Submission re DRS Policy Review

Introduction

This submission is directed at the comment made in the announcement of this consultation:

> ***"The Domain Name Commission intends to add an additional clause enabling a term of settlement, that is within the power of the DNC, to be enforced by the DNC if the parties fail to do so. For example, when the parties agree to transfer a domain name to a different registrant but one party doesn't sign the forms required by the registrar, the DNC will be able to direct the registrar to make the required change."***

When the SRS policy was set, it was against a background of grave concern at InternetNZ and its subsidiary Domainz, (at that time, acting as the registry and the sole registrar) being both policy setter for the .nz space and operating commercially. So called resellers (most of whom who have now become registrars in their own right) were justifiably concerned that the structure was confusing for registrants and operated to the resellers' commercial disadvantage because they were effectively competing with the wholesaler/regulator.

So, the SRS policy makes it quite clear that InternetNZ, as operator of the registry (now via NZRS operationally and the DNC's office re policy) is not to deal directly with registrants and is to treat the registrars as its customers.

That coincided with the very valuable legal precedent established in the *Oggi* case, that the registry was not liable for transgressions by registrants (in that case, alleged cyber-squatting) since it was not exercising any decision-making power – it would simply abide by an order of the Court.

It seems to me that the suggestion I have quoted above goes against those principles. It interposes InternetNZ (via the DNC's office) in the relationship between registrar and registrant and requires InternetNZ to take some positive "enforcement" action, for which, conceivably, it could be taken to task by an aggrieved registrant. That, IMHO, is not the role of InternetNZ and, even with the proposed corporatisation of the DNC's office, invites liability that is unnecessary.

Suggestion

There is no argument that if a panel makes a ruling or a mediated agreement is reached then that must be actioned. It should not be able to be held up by the procedural intricacies of any particular registrar's paperwork; just as a registrar is not able to hold up a transfer away from its services to another registrar on the basis of non-payment, for example. The rights of the registrant (in this case the new registrant that is to take over the name) are paramount.

Therefore, I suggest:

1. **The DNC alter its policy (if it is not already there) to require that a registrar who is notified of a decision (or mediated agreement) affecting a domain name of which it is registrar, must give effect to that decision or agreement as soon as practicable (and no later than [3] working days after receiving notice).**

2. **The secretariat that handles registration and procedural aspects of DRS claims be responsible for notifying (NOT directing), the registrar in question of that decision/agreement immediately it is released and providing details of the successful registrant as per the claim.**

3. **The "new" registrant would be deemed to have accepted the registrar's standard terms applicable to the domain name in question.**

4. **Should the registrar require further information from the new registrant or wish to have the new registrant formally accept its standard terms or should the new registrant wish to change registrar, then that can take place in the normal course.**

The important point is that InternetNZ is removed from the process other than as a procedural conduit of the decision/agreement and the new registrant's rights flowing from that decision/agreement are implemented as soon as practicable.

Rick Shera, Ll.B, MComLaw (Hons)
12 February 2008