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PhD in Law

## LEGAL STATUS OF DOMAIN NAMES IN THE LEGISLATION OF UKRAINE AND DOCTRINAL SOURCES

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**Purpose:** *determination of the legal nature of domain names, identification of deficiencies in their legal regulation in national legislation, and the formulation of relevant proposals to improve this legislation. The methodological basis of the research comprises philosophical, dialectical, historical, formal logical, synergetic methods. Results:* *doctrinal sources, as well as legislation, do not have a unified approach to determining the essence and place of domain names, as the author of the article points out. Also, in this scientific work, various approaches to this issue are considered, and the author's recommendations are given on solving the problem that has arisen concerning domain names and their place in the legal relation. Discussion:* *improvement of the national legislation of Ukraine in the sphere of domain names regulation; development of a procedure for resolving conflicts related to the clash of rights to domain names with rights to other means of individualization of participants in civil turnover.*

**Keywords:** *domain name; website; domain name registration agreement; domain name registration; Internet governance; protection of rights of the domain name owner.*

**Problem statement and its relevance.** Today, the Internet has become an integral part of human existence. In such conditions, the value and role of the domain name as a particular type of identification designations for the allocation of information resources within the global information systems is growing. Having a complex legal nature, they often become the cause of legal conflicts associated with exclusive rights to domain names and similar intellectual property objects. The relevance of the article is emphasized by the lack of a unified approach to the definition of the concept of a domain name, its legal status and belonging to atypical intellectual property in the legislation of Ukraine.

**Analysis of research and publications.** The issue was studied by Ageenko A.A., Boyko D.V., Bulat N.M., Demchenko T.S., Gritsay V.I., Esimov S.S., Kalyatin V.A., Kulinich A.A., Podoprigora A.V., Sergo A.G., Filinovich V.V., Zhilinkova I.V. and other scientists.

**Purpose of the article.** By this article, the author wants to reveal the provisions and features of the legal protection of domain names as a means of individualization of participants in civil turnover, as well as to identify shortcomings and gaps in their legal regulation and to provide suggestions for improving the legal rules and norms governing relations between participants in relationships regarding domain names.

**The presentation of the main material.** The development of information technologies and the availability of quick and hassle-free access to the worldwide net named Internet have led to increased opportunities for the sale of goods and services. Thus, they brought economic relations to the level of Internet cooperation. And the Network has become the element without which the implementation of any business operation is almost impossible.

Therefore, the role of the domain name as a new type of identification designations, whose goal is the allocation of information resources within the global

information systems, has intensified. Today it is not just a designation; it is an identifier, a "visiting card" of a website. That is why the legal protection of a domain name is of particular relevance.

We should note that domain names are not only means of addressing on the Web, but they are also unique objects of civil turnover. Their legal nature is quite complex, as a result of which they are often confused with other identification objects of intellectual property, for example, with trademarks and commercial (company) names. All this leads to the emergence of legal conflicts regarding exclusive rights to such objects.

The complexity and lack of regulation of domain names in the legislation of Ukraine make it necessary to analyze the existing definitions of domain names in the current legislation and the doctrine of civil law. However, first, we need to explore the relationship between the concepts of "domain name" and "domain" because the legislation of Ukraine uses both of them.

According to Art. 1 of the Law of Ukraine "On the Protection of Rights to Marks for Goods and Services," a domain name is a name used to address computers and resources on the world wide web Internet [15]. At the same time, Art. 1 of the Law of Ukraine "On Telecommunications" defines the domain as "part of the hierarchical address space of the Internet, which has a unique name that identifies it, is served by a group of domain name servers, and is centrally administered" [16].

We also note that the definition of the concept of "domain" is contained in the departmental regulatory act of the Ministry of Health of Ukraine (in the Regulation on the Industry Information and Telecommunication System of the Ministry of Health of Ukraine "Health Net"), approved by order of the Ministry of Health No. 208 of 04/26/2007, in paragraph 4 Section II of which the domain is defined as part of the hierarchical address space of the Health Net Information and Telecommunication System, which has a unique name that identifies it and is serviced by a central node [13].

It can be concluded that each of the above legal acts fixes one of the concepts without

interconnection with the other. It, of course, does not positively affect the correct understanding of their relationship.

Both concepts are contained only in the order of connection to global data networks, approved by the Resolution of the Cabinet of Ministers No. 522 of 04/12/2002. This document indicates that:

– a domain is a part of the address space on the Internet designed to identify a computer or group of computers; and

– a domain name is an alphanumeric expression that identifies any subscriber's computer in the Internet information network [14, p. 2].

At the same time, international technical standards (RFC), which determine the functioning of the Internet network (including RFC-1034), consider the concept of a domain and a domain name as synonyms. So, in section 2.1 it indicates that both terms are used in many contexts that are independent of the DNS described in this document [2].

The definitions specified in the Law "On Protection of Rights to Marks for Goods and Services" and "On Telecommunications" indirectly characterize domain names. They do not contain a clear indication of the branch of law such objects relate to. Therefore, the question arises as to whether they can even be considered an object of civil law.

