

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

Submit date : **Feb 13, 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.

The trademark of dictionary words is a very complicated and contentious subject and unless very careful consideration is given, a situation may arise where abuse of the trademark system becomes equally or more problematic than the domain space. All DRS cases are currently presided over by intelligent and balanced human beings who are able to take each case on merit, I see no possible reason why this should not continue. Ultimately this is our language that we are discussing, we use it everyday for reasons other than the internet and if a company decides to register a dictionary word as their company name, then they must accept that on the balance of probability there is going to be a other's that will legitimately use the word.

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

A clear distinction should be made between approaching and offering to sell a domain to a company or individual with a legitimate claim or right to that name and approaching a company or individual that the seller believes to have an interest in purchasing for commercial reasons. As an example, approaching Ford Motor Corporation to sell ford.co.uk would be a clear abuse but approaching the same company to sell car.co.uk would not. If the traffic being offered originates from a domain that the buyer has a legitimate claim to then this would be abuse. If no clear claim can be proven then it is a reasonable to . Nominet do not in any part of their member agreement etc.. prohibit the registration of many domain names, in fact it can be argued that they encourage this practice by operating a restrictive registration system that favours members that use 'drop catching' systems.

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.

In cases where there is no obvious right then the onus most always be on the complainant to prove beyond doubt that a registration is abusive.

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

A system where there is no fee is a fair one as it means that there is no barrier to entry but this also leaves the system open to abuse from both complainants and respondents so giving the person presiding over each drs the option to make a charge if there is clear evidence of an abusive registration or if no clear claim can be proven by the complainant would seem like a possible solution

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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?

There is no obvious answer to which section of the community would benefit but only where there is an obvious abusive registration should the respondent ever incur a cost.

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?

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.

There are currently too many cases where complainants are winning cases involving pure generic words or terms. There is an argument that says trademarking of a word or phrase that is already in use in everyday language is in itself an abusive act and one where the risk of duplication must be accepted by the trademark owners. A domain that is a generic word or phrase should never be transferred to a complainant unless clear abuse of ownership can be proven, i.e. passing off in some way etc.. Guidance to this effect should be given to the person presiding over each case.

Please give us your contact details

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