

Dispute Resolution Policy Review Submission

From: David JA Cairns

Firstly, comments were requested on the interaction of the policy and the Arbitration Act. I am not sure exactly what type of interaction is envisaged, but in my view it is imperative to keep domain name dispute resolution entirely separate from arbitration legislation. There is no advantage at all in seeking to integrate domain name resolution in even the most limited manner with arbitration legislation, and substantial costs in terms of the loss of speed, simplicity and flexibility.

Secondly, you might wish to consider some provision in the Policy for the Respondent to surrender voluntarily a disputed domain name to the Complainant. There is provision in section B18 for settlement but, in my experience of the similar provision in the ICANN Policy, Complainants are reluctant to suspend proceedings once begun in order to finalise a settlement. Accordingly, under the ICANN Policy complaints can proceed to a Panel decision, notwithstanding a voluntary offer to transfer. The .nz Policy in A5.3 contains an innovation that provides an incentive for a Respondent unilaterally to surrender a domain name that cannot be defended (namely, to avoid a finding of Unfair Registration). Your informal mediation provisions (which, of course, do not appear in the ICANN Policy) might as a practical matter avoid this problem. Still, you might wish to consider whether the DRS should be empowered to make an enforceable order based on the Respondent's unilateral consent to transfer.