

## Avoiding the Traps: Domain Names in Turkey

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The Internet has brought domain name disputes to prominence, while traditional trademark disputes continue as before. Assigning generic top level domain names (gTLDs) such as .com, .edu and .gen on a 'first come, first served' basis has caused domain name disputes between many registrants. Although country code top level domain names (ccTLDs) such as .com.tr, edu.tr, info.tr and web.tr are assigned on a document-required basis in Turkey, it still does not prevent disputes. So domain name oppositions and cancellation actions have become a hot topic in the trademark world.

Although ccTLDs have been assigned by Nic.tr under the aegis of the Middle East Technical University (METU) since 1991, there is still no legal arrangement for registration, assignment, cancellation or dispute resolution proceedings for domain names in Turkey. Moreover, the draft domain name regulation has yet to be accepted.

For this reason though the Ministry of Transportation has authorized the Information Technology and Communication Institute to take on domain name proceedings (according to the E-Communication Law of 2008), METU continues to operate domain name proceedings in Turkey, since there is no valid legal regulation. Because of this, METU has to operate as a legislative power and determine its own policies and procedures regarding domain names.

For example, the sale, rental or assignment of .tr domain names is not possible in Turkey. Only when the rights certified in the document upon which the application is based are assigned can the domain name be assigned to the assignee. Such documents include trademark applications, registration certificates or commercial registration certificates.

METU assigns the ccTLDs on a document-required basis in order to prevent domain name disputes. Within this context, a registrant wishing to acquire a domain name has to certify (with an identification certificate, commercial registration certificate/government licence, etc.) its rights to the applied-for domain name. Alternatively, the registrant may also apply based on an existing trademark registration/application. Not surprisingly, most domain name disputes arise from these trademark and registration based domain name applications. This is because bad faith applicants put great effort into registering famous trademarks (in different classes, to avoid rejections) or registering a confusingly similar trademark and filing a domain name application based on this malicious trademark application.

Trademarks owners can choose to oppose domain name applications within six months. However, METU examines the oppositions according to its own policies without any judicial review. As METU's decisions are not based on any law and are not open to judicial review, starting a lawsuit before the courts seems to be the most effective and reliable option at the present moment. However, in the near future, the Dispute Resolution Committee (which will be established by the Information Technology and Communication Institution) will solve domain name disputes. Its decisions will be appealable in the courts.

To date, the Turkish courts have tended to decide in favor of cancelling gTLDs. However, the courts take too long to cancel this kind of domain name. When a cancellation action is initiated and the decision is rendered, the execution of the cancellation decision must be enforced by the registrant company and, most commonly, the registrant companies are not Turkish. If the registrant company is not located in Turkey it may be difficult to enforce recognition of Turkish court orders. Therefore, instead of taking this risk, it makes sense to use WIPO arbitration for gTLD conflicts.

## Related Practices

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