Yesimov S.S. points to the duality of the legal nature of the domain name: as an object of intellectual property law and as an object of information law. When considering disputes on a domain name in the framework of various procedures, the issue of its informational nature and informational and legal status should not be ignored, because the intersectoral nature of relations regarding domain names indicates that the institute of a domain name is an integral part of information law [7, p. 160].

At the same time, researchers point out that the laws of some countries include aspects of Internet relations regulation in the field of intellectual property. We should not forget that the registration and use of domain names are carried out, as a rule, on a contractual basis. It can be considered as the basis for their inclusion in the system of contract law.

Some scientists also believe that it is necessary to solve the issue of the possibility of the existence of an exclusive right to a domain name, the probability

of regulation of such an object by the rules of property rights, as well as questions about the institutional ownership of the domain name [17, p. 190].

Thus, on the issue of establishing the legal nature of a domain name in the science of civil law, several approaches have been established.

First, a domain name is a means of individualization. So believes, for example, the scientist Kalyatin V.A. In his opinion, a domain name as a means of individualization, can provide additional information about its owner, relevant goods or services, indicate a geographical location, perform advertising and warranty functions [8, p. 55].

The fact that a domain name serves to individualize a person in the space of the Internet, as well as general objective reality, according to V.B. Naumov, gives the basis to believe that from functionality the domain name and the corresponding class of intellectual property rights are very similar [11].

At the same time, the statement of the Committee of Ministers of the Council of Europe determined that the choice of a domain name or sequence of names can be used to identify and describe the content posted on their websites, as well as to disseminate a certain point of view or create spaces for communication, interaction, meetings and associations for various social groups and communities [1, p. 7]. In this sense, a domain name can act as a means of expressing the freedom of opinion.

The approaches mentioned indicate the diversity and complexity of the phenomenon of the domain name legal nature and that a domain name can act as:

- computer addresses on the Internet (a means of individualization of an Internet resource)
- means of individualization directly of the owner himself, together with his goods and services;
- means of expression of freedom of opinion.

So, in the doctrine of civil law, three approaches have been formed to determine the domain name:

1. Civil-legal. The determining function of a domain name is the individualization of

information resources owned by individuals and legal entities on the Web [18, p. 54]

2. Technical. A domain name is a verbal designation of a specific resource used instead of a digital address and which specifies the path to an information resource in a telecommunication environment by addressing a specific node on the Network [9, p. 56].

3. Mixed. A domain name is a unique symbolic name made to identify resources on the Internet; it is identified as part of the addressing system, which is recognized by the national communications administration as standard for use on the Internet [12].

According to the author of the article, a mixed approach is the most relevant. After all, it thoroughly combines both technical and civil legal features of domain names, thereby revealing their nature more fully. Having come from it, we can say that domain names belong to means of individualization.

Today, the rapid development of information technology has led to a sharp increase in disputes over the use of identifying signs on the Internet. Disputes also arose on the issue of expanding the list of means of individualization by including domain names in it. In this regard, Bontlab V.V. indicates that a domain name is an independent object of intellectual property law (as a means of individualization of participants in civil turnover, goods, and services on the Internet) [4, p. 7].

To confirm the essence of a domain name as a means of individualization of participants in civil turnover, it is necessary first of all to determine its place in the system of civil law objects. As a general rule, such objects are all about what civil relations arise.

Under Art. 177 of the Civil Code of Ukraine [19] objects of civil rights are things, including money and securities, other property, property rights, work results, services, results of intellectual activity, information, and other tangible and intangible benefits. According to the attributes that characterize the objects of civil rights, the scientist V.A. Lapach considers discrete, legal binding, and systematicity as such universal qualities [10, p. 167].

A similar opinion has O.I. Gladkaya, who believes that:

- Discreteness as a qualitative, physical, and/or

accounting certainty and isolation from all objects is inherent in objects of civil law. A domain name should have such an attribute because it has a technical purpose and a unique set of attributes. So, the emergence of each new domain name is possible only with registration as a manifestation of civil law contractual relations between the registrar and the applicant. Nevertheless, such relations are not state registration in their traditional sense, since the registrar is a legal entity, and it is not a public authority [5, p. 137].

– Legal binding in the context of a domain name is manifested through registration in a particular body, the ability to use a domain name, and dispose of rights to it in ways that do not contradict with the law [5, p. 137-138].

– Systematicity [5, p. 139]. On this point, in Ukraine, the systematic nature of these objects is contradictory, since the Civil Code does not indicate them as objects. However, they became one of the objects of civil circulation.

In the process of assigning a domain name to the means of individualization of participants in civil turnover, scientists point out that these objects have, in addition to general, specific characteristics as atypical objects of civil law. Dozortsev V.A. determined such characteristics:

– all objects of intellectual property rights are intangible;

– an intangible asset has commercial value and acts as an object of economic turnover (excluding the inalienable rights of the owner);

– the value of the object is in its aesthetic or informational content;

– the object can be isolated from adjacent objects to be able to determine what a person has the right to [6, p. 38-39].

