

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

Submit date : **Feb 9, 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.

**I think it would be helpful to provide clearer guidance to complainants as to what could constitute Rights for the purposes of a complaint, and both of these seem sensible.**

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

**Again, this seems sensible in principle, although care will have to be taken to ensure that the caveat "not necessarily" is not disregarded in practice.**

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 with this suggestion, it might help to focus complainants on providing proper evidence of their use of the mark/name relied upon with their complaint**

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

**Small upfront fee - it would discourage frivolous complaints, and encourage at least the minimum detail required for the complaint. Even comparatively impecunious complainants should be able to afford that sort of level of fee to recover what is presumably a potentially valuable asset.**

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?

**I find it difficult to see how it could be easily enforced in the majority of cases. A system requiring both parties to a dispute to deposit funds to cover the costs before the expert decides might be one way of proceeding, but would be likely to deter would-be Respondents, and would probably favour the larger brand owners.**

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 feel the Reply stage is unfairly favourable to the complainant at the moment, and would favour some kind of statement to the effect that if anything new comes out of the Reply, then a Respondent can ask the expert to admit a non-standard communication, which the expert should normally permit, providing and to the**

**extent it deals with genuinely new material or issues. I agree it might be sensible to make it clear that past abusive behaviour can be enough on its own, even if it has subsequently ceased.**

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.

**As an Expert and a representative of clients in disputes, I do not feel in a position of conflict, and certainly feel it improves my performance as an Expert to have had experience of acting for clients. I think the "conflict" is more a question of perception than a real issue in practice. I think the longer UDRP word limits could be adopted by Nominet - in a detailed complaint, there is not always enough flexibility.**

Please give us your contact details

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