

# Domain Name Disputes in India

This document is an extract from the book *IPR & Cyberspace – Indian Perspective* authored by Rohas Nagpal. This book is available as courseware for the **Diploma in Cyber Law** and **PG Program in Cyber Law** conducted by Asian School of Cyber Laws



[www.asianlaws.org](http://www.asianlaws.org)



### 3. Domain Name Disputes in India

India's top level domain is ".in". The sunrise period for the ".in" domains was from 1<sup>st</sup> January, 2005 to 21<sup>st</sup> January, 2005. During this period owners of registered Indian trademarks or service marks were given an opportunity to apply for ".in" domains. The booking was opened to the public from 16<sup>th</sup> February, 2005.

**INRegistry** is the official ".in" registry. INRegistry is operated under the authority of **NIXI** (National Internet eXchange of India)

NIXI is a not-for-profit company registered under section 25 of the Indian Companies Act. NIXI has been set up to facilitate improved Internet services in India.

INRegistry has the following responsibilities:

1. maintaining the "in" top level domain
2. ensuring the operational stability, reliability, and security of ".in"
3. implementing Government of India policies

INRegistry took over its role from National Centre for Software Technology (NCST) and Centre for Development of Advanced Computing (C-DAC). End users cannot register ".in" domains from INRegistry. Registrations are handled by INRegistry accredited registrars. The following are the registrars for specific domains:

1. National Informatics Centre is the registrar for **gov.in** domains
2. ERNET is the registrar for **res.in** and **ac.in** domains
3. Ministry of Defence is the registrar for **mil.in** domains

".in" domain name disputes are resolved in accordance with the **.IN Dispute Resolution Policy** (INDRP) and the **INDRP Rules of Procedure**.

The INDRP outlines:

1. the types of disputes that can be brought and
2. the criteria that will be considered by the arbitrators.

The INDRP Rules of Procedure describe:

1. how to file a complaint,
2. how to respond to a complaint,
3. the fees,
4. communications, and
5. other procedures.

### 3.1 The .in Domain Name Dispute Resolution Policy

The “.in Domain Name Dispute Resolution Policy” (INDRP) sets out the terms and conditions to resolve a dispute between the **Registrant** and the **Complainant**, arising out of the registration and use of a “.in” Internet Domain Name.

**Registrant** is a holder of the .in Internet domain name.

**Complainant** is the person who has complaint against the Registrant.

#### Illustration

Sameer has booked the domain name “noodle.in”. Noodle Ltd files a complaint against Sameer to get the “noodle.in” domain transferred to its own name.

In this case, Sameer is the registrant while Noodle Ltd is the complainant.

A **complaint** can be filed with the .IN Registry on the **following grounds**:

1. the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights,
2. the Registrant has no **rights or legitimate interests** in respect of the domain name,

Simply put, the following circumstances demonstrate the Registrant's rights to or legitimate interests in the domain name:

1. Before any notice to the Registrant of the dispute, the Registrant uses or prepares to use the domain in connection with a bona fide offering of goods or services.
2. The Registrant (as an individual or organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights.
3. The Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for





commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

3. The Registrant's domain name has been registered or is being used in **bad faith**.

Simply put, the following circumstances are evidence of the registration and use of a domain name in bad faith:

1. circumstances indicating that the Registrant has registered / acquired the domain name primarily for
  - a. selling,
  - b. renting, or
  - c. otherwise transferringit to the Complainant or its competitor for a profit.
2. the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name [provided that the Registrant has engaged in a pattern of such conduct]
3. by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location.

**The basic procedure for the dispute resolution is:**

1. The Complainant files the **complaint** with the .IN Registry and pays the relevant **fees**.

The Complainant can ask for

- a. **cancellation** of the Registrant's domain name or
  - b. **transfer** of the domain name registration to the Complainant
2. The .IN Registry **appoints an Arbitrator** out of the list of arbitrators maintained by it.

The List of the Arbitrators is published online at [www.registry.in](http://www.registry.in)

3. The Arbitrator conducts the **arbitration proceedings** in accordance with the Arbitration & Conciliation Act 1996 and the IDR Policy and Rules.

The Registrant is required to submit to the mandatory arbitration proceeding.

The Registrant cannot **transfer** a domain name registration to another holder:

- b. for **15 working days** after conclusion of the proceeding
- c. during a **pending case** unless the transferee agrees to be bound by the decision.

The Registry reserves the right to cancel any transfer of a domain name registration to another holder that is made in violation of this paragraph.

4. The Arbitrator **decides** on the complaint.

All decisions under this Policy are published in full over the Internet. **Note:** An Arbitration Panel can decide in exceptional cases to edit portions of its decision.





## 3.2 The INDRP Rules

The “.in Domain Name Dispute Resolution Policy Rules” (INDRP Rules) describe the following:

1. how to file a complaint,
2. how to respond to a complaint,
3. the fees,
4. communications,
5. other procedures.

