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Distribution list

Domain name tvkaista.fi

## **FICORA's refusal decision of termination claim regarding the domain name tvkaista.fi**

### **Claim**

District Prosecutors Thomas Berg and Katja Harakka have demanded that FICORA terminate the domain name tvkaista.fi.

### **Procedure and course of events**

On 27 April 2006, an application for the domain name tvkaista.fi was submitted. The domain name was granted to the holder on that day. The domain name was granted to the company Hibox Systems.

On 21 March 2008, the domain name was transferred to the holder TVkaista Oy.

Barrister Heikki Aaltonen from Asianajotoimisto Jouko Aaltonen Oy, the bankruptcy trustee of TVkaista Oy has contacted FICORA on 11 March 2014 by email and asked if it was possible to *"shelve the domain name so that it does not become available, but it would not be in active use"*.

FICORA contacted Aaltonen the same day by telephone with regard to the question (telephone discussion between Aaltonen and Legal Counsel Moilanen). During the call, the parties discussed about the holdership of the domain name, the use of the domain name, and what the domain name holder is entitled to do with the domain name. On the basis of the discussion, Aaltonen considered his options, but he was not willing to give up the domain name (e.g. by withdrawing it).

District Prosecutor Thomas Berg contacted FICORA by telephone on 17 March 2014 (telephone discussion between Prosecutor Berg and Moilanen) and asked for further information on the termination of the domain name on the basis of section 11(1)(1) of the Domain Name Act.

On 17 March 2014, FICORA received a claim submitted by the Prosecutor's Office of Helsinki regarding the termination of the domain name.

The bankruptcy trustee of TVkaista Oy has submitted a district court decision on the appointment of a bankruptcy trustee. Therefore, the contact details of the domain name holder were updated from FICORA's admin user

interface on 21 March 2014. The contact details were changed to the contact details of the trustee.

Also, an authorisation key was sent to the domain holder, i.e. the bankruptcy trustee of TVkaista Oy, on 21 March 2014.<sup>1</sup>

On 25 March 2014, FICORA contacted per telephone District Prosecutor Katja Harakka (telephone discussion between Prosecutor Harakka and Moilanen). The discussion concerned the meaning of the provision concerning termination and how FICORA interprets it. During the discussion, it transpired that the prosecutor had been in contact with the bankrupt's trustee. The trustee had, in turn, mentioned that there is nothing that he can do to remove the webpage opened by the domain name tvkaista.fi. FICORA stated that this was not the case because the domain name holder has alternative ways to take care of the matter. On the basis of the discussion, the prosecutor pondered on whether an appealable decision is requested in the case.

On 27 March 2014, the district prosecutor notified by email that she wants to have FICORA's decision about the case.

According to the domain name system, the domain name was linked to a user account on 27 March 2014, which means that the holder can administrate the domain name in FICORA's domain name system. (The procedure was made by using a user ID that belongs to Jouko Aaltonen Oy.)

On 28 March 2014, the domain name holder changed the name servers for the domain name. In practice, this means that the webpages for the domain name www.tvkaista.fi stopped working on 28/29 March 2014.

According to information obtained by FICORA, the service that has been on the webpages for the domain name www.tvkaista.fi has been transferred and it now belongs to a web address ending with .com.

### **Grounds for the claim**

The prosecutor has demanded that *"the domain name must be terminated for one year"* on the grounds that there are probable causes to suspect that the domain name is used with a purpose of committing a crime.

The claim of the district prosecutor is also based on the following:

*"On 24 October 2012, we charged the management of TVkaista oy with copyright infringement, intellectual property offence and aggravated fraud related to the operations of TVkaista Oy. With regard to the operations, TVkaista Oy provides on its webpages the entire television programming of Finland's "free channels" for viewing. The plaint was supplemented on 13*

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<sup>1</sup> By means of the authorisation key, the domain holder can administrate his/her domain name. The holder can, for example, change the domain name holder, change the name server details related to the domain name or the number sequence of the authorisation key, update the details related to the domain name (details of the holder, the payer and/or the technical contact person) or withdraw the domain name.

