determined by HKIAC) |

Ordinarily, the Complainant is responsible for paying all the fees, unless the Respondent (i.e. the holder of the CN domain name or Chinese domain name which is in dispute) chooses to have the administrative proceeding conducted by a Panel of three (3) Panelists whereas the Complainant has chosen to have the Complaint decided by one (1) Panelist, in which case the fees are to be shared equally between the Parties.

It should also be noted, that according to Article 48 of the Rules for the CNNIC Domain Name Dispute Resolution Policy, in the exceptional circumstances that an in-person hearing is required, there will be additional fees to be paid the amount of which will be established by the HKIAC in agreement with the Parties and the Panel.

The fees above do not include any payments that a Party may or may not have to pay to a lawyer or other representatives representing such Party, which is a matter entirely for such Party.

11. How are fees of a CN domain name or Chinese domain name administrative proceeding paid?

Answer: According to the HKIAC Supplemental Rules for the CNNIC Domain Name Dispute Resolution Policy, fees are to be paid to the HKIAC free of any bank charges, transfer fees or any withholdings, in Renminbi (RMB) / United States Dollars (USD), by way of cash, cheque, draft or telegraphic transfer. Cheques or drafts are to be made payable to "Hong Kong International Arbitration Centre".

Telegraphic transfers are to be made as follows:

Account name: Hong Kong International Arbitration Centre

Account no.: 004-567-190897-001

Bank: The Hongkong and Shanghai Banking Corporation Limited

12. Must a Party be represented by a lawyer in a CN domain name or Chinese domain name administrative proceeding?

Answer: No, it is not required, but a Party might find it useful to engage the services of a legal advisor for this purpose. A Party may represent itself or be represented by any person such Party may choose.

13. Can a Complaint include more than one disputed CN domain name or Chinese domain name?

Answer: Yes. According to Article 13 of the Rule for the CNNIC Domain Name Dispute Resolution Policy, a Complaint may relate to more than one domain name, provided that the domain names in question are registered by the same domain name holder. Also please note that Article 36 of the Rule for the CNNIC Domain Name Dispute Resolution Policy provides

that in the event of multiple disputes between a domain name holder and a Complainant, either Party may petition the first Panel to hear a pending dispute between the Parties, to consolidate the disputes before a single Panel. In such event, the Panel, in its sole discretion, may consolidate any or all of the disputes in question before it, provided that the consolidated disputes are governed by the CNDRP.

14. Will CNNIC and the Registrar of the disputed CN domain name or Chinese domain name be involved in the administrative proceeding?

Answer: No. According to Article 12 of the CNNIC Domain Name Dispute Resolution Policy (CNDRP), CNNIC and the relevant Registrar will not participate in the administration or conduct of an administrative proceeding in respect of a CN domain name or a Chinese domain name, and neither will the relevant Registrar be liable as a result of a Decision rendered by a Panel which has conducted an administrative proceeding. The relevant Registrar is not to be referred to as a party or otherwise in any administrative proceeding.

That said, the relevant Registrar will implement a Decision of a Panel which after conducting an administrative proceeding calls for the cancellation or the transfer of a domain name which was in dispute.

15. If a Complainant duly commences a CN domain name or a Chinese domain name administrative proceeding, can the Complainant still go to court in connection with the disputed domain name?

Answer: Article 14 of the CNNIC Domain Name Dispute Resolution Policy (CNDRP) states that the administrative proceedings called for under the CNDRP shall not prevent either a Complainant or a domain name holder from submitting the dispute to a court in the place where CNNIC is situated or to go for an arbitration before the administrative proceeding is commenced or after the administrative proceeding is concluded. According to Article 41 (2) of the Rules for the CNNIC Domain Name Dispute Resolution Policy, in the event that a Party initiates any legal proceeding during the pendency of an administrative proceeding respecting the domain name that is the subject of the administrative proceeding, such Party shall

promptly notify the Panel and the HKIAC. Article 41 (2) of the Rules for the CNNIC Domain Name Dispute Resolution Policy states that in the event that any legal proceeding is initiated prior to or during an administrative proceeding in respect of the domain name which is the subject of the administrative proceeding, the Panel appointed to deal with the administrative proceeding in question shall have the discretion to decide whether to suspend or terminate the administrative proceeding, or to continue to render a decision.

It should be noted that if a Panel decides that a domain name registration should be cancelled or transferred, the Registrar of the domain name in question will wait for ten (10) days (as observed in the location of the principal office of the Registrar) after the Registrar is informed by the HKIAC of the Panel's decision before implementing the decision. The Registrar will implement the decision, unless it receives from the domain name holder (the Respondent) during the ten (10) days period, official documentation (such as a copy of a complaint, file-stamped by the clerk of the relevant court) that the domain name holder (the Respondent) has commenced a lawsuit against the Complainant in a jurisdiction. If the Registrar receives such documentation within the said ten (10) days period, the Registrar will not implement the Panel's cancellation or transfer decision, and the Registrar will take no further action until the Registrar receives the following: (i) evidence satisfactory to it of a resolution between the Parties; (ii) evidence satisfactory to the Registrar that the domain name holder's (the Respondent's) lawsuit has been dismissed or withdrawn; or (iii) a copy of an order from such court dismissing the domain name holder's (the Respondent's) lawsuit or ordering that the domain name holder (the Respondent) does not have the right to continue to use the domain name in question.

