

## Differences Between DRS and UDRP

(Speaker 1 is Nick G)

Speaker2

[56:57]Okay thank you.

Speaker3

[57:00]I'll come to this question next I've got three or four here but I'll come to this one next because I think you just mentioned UDRP in your last response Nick. So the question is, the key difference between nominates DRS and Uniform Domain Name Dispute Resolution Policy is that the DRS does not require both the registration and use of a domain name to be abusive or in bad faith. So the question is, why the difference? And what does Nick Gardner think is more preferable and why?

Speaker1

[57:27]Just to explain that question in more detail for people who may not be familiar with it, the UDRP, which was the first of these policies, for a complaint to succeed, you have to show both that the registration at the time it was registered was in bad faith and that the subsequent use that is being made of the domain name is in bad faith. You have to show both of those and that that that in practice has caused some problems where somebody um may have registered a name perfectly innocently um for whatever reason uh but then typically somebody that they're holding that name in their portfolio or whatever and then somebody else has come along and developed a successful business that just entirely coincidentally uh it's based on the same name and the domain name holder then uses it in ways that are clearly abusive targeting that that new business and going after them in a way that is objectionable

Speaker1

[58:30]And and that led to a series of cases which were i think generally regarded as rather unsatisfactory where people behaving you know at extremes there are not all cases like this but could be behaving dishonestly with their domain name clear piracy cyber squatting and whatever and the policy was powerless to deal with it at one stage the udrp flirted with some rather um exotic concepts of sort of retroactive bad faith and trying to wind the clock back to deal with this which produced some um intellectually unsatisfactory decisions which were eventually discredited and alter the mummy gold of the two cases that people tend to quote which are now no longer followed and so you have this species of case under the udrp where you just cannot combat that and you will have to go to court to deal with deal with it um the the the i i think pretty early on in the udrp it was recognized that this was

Speaker1

[59:24]Arguably unsatisfactory. And one of the reasons the framers of the DRS adopted the alternative either or was to address that problem. I think it's clearly satisfactory. It gives the panel more flexibility to deal with cases of behavior that should be stopped. And there is an ongoing debate in relation to the UDRP as to whether even when it's revised, it should switch to that that or formulation rather than the and formulation and a large number of subsequent um domain name

policies that have been introduced around the world tend to go for the um uh the or formulation rather than the and so i i think that the the the or formulation is um clearly preferable

Speaker0

[1:00:10]I was going to say there's another situation which is actually quite common, which is where there's a contractual relationship between a trademark owner and a company. Say, for example, it's a local distributor in the United Kingdom. So with the consent of the trademark owner, the domain name registers a domain name incorporating the trademark for a legitimate purpose. But then subsequently the distribution relationship is terminated, there's been a dispute, and the use of the domain name, the registration was obviously completely fine, but subsequently the use absolutely clearly is not okay. And the UDLP just doesn't deal with that scenario at all and it is a bit unsatisfactory.

Speaker0

[1:00:59]So yeah, there are some quite common scenarios, particularly as the age of the domain name cohort gets on and on. So these cases start to come more into the mix than the straightforward registration of something in the last few months very opportunistically. So it's nice that those sorts of situations can be catered for within the DRS and that's something that the UDRP has struggled with. And we look back, I suppose, at the more underlying purpose of nominate, you know, the public resource to stakeholders in terms of being able to avoid court litigation and that sort of thing in cases where we should be able to handle it.

Speaker3

[1:01:44]Excellent. Thank you both. A couple more questions for the panel.

[1:01:48]Concerns with Domain Privacy Services

Speaker3

[1:01:49]With the high number of domains using domain privacy services, are there more problems contacting registrants these days? Are Domain Privacy Services breaking Nominet's Terms of Registration?

Speaker0

[1:02:02]So, I mean, there's privacy services and there's privacy services, I suppose, is the answer. In principle, so long as the domain registrant is contactable and can receive their complaint, then all should be good. The problem is that that's not always the case. So, when Nominet receives a complaint, particularly with the increasing advent of privacy services, we will... Where we know the privacy service, we will say there's been a complaint raised and a bit like with the UDRP, which has a very similar process. Can you remove privacy so that at least the complainant knows against whom he's making the complaint and can work out that it's the correct respondent to the complaint? And not, for example, a domain name registered by their own organization in a different company, which in a different country, where they just weren't aware actually that was part of their own group's portfolio estate, which happens surprisingly often. So it does create a few problems, but nothing that shouldn't be resolvable. I think the situation, particularly, say, for example, in the vetting sites case.

Speaker0

[1:03:19]Was that the domain was originally registered, put onto a privacy service, and then the domain was transferred on acquisition and the privacy service wasn't removed. So you had a privacy service which was then removed only to reveal another privacy service. So you get these layers of privacy services and that frankly is very poor administration by the domain name holder. They should be better at managing that sort of thing because it's quite important that the domain name registrant is contactable. Privacy services is probably a bit out of the scope, but it is something. I think the question is, does this breach Nominet's terms and conditions? I think so long as the domain registrant can be contactable, it doesn't breach the terms and conditions as we currently understand it.

Speaker3

[1:04:16]Excellent. Thank you. Next question coming from our viewers. Is there a risk that some individuals might use the DRS process as a way to obtain domain holder information for other purposes, such as making unsolicited offers to buy domain names, for example.

Speaker0

[1:04:33]It's definitely a risk and it is something that we are sensitive about in terms of domain name holders' privacy. We fundamentally expressly disapprove of people using the DRS process as a way of evading legitimate privacy expectations. So, yeah, I mean, I'm aware of some examples of that. I think ultimately, I don't think there's been a huge detriment to somebody's fundamental privacy rights, but it is something that happens from time to time. Yeah, it's definitely a concern. I don't know if there's an easy answer to some of those things.