

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

Submit date : **Feb 6, 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.

Agreed - legally enforceable rights can apply in these cases, so teh DRS should certainly recognise them

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

It is possible that a general offer to resell and sale of traffic or registration of many domains by themselves may not amount to proof of abusive registration, but experience suggests that these do very frequently demonstrate a deliberate intention by some so-called domainers to profit by unfair exploitation of the goodwill, rights and reputation established by genuine businesses. A glance through the lists of names held by some of these "domainers" suggests that they have not selected their names innocently, but have probably trawled through business directories (eg. Kompass) for potentially profitable names and their typographical variants. They then parasitically skim off profits for themselves from pay-per-click links often directed to competitors of the genuine businesses with established rights to the names concerned. Often, as these are small businesses themselves, they are put off from taking action by the costs of preparing and filing a DRS complaint (costs in their time and professional legal fees will clearly exceed the £750 charged by Nominet). Consequently, the parasites can rely on getting away with it for the most part - again one only has to see the lists of names held by some of these "domainers" to realise that the number of complaints actually filed is minimal compared with the number that actually could be filed. Most of the DRS complaints filed in these cases are not responded to by the Domainers concerned, which rather suggests that they have difficulty finding an honest case to make. As Nominet likes to point out that the number of DRS disputes is very small compared with the number of names actually registered, so it is with these Domainers - the number of names they have lost to those with a genuine claim is miniscule compared to the numbers of names they are still happily exploiting. Consequently, I do not see that there is any need to extend the examples in this way - and indeed I feel there is a case to be made that the generation of pay-per-click revenue off a name where the links have been tailored to be relevant to a surfer seeking the business likely to be associated with a name (e.g. if say MYNAME is a clothes business, then providing links from MYNAME.co.uk to other potentially competing clothes businesses) should be prima facie evidence 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.

This is obviously the case.

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

A small upfront fee would be preferable, both to potentially make the Complainant perhaps take a little more care when preparing a Complaint, and because the Respondent could then likewise be required to make a corresponding small payment if it wished to defend against the complaint. If no response / defence fee was paid the complaint could then be automatically found for the Complainant. This would spare small businesses the full £750+ presently required to pursue abusive registrations by domainers who typically make no effort to respond or to take part in mediation, simply to delay the final decision and to make the Complainant pay the full cost.

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?

Enforce the system by obliging a respondent to make a corresponding defence payment to match the initial complaint fee paid by a complainant. If the respondent doesn't pay it loses automatically. The beneficiaries would and should be those small business complainants who are presently obliged to go through the whole process and pay the full whack to get a decision simply because the respondent makes no response and takes no part in mediation.

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?

1. Leave reply stage as it is but ban any out of time further submissions. 2. Allow respondent to pay for decision if complainant declines 3. Leave it as "Abusive Registration" 4. New evidence on appeal only if it couldn't have been available before 5. Agree with proposals for clarification re Experts - but would point out that £750 is actually a very low cost for the time typically spent by most Experts in dealing with any DRS case - and Appeals typically take much more time. 6. Agree with anti-avoidance provisions for "three strikes" rule.

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.

Would be helpful to improve Nominet online Complaint form to allow for formatting! Should limit volume of exhibits attached to Complaint or Response - recommend (say) details of only most relevant TM registrations - and (say) max 25 pages exhibits! If these is evidence of abuse, then should still be able to find registration abusive even if complaint does not expressly include every reason -

otherwise, complainants will just need to recite "or for any other reason." Experts can hardly be expected to make a living on £750 for a DRS case. If Experts are to be prevented from representing complainants or respondents then I would expect many to simply resign - Complainants or respondents can be charged more like the full professional rate for the time required to deal with a case!

Please give us your contact details

Name

Keith Gymer

Company Name