16. Will a Party against whom a CN domain name or Chinese domain administrative proceeding name is filed have recourse in Hong Kong courts?

Answer: Article 14 of the CNNIC Domain Name Dispute Resolution Policy (CNDRP) states that the administrative proceedings called for under the CNDRP shall not prevent either a Complainant or a domain name holder from submitting the dispute to a court in the place

where CNNIC is situated or to go for an arbitration before the administrative proceeding is commenced or after the administrative proceeding is concluded. According to Article 41 (2) of the Rules for the CNNIC Domain Name Dispute Resolution Policy, in the event that a Party initiates any legal proceeding during the pendency of an administrative proceeding respecting the domain name which is the subject of the administrative proceeding, such Party shall promptly notify the Panel and the HKIAC. Article 41 (2) of the Rules for the CNNIC Domain Name Dispute Resolution Policy states that in the event that any legal proceeding is initiated prior to or during an administrative proceeding, in respect of the domain name which is the subject of the administrative proceeding, the Panel appointed to deal with the administrative proceeding in question shall have the discretion to decide whether to suspend or terminate the administrative proceeding, or to continue to render a decision.

It should be noted that if a Panel decides that a domain name registration should be cancelled or transferred, the Registrar of the domain name in question will wait for ten (10) days (as observed in the location of the principal office of the Registrar) after the Registrar is informed by the HKIAC of the Panel's decision before implementing the decision. The Registrar will implement the decision, unless it receives from the domain name holder (the Respondent) during the ten (10) days period, official documentation (such as a copy of a complaint, file-stamped by the clerk of the relevant court) that the domain name holder (the Respondent) has commenced a lawsuit against the Complainant in a jurisdiction. If the Registrar receives such documentation within the ten (10) days period, the Registrar will not implement the Panel's cancellation or transfer decision, and the Registrar will take no further action, until the Registrar receives the following: (i) evidence satisfactory to it of a resolution between the Parties; (ii) evidence satisfactory to the Registrar that the domain name holder's (the Respondent's) lawsuit has been dismissed or withdrawn; or (iii) a copy of an order from such court dismissing the domain name holder's (the Respondent's) lawsuit or ordering that the domain name holder (the Respondent) does not have the right to continue to use the domain name in question.

17. Where can I obtain information about the registered holder of a CN domain name or Chinese domain name?

Answer: Information on registered CN domain name or Chinese domain name holders can be obtained by clicking on www.cnnic.org.cn to enquire the domain name database.

18. What happens if the Hong Kong International Arbitration Centre (HKIAC) deems a Complaint deficient in its Compliance Review?

Answer: According to Article 7 of the HKIAC Supplemental Rules for the CNNIC Domain Name Dispute Resolution Policy, if the HKIAC determines that there are deficiencies in the Complaint, the HKIAC shall notify the Complainant of such deficiencies and the Complainant shall remedy such deficiencies within five (5) calendar days.

19. Must a Party respond regarding a CN domain name dispute or a Chinese domain name dispute that has been filed at the HKIAC?

Answer: Yes. Under the terms of the Registration Agreement between the Registrar and the registered holder of a CN domain name or Chinese domain name, the registered holder agreed to participate in any administrative proceeding commenced regarding the CN domain name or Chinese domain name in question.

20. What happens if a Response is not filed on time or at all?

Answer: According to Article 17 of the Rules for CNDRP and Article 6 of the HKIAC Supplemental Rules for CNDRP, a Party who is the registered holder of a CN domain name and Chinese domain name against whom a Complaint is filed with the HKIAC must respond within twenty (20) calendar days of the date the HKIAC transmits the Complaint to such Party. In the event that such person (Respondent), does not file a Response (including the payment of any relevant fees) within the said twenty (20) calendar days, according to Article 31 of the Rules for the CNDRP, the Panel will decide the case based on available information.

21. How is a Panel for a CN domain name dispute or a Chinese domain name administrative proceeding established?

Answer: The Panels which conduct CN domain name disputes or Chinese domain name disputes are composed of one (1) or three (3) Panelists. The Hong Kong International Arbitration Centre (HKIAC) maintains a list of Panelists whom the HKIAC considers to be independent, reputable, knowledgeable, experienced, impartial and suited to undertake the task of deciding disputes with respect to CN domain names or Chinese domain names. The HKIAC selects the Panelists to sit on a CNNIC Domain Name Dispute Resolution Policy Panel on a case-by-case basis in light of the following criteria: the nature of the dispute, the availability of the Panelist(s), the identity of the Parties, the independence and impartiality of the Panelist(s), any stipulations in the relevant Registration Agreement and any suggestions made by the Parties themselves.

