

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

Submit date : **Feb 16, 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.

a)No protection should be given for dictionary words which are not trade marked.

b)The date of the trade mark is very important and if the domain was registered before the trademark then this cannot constitute an abusive registration because it was purchased in good faith. We live in an internet age and any sound business venture would ensure that they had been able to register the relevant domain name(s) before launching a business or applying for a registered trade mark.

Your proposals will only worsen the situation where a company trademarks a dictionary word(s) simply as a means of launching a DRS in the future against a domain that had already been registered.

c)The DRS should only give protection for dictionary words which are protected by registered trade marks (not good will)and only give protection for that particular class. i.e. if a dictionary word is trademarked for the class 'telecommunications' and a domain owner is using that word to serve ads relating to 'phones' then that is abusive, however if the domain is being used for a different class then that is not abusive.

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

We are privileged to live in a free market where people are able to buy and sell. It's ludicrous to suggest that selling a domain name, serving relevant ads or registering many domains should in any way prejudice you in a DRS. Some of the highest value domain purchases have been on behalf of major plc's.

Advertising feeds are also a legitimate business and many of the advertisers are high street names. Are you saying that these blue chip businesses are complicit in some sort of dubious activity in agreeing to bid on keywords that are relevant to their business? Most of these types of ads are served by Google and Yahoo. It would be strange if Nominet were to infer, via the DRS rules, that they were assisting some form of 'abuse'.

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.

Where the evidence is finely balanced it should always favour the defendant (domain owner) as in any normal court of law.

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

The claimant should pay £250 as an upfront non-refundable fee and another £750 if it goes to the expert stage. The losing party shouldn't pay any costs as this proposal will open the floodgates to large corporate companies backed by top lawyers taking on individuals and smaller businesses.

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?

We do not support any refund system.

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?

- a) **At least 30 days should be given to the respondent to respond to a DRS to take into account holidays, living abroad etc.**
- b) **The current DRS is grossly biased in favour of the complainant as it gives them a right of reply but does not allow the same right to the respondent. English Law traditionally favours the defendant whereas the DRS rules and procedures, in all aspects (see previous answers), seem to favour the complainant.**
- c) **The three strikes rule disproportionately discriminates against larger domain portfolios. The DRS again has taken a different view to English Law which never discriminates in this way. It is obvious that a portfolio of 3000 domains will statistically be more likely to attract 3 DRSs than a portfolio of 50.**

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.

Experts should be wholly independent and not earning a living in the domain industry. They should not be engaged in businesses who assist clients in domain actions/DRSs.

Please give us your contact details

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