



INFORMATION FOR APPLICANTS - EXPERTS

1. Introduction

The Domain Name Commission (DNC) administers a dispute resolution service (DRS) for .nz domain names as an alternative to court action, giving parties another mechanism to resolve disputes which arise. The DRS is modelled on the Nominet UK systems which has been in place for a number of years and is very successful (where around 60% of all complaints that go to mediation are resolved there). Approximately 100 disputes are submitted annually under the DRS.

The DRS has three tiers - the first tier is mediation, the second is adjudication by an expert and the third is the appeal of an adjudicated decision.

As part of a planned rotation of panel members, the DNC is seeking applications from suitably qualified individuals to act as an Expert for the DRS. One Expert is sought, and the appointment will be for a three year term.

This document provides applicants with information on:

- the DRS adjudication process
- a role outline for Experts
- remuneration and other terms and conditions of appointment
- the appointment process
- contact information.

2. The DRS Adjudication Process

The second tier of dispute resolution in the DRS is an adjudication process whereby an appointed expert makes a decision on the dispute.

This process can be triggered by one of two events:

- the failure of the respondent (i.e. the registrant of the domain name) to reply to the complainant's complaint (thereby bypassing the first tier of informal mediation), or
- the complainant and respondent being unable to reach a satisfactory agreement during mediation.

The expert will be appointed by the DNC once the complainant has paid the fee of \$1,800 (excl GST) for a dispute involving 1 - 5 domain names. The full fee paid by the complainant to the DNC is received by the Expert on completion of the adjudication process.

The key features of the DRS Expert Adjudication process are that it is:

- low cost – the complainant is required to pay a modest fee to the DNC to trigger this tier of the DRS process but neither party requires legal representation to prepare their case unless they wish to. Both parties meet their own costs incurred during the adjudication process
- relatively informal – the Expert comes to his/her decision based on the papers received under the process. There are strict guidelines about the size and format of submissions by both parties. The parties do not present face-to-face submissions nor is there cross-examination of evidence. Neither party may communicate directly with the appointed Expert - all communication with the Expert is through the DNC. In exceptional cases, an Expert may determine that they wish to have in person hearings (including hearings by conference call, video conference and web conference), but that decision is at the Expert's sole discretion.
- quick – the timeframe from the complaint being lodged to receiving the decision of the Expert is around 11 - 12 weeks.
- independent of the informal mediation phase that may have preceded it - information arising during and out of the mediation is not provided to the Expert

The DNC will assign an Expert for each dispute from a panel of Experts who have been appointed specifically by the DNC for the DRS. The list of Experts will be published on the DNC website along with their qualifications.

An Expert will be assigned to each complaint on a 'first cab off the rank' basis. As the Expert must be both impartial and independent, the Expert is required to disclose to the DNC any circumstances giving rise to justifiable doubt as to his or her impartiality or independence. Where this occurs, the DNC has the discretion to appoint another Expert (the next on the list and so forth) and adjust the timetable accordingly. The complainant and respondent are not asked to comment on the suitability of the Expert, nor are they able to influence the assignment process.

The Expert receives a fixed fee for their work, which is paid by the DNC upon receipt of their decision. The Expert does not, and cannot, receive any payment from either the complainant or respondent for their work.

Under the adjudication process, the Expert considers the written submissions of the complainant and respondent, the DRS Policy and makes a decision settling the dispute. The Expert has ten days in which to complete this process. During this process, the Expert considers the admissibility, relevance, materiality and weight of the evidence provided in the submissions.

The Expert does not communicate directly with either party. The parties need to state their case fully, but succinctly, in their written submissions. The Expert may, however, request further statements or documents from parties.

The submissions from both parties are required to be compliant with the Policy. This includes being written and not exceeding 2,000 words (excluding appendices).

Any additional submissions initiated by either party will require a brief explanation of why there is an exceptional need for this material. This

explanation will be provided to the Expert and it is at the Expert's sole discretion as to whether they request the remainder of the non-compliant material.

In exceptional circumstances the Expert may determine that an in-person hearing is required to enable him or her to come to a Decision. The format of this will be at the sole discretion of the Expert and may not necessarily include a face-to-face conference.

The Decision of the Expert will be in writing and will include the reasons on which the decision is based. The Decision may include the finding that the dispute is outside the scope of the DRS (i.e. that the complainant does not have rights in respect of a name or mark that is identical or similar to the domain name in dispute and it is not an unfair registration by the respondent).

Once a Decision is received from the Expert, the DNC will communicate the full text of this within three days to both parties along with the implementation date for the Decision. In due course, the DNC will publish all Decisions of Experts (in full) on its website.