Prior to an appointment, a proposed Panelist must declare in writing to the Parties and the HKIAC any circumstances which could give rise to any justifiable doubt as to the Panelist's impartiality or independence or prevent a prompt resolution of the dispute in question. If, at any stage during an administrative proceeding, new circumstances arise that could give rise to justifiable doubt as to the impartiality or independence of a Panelist, the Panelist in question shall promptly disclose such circumstances to the HKIAC, in which event the HKIAC shall have the discretion to appoint a substitute Panelist. Unless the Parties otherwise agree, no person shall serve as a Panelist in a dispute in which that person has any interest which, if known by a Party, might lead the Party to doubt the Panelist's impartiality or independence.

22. How long does a Panel have in order to render a decision in a CN domain name or Chinese domain name administrative proceeding?

Answer: According to Article 37 of the Rules for CNDRP, in the absence of exceptional circumstances the Panel in question shall forward to the Hong Kong International Arbitration Centre (HKIAC) the Panel's decision on a Complaint within fourteen (14) calendar days of the appointment of the Panel.

The HKIAC shall communicate the decision of the Panel to the Parties and the Registrar of the CN domain name or Chinese domain name which was the object of the administrative proceeding within three (3) calendar days of the receipt by the HKIAC of the decision.

23. What kind of decision can a Panel make in a CN domain name or Chinese domain name administrative proceeding?

Answer: A decision by a Panel conducting a CN domain name dispute or a Chinese domain name dispute administrative proceeding must be in writing and the kinds of decision a Panel conducting a CN domain name dispute or a Chinese domain name dispute may render are limited. A Panel might decide in one of two ways: (a) that the Complaint is not justified, in which case the existing registered CN domain name or Chinese domain name holder shall be entitled to retain the CN domain name or Chinese domain name in question; or (b) the Panel may decide that the Complaint is justified in which case the Panel will order that the domain name in dispute should be cancelled or transferred to the Party which brought the Complaint.

It should be noted that if a Panel finds that a Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding, the Panel is required to state in its decision that this was the case.

A Panel may not make money awards or awards relating to costs, including but not limited to lawyer's fees, and costs.

24. Is it possible to challenge a decision regarding a CN domain name or a Chinese domain name?

Answer: Article 14 of the CNNIC Domain Name Dispute Resolution Policy (CNDRP) states that the administrative proceedings called for under the CNDRP shall not prevent either a Complainant or a domain name holder from submitting the dispute to a court in the place where CNNIC is situated or to go for an arbitration before the administrative proceeding is commenced or after the administrative proceeding is concluded.

If a Panel decides that a domain name registration should be cancelled or transferred, the Registrar of the domain name in question will wait for ten (10) days (as observed in the location of the principal office of the Registrar) after the Registrar is informed by the HKIAC of the Panel's decision before implementing the decision. The Registrar will implement the decision, unless it receives from the domain name holder (the Respondent) during the ten (10) days period, official documentation (such as a copy of a complaint, file-stamped by the clerk of the relevant court) that the domain name holder (the Respondent) has commenced a lawsuit against the Complainant in a jurisdiction. If the Registrar receives such documentation within the said ten (10) day period, the Registrar will not implement the Panel's cancellation or transfer decision, and the Registrar will take no further action, until the Registrar receives the following: (i) evidence satisfactory to it of a resolution between the Parties; (ii) evidence satisfactory to the Registrar that the domain name holder's (the Respondent's) lawsuit has been dismissed or withdrawn; or (iii) a copy of an order from such court dismissing the domain name holder's (the Respondent's) lawsuit or ordering that the domain name holder (the Respondent) does not have the right to continue to use the domain name in question.

25. How does a Panel carry out a decision regarding a CN domain name and a Chinese domain name?

Answer: If a Panel decides that a domain name registration should be cancelled or transferred, the Registrar of the domain name in question will wait for ten (10) days (as observed in the location of the principal office of the Registrar) after the Registrar is informed by the HKIAC of the Panel's decision before implementing the decision. The Registrar will implement the decision, unless it receives from the domain name holder (the Respondent) during the ten (10) days period, official documentation (such as a copy of a complaint, file-stamped by the clerk of the relevant court) that the domain name holder (the Respondent) has commenced a lawsuit against the Complainant in a jurisdiction. If the Registrar receives such documentation within the said ten (10) days period, the Registrar will not implement the Panel's cancellation or transfer decision, and the Registrar will take no further action, until the Registrar receives the following: (i) evidence satisfactory to it of a resolution between the Parties; (ii) evidence

satisfactory to the Registrar that the domain name holder's (the Respondent's) lawsuit has been dismissed or withdrawn; or (iii) a copy of an order from such court dismissing the domain name holder's (the Respondent's) lawsuit or ordering that the domain name holder (the Respondent) does not have the right to continue to use the domain name in question.