

.at report

Nr. 3/2011

Dear reader,

These days everyone appreciates that the law also applies to the internet – just as it does to other areas of their everyday lives. And today, even the days of the cybersquatters are a distant memory. But even so, nic.at's legal department still has its hands full, which is why we have decided to dedicate the final .at report this year to this subject.

When it comes to domains and legal issues, most people automatically think of disputes. In fact, during the last 11 years only 1,200 .at domains were subject of disputes, and only a tenth of disagreements end up in court. By now, most of the legal questions surrounding the world of domains have already been settled by the courts, as has nic.at's role and the extent of its liability, which we summarise for you on the following pages. We have also highlighted a number of interesting details and short case studies.

The current economic environment has had an impact on the nic.at legal department, as the department is also responsible for

handling insolvency cases. On average, some 2,000 domains a year are implicated in insolvency proceedings involving the domain name owner or provider. And growing awareness of the value of domain names means that domain name attachments are also on the rise. Even if the bailiff's virtual stamp is invisible to the outside world, this creates a lot of legal work for nic.at. Such cases need to be handled carefully, as a domain is often an important foundation of a business and a source of income. We have included some statistics that shed more light on this aspect of domain name ownership on page 5.

In a broad sense, the topic of legal issues also includes the corporate structure and legal form of nic.at. In this report we explain how, as a private limited company, we carry out our duties in administering the .at domain in the public interest. The Domain Name Council – made up of representatives from the domestic and international internet community – plays an important role in what we do. Which brings us back to



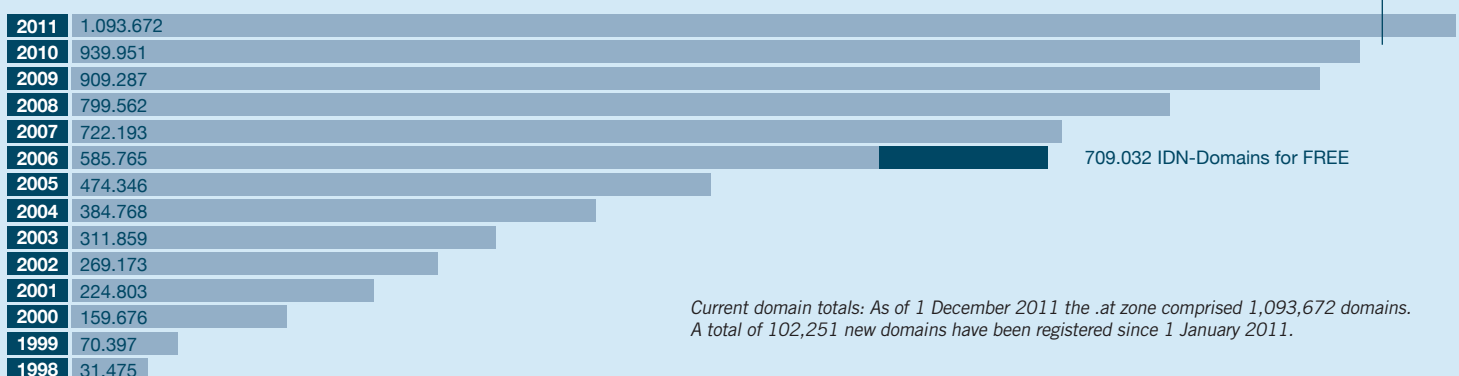
Richard Wein & Robert Schischka
General Managers **nic.at**

legal expertise: we are very happy to have a respected judge and expert in internet domain law on board in Franz Schmidbauer, who chairs the Domain Name Council. We catch up with him on page 4.

As a way of giving the legal experts in the sector an opportunity to meet, and to present new legal developments, nic.at regularly organises a Domain Law Day, the most recent of which took place in May this year. We look back at this event with some photos on page 6.

