

## 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.

**These are both very difficult concepts both for Registrants and for Experts; I am not minded to extend the protection to these specific areas as the concept of "rights" within the existing DRS is wide enough to encompass real abuse in these areas. I believe that to include (a) and (b) goodwill would be a step too far. The existing DRS deals with conflicting rights poorly and small registrants may feel the system is stacked against them; any extension would heighten this perception of unfairness.**

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 general offer to resell a domain name should not necessarily be evidence of abuse but might be if the name was one whose use might be abusive within the policy - e.g. "coca-cola-drinks.co.uk" as a general offer would, in my opinion almost always be abusive; other names (particularly generic names) not so · sale of traffic (i.e. visitors to the domain name) - If the domain is being used to attract traffic it should be capable of being found abusive and I would not change the present system, save as to make this clearer · registering many domains should not necessarily be evidence of abuse; however, where a complaint is made against a registrant for using a name and a finding of abuse is made, it should be possible to expedite proceedings against that registrant for other apparently abusive registrations (see DRS3984 for an example). The existing system would require hundreds of individual cases at substantial cost and administrative headache. This should not affect domain dealers who do not register multiple typo-squatting and cybersquatting names.**

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.

**The quality of complaints is often abysmal; I would welcome an ability for the Expert to reject a complaint because of its lack of quality; sometimes it is almost impossible to see what the complainant is arguing or why. Abuse is, however, not proportional to strength of rights and the DRS is not designed to deal with competing and qualitative rights.**

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

**No change; it would be impossible to collect from losers (particularly those who did not respond). The existing fee barely covers the cost of the Expert in simple cases and in complex cases never does so; hence no reduction.**

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?

**N/A**

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 would abolish the Reply stage as right and leave it for a non-standard response if needed. The quality of complaints must be improved; a complaint of 250 words is of little value. Equally the abuse of the word count restriction by the attachment of thousands of pages as annexes is unhelpful. If the complaint cannot be articulated clearly within the limit, the case is probably not suitable for DRS. I would introduce a penalty against vexatious complainants. I do not believe that any strengthening of complainant rights (or right-holders' position) is needed. The scales are possibly already weighted in their favour as they get to choose when and how to complain and the complaint has no time restrictions for its filing unlike the response. I would welcome a thorough debate on whether the existence of rights in a name in market A should allow complaint against use of that name in a domain in market B. The existing "abusive registration" test seems to be rather weighted against the market A rights holder.**

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 quality of complaints must be improved; a complaint of 250 words is of little value. Equally the abuse of the word count restriction by the attachment of thousands of pages as annexes is unhelpful. If the complaint cannot be articulated clearly within the limit, the case is probably not suitable for DRS. Experts should be able to represent parties in other disputes; the declaration of impartiality is an adequate safeguard. I consider that DRS updates should be infrequent as registrants need to know that their registrations will not be affected by a future change which would be applied to existing names. Experts must be able to judge the complaint on all its facts and circumstances; many Experts are not lawyers and I would be very loathe to introduce a too-legalistic approach which could only serve to complicate the**

**process and prejudice legitimate domain registrants who were not major brand owners and/or could not afford legal advice**

Please give us your contact details

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