

## Tip sheet

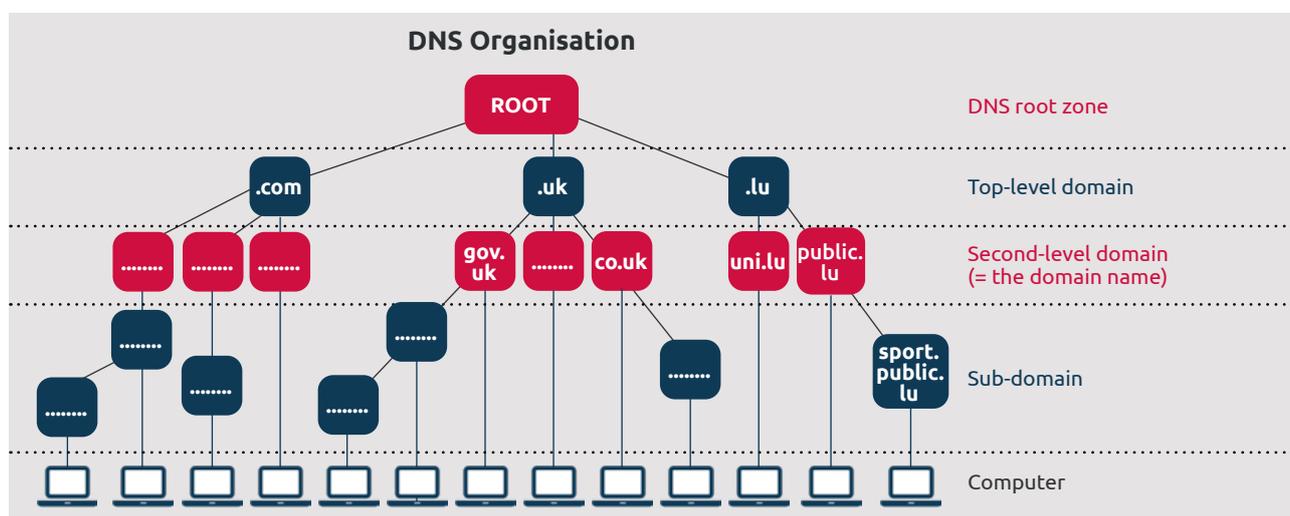
# DOMAIN NAME DISPUTES

Since its arrival in Luxembourg in 1992, the internet has become indispensable for all business sectors. Its technical infrastructure, in which the Domain Name System (DNS) and the domain names form an essential pillar, enables access to a variety of services, such as websites, email, videoconferencing and connection to databases, to name but a few of these. Like the world itself, domain names, as identifiers, have progressively become an integral part of disputes.



*This advisory leaflet provides basic information only and does not claim to discuss comprehensively or in depth the subject of the disputes to which numerous legal experts are devoted.*

A domain name is a unique functional identifier, designed to be understandable and memorable to humans. It allows technical information, such as the IP address of a website or email server, to be associated with it by querying a DNS server (names server).



## • Recommendations and responsibilities

A domain name is registered in the name of the holder on a 'first come, first served' basis. The holder assumes total responsibility for the use of the domain name it has registered. Before taking on this role, make sure that:

**Your domain name does not infringe the rights of other persons, companies or institutions.**

Look up the files for the registered trademarks - in particular those of the Benelux Office for Intellectual Property (BOIP) for the Benelux countries - as well as the business registers - including in Luxembourg the Trade and Companies Register (French abbreviation - RCS) managed by the Luxembourg Business Registers.

**The content and nature of the related services comply with the legislations in force in the countries where you wish to communicate.**

Even if the domain name and the content published via this domain name are two entirely independent concepts, you should keep in mind that each country has for its own regulations.

## • Types of disputes

National and European legislations are applied in the usual manner to dispute resolution. The domain name registries have an essentially technical role and play no part in this process, as they have no competence to settle a dispute. The limits of their actions can be defined in their domain name charters or their general terms and conditions. In Luxembourg, the first domain name charter for the domain name .lu was established as early as 2001.

### The .lu domain name charter, a charter for registering a .lu

The .lu domain name charter contains the guiding principles implemented by the Restena Foundation when registering domain names. It is the product of direct collaboration between the Restena Foundation and public and private players representing the national internet community, who meet in a workgroup first formed by the Government on 16 March 2001. Since then, the charter has been revised on a number of occasions, in particular to take into account technical developments and as a response to the wishes of the national internet community.

*The .lu domain name charter .lu can be read and downloaded at <https://dns.lu/en/publications>*

### Disputes concerning the domain name itself

A party may assert that a domain name is illegal (fake, slanderous, etc.) without calling into question the services or content offered on the website.

These disputes are often settled amicably or culminate in cases relating essentially to civil law and covering the rights of use of the domain in question. However, the case in question may also relate to criminal law.

#### Info !

- To be assigned a domain name identical to a name protected by a third party in Benelux is punishable under article 2.20 of the Benelux Convention on Intellectual Property.
- To register a domain name very similar to a protected name, with the intention of profiting from the reputation of the name in question, is an act of piracy punishable by the law governing unfair competition.

### Disputes concerning services related to the domain name

Websites and email addresses may contain illicit content or be used for illicit ends, such as an attempt at fraud or the sale of fake merchandise or merchandise resulting from a crime or an offence. In this case, disputes concern the services and contents of the website in question, supplied via the domain name, but do not concern the actual domain name.

In Luxembourg, these disputes are settled amicably, or before the civil courts on the basis, for example, of articles 1382 and 1383 of the Civil Code. They may also lead to legal proceedings, during which the competent Government department cites the need to bring to an end the distribution of an illegal content or service.

