

## 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.

**Generic words or terms that happen also to be a trade mark cannot lead to the trade mark owner monopolising all uses of the word or term. It should not be up to the DRS to make a judgment call on something that is often very ambiguous, that is the responsibility of the courts.**

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 large number of domain owners, build & run websites and have a stock of domains for future projects, as is common with house builders & land. The number of domains a person owns is irrelevant. An offer to sell should not be considered abuse especially when the complainant solicits an offer.**

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**

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

**I think there should be an up front fee but think that it should be more like £250 and should be refunded if the two parties reach an agreement in the mediation stage. Losing party pays would be a major blow to small businesses and private individuals on top of the unfair advantage that corporate giants have already with their vast resources and experience in winning these cases. It would have the effect of forcing unscrupulous domain owners to hide their real details.**

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?

You could not enforce it. Not being a legal person, I am unsure if you would even have the authority to impose such fines surely this is something for the courts to decide not Nominet.

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 respondent should always have the right to reply. Experts should only consider the facts in front of them and not enter additional evidence (could you imagine a jury doing that!!) it is up to the complainant to put their case forward, no one else. Everything should always be written in plain English.**

**Experts should state they have no connection with the complainant or the complainants representative. Where the respondent closes down a website while the complaint is being dealt with, the complainant should not be able to use this as abusive. The fact that the respondent has lost a previous DRS case should not be used against them unless there is clear evidence of multiple abuse.**

**It should not be up to the DRS or the expert to speculate if some of the respondents other domains are abusive in nature. Often companies will allow their trade marks to be used in domain names allowing owners to drive extra sales to them.**

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.

**Experts should only consider the facts in front of them, please see previous statements. Experts should be totally independent and should state this, if a conflict of interest is found later this could then be addressed, and would no doubt result in greater confidence for both parties that the decision was impartial.**

Please give us your contact details

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