

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

Submit date : **Feb 12, 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.

Legally enforceable rights can and should be recognised within the DRS. However, the scope and strength of those rights should be considered in the context of any particular case – for example, the mobile phone company called Orange should not be able to challenge a bona fide venture using the name orange.co.uk in a non-mobile related industry.

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 guidance would seem sensible as it may reduce the volume of frivolous complaints.

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 seems sensible.

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

Change would appear to be required as it is too easy for anyone to submit a frivolous complaint without any merit, which leaves a respondent having to spend time and money defending their domain name without due cause. I would favour the suggestion put forward by Sebastien Lahtien whereby the full £750 case fee is taken up front as a deposit from the complainant when the case is filed; which is later refunded if mediation is successful; otherwise this deposit is put towards the expert decision. Alternatively, I would also support an option where the complainant is required to pay an upfront non-refundable fee when the case is filed, perhaps in the region of £250. In the event the dispute goes to a decision the expert fee should be adjusted downwards accordingly. I do not view “loser pays” as a viable option.

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 do not see any system of refund as viable.

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?

Experts should not be permitted to perform their own research. Cases should be judged exclusively on the evidence present by the complainant and respondent.

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.

The DRS should abide by legal principles and not be able to consider communications between parties made on a "without prejudice" basis.

Please give us your contact details

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