

Using the Dispute Resolution Service for .uk domain names online survey

Submit date : **Feb 15, 2007**

Question 1: Please give us feedback on our proposals that the DRS should include:

- (a) protection for words which have a distinctive character as a result of the use made of them.
- (b) dictionary words which are protected by registered trade marks or good will.

Agreed. This would accord with the law and the practice of the experts.

Question 2: Please give us your feedback on our proposal that the DRS should include the following as examples of things that are not necessarily evidence of abuse:

- a general offer to resell a domain name
- sale of traffic (i.e. visitors to the domain name)
- registering many domains

Commercial use by the sale of traffic is often abusive and general offers of sale often act as threats to rightsholders and can be evidence of abuse. Including these may not add clarity and the case by case approach currently adopted may be preferable.

Question 3: Please give us feedback on our proposal that the DRS should include a statement that, where the evidence is finely balanced, the weaker the rights that the complainant has, the less likely it is that abusive registration or use will be inferred.

While this is often, rightly, the approach taken in practice, it's not clear that a general statement to this effect will assist.

Question 4: Please tell us which payment option you would prefer and why: no change; a small upfront fee; or loser pays?

The current system offers a quick and inexpensive remedy. The current fee for Complainants brings a focus that is necessary and desirable. It may be burdensome for very small businesses but the alternatives appear problematic. A loser pays system would be fairer but enforcing the awards would be extremely burdensome unless a deposit of some kind was payable at registration. I have no comment on the administration fee.

Question 5: How would you enforce any system of refund (outlined in option 3)? Which section of the community would you imagine would most benefit from a refund system?

See above. Certainly SMEs would benefit from a loser pays system with a deposit on registration. I have no comment on the administration fee.

Question 6: Do you have any comments about the proposals to change aspects of the procedure, payment, drafting, appeals, expert decisions, abusive registrations or miscellaneous issues?

The current Reply and non-standard submission system works well and allows an element of flexibility that is positive and conducive to real resolution of the issues. This should sound in reduced appeals and post DRS litigation. DRS participants are often completely inexperienced in the ways of dispute resolution and for this reason some elasticity is necessary and desirable.

Respondents should be allowed to pay for a decision. A Plain English approach is preferable and I agree that 'Unfair' is an advance on Abusive. 'Likelihood of confusion' may also be confusing for participants.

The current appeal period is satisfactory and, for the reasons touched on above, I favour allowing new evidence in appeals on a fairly flexible basis, similar to that currently adopted for non-standard submissions.

As to incorporating tests, I make liberal use of the Chivas test. Certainly making them more accessible is desirable. I query whether it is best to incorporate them or whether, once they have achieved the necessary level of consensus, they ought to be drawn to the attention of all experts and the public by way of a guidance note or accepted precedent. I agree the test for confusion should be softened and that there is no harm in clarifying that the abuse need not be continuing. I would not have thought it necessary to clarify the time for Rights to subsist. I agree that the parties should be given rights against each other for untrue statements. Perhaps they could agree that if challenged on any given fact, they are prepared to submit a statutory declaration as to that fact.

Question 7: Do you have any other changes you would like to see within the DRS, or topics within the DRS that you wish to comment on? In particular, if you have any views about any of the following topics which have been the subject of discussion, please let us know:

- Length of submissions and word limits.
- The impact of Internationalised Domain Names, if introduced.
- Whether experts can find a registration abusive for reasons not spelled out in the complaint.
- Whether there have been any practical problems with the treatment of 'Without Prejudice' material.
- Whether experts should be able to represent parties in other disputes, and if not how to keep the quality of experts high.
- Whether the detail of the DRS can be taken out of the contract and updated more regularly.

Participants would benefit from guidance on internationalized domain names. Many would benefit from more assistance with international rights –as would experts. I also agree that guidance on the experts' ability to make findings that have not been the subject of submissions would be helpful –although that might be dealt with by expert training or a separate guidance note.

Please give us your contact details

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