

Code of Conduct Domain Names (CCD) Notice and notice or notice and take down

Preamble

Swico has adopted this Domain Names Code of Conduct (hereinafter referred to as the 'CCD') to set down technologically relevant principles of conduct for Swiss registrars in relation to the illegal registration and use of domain names, to establish these principles as an industry standard, to strengthen legal security and to make it easier for data subjects affected by illegal registrations and use to institute proceedings against those responsible for such domain names.

With respect to the notice and notice or notice and takedown procedure set down in the CCD, Swico follows the applicable regulations of Swiss law. It also completes the legal scope for interpretation with specific conduct recommendations in response to complaints from third parties regarding customers illegally registering and using domain names.

Domain name service providers play an important role as intermediaries on the internet. Without them, internet communication would be impossible. To support the economic, social and cultural potential of their services, they agree to uphold the following principles of conduct.

1. Subject matter and legal nature

The CCD is a set of guidelines on how to deal with reports of possible illegal domain registrations. It is a document of voluntary self-regulation.

2. Addressees and scope of validity

2.1 The CCD is aimed at registrars based in Switzerland, i.e. companies and individuals that offer domain name services and are subject to Swiss law.

2.2 Any services offered by registrars that are not purely domain name services are excluded from the scope of the CCD. In particular, internet access services and services for storing and processing content and making such content accessible to third parties (e.g. hosting or cloud services) are not included.

3. Definitions

3.1 *Illegal registration or use of a domain name:* registration and/or use of a domain name by the customer where this infringes third parties' rights, particularly intellectual property rights in the broad sense (e.g. copyrights or trademark rights), or personality rights, or that constitutes a criminal offence (for example in the areas of pornography, the depiction of violence, racism and libel).

3.2 *Domain name service:* provision of a registrar service to register the domain name requested by the customer with the relevant registration authority and/or to manage domain name registration.

3.3 *Customer:* recipient of registrar services where there is a contract with the registrar for domain name services.

3.4 *Notice:* communication from a data subject that a registration of a domain name held by the customer or use of a domain name by the customer is illegal.

The sender must be affected by the alleged infringement to a greater extent than a third party or the general public. For personality right infringements and offences that must be reported, this includes the injured party (or their representative), while for intellectual property right infringements, this includes the holder of ownership or licensing rights for the content concerned (or their representative). The sender does not need to be particularly affected for offences for which proceedings are brought directly by the public prosecutor's office.

A notice must at least meet the formal and content-related requirements by including the following information:

- a) the sender's name and address;
- b) an explanation of why the sender is particularly affected (except for offences for which proceedings are brought directly by the public prosecutor's office);
- c) the domain name that is the subject of the complaint;
- d) a precise description of the allegedly illegal registration and/or use of the domain name; and
- e) a reason as to why the registration and/or use is illegal.

4. No monitoring obligations

As intermediaries on the internet, registrars provide services that enable operators of websites to make content publicly available to third parties. Registrars have no knowledge of how their customers use domain names. Neither are they obligated to actively monitor the registration of domain names or their use. The customer alone is solely responsible for the registration and use of domain names and for content that it stores, processes or makes accessible to third parties using the domain name.

The registrar's obligations defined in the CCD are designed to make it easier for data subjects affected by the illegal registration or use of domain names to institute legal proceedings against those responsible.

5. Notice and notice

5.1 The registrar checks that any notices received meet the formal and content-related requirements set down in (3.4). When assessing these requirements, the registrar applies the benchmark of a legal layman.

5.2 If a received notice does not meet the formal and/or content-related requirements set down in (3.4), or only meets them to a certain extent, the registrar shall ask the sender of the notice to provide the missing information within two working days of being prompted to do so.

If the sender fails to respond before the deadline, or if the additional information supplied also does not meet the formal and/or content-related requirements set down in (3.4), or only meets them to a certain extent, the registrar shall not process the notice further.

5.3 If a received notice meets the formal and content-related requirements set down in (3.4) in full, the registrar shall write to the customer and to the sender of the notice, generally within two working days of receiving the notice.