#### Info !

There are numerous initiatives worldwide to enable all citizens to report illegal content. In Luxembourg, the BEE SECURE STOPLINE platform enables certain illegal content to be reported, including child sexual abuse material and content related to racism, revisionism, discrimination, or even terrorism.

*To learn more, go to: <https://stopline.bee-secure.lu>*

→ **Before any registration, the holder must make sure of its legitimacy to register and use a domain name.**

## • Dispute control measures

Anyone can contest a domain name and/or services related to it. If you believe you have been the victim of an illegal act, various remedies are open to you.

### Extrajudicial measures

#### 1. Contact the domain name holder.

This is a fast and often effective means of resolving disputes, particularly if the subject of the dispute is undeniable or obvious.

To get in touch with the holder, or its representative, use the WHOIS registration data consultation service offered by each of the top-level domain registries.

#### 2. Contact the content provider or the Internet Service Provider (ISP).

By contacting the technical supplier of the incriminated service, you can expect them to take direct action regarding the content or service.

Various European ISPs have been given guidelines relating to means of preventing their customers from making use of resources for illegal purposes. Each service provider assesses on a case-by-case basis the merits of a complaint, and decides whether the terms and conditions of the contract signed with its customer, or the legislation in force, authorise it to close the service in question itself, or whether it is required to wait for a decision to be taken by the courts.

#### 3. Use the Alternative Dispute Resolution (ADR), if provided by the registry managing the extension involved.

The ADR is an alternative to legal proceedings. In particular, it enables a decision on whether a domain name must be removed or transferred without passing through the courts. Just as for legal proceedings, the decisions of an ADR are enforceable.

In Luxembourg, failing an obvious demand from the local community, there is no ADR for .lu. However, the .lu registry can prohibit assignment to a third party of a domain name involved in a dispute. For this, the party contesting the legitimacy of a domain name registration must document the merits of its request. It must provide information that shows that it can claim a right over the domain and that it has initiated formal proceedings (legal action, arbitration, etc.) attempting to recover the domain name for the actual holder.

#### WHOIS, a registration data consultation service

The WHOIS database is a search service covering registered domain names. It contains data relating to the functioning of the internet and serves the internet community. For .lu, there is a linked form for contacting the administrative and/or technical contact for a domain name.

*The WHOIS for the .lu zone can be viewed at <https://dns.lu/en/domains/whois-web>*

#### Resolution of disputes relating to a .lu

Before contesting the legitimacy of the registration of a domain name in .lu, the plaintiff must:

- make sure that its request is compatible with the procedure set up by the .lu registry,
- download, then fill in the form for applying to register a dispute entry for a .lu domain name.

*The procedure and form can be viewed and downloaded at <https://dns.lu/en/functioning/dispute-resolution>*

→ **Failing impunity on the internet, the holder is liable when using a domain name.**

## Legal measures

Restrictive measures against a holder do not require its consent. However, in most countries, including Luxembourg, a court ruling is necessary in order to justify the application of obligatory measures to the registry.

→ **Bring the matter before the competent courts for a judgement and the application of measures to the prejudicial domain name:** the measures defined by the courts are interim or permanent.

	Interim measures	Permanent measures
<b>Features</b>	<ul style="list-style-type: none"><li>• These generally take the form of orders, pronounced in summary proceedings, the scope of which is interim.</li></ul>	<ul style="list-style-type: none"><li>• These are set out as part of a judgement on the merits of the case and, after the appeal period or following an appeal ruling confirming them, are considered to be final.</li></ul>
<b>Consequences</b>	<ul style="list-style-type: none"><li>• The registration is not cancelled, but the user privileges enjoyed by the holder over the domain name are limited.</li></ul>	<ul style="list-style-type: none"><li>• The holder loses its domain name.</li></ul>
<b>Examples</b>	<ul style="list-style-type: none"><li>• Suspension of the use of an 'active' domain name until resolution on the merits of the case: the domain name ceases to function (is no longer referenced by the DNS servers), but remains registered by the holder (its administrative data is not impacted).</li><li>• Restriction on the rights of the holder in the use of its domain name (i.e. change of holder not authorised).</li></ul>	<ul style="list-style-type: none"><li>• Changing holders.</li><li>• Removal of the domain name: the domain name is withdrawn from the database and generally undergoes a quarantine period, after which it will once again be available for registration.</li></ul>

### Removing a domain name, a solution of last resort

Removing a domain name is the same as withdrawing the right to use the domain from its holder. The domain name will be available for re-registration – like any other name that has not been re-registered – by a new holder after a quarantine period.

Removal of a domain name, in particular from the registry, does not put an end to an illicit service, but can contribute to making it less easy to access, at least temporarily. The content itself still remains present on the internet. In the event of removal, all services that rely on the domain name (email boxes, website, other domain names, etc.), as well as all delegated sub-domains, are impacted. Removal of domain names to act on the content is therefore to be considered as a tool of last resort, given the risks associated with such an action.

**Caution!** Removal of a domain name is not effective immediately over the whole of the internet. The domain name may remain visible locally for several days.

## Service offer

The infrastructure for registering domain names with the national extension .lu is managed by the Restena Foundation, which serves as the .lu registry.

For more information on this service, visit [dns.lu](https://dns.lu)

For further reading, download the policy document '*Domain name registries and online content*' published by the Council of European National Top-Level Domain Registries (CENTR), an association for exchange, dialogue and innovation of European country code top-level domain (ccTLD) registries at <https://centr.org/library/library/download/10405/5751/41.html>

