

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

Submit date : Jan 26, 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) The issue with protecting names with “distinctive character” are the measurements applied in identification. Phones4U Ltd & Anor v Phone4u.co.uk & Ors demonstrated the plausible use of a term, the reasoning behind the TM and what could demonstrate passing off. It identified that TM/rights apply to other attributes such as colour and or font and not necessarily to a generic term. In allowing the unquantifiable unilateral rights to terms it dilutes entrepreneurial spirit and a free market. (b) See answer for (a)

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

This particular question is a misnomer. The nature of the internet means that valuation of legitimate businesses may include the assignment of the contract for the use of a domain, the number of visitors to a domain and or whether the organisation has many domains, which may or may not include other extensions outside of .uk registry. To preclude any of those functions inhibits both the large corporations who hold hundreds of domains and the small businessmen. In using those as evidence invariably the small businessman will suffer.

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 statement talks about quantifying rights, either rights exist or they don't. As stated in question 1 (a) if this means the erosion of unilateral application of rights to all classifications of TM it becomes a positive step. As Ernie Rogers suggests in his response it would be better to apply terminology and rules that requires the respondent not to have rights.

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

The question here is the level of involvement in the quasi-court process Nominet wishes to go and the barriers to that process. I cannot see how the loser pays option can be enforced, not without going through another court process. As for option 1 and 2, it depends on the number of frivolous complaints, as a respondent to the questionnaire I cannot determine that number.

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 question 4 The benefit can only reflect the historical DRS decisions.

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?

If the DRS process is to reflect the court process, “without prejudice” communication should not be included. Equally, the use of precedents by experts who then act as consultants to organisations can allow abuse of the system. Nor should experts take it upon themselves to establish evidence. There are distinct question marks over the DRS decision making process “The requirement to demonstrate Rights under the Policy is not a particularly high threshold test” (DRS 4113 Terry Forsey v. Xi Software Limited / Mr John Collins, p6). When experts in the processes make their opinions known, then perhaps Nominet should seek to redress the balance.

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.

See question 7 If Nominet is to retain the DRS, they Nominet should replace experts with retired Lord Justices.

Please give us your contact details

Name **Andrew Grice**

Company Name