Examples of Expert decisions made to date can be viewed at <http://www.dnc.org.nz/decisions>

DRS Adjudication Timeframe

Action	Days
The DNC receives a request from the complainant to refer the matter to an Expert (within the ten day timeframe where the matter has been to mediation) and receives the full fee	
The DNC appoints an Expert	Five working days
Expert considers the submissions and the DRS Policy, makes a decision and sends this to the DNC	Ten working days
The DNC sends the full text of the decision to both parties	Three working days
Where applicable, the DNC implements the decision unless an appeal or notice of legal proceedings is received	Ten working days

The escalation of the dispute to the next tier, the appeal process, must be initiated by either the complainant or respondent within ten days of being notified by the DNC of the Expert's decision. The fee for an appeal is \$6,600 (excl GST).

Under the appeal process, an appeal panel is convened of the chair of the Experts and the next two available independent Experts appointed by rotation from the list. The appeal panel has thirty days to consider the appeal and submissions, and return the appeal decision to the DNC.

To date, one appeal has been processed.

3. The role of the Expert

The role of the Expert is to make impartial, reasoned decisions on domain name disputes that have been submitted under the DRS. Specifically this requires the Expert to:

- consider fully the submissions of both the complainant and the respondent
- determine the admissibility, relevance, materiality and weight of the evidence contained in the submissions
- consider the dispute in the context of the .nz Policies, the DRS Policy, DRS case law and/or the general law to the extent relevant (including being satisfied that the dispute falls within the scope of the DRS)
- make a decision that resolves the dispute
- write up the decision (in accordance with the DRS Expert Guidelines)
- complete this process within 10 working days
- forward the decision and all relevant paperwork to the DNC.

Requirements for DRS Experts

Relevant Knowledge

- a working knowledge of the .nz policies, and the DRS Policy
- a general understanding of domain name and trade mark issues

Relevant Experience

- current membership of AMINZ (as Affiliate or Fellow and preferably as a member of the Panel of Arbitrators and/or List of Adjudicators), and to maintain this status while holding appointment as a DRS Expert (highly desirable)

or

- previous experience as a judge, an arbitrator or adjudicator or as a member of a decision-making tribunal or equivalent body (highly desirable)

or

- significant experience in writing expert opinions and/or determinations

Personal Qualities and Skills

- integrity
- impartiality
- good judgement and common sense
- be a person of good standing
- able to absorb and analyse competing and often complex factual and legal material
- able to make decisions quickly after considering all the relevant facts and issues
- well developed written communication skills
- able to devote adequate time to meet the ten working day timeframe for a DRS expert decision
- passionate about, and committed to, the .nz dispute resolution process

4. Remuneration and Other Terms and Conditions of Appointment

Remuneration

Experts will receive a fixed fee (\$1,800 (excl GST)) for each dispute they are assigned and which is accepted by Expert for decision. This fee is inclusive of any costs incurred during the adjudication process and irrespective of the simplicity or complexity of the dispute involved. The fee will be paid on completion of the adjudication process and on submission of an invoice.

Training

Training will be provided to the appointed DRS list of Experts on the .nz policies, the DRS Policy and the adjudication process. It is a requirement of appointment that the Expert attends an annual training session - in 2010 this will be held in Auckland on 4 November. A fee of \$1,000/day will be paid for attendance at the training, plus airfares and other travel related expenses.

Term of the Appointment

The term of appointment is 3 years, with a possibility of extension.

Other Terms and Conditions

These are contained in the Appointment Contract, a copy of which is available at www.dnc.org.nz/information-experts.

5. The Appointment Process

Applications close at 5pm on Thursday, 2 September 2010. Applicants should submit a current curriculum vitae and a covering letter outlining their key qualifications, experience and personal qualities for the role of Expert. The names of two referees should be included. This should be sent by email (preferably) to:

vacancy@dnc.org.nz

or by mail to:

DRS Applications
Domain Name Commission Limited
PO Box 11 881
Wellington 6142

Applications will be considered by a subcommittee of the DNCL Board who will forward their recommendations to the full Board for approval. Shortlisted applicants will be interviewed (either by telephone or in person).

Appointments will be completed early in October 2010 and applicants will be notified in the week following of the outcome of the process.

6. Contact Information

If you are seeking further information about these roles, please visit the website of the Domain Name Commissioner in the first instance at www.dnc.org.nz/information-experts

Further information can be obtained from Alison McKenzie, Senior Support Analyst, on 04 495 2111.