*November 2013. A prerequisite for charging is that there is probable cause to suspect that the person has committed a crime (Chapter 1(6) of the Criminal Procedure Act, updated Finnish version). The supplemented plaint of 13 November 2013 is annexed to this request (Annex 1).*

*On 6 February 2014, TVkaista Oy was declared bankrupt, but the domain name [www.tvkaista.fi](http://www.tvkaista.fi), which according to the [www.who.is](http://www.who.is) service belongs to TVkaista Oy (Annex 2), is still working for the same purpose and in the same way as previously.*

*To prevent the continuous crime, the domain name [www.tvkaista.fi](http://www.tvkaista.fi) must be terminated."*

## **The grounds on which the decision is based**

### General

The prosecutor has demanded the termination of the **domain name**, but specified that the termination actually applies to the **webpage** [www.tvkaista.fi](http://www.tvkaista.fi).

A webpage refers to a page published in the global information network, i.e. on the Internet. However, www is only one of the Internet's service forms.

It is FICORA's duty to supervise the Domain Name Act (228/2003, amendments up to 397/2009 included). According to section 3(1) of the Domain Name Act, a domain name means second-level **address information** on the Internet under the national country code Top Level Domain. fi or the region code Top Level Domain .ax consisting of letters, digits or other characters or their combination in the **form of a name**.<sup>2</sup>

### Regulation concerning the termination of domain names

FICORA's decisions on domain name revocations and terminations are based on the Finnish Domain Name Act.

According to section 11(1)(1) of the Domain Name Act, FICORA may terminate a domain name for a maximum period of one year, if the police or prosecuting authority has requested a termination of the name because there is probable cause to suspect that the domain name is used with a purpose of committing a crime.

According to section 11(2) of the Act, FICORA may, at request, extend the time period for a weighty reason. *As soon as the reason for terminating the domain name has been removed, FICORA shall return the domain name to the root fi.*

According to general rationale of the Government Bill (HE 96/2002, p. 15, Finnish version): *According to the proposal, FICORA must have possibilities to intervene in defects either by carrying out time-limited measures, i.e. by terminating the domain name, or by revoking the domain name, in which*

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<sup>2</sup> Devices of the Internet communicate with each other by means of numeric IP addresses and the Domain Name System (DNS) of the Internet converts domain names to IP addresses.

*case the domain name would be completely removed from the root fi. Both of these measures are rather powerful for intervening in existing domain names."...*

*"As a rule, a domain name could be terminated for a time-limited period of no more than one year, but the termination period could be extended at request. The termination can be requested by the police or prosecuting authority or anyone who considers that the domain name violates his/her rights. FICORA investigates the requests case-by-case and makes the decision on the basis of its investigation."*

According to detailed rationale of the Government Bill (HE 96/2002, p. 25, Finnish version): *"When granting domain names, it is not possible to take into consideration in advance all the situations in which the use of the domain name causes confusion or other defects are related to it. Due to the nature of Internet domain names, these situations should intervened quickly and with as little administrative effort as possible and without endangering anyone's legal protection.*

*A fast, light, efficient and economically rational procedure benefits all parties in these kinds of situations. Awareness of that FICORA can, if necessary, quickly react to the perceived defects also prevents operations that are against the law.*

*As a rule, the termination of a domain name can be requested either by the applicant or the party who considers that the domain name violates his/her rights. FICORA can also terminate the domain name at the request of some other authority or on its own initiative in situations laid down in the legislation.*

*Pursuant to subsection 1, FICORA can terminate a domain name on the grounds mentioned below for a maximum limited period of one year. For each single case, FICORA investigates the grounds for a request for termination and decides on the length of the termination. In most cases, terminating for a shorter period of time than one year is a sufficient measure because the benefit gained from a violation of another party's trademark right is usually lost when the domain name is terminated.*

*Pursuant to subsection 1, FICORA can terminate a domain name, if the police or prosecuting authority has requested the termination of the domain name. It may be necessary to terminate a domain name for example in cases where the police suspects that the domain name is used for criminal activities."*

#### About the illegality of a domain name

According to section 4(4) of the Domain Name Act, a domain name shall not include expressions that are insulting or incite into criminal activity. According to section 12(1)(8) of the Domain Name Act, FICORA may revoke a domain name, if after granting the domain name it has become apparent that the name includes insulting expressions or incites into criminal activity or it has been formed against the provision of section 4(3). According to section 4(3) of the Domain Name Act, a domain name shall not be illegally based on a protected name or trademark owned by another party or a natural person's name.

FICORA states that the provisions in the Domain Name Act apply specifically to domain names and not to content on webpages. FICORA considers that webpage content cannot, as such, be the reason for terminating a domain name. When interpreting section 11(1)(1) of the Domain Name Act, one must take into consideration that the Domain Name Act expressly applies to domain names.

