

## 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.

**Against. It is an unbalanced proposal. Rights already enforceable by law should be represented within DRS Policy. DRS Policy already covers such rights to the necessary extent. 'Distinctive character as a result of the use made of it' does not on its own provide a concrete enough definition to avoid abuse in complaints by predatory corporate counsels, and will lead to such abuse in isolation.**

**Dictionary words: If use of a dictionary word domain does not infringe upon a complainant's trademark, I would say a registration is not abusive and any rights should be seen as lacking. DRS Policy should explain the protection afforded generic/descriptive terms. Any recognition of Complainant rights in dictionary words should also be accompanied by a balancing recognition of the limitation of those rights via TM categories, and a Respondant's rights to generic terms/dictionary words. This proposal does not do that, and cannot be said to be reasonable nor balanced as it stands.**

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

**I would agree. The wording 'not necessarily' provides enough latitude for experts to exercise some judgement. Such advice would lower the number of unsubstantial complaints, and allow DRS mechanism resources to concentrate on cases where real abuse of IP has occurred.**

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 would agree. This would reduce speculative complaints.**

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

I understand unsubstantial complaints are frequently made against some domain registrants, all requiring time and money for response. The model, suggested previously, requiring the upfront deposit of a fee seems reasonable, with its return upon successful mediation by the Complainant. This would again reduce the burden on Nominet's DRS mechanism.

**The current sum of £750 appears to be correct, permitting SMEs to exercise rights over abusive registrations without unreasonable cost, given the presumable value of any domain in question. I would be against a system where a losing party pays the DRS fee.**

the DRS fees.

**Administration would be somewhat challenging, and in the case of incorrect ownership details, a financial burden to Nominet.**

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?

**See above**

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?

- **Policy should state that a long delay in bringing a DRS case, where there is no adequate explanation, is likely to damage a complainant's chance of success.**
- **Policy should state the criteria/definitions of if a brand or term is well known/fame.**
- **I would encourage Nominet to broaden the makeup the 'experts' as currently there is solely lawyers / people from the legal arena on the panels. Those outside such arenas could see the scope for substantial conflicts of interest, tarnishing the DRS process.**
- **I would suggest and support a time limit to how long an individual can serve as a Nominet expert. New experts should undergo some training on terms.**
- **Prior abusive use modification 3(a)(iii); Policy should state that should retrospective abuse have occurred indirectly and unintentionally as a result of automatic third party adverts (i.e Google Adwords), and the Registrant once advised has corrected in good faith, it should not be seen as intentional abuse, should reasonable foresight have been employed.**
- **I believe that the DRS ought to treat 'without prejudice' in the standard legal way.**

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.

**See Q6 answers.**

Please give us your contact details

Name

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Company Name

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