

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

Submit date : Jan 4, 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) I agree with this part. (b) I consider this would be hard to police and that you would require further definitions of 'good will'; if a word or phrase is in common usage, then I find it difficult to attribute that word to a specific individual or organisation.

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

I don't agree with the first part - I see no reason why you shouldn't be able to sell a domain name which you own if you no longer require it; unless we're looking at the Microsoft model whereby you never own the domain, you simply own a licence to use that particular name. I agree with the second part, if it refers to individuals and organisations who set up a web site to purely feed search terms from Google or another search engine. This can prove somewhat confusing and isn't what the user was expecting. I completely agree with the third part, but not if the domain names are being legitimately used. One practice I do not like is when using an ISP to identify whether a domain name is available, that data is sometimes used to purchase the domain name you were interested in. You then go back to find that the domain name is no longer available unless you pay their charges and host with them.

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.

I agree that the onus should be upon the complainant to prove the case in keeping with the innocent until proven guilty ethos.

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

Second one - having an unknown cost element may deter people with legitimate complaints, but not the financial security, from raising it.

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?

Difficult to say, unless both parties sign a legal document to accept liability should the decision go against them. In that case, there would need to be an agreement where the losing party pays the fees to Nominet to place in a holding account, who then pass it to the winning party.

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 that both parties should have rights to equal representation, but have no problems with the complainant having the last word, so long as they do not raise additional issues which were not originally identified. The timescales for an initial decision and subsequent appeal should be kept as short as possible. It is important to ensure that all relevant terms are defined in plain English to assist with confidence in the process and to ensure discussions centre around the real issues, rather than nomenclature.

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.

I think that the expert should be able to identify to Nominet if there are additional issues which the complainant did not cite. However, these should not be necessarily be passed to the complainant nor considered as part of the initial process, as this gives the complainant an advantage. There should be other processes for dealing with problems identified as the result of an investigation.

Please give us your contact details

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