

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

Submit date : **Nov 30, 2006**

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

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

Generally, I do not see why 'domainers' require additional safeguards unless they are prepared to voluntarily agree to hand over names that they know have been abusively registered. Sale of domain names and traffic, multi registrations etc almost always have an abusive registration. I would not advocate blanket protective rights. application

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.

Agreed in principle, but my experience of the 'experts' is that they are protecting the rights of the registrant - and 'finely balanced' therefore becomes very subjective.

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

I would have a small up front fee to discourage time wasters

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?

A system of loser pays may be hard to enforce but is eminently fair. I would recommend that loser pays is applied and both parties have to agree to payment. If either party refuses to agree for whatever reason then either the claim lapses or the domain name registration lapses.

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?

- I think it should be made mandatory that the Respondent responds to the Claim, if there is no reply the domain name is transferred. At present the registrant can just 'sit tight' and if it is an abusive registration but the claim fails on a technicality or sympathetic expert - they get away with it. -I would keep the reply stage as is - Plain English is always good Experts - I would give them the right to ask for clarification from either party on any unclear or ambiguous point -Experts - how are the Experts audited for quality in their decision making? -Appeal process - is simply too expensive -Appeal process - should definitely allow new evidence to be presented (why wouldn't it?) - Long delay in bringing a DRS case - I think it is dangerous to restrict this. Small businesses in particular are usually involved in the day to day, not the legal/quasi

legal issues of DRS. In summary, I have dealt with a number of DRS situations in the past. Currently my company Spa Finder Europe has had 2 DRS claims (for Spafinder.co.uk and spafinders.co.uk) rejected on different grounds by different experts. Neither of the experts was particularly rigorous; both were wrong on a number of substantive points; the appeals process does not allow any new evidence (and is therefore a complete waste of time) and the competitor who registered the name is still generating traffic from our brand to his site. Spa Finder has been a registered entity (with various US and Euro copyright protection etc) since 1986. We will continue with the process to get the URL's - but have found the Nominet DRS to be a big disappointment to date. This review is long overdue.

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.
- The submissions are anyway too short. -The Experts should act like Experts - and if they find other causes for abusive registration they should say so (they are experts after all) - They should have the right to clarify the evidence from either party**

Please give us your contact details

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