



INFORMATION FOR APPLICANTS - MEDIATORS

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 75 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 Mediators for the DRS. One Mediator is sought. Appointment terms are for three years.

This document provides applicants with information on:

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

2. The DRS Mediation Process

The first tier of dispute resolution in the DRS, following the lodging of a complaint and the receipt of the parties' submissions, is informal mediation.

The key features of the DRS mediation are that it is:

- voluntary - both parties must agree to the mediation – no mediation occurs if the respondent (i.e. the registrant of the domain name) does not file a response to the complaint lodged
- low cost – there is no fee payable by the complainant (or respondent) to initiate the mediation. However both parties meet their own costs incurred during the mediation process. The mediator is paid a fixed fee by the DNC

- informal – the mediation is conducted by phone discussions (and email where this is not possible). The process used is at the sole discretion of the mediator and will not include face-to-face meetings
- quick – once the mediator has been assigned, the parties have ten working days to reach an acceptable resolution of their dispute
- confidential – information arising during and out of the mediation is confidential. Information provided to the mediator by either party will not be disclosed to the other unless it is agreed by the party providing the information. Not will any information be provided to the Expert (the next tier of the DRS process)
- aimed at amicable settlement of the dispute – if agreement is reached during the mediation process, the existence, nature and terms of the settlement will remain confidential between the parties, the mediator and the DNC unless the parties agree otherwise
- documented where agreement is reached – a written settlement agreement is required if the mediation is successful

Note: Only a Court or other decision making body of competent jurisdiction can require disclosure of the mediation and its details.

The DNC will assign the mediator for each dispute from a pool of mediators who have been appointed specifically by the DNC for the DRS.

Mediators will be assigned on a ‘first cab off the rank’ basis. Where the assigned mediator has a conflict of interest or is unable to take on the mediation due to prior commitments, the next mediator on the list will be assigned (and so forth). The complainant and respondent are not asked to comment on the suitability of the mediator, nor are they able to influence the assignment process.

The mediator receives a fixed fee for their involvement in the process, which is paid on completion of their notes and receipt of these by the DNC. The mediator does not, and cannot, receive any payment from either the complainant or respondent for their services.

Under the DRS process, the mediator will contact each party and have a series of telephone calls and/or emails to encourage communication between the parties and help them to generate options for settlement. The process is confidential: anything a party says to the mediator will remain confidential unless the mediator has express permission from one party to put their comments to the other.

By entering the DRS mediation process the parties are not bound to settle their case. The mediator cannot force the parties to settle or to impose a solution upon them. In addition, mediation allows the parties to discuss several settlement proposals as no settlement is binding until the parties have signed the settlement paperwork. The mediator’s role is to gather information from both parties, identify common ground, help generate options for settlement, and deal with the deadlock and emotions that can often be a barrier to settlement.

A mediator under the DRS could expect to be assigned four or five disputes a year to facilitate. The time commitment is anticipated to be on average up to one day for each dispute. Some may take less time, some may take more,

depending on the complexity of the issues and the willingness of both parties to the dispute to find an acceptable solution.

DRS Mediation Timeframe

| Action | Days |
|---|----------------------|
| The DNC receives a full and compliant copy of the complaint | Day One |
| The DNC sends the complaint to the respondent (i.e. the registrant) | Three working days |
| Respondent sends a response to the complaint to the DNC | Fifteen working days |
| The DNC sends the respondent's response to the complainant | Three working days |
| Complainant may submit a reply to the response | Five working days |
| The DNC appoints a mediator | Three working days |
| Mediation is conducted | Ten working days |
| Acceptable resolution achieved | End of the dispute |

The escalation of the dispute to the next tier, the Expert decision, can be triggered by the following:

- the respondent (i.e. the registrant) does not reply to the complaint sent to them by the DNC, or
- the dispute is not resolved at mediation, AND
- the complainant pays the applicable fee (\$1,800 plus GST for a dispute involving 1 - 5 domain names) within the requisite timeframe.

3. The role of Mediator

The role of the Mediator is to assist the complainant and respondent to resolve disputes that have been submitted under the DRS.

Specifically this requires the Mediator to:

- explain the DRS mediation process and the ground rules to both parties
- promote communication and co-operation between the parties
- encourage the parties to explore the options
- facilitate negotiation and promote problem solving
- identify and record the agreed outcome(s) (in accordance with the DRS Mediation Guidelines)
- manage the mediation process within the ten working day timeframe

This will require the Mediator:

- to be diligent in their preparation for, and conduct of, mediations under the DRS
- to exercise due skill and care in the performance of their responsibilities
- to maintain confidentiality of the mediation processes and outcomes reached
- to be prompt in identifying conflicts of interest when initially assigned a mediation by the DNC
- to operate within the ethical guidelines required of a professional mediator.

Requirements for DRS Mediators

Relevant Knowledge

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

Relevant Experience

- current membership of AMINZ (as a Mediation Panel member) or LEADR (Advanced Panel membership) and to maintain this status while holding appointment as a DRS Mediator (highly desirable)
- or
- membership of an equivalent international body or organisation
- or
- significant experience as a mediator working in a formal, structured environment

Personal Qualities and Skills

- integrity
- impartiality
- good judgement and common sense
- diligence
- be a person of good standing
- able to absorb and make sense of competing and often complex factual and legal material
- able to devote adequate time to meet the ten working day timeframe for a DRS Mediation
- passionate about, and committed to, mediation as a dispute resolution process

4. Remuneration and Other Terms and Conditions of Appointment

Remuneration

Mediators will receive a fixed fee of \$1,400 (excl GST) for each mediation they are assigned and which is accepted by the mediator for facilitation. This fee is inclusive of any costs incurred during the mediation process and irrespective of the simplicity or complexity of the dispute involved. The fee will be paid on completion of the mediation process (on completion of their notes and/or a written mediation agreement) and on submission of the invoice.

Training

Training will be provided to the appointed DRS pool of mediators on the .nz policies, the DRS Policy and telephone mediation. It is a requirement of appointment that the mediator attends an annual training session - in 2010 this will be held in Wellington on 11 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 initial 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-mediators

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 Mediator. 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 Mediator Applications
Domain Name Commission Limited
PO Box 11 881
Wellington 6142

Applications will be considered by an appointment committee and shortlisted applicants will be interviewed (either by telephone or in person).

Appointments will be completed early in October 2010 and applicants will be notified as soon as practicable following 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-mediators

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