### **The complaint**

An arbitration proceeding in respect of a domain name dispute can be initiated by submitting a complaint (in hard copy and electronic version) to:

.IN Registry  
c/o NIXI (National Internet eXchange of India)  
Corp. Office: 121-123, Ansal Tower, 38  
Nehru Place, New Delhi 110019

The complaint must contain the following:

1. Name, postal addresses, e-mail addresses, telephone numbers and facsimile numbers of the **complainant**.
2. Contact information of the **respondent**.
3. The **domain name** which is the subject of the complaint.
4. The **trademark(s)** or service mark(s) on which the complaint is based.
5. The **grounds** on which the complaint is made.

#### The following must be specified:

- a. The manner in which the domain name is **identical** (or confusingly similar) to the complainant's trademark or service mark.
  - b. reasons why the respondent should be considered to have no **rights** or legitimate **interests** in the domain name,
  - c. reasons why the domain name should be considered to have been registered and as being used in **bad faith**.
6. The **remedies** sought.
  7. Any other relevant legal **proceedings**.



8. Relevant **documents**.
9. Cheque / draft (in favour of 'NATIONAL INTERNET EXCHANGE OF INDIA') for the **relevant fees**. The fees for adjudication is payable as per the following schedule:

.IN Registry's Administration Fee	Rs.5000
Arbitrator's Fee	Rs.25000
Personal hearing	Rs.5000 per hearing

**Note:** In case the Arbitrator calls for personal hearings, the fees for the same are to be shared by the parties equally.

If any party requests for personal hearing and that request is allowed by the Arbitrator, the fees for it is payable by the requesting party.

### **Notification of complaint**

The procedure followed by the .IN Registry on receipt of the complaint is as under:

1. If the complaint is in accordance with the policy and rules, it will be **forwarded to the respondent** within 3 working days.

.IN Registry sends the complaint to all postal, facsimile and email addresses shown in the domain name's **registration data** through .IN Registry's WHOIS database at [www.registry.in](http://www.registry.in) [see next page for an illustration of registration data]

2. If the complaint is not in accordance with the policy and rules, the **deficiencies** will be notified to the complainant within 3 working days. The complainant must **correct the deficiencies** in 5 working days.
3. The .IN Registry then **appoints an arbitrator** from the list of arbitrators.
4. The complaint and documents are **forwarded to the respondent and the arbitrator** for adjudicating (in accordance with the Arbitration and Conciliation Act 1996, rules thereunder, and the Dispute Resolution Policy & rules).
5. Within 3 days from the receipt of the complaint the Arbitrator issues a **notice** to the Respondent. The date of commencement of the arbitration proceeding is the date on which the Arbitrator issues this notice to the respondent.



- The Arbitrator must pass a **reasoned award** (within 60 days) and put forward a copy of it immediately to the complainant, respondent and the .IN Registry.

**Registration data for the domain data64.in through  
.IN Registry's WHOIS database at [www.registry.in](http://www.registry.in)**

Domain ID:D2243738-AFIN  
Domain Name:DATA64.IN  
Created On:26-May-2006 18:46:53 UTC  
Last Updated On:07-Sep-2007 06:36:27 UTC  
Expiration Date:26-May-2010 18:46:53 UTC  
Sponsoring Registrar:Silicon House (R38-AFIN)  
Status:OK  
Registrant ID:DI\_5590479  
Registrant Name:Data 64  
Registrant Organization:Data64 Techno Solutions Pvt Ltd  
Registrant Street1:6th Floor  
Registrant Street2:Senapati Bapat Road  
Registrant City:Pune  
Registrant State/Province:MH  
Registrant Postal Code:411016  
Registrant Country:IN  
Registrant Phone:+91.2064006464  
Registrant FAX:+91.2025884192  
Registrant Email:rn@asianlaws.org  
Admin ID:DI\_5590479  
Admin Name:Data 64  
Admin Organization:Data64 Techno Solutions Pvt Ltd  
Admin Street1:6th Floor  
Admin Street2:Senapati Bapat Road  
Admin City:Pune  
Admin State/Province:MH  
Admin Postal Code:411016  
Admin Country:IN  
Admin Phone:+91.2064006464  
Admin FAX:+91.2025884192  
Admin Email:rn@asianlaws.org  
Tech ID:DI\_5590479  
Tech Name:Data 64  
Tech Organization:Data64 Techno Solutions Pvt Ltd  
Tech Street1:6th Floor  
Tech Street2:Senapati Bapat Road  
Tech City:Pune  
Tech State/Province:MH  
Tech Postal Code:411016  
Tech Country:IN  
Tech Phone:+91.2064006464  
Tech FAX:+91.2025884192  
Tech Email:rn@asianlaws.org  
Name Server:NS1.DREAMHOST.COM  
Name Server:NS2.DREAMHOST.COM  
Name Server:NS3.DREAMHOST.COM





[www.asianlaws.org](http://www.asianlaws.org)

**Head Office**

6th Floor, Pride Senate,  
Behind Indiabulls Mega Store,  
Senapati Bapat Road,  
Pune - 411016.  
India

**Contact Numbers**

+91-20-25667148  
+91-20-40033365  
+91-20-64000000  
+91-20-64006464

**Email:** [info@asianlaws.org](mailto:info@asianlaws.org)

**URL:** [www.asianlaws.org](http://www.asianlaws.org)