- a) In the letter to the customer, the registrar shall inform them (the customer) that the notice has been received and shall forward a copy of the same. The registrar shall remind the customer that they (the customer) are solely responsible for registering and using domain names and for content made accessible to third parties. It shall prompt the customer to cease and desist with the registration or use of domain names or to explain why registration or use is lawful in a letter to the sender of the notice. The registrar shall also inform the customer that they are liable to compensate it for expenditure relating to the defence of third-party claims and for any other damage suffered. The registrar may demand a surety from the customer as a precautionary payment to cover such damage. In clear cases, the registrar may also take direct action in accordance with (6).
- b) In the letter to the sender of the notice, the registrar shall confirm receipt of the notice and inform the sender that it has written to the customer. It shall inform the sender of the notice that the customer is solely responsible for registering and using domain names and for content that it makes accessible to third parties. The registrar shall also notify the sender that it is not allowed to disclose customer data. Instead, it shall inform the sender of possible ways in which they may uncover the identity of the owner of an internet domain (e.g. using Whois databases available online) and of which state authorities they may contact to assert their claims. In clear cases, the registrar may also take direct action in accordance with (6).

6. Notice and take down

6.1 If a received notice meets the formal and content-related requirements set down in (3.4) in full, and if it appears highly likely that the registration or use of domain names is illegal, or if the registrar itself could be criminally responsible or liable under civil law, the registrar may take the following measures at its own discretion:

- a) place an administrative or technical block on a domain name until the matter has been resolved between the data subjects or by courts and authorities;
- b) deny a request to assign or transfer a domain name until the matter has been resolved between the data subjects or by courts and authorities;
- c) refuse to accept the customer's administrative instructions or block customer access to the user account; and
- d) refuse to renew the domain name.

6.2 The CCD does not replace a domain dispute settlement procedure (SWITCH or WIPO) or an official or judicial procedure in connection with domain disputes. If the registration authority has already placed an administrative or technical block on a domain name because of a pending procedure, or if another measure to restrict the customer's power of disposal over the domain name is ordered by an authority or a court, the registrar can no longer decide on these measures.

6.3 Immediately before or after taking a measure set down in (6.1), the registrar shall inform the customer that a notice has been received, shall forward the notice to them and shall notify them of the reason for the measure. At the same time, the registrar shall inform the sender of the notice of the measure being taken and the letter being sent to the customer.

6.4 The registrar shall decide, at its own discretion, whether to report any criminal offences to KOBIC (the Swiss Coordination Unit for Cybercrime) or to the criminal prosecution authorities.

6.5 When assessing whether the notice is complete and whether measures should be taken and notice made under (6.1), the registrar shall apply the benchmark of a legal layman.

7. Contractual safeguards vis-à-vis the customer

7.1 The registrar shall ensure that its agreements with the customer contain the following regulations and information at the very least:

- a) The customer may only use the services and domain names lawfully. The customer is solely responsible for the registration or use of domain names the customer registers using the services, and content the customer makes accessible to third parties using the domain name.
- b) The registrar is not obligated to monitor the registration and use of domain names. However, it may examine the registration or use of domain names after receiving a notice, as required by the notice and take down procedure, or if ordered to do so by a court or another authority. The registrar reserves the right to carry out spot checks, even if a notice has not been received.
- c) The registrar has the right to take measures set down in (6.1) and to withdraw services i) if the relevant requirements set down in the notice and take down procedure described in its General Terms and Conditions or in the CCD, if referred to in its General Terms and Conditions, are met; or ii) if the registrar is ordered to do so by a court or another authority or could in some other way be legally responsible or held liable itself; or iii) if a spot check uncovers registrations or content that are highly likely to be illegal under (3.1).
- d) The registrar shall describe the notice and take down procedure or make mention of the CCD in its General Terms and Conditions and preferably provide easy access to the CCD on its website. The customer is responsible for finding out about the notice and take down procedure. They note and acknowledge that the registrar may terminate the contract with them with immediate effect if they fail to follow its instructions according to the notice and take down procedure described in the General Terms and Conditions and/or the CCD.
- e) If ordered to do so by a court or another authority in writing, the registrar shall be entitled and obligated to reveal the customer's identity to the former or to other third parties.
- f) The registrar is entitled to bill the customer for any expenditure incurred in relation to a notice. The customer must compensate the registrar for any other damage suffered as a result of asserted claims. The registrar may demand a surety from the customer as a precautionary payment to cover such damage. If this surety is not paid, the registrar may withdraw the service.

8. Internal organizational measures

The registrar shall take internal organisational measures to respond to notices quickly. It shall appoint someone as its Head of Illegal Registrations and Use of Domain Names and make clear on its website how and to whom notices ought to be sent as part of the notice and take down procedure (using an online form, for example).

9. Sample letters

Swico provides its members with samples of the letters mentioned in the CCD that they must send to customers and to senders of notices.

10. No liability on Swico's part

The CCD is a document of voluntary self-regulation. In view of the current legal uncertainty surrounding registrar liability, Swico cannot guarantee that registrars will be exempt from criminal prosecution or civil liability if they comply with the CCD.

11. Entry into force

This CCD enters into force on 15 April 2020.

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