

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

Submit date : Jan 11, 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) Distinctive words that are very distinctive and widely known because of commercial, trademark use should be protected. (Lego would be an example). Otherwise, no prima facie protection. (b) Dictionary words (or any words) that are protected by trademark should not automatically be protected under the resolution service. This is because the trademark may be in use for some goods or services that are completely different to the intended use of the domain registree. Trademark law permits the same word to be registered lots of times, so long as the use to which the mark is put is different. It would be unfair to give the monopoly on a domain to a trademark owner merely because he had a trademark registration before the domain was registered to someone else. If the trademark owner wants the domain then he is free to get it when he applies for the trademark.

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 agree with your proposal completely. Reselling is (usually) a legitimate business.

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.

This sounds reasonable

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

My preference is for an up front charge of around £200. This then filters out those serious about complaining from the frivolous. The worst approach is to get the losing party to pay. This is because the losing party will, in most instances, be completely unaware at the time of registration that they will be the subject of an attack (possibly by some trademark holder for the same word, but with commercial interest in a completely different field, as discussed in a previous answer above), and so be out of pocket completely unfairly. Should the complainant win, then they pay the fee, but gain the domain - this is much more just.

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?

Big business would most benefit, because they can afford to make frivolous attempts to gain a domain, and the smaller domain holder would be much more likely to give up their (perhaps quite legitimately held) domain at an early stage under the threat of having to pay out should they lose. The itunes saga springs to mind.

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?

On the "likelihood of confusion" issue, one needs to interpret this very narrowly. E.g, www.tescossucks.co.uk would never be confused with a proper Tesco's site, and therefore should be allowed.

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.

Please give us your contact details

Name

Alan Clarke

Company Name