

.nz Additional search functionality consultation - Submission

From: Bruce Clement

Received: October 27 2009

Thank you for the opportunity to comment on the proposed additional search functionality. I have an interest in this proposed new functionality as I am the current registrant of over 1,000 .co.nz domain names.

In the proposal there are three distinct classes of search proposed. The first class relates to individuals or organisations searching for domain names registered in their name, either directly or through agents.

I would hope that this proposal is uncontroversial as I regard this search as a very useful service for registrants. If implemented it will allow registrants to ensure that the domains they believe are registered to them are all registered in their name and will also allow registrants to ensure that no additional domain names have been registered to them by person or persons unknown. I personally would use this facility to reconcile my records with the register and to find if there are any additional "phantom registrations" in my name.

The second class of search allows variations on domain names to be searched. The example given is trade me searching for typosquatting on its name.

Given that any typos found would still be subject to the normal DRS process, it is hard to see that this search can be a problem. I can see it being useful to obvious targets of typosquatting.

The final class of search is where I see difficulties arising.

I don't agree with the assertion that has already been mentioned in another submission that this facility would be misused used by some IP lawyers to tout for business, but I do see a risk that the information obtained will be misused in a more subtle manner.

As currently written clause 5.1.3 of the DRS policy requires that the domain name about which the complaint is made is part of the pattern of registrations and that the other registrations are unfair. There have already been several DRS disputes where clause 5.1.3 was invoked. For example the decision on complaint number 372 contained

"(e) The Respondent is engaged in a pattern of registrations where the Respondent is the registrant of Domain Names which correspond to well known names or trade marks in which the Respondent has no apparent rights, and the Domain Name is part of that pattern (clause 5.1.3 of the Policy). In respect of this allegation, evidence was supplied that the Respondent was the registrant of the following:

(i) ripcord.co.nz which is to be compared to ripcord.com of which the Respondent is not the registrant;

(ii) analogue.co.nz which is to be compared to analogue.com of which the Respondent is not the registrant;

(iii) lpals.co.nz which is to be compared to lpals.com of which the Respondent is not the registrant; and

(iv) linkmeup.co.nz which is to be compared to linkmeup.com."

This shows two difficulties with the current application of clause 5.1.3. Firstly it is impossible to see from the decision how the disputed domain name metrotest.co.nz is related to the four cited domain names and secondly the claim that two generic domain names are part of a pattern of unfair registrations merely because a different registrant owns the similar domain name in a different registry. It is most unfortunate that the expert in this case allowed the claim against generic domain names to pass without any apparent comment.

I can see fishing trips through a registrant's domain names cherry picking a few names and then claiming on tenuous grounds that there is a "pattern of registrations" where no such pattern exists.

If this searching for the purpose of making a claim using section 5.1.3 of the DRS is to be allowed, then I believe that section 5.1.3 will need modifying to raise the standard of proof required before apparently unrelated domain names can be referred to in a DRS claim.

The second difficulty with this proposal is that there appears to be no guarantee that the information is sought purely for the purposes of raising a DRS and provides no mechanism to ensure that the information divulged in this way is only used for that purpose. It has already been mentioned in another response that this information could be useful for competitive purposes.

I would like to express my full agreement with Lenz Gschwendtner's submission which I will refrain from repeating except to echo the point that if implemented this proposal will lead to an increased number of domains containing bogus or misleading registration data. My pick is that the cybersquatters will be the ones most likely to do this while those with generic portfolios won't see a need and will be the ones caught out by cherry picking.

Finally if this proposal is implemented I would request that it be introduced in stages to allow registrants or their agents to obtain a list of their own domain names significantly before opening this facility to others as this will permit registrants to check for bogus registrations and take appropriate action.

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