We hope you enjoy our foray into the world of sections and sub-sections, and wish you a relaxing winter break and happy New Year!
Richard Wein & Robert Schischka

Domain registrations / The .at zone since 1998



All issues of the .at-report

The legal structure surrounding nic.at – private bottom up self administration the key to success

nic.at Internet Verwaltungs- und Betriebsgesellschaft m.b.H. is a wholly owned subsidiary of Internet Foundation Austria (IPA), a non-profit foundation set up by Internet Service Provider Austria (ISPA) in 2000.

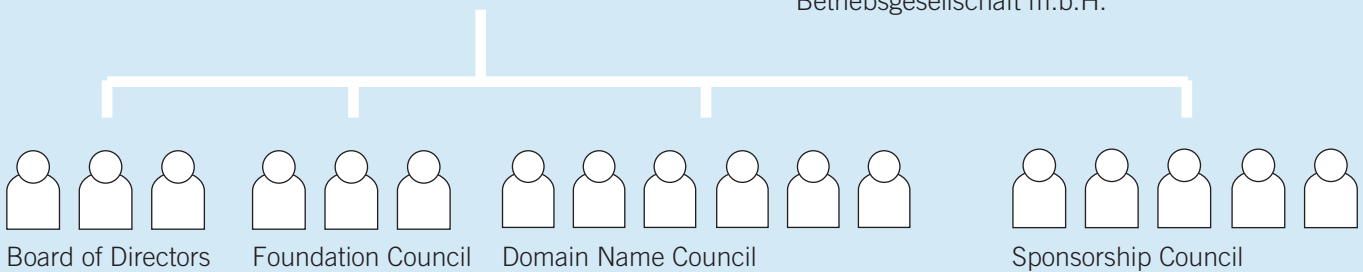
The objective of the foundation is to support development of the internet in Austria, and to manage the top level domain .at in trust for the general public. The foundation is funded by receipts from domain administration collected by nic.at.



Internet Foundation Austria (IPA)



Internet Verwaltungs- und Betriebsgesellschaft m.b.H.



The Board of Directors manages the foundation's business affairs, while the Foundation Council performs an auditing function.

The Domain Name Council, made up of representatives of the internet community from Austria and abroad, sets the domain name allocation guidelines for .at.

The Sponsorship Council decides which projects the foundation will sponsor, for example those that benefit from the annual netidee grant awards.



The IPA Board of Directors: Manfred Wagner, Rupert Nagler and Wolfgang Kleinert



You can find out more at www.nic.at/en under About nic.at, and at www.domainbeirat.at

Illegal domain names and nic.at's role



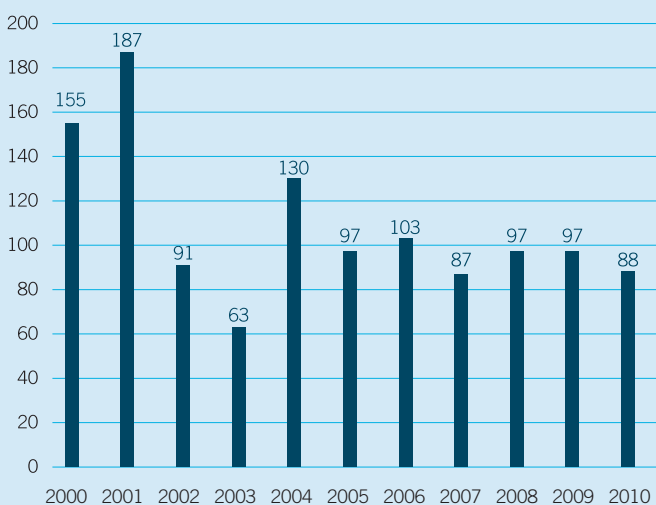
The allocation of .at domains is based on our general terms and conditions (GTC) and our registration guidelines. These also specify the circumstances under which nic.at may cancel (i.e. delete) a domain name. The onus is on the domain name owner to check whether a domain name infringes the trademarks or copyright of a third party, so this is not checked by nic.at in the

course of registration. nic.at is only obliged to act when notified that rights have been infringed. Usually, the domain name in question is set to "wait" status, until the parties in dispute have come to an agreement. nic.at then implements what the parties have agreed or, if applicable, what a court has decided.

