

DRS Review

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1. Introduction

Because of the recent interest in the DRS on the member list and dropcatcher forums, this paper has been produced to highlight the large number of areas that we have identified as requiring review in the DRS. Many of these topics have been under discussion for some time internally and with the DRS Experts with a view to producing a largely operational consultation paper later in the year.

The nature of the DRS is that many purely operational matters are specified in the Procedure, unlike the conditions of registration, where operational detail is largely omitted. Where these are not specified in the Procedure, we have been reviewing them internally and will make the improvements required. Where they are specified in the Procedure, they will probably go to public consultation later in the year, together with the policy issues raised. If the proposal (elsewhere) that the PAB respond to consultations at the same time as the public has been adopted, then that process will be followed here. Otherwise, the consultation document would, we hope, be ready for the July PAB meeting.

This paper also sets out some information about what has been happening in the DRS, as there have been a number of news stories that have tended to drown out much of the good work that the DRS does. It also highlights a couple of policy areas for consideration. Many of the topics above have been added to the list as the result of public comments gained from direct communication with stakeholders and via the user survey carried out in late 2005.

The PAB is asked to review the policy issues in section 3 and suggest any other policy issues which they feel should be included in the DRS policy review, so that the consultation paper can be drawn together and progressed. .

2. Recent DRS History

The current style of Dispute Resolution Service was first introduced in 2001 and unlike the UDRP it has been updated regularly. The DRS has been busy since its last update in 2004. The changes introduced in 2004 have generally been successful, and used by parties. It handled 912 disputes in 2005, up nearly a quarter on the year before, making Nominet the third largest domain dispute service in the world (after WIPO and NAF, primary providers of the UDRP). This continues to reflect a fairly constant ratio of 1 dispute per 1,600 registrations.

The department as a whole has won awards, notably the CEDR award (an award from one of the major mediation bodies for its excellence in use of mediation), the Legal Week award in 2005 and 3rd place in our category at The Lawyer awards. In addition, we have just assisted the New Zealand equivalent of Nominet to copy the DRS to deal with domain name disputes there, advised South Africa on their possible service and Norway and Switzerland continue to use processes which borrow heavily from ours.

Also during the year we performed a customer satisfaction survey, and we were pleased to see that 95% of parties would be happy to use the service again. The survey was overwhelmingly positive overall, although it has highlighted some areas for improvement which we will be concentrating on. In addition, we were pleased to see that the service was not just the tool of large companies, as is sometimes claimed: 13% of parties are individuals, and of the companies, 74% had 50 staff or fewer.

There has been an increase in the number of appeals (4 in the last year, compared to about 1/year before), several of which have used the split fee structure pioneered in 2004. These have established some interesting elements of the DRS relating to rights in generic names, and the uses to which words incorporating trade marks and generic words can be put.

3. Policy Points

The following items are matters of more general policy, and are also due for review.

- The meaning of “Rights”, including both the question of what rights are permissible and the question of “generic” names and the extent to which complaints can show “rights” in generic words.
- The extent to which there is a “natural justice” need for a Reply stage, or whether it could be removed (and the existing Non Standard Submission process replace it, as it currently does for reply-to-a-reply).
- Generally, whether the DRS should seek to result in the same outcome as the courts, or whether the essential differences in their nature mean that differences are inevitable.
- Given that the DRS is designed to be an approachable system for non-lawyers (and experience shows that only about 13% of parties use a lawyer), we have always assumed that we should try to ensure that as much of the necessary information as possible is in the Policy and Procedure, reducing the need to read past decisions. We will see if there is support for that policy proposition.

There is a constant tension in relation to timescales. At the moment we see this as a balancing act between policy objectives: (1) to provide a service that is sufficiently fast that it actually deals with abusive registrations effectively (as they can be causing ongoing harm to the complainant) and (2) to provide a service that is not oppressively fast. There are factors that can go both ways – a quick service is cheaper for the parties, as they (and their lawyers, if any) spend less time on it, but could lead to more missed submissions and therefore appeals. Are there other policy considerations?

4. Operational Points

The following operational points are being or will be looked at:

- Improvements to the website to lead parties through the process better.
- Improvements to the letters used in the process to put them in a newer style.
- Sending customer satisfaction surveys to all participants, initially in paper and later, we hope, online.
- Putting the DRS into Plain English (like we have with the terms and conditions).
- Following on from the plan to move tag-changes and transfers online, we hope that the whole structure of the DRS may change so that submissions online are completed as part of the new online systems, with less done via email and letter.
- Reviews of:
 - Fees.
 - Data protection issues.
 - Changes made by New Zealand when copying our DRS.
 - Timescales for appeal.
 - Evidence that can be used at appeal.
- In respect of the Experts, reviewing:
 - Their training.
 - The feedback they get about the decisions they write.
 - The mechanism for dealing with typos in decisions.
- How the quality of complaints could be improved including:
 - Changing the website.
 - Specific issues in no-response cases.
 - Operational effects of charging to complain (without, at in this element, deciding whether or not to do so).
- Putting interpretations established in previous cases into the wording of the DRS, such as:
 - Initial Interest Confusion.
 - Links and Search Engine pages – clarifying when they are and are not abusive.
 - Timing of abuse and rights.
 - The admissibility of warehousing, in general.
- Clarifying what evidence the Experts can use.
- Anti-avoidance provisions for the “three strikes” rule (Policy 3(c)).

- Ability for Respondents to pay for a decision, if they wish.
- The precedent value of previous cases and appeal cases.

Much of the above has already been discussed with the Experts.

5. Conclusion

The PAB are asked to comment on whether there are any items of policy missing from the list above.