

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

Submit date : **Feb 8, 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) No, DRS should not include (b) No, DRS should not include Reason: DRS is not a protection body. Trademark holders and holders of distinctive characters should apply to fight their rights themselves

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

Yes, these examples are not evidence of abuse Abusive registrations should prove that: (a) A Trademark or Distinctive Character is used, generic names are free for anyone AND (b) Registrant has no legitimate right to use same name e.g. trademark in different classification or type of business or usage AND (c) Registrant's usage is not bona fide AND (d) The general bog standard public is likely to be misled, most important. For .uk names, this only applies to UK public AND (e) The Complainant has protected their trademark or distinctive character in the public, and not allowed it to be used in a way that weakens that Mark, and thereby their right to claim strength of usage of that Mark

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.

Yes, correct, agreed Examples of weakness of rights should include: 1. Non-protection of trademark usage 2. Abusive complaint by Complainant 3. Generic names or marks based on generic names 4. Acid test is will the UK public be misled ? If not, then many different versions of names can be held by fiddereent people for different classes of business or usage

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

2 AND 3 (BOTH should be applied) Reason: If a mark is valuable, then Complainant must demonstrate his seriousness. £ 50 is nothing, anybody can file frivolous complaints Charge Complainant £ 500 upfront fee Keep expert decision fee at £ say £ 2,000 Loser pays, including time & legals fees of winner. This will deter frivolous cases

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?

Force both parties to sign & agree fees system. Then, if a party does not pay, the other party can easily take them to court and get judgement and warrant of action quickly. For non-uk parties, they need to post a £ 3,000 bond to cover this which is held by Nominet in advance of 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?

DRS Reply Stage ===== Allow respondent a 2nd reply to reply to balance with complainant's 2 chances

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.

1. Limit submission to prevent US lawyers swamping genuine UK respondents with time, cost and their "reverse hijacking" of fairly registered domains 2. Discretion given to experts to find domains abusive or not, on case by case basis, and expert will have to consider not only past cases but particular circumstances of that case 3. Without Prejudice will not affect further legal actions in courts 4. Experts cannot represent parties, it will compromise them totally. To keep quality of experts high, : (a) Get more experts from domain community (b) Reduce frivolous cases by high filing & losing fees. This will deter both frivolous US litigants who like to reverse hijack, and also abusive registrants who face high penalties (c) DRS details easily taken out of contract with a general term pointing to details on a website, which can be updated frequently, there is no legal problem to this provided registrants are told that DRS can change regularly and it's their responsibility to check latest rules from time to time

Please give us your contact details

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