Tried and tested solution for when disputes arise: the wait status

The wait status is a temporary bar on transfer of ownership of a domain. It guarantees that the domain name holder remains the same for the duration of the dispute, so a holder cannot simply get out of the situation by giving the domain to someone else. Wait status can be requested by anyone who can show that their rights have been infringed. The domain continues to function normally during this time.

11 years of the wait status at nic.at



In total, almost 1,200 domains have been put on wait status since the year 2000. The number of applications for wait status started to decline again in 2010, not least because the law with regard to domains has been administered well (see interview with Franz Schmidbauer, page 4). Less than one in every thousand newly registered domain names becomes the subject of a dispute.*



The big misconception: winning a court case does not mean domain name transfer!

Often, after disputes over domain names, the plaintiff can become frustrated.

Even when the plaintiff has won a court case and the defendant must give up the domain due to an injunction, this does not mean that the domain is automatically transferred to the plaintiff. An injunction requires that the domain in question is deleted. After deletion, the domain name becomes free again and available for registration on a first come, first served basis. So it may be that the party whose rights were infringed still doesn't get what they wanted.

Our legal department's tip: an out of court settlement where change of ownership is agreed is preferable, enabling transfer of the domain without any hassle.

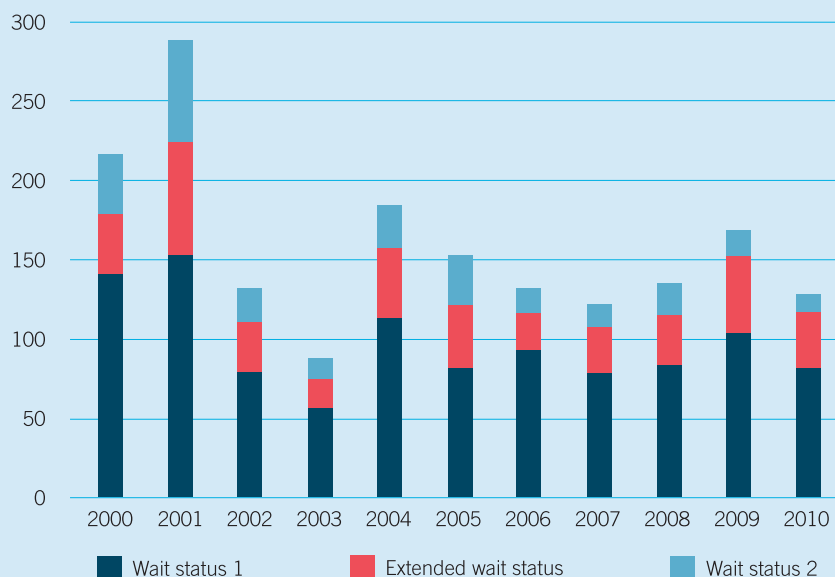
Wait status cases in detail

There are two kinds of wait status.

Wait status 1 lasts one month, and can be extended for another month.

If a case is taken to court, wait status 2 is activated, which lasts for the entire duration of the proceedings. Only a small proportion of disputes (between 10% and 20%) end up in court. In most cases, parties settle out of court.*

As at 1 December 2011, 11 domains were on wait status 1, and 23 were on wait status 2 as the subject of court proceedings.



*The numbers given here relate to all cases of which nic.at received notice.

Interview: Three questions for Franz Schmidbauer

Franz Schmidbauer chairs the Domain Name Council, and sits as a judge in Salzburg. He also runs the specialist website, www.i4j.at ("internet4jurists"), with an extensive archive of material on domain name law in Austria.