A domain name and webpage content are two different concepts which are also subject to different legislations. The Domain Name Act defines the requirements for registering a domain name and the legality of the registration of a domain name. The Domain Name Act does not regulate the content on the webpages that the domain name has possibly opened. The purpose of the Domain Name Act is not to interfere with the material published on webpages. FICORA is neither competent to assess the legality of material published on webpages, and neither to order material on webpages to be removed or edited. None of the grounds for terminating or revoking the domain name does entitle FICORA to terminate or revoke the domain name on the basis of the content on the webpages.

In FICORA's opinion, the **domain name** tvkaista.fi is not used with a purpose to commit a crime. The domain name in itself does not contain words or expressions on the basis of which the domain name could be considered to be used for committing a crime. An example of a situation like this is a domain name containing a sentence the expression of which is, according to law, an offence. The domain name could be used for criminal purposes also if the domain name incites or urges into criminal activity.

#### About the regulation of web communications

FICORA states that the illegality of web communications content involves regulation in several different acts and compared to the termination section of the Domain Name Act the regulation is also justified in more detail.

Section 18 of the Act on the Exercise of Freedom of Expression in Mass Media (460/2003) lays down provisions on the order to cease the distribution of a network message, which can be requested from a court, if it is evident on the basis of the contents of the message that providing it to the public is a criminal offence. The court order is aimed at the publisher, public broadcaster or keeper of a transmitter, server or other comparable device who must cease the distribution of a published network message.

The Act on Provision of Information Society Services (458/2002) regulates, in particular, the exemption of service providers, acting as intermediaries, from liability (Chapter 4). Pursuant to section 16 of the Act, a court may issue an order to disable access to the information if the information is clearly such that keeping its content available to the public or its transmission is prescribed punishable or as a basis for civil liability. The order is aimed at a service provider referred to in section 15 of the Act (in practice, so-called hosting services, maintenance services for webpages, i.e. storage of the information submitted by the customer).

On the basis of section 60 c of the Copyright Act (404/1961, amendments up to 307/2010 included), the court of justice may order the maintainer of the transmitter, server or other device or any other service provider acting

as an intermediary to discontinue, on pain of fine, the making of the allegedly copyright-infringing material available to the public (*injunction to discontinue*), unless this can be regarded as unreasonable in view of the rights of the person making the material available to the public, the intermediary and the author.

In FICORA's opinion, the legislation concerning the content of web communications supports FICORA's view of that the legislation concerning domain names and webpages should not be mixed up with each other.

#### In conclusion

Due to technical features of the Internet, the termination of a domain name as FICORA's procedure does not solve problems related to the removal of illegal web communications content from the Internet. In FICORA's opinion, this kind of purpose cannot be derived from the rationale of the Domain Name Act either. The domain name holder is able, by changing (or removing) the domain name's name servers, to define how the network traffic is routed. In the case being processed, the domain name holder was able to remove the linkage between the domain name and the webpages that the prosecutor considered to be illegal.

According to the Domain Name Act, the domain name holder is not obliged to use the domain name for e.g. email services or home pages. On the other hand, the domain name becomes useless for the holder if FICORA terminates the domain name.

FICORA also states that the prevention of the continuous crime, which is the aim of the prosecutor and which has been used as a ground for the termination claim, is not achieved by terminating the domain name. FICORA concludes that this is the first time that a prosecutor has, during the validity of the Domain Name Act, made a termination claim on the basis of section 11(1)(1) of the Domain Name Act.

District Prosecutors Thomas Berg and Katja Harakka have demanded that FICORA terminate the domain name tvkaista.fi on the grounds that there are probable causes to suspect that the domain name is used with a purpose of committing a crime.

#### **Decision**

FICORA rejects the claim for the termination of the domain name tvkaista.fi.

#### **Enforcement of decision**

Pursuant to section 18(1) of the Domain Name Act, the decision takes effect, unless the Market Court orders otherwise due to the concerned party's appeal.

#### **Legislation**

Sections 4(3) and (4), 11(1)(1), 11(2), 12(1)(8) and 18(1) of the Domain Name Act (228/2003).

### **Appeal directions**

FICORA's decision may be appealed to the Market Court. The appeal directions are attached to the decision.

Juhani Juselius

Chief

Kirsi Sunila-Putilin

Legal Counsel

ANNEXES

Appeal directions  
Copy of the claim incl. annexes

DISTRIBUTION

TVkaista Oy  
Prosecutor's Office of Helsinki, District Prosecutors  
Thomas Berg/Katja Harakka