Also, according to Ukrainian legislation, there is an exhaustive list of intellectual property rights established by law (Article 424 of the Civil Code of Ukraine), as well as their urgent nature (part 2 of Article 425 of the Civil Code of Ukraine).

If we determine the place of domain names in the system of civil law objects according to the classification, which involves the division of objects into objects of property, obligation and exclusive rights, we should draw the previous conclusion that domain names undoubtedly refer

to objects of exclusive rights (intellectual property rights) [3, p. 55].

Considering a domain name as a means of individualization, it is worth paying attention to its specificity and derivative nature. The last characteristic is due to the identity of the name with the original means of individualization (name, surname, pseudonym of an individual, name, designation of a legal entity, and the like) [3, p. 61].

So, in the process of determining domain names in the system of civil law objects and dividing them into the property, non-property and mixed, the most justified, according to the author of the article, is the assignment of domain names to mixed type objects. After all, they combine the features of both non-property and property objects. These features are:

– the ability to perform an individualizing function (according to the personality itself, its goods and services);

– the ability to cause the consumer to associate with his product (service) or brand that owns the domain name;

– there is value expression of the economic value of a domain name;

– the possibility of alienation of rights to it;

– urgent nature of domain name rights.

**Conclusion.** An analysis of the approaches to understanding domain names makes it possible to confirm the absence in the legal acts of a single and full definition of a domain name, which is reflected at the level of legal doctrine. In particular, scientists propose three approaches to understanding a domain name, namely: technical, civil, and mixed. The last of the proposed, the mixed one, is the most successful, as to the author of the article because it makes it possible to determine the legal nature of the domain name, taking into account the technical requirements for them, precisely as a means of individualization of participants in civil turnover.

Characterization of domain names as a means of individualization of participants in civil turnover made it possible to assert the non-material nature of domain names, which can be understood as benefits (they satisfy the needs of society, have a value expression). At the same time, the contractual nature of the emergence of the right to a domain name, and its urgent nature allow us to attribute them to intellectual property rights of a property nature.

Moreover, having specific features, domain names occupy an independent place in the system of intellectual property rights. They are not identified with related objects, in particular, such as signs for goods and services and commercial (trade) name.

Also, registration of a domain name is an essential step in acquiring the right to a domain name since only after the fact of registration is it possible to conclude an agreement on registration of a domain name.

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ПРАВОВИЙ СТАТУС ДОМЕННИХ ІМЕН В ЗАКОНОДАВСТВІ УКРАЇНИ  
ТА ДОКТРИНАЛЬНИХ ДЖЕРЕЛАХ

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*Метою* даної статті є визначення правової природи доменних імен, виявлення недоліків у їх правовому регулюванні в національному законодавстві та вироблення відповідних пропозицій щодо вдосконалення цього законодавства. *Методологічну основу дослідження* становлять філософські, діалектичні, історичні, формально-логічні, синергетичні методи. *Результатом* дослідження став аналіз доктринальних джерел і законодавства, на підставі чого був зроблений висновок про відсутність єдиного підходу до визначення сутності та місця доменних імен, а також про віднесення їх до засобів індивідуалізації учасників цивільного обороту. Також у даній науковій роботі розглянуті різні підходи до цієї проблеми, і даються рекомендації автора щодо вирішення виниклої проблеми, що стосується доменних імен і їх місця в правовому відношенні. *Обговорення* ведеться щодо вдосконалення національного законодавства України в сфері регулювання доменних імен, розробки порядку вирішення спорів, пов'язаних із конфліктом прав на доменні імена з правами на інші засоби індивідуалізації учасників цивільного обороту.

Всесвітня Мережа Інтернет і пов'язані з нею активності, на сьогоднішній день, стали невід'ємною частиною людського існування. Відповідно, в таких умовах підвищився рівень значення і роль доменного імені як особливого типу ідентифікаційних позначень для цілей вирішення інформаційних ресурсів в глобальних інформаційних системах. Доменні імена, завдяки своїй складній юридичній природі, нерідко призводять до правових конфліктів, пов'язаних з винятковими правами на такі об'єкти інтелектуальної власності. Актуальність статті підкреслюється відсутністю єдиного підходу до визначення правового статусу доменного імені та його приналежності до нетипових об'єктів інтелектуальної власності в законодавстві нашої держави.

В процесі роботи над цією статтею було проведено детальний аналіз безлічі досліджень і публікацій. У цьому науковому матеріалі автор спробує розкрити положення і особливості правового захисту доменних імен як засобу індивідуалізації учасників цивільного обороту, а також виявити недоліки та прогалини в їх правовому регулюванні. Окремо будуть дані авторські рекомендації щодо поліпшення діючих правових норм, які регулюють відносини між учасниками щодо доменних імен.

**Ключові слова:** доменне ім'я; сайт; договір про реєстрацію доменного імені; реєстрація доменного імені; управління інтернетом; захист прав власника доменного імені.