

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

Submit date : **Feb 16, 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.

1(a) Disagree. Every case should be treated on its own merits by the appointed "expert". Definitions of distinction are too subjective and Nominet should not get involved in trying to define them. (b) Disagree. Dictionary words are no different to any other words. There are 45 classes of UK trademarks. Similar names will and do occur across many classes. Should class mark owners have any priority rights over any other class mark owners? Are the so-called superclasses acceptable because of their size or brand familiarity?

First come first served must be the starting point, and clearly any domain registration which pre-dates a trademark should not be contestible within the DRS or indeed in Court subject of course to the the abuse tests of reasonable use, or non-use for that matter. "Passing off" is always a valid ground for a complainant but "passing off" and "confusion" are not the same thing and must never be conjoined. Goodwill? In this context the concept is too imprecise and always open to dispute.

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

2. (a) Agree. A general offer to resell is not abusive. (b) Sometimes OK. However if the traffic is drawn to the site through keywords specifically relevant to a complainant's prior recognised rights this would be considered abusive. (c) Agree generally. However although it may not appear relevant to a specific complaint how many names the respondent has registered, and notwithstanding that the use of each individual name must be judged on its own merits, there may be indicated a pattern of abuse, for example small variational differences to an existing name in which there are already existing rights.

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 statement is somewhat self evident and need not be added to the DRS unless supplemented by more precise definitions of "rights"

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

Agree with 2. Upfront fee for the complainant only should be far more substantial as with UDRP Say £400 minimum. This will wholly deter frivolous complainants. This should not be refundable in the event of a complainant win but should be payable to the respondent in the event of complainant losing at arbitration and

not going on to pay for an expert decision. Furthermore the appeal fee should be reduced to say twice this figure making the whole system more equitable.

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?

Disagree with option 3.

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?

Procedure. The registrant should be allowed to respond to the complainants second response subject to a reasonable time limit. Notwithstanding the above specific, a general extension of time limits should be applied. This will help compensate for overseas based registrants, reasonable vacations etc.

Payment. Respondents should be given the opportunity to pay for a decision.

Drafting Yes, provided that "plain english" is not so dumbed down as to lose the necessary specificity of definitions.

Appeals. Time limits should be increased.

Expert decisions. Use of PRSS system would enable experts to access register details.

Abusive registration. No. Test should not be softened. Confusion should not be a test of abuse except for a small number of obvious cases indicating clear deception.

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.

UDRP is far from perfect, but bringing submissions and limits etc into line with UDRP seems reasonable and logical to me. Experts should never find a registration abusive for reasons not given or implied by the complainant. This would apply in any court of law so why should it be any different here.

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It is up to the complainant to make his case and the registrant to respond to it. I want to make an observation with regard to the use of "experts" in Domain Name disputes. For instance an examination of the UDRP experts or "panelist" list will indicate a large weighting of expertise from commercially practising lawyers who clearly have a vested interest in trademark and intellectual property rights of their own clients. This is in stark contrast to the much smaller number of highly qualified academic lawyers who have no such axe to grind. I would suggest that in the DRS a balance of the two styles should be achieved making the process fairer and equitable to all parties.

Please give us your contact details

Name

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Cherished Domains