Photo: i4j.at

1) Has everything in Austrian law regarding domain names been decided?

In principle, yes, in particular regarding rights to names, brands and trademarks. However, there are always other aspects that come up, where the courts have something new to decide, for example the question of trademark protection as opposed to free expression of opinion in the case of domain names. This was the question in the aquapol-unzufriedene.at case. The right to free expression of opinion, with the appendage of "unzufriedene" (dissatisfied), was judged as taking precedence over protecting the Aquapol trademark.

2) The fast-moving nature of the internet requires decisions to be made quickly, but court proceedings are often lengthy. What can be done?

Certainly, proceedings take time, with the need to go through all the procedures. That is why I continue to recommend that parties attempt to come to a resolution out of court with the domain name owner, before deciding to sue. Apart from saving a great deal of time, in the majority of cases this is also much cheaper for all parties.

3) Do you expect another increase in the number of lawsuits over domain names with the introduction of new top level domains?

Yes, because opening up the space for new names also creates more space for rights infringements. Many disputes will be decided by the WIPO court of arbitration, but nevertheless, courts in Austria will certainly be confronted with such cases more often.

Decisions of Austria's Supreme Court of Justice on nic.at's liability

§ The competition never sleeps...

It happens to all businesses, from a small tanning shop to a well known news magazine.

Your product is ready for market, your business cards are printed, your advertising campaign is underway... but in all the heat of starting a new business, you suddenly realise that you have forgotten to register the domain name you need. And sometimes, the competition has got there first, or the domain name was registered to someone else a long time ago.

By that point, unfortunately nic.at can't help... domain names are allocated strictly according to the first come, first served principle.

Year	Case / domain	Ref. number
2001	fpo.at	4 Ob 176/01p
2006	5htp.at	4 Ob 229/06i
2009	nimfuehr.at	4 Ob 235/08z
2009	Role of the registry nic.at in domain attachments	3 Ob 287/08i

nic.at has appeared before the Supreme Court of Justice of the Republic of Austria on four occasions. The first case, heard in 2001 and concerning fpo.at, was also the most sensational. It confirmed that nic.at does not have a duty to verify whether a domain name infringes the rights of a third party at the time of registration.

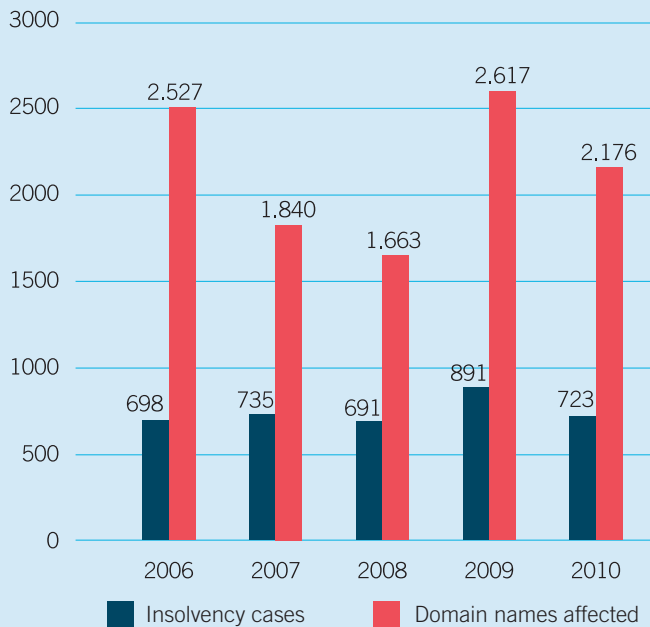
nic.at only needs to act when an injured party asks the organisation to intervene, and the rights infringement constituted by the domain name in combination with the content "is obvious to the layperson without further investigation." This test case, where

the Supreme Court ruled on nic.at's liability for the first time, set a precedent which was followed by two other Supreme Court cases concerning the domains 5htp.at and nimfuehr.at, confirming that nic.at's approach is well grounded.

