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## VIETNAM: STEP FORWARD IN HANDLING DOMAIN NAME DISPUTES

The Vietnam National Internet Centre (VNNIC) has reportedly received hundreds of complaints requesting the withdrawal of registered “.vn” domain names. The number of complaints has increased in direct proportion with the increase in the number of registered “.vn” domain names. The most common basis for such complaints is that the registered domain name is identical to the complainant’s registered trademark or trade name. Many such complaints have been lodged by owners of reputable global brands whose famous trademarks or trade names have been included in other parties’ registered “.vn” domain names.

This situation has resulted in an urgent need for detailed guidelines for VNNIC, “.vn” domain name registrars, and “.vn” domain name registrants to handle disputes over “.vn” domain names. In response to this need, on March 17, 2010, VNNIC issued the Guidelines on Handling of Disputed “.vn” Domain Names. These long-awaited Guidelines provide a number of clarifications to domain registrars and other stakeholders in the handling of disputed “.vn” domain names.

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### Background

On June 29, 2006, Vietnam issued the Law on Informatics Technology, which came into effect on January 1, 2007. The Law provides for three means to resolve domain name disputes: informal negotiation and mediation; arbitration; and civil proceedings. To clarify the grounds under which a complainant may take action under these dispute resolution mechanisms, the Ministry of Information and Communication issued a December 2008 circular (number 10/2008/TT-BTTTT) stating that a request for resolution of a domain name dispute should fulfill three criteria. First, the disputed domain name must be identical or confusingly similar to the name of the complainant, or identical or confusingly similar to a trademark or service mark in which the complainant has lawful rights or interests. Second, the respondent must not have lawful rights or interests in the domain name. And third, the domain name must have been used by the respondent in bad faith. The circular provides several grounds for a finding of bad faith on the part of the respondent, including cybersquatting and damaging the reputation of the complainant.

To prove its lawful rights in the disputed domain name, the respondent can submit evidence showing that it used (or planned to use) the domain name for a bona fide offering of goods or services before the dispute arose. Alternatively, the respondent may demonstrate that it has been commonly known by the domain name, even if the respondent has no rights in the corresponding trademark or service mark. Finally, the respondent can submit evidence

that it is making a lawful noncommercial use of the domain name or a legitimate fair use of the domain name without intent or commercial gain to misleadingly divert consumers or to tarnish the name, trademark, or service mark at issue.

### Guidelines

Despite the existence of the legal framework described above, procedures for handling disputed “.vn” domain names had not previously been put in place. The Guidelines on Handling of Disputed “.vn” Domain Names represent an attempt to provide clear procedural steps for handling such disputes.

According to the Guidelines, a domain name is considered to be in dispute from the date the complainant sends a letter of complaint to the respondent and the registrar. The letter of complaint shall be addressed to the respondent if it is also the user of the domain name, or to both the respondent and the domain user if they are not the same. Within 60 consecutive days from the date of the complaint letter, the registrar shall freeze the existing status of the domain name. No returning, withdrawal, or transfer of the domain name to another registrar, organization, or individual is allowed during this period.

Within this 60-day period, the complainant may submit written minutes of successful mediation or a decision by an arbitration center or court to handle the dispute, and the registrar will then continue to freeze the existing status of the domain name for further settlement. If the dispute is settled in favor of the complainant, the complainant will have the priority right to register the domain name in its own name within ten consecutive days from the date of written minutes of successful mediation or a final decision of the arbitration center or binding

decision by the court. After this priority period, if the complainant fails to register the domain name, any third party can register the domain name for themselves.

If the complainant fails to submit the evidence of successful mediation (or arbitration or court decision) within the 60-day period, the registrar shall unfreeze the domain name and the name will no longer be considered in dispute. The respondent is then free to return the domain name to the registrar or transfer the domain to another registrar, organization, or individual. If during this period, the domain name has been transferred, the complainant will have to commence a new domain name dispute against the new registrar, organization, or individual, even if a final decision of the arbitration center or court has been rendered.

The Guidelines also indicate that during the period a domain name is considered to be in dispute, if the respondent fails to renew the domain, the complainant is assigned a priority right to register the domain name within five days. If the complainant does not register the domain during this period, any third party can apply for its registration.

The Guidelines on Handling of Disputed “.vn” Domain Names are a step forward in settlement of the increasing number of disputes over domain names. It is expected that these Guidelines will soon help to clear the existing procedural obstacles in settlement of domain name disputes in Vietnam. 