The latest Supreme Court judgement defined nic.at's role as a third party debtor in execution processes where domains are attachments.

More about these judgements can be read at www.i4j.at (German only).

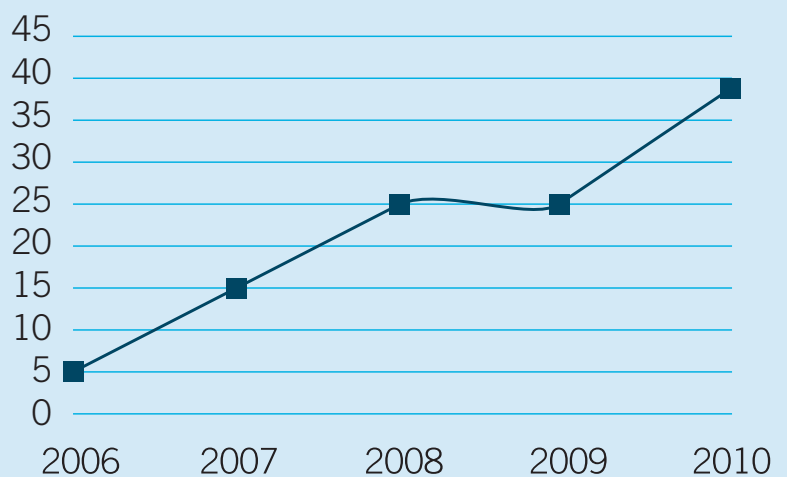
Insolvencies: domains as a barometer of the economic outlook*



In the last five years, a total of 10,823 .at domains have been implicated in insolvency proceedings – where either the domain name owner, the invoice recipient or the domain registrar was insolvent. On average, each insolvency affects three domain names. There was a peak in the number of insolvency cases registered by nic.at in 2009 – clearly a consequence of the financial crisis. The new insolvency law of July 2010 (IRÄG 2010) made provision for restructuring processes. This option is increasingly being taken up. As at 1 November 2011, approximately a third of this year's 1,036 insolvency cases involving domain names were part of restructuring processes.

Domain attachments 2006-10

While attachment of domains to writs of execution is still pretty unusual, it is definitely on the rise. From 2006 to 2010, 109 domains were seized by the courts, with nic.at being informed of the attachment. A temporary bar on transferral of domain name ownership is also imposed in these cases, so that the attached asset cannot be transferred to a third party without the agreement of the court. Once the execution is completed, nic.at receives a release order and the bar is lifted. In technical terms, the domain in question continues to function as usual during this time.



*The numbers given here relate to all cases of which nic.at received notice.

www.domainrechtstag.at

Domain Law Day 2011

nic.at's third Domain Law Day was held on 3 May 2011 at Wolke 19 in Vienna. You can find speakers' presentations for download at www.domainrechtstag.at.

We have selected a few photographs from the event, which was attended by almost 80 legal professionals.



The nic.at team ready to greet participants



Lawyers Thiele and Daum swap stories



Networking with a view over Vienna



Manfred Vogel, Supreme Court Judge, giving his talk on domain name case law with regard to trademark legislation



Alexander Ernst, Chair of the nic.at Registrar Roundtable, explains the technical background to domain parking



Clemens Thiele presents a summary of ongoing disputes over .eu domains



Franz Schmidbauer, Peter Rastl and Richard Wein



Discussions about domain name law can also be amusing!



Who is responsible for what in the domain business? Alexander Mayrhofer of nic.at talking about the key players.



nic.at lawyer Michael Pilz summarises the current laws with regard to nic.at



The German Registry is inundated with lawsuits over .de domains: Stephan Wenzel, General Counsel at DENIC eG



The nic.at legal department made sure that all participants were well looked after



The event was concluded with some socialising on Wolke 19's roof terrace



Taking the chance to establish and foster professional contacts