

**Question 1: Please give us feedback on our proposals that the DRS should include:**

If a domain name is registered prior to a trade mark, it should be able to be used in any class without having to answer to the DRS

**(a) protection for words which have a distinctive character as a result of the use made of them.**

I agree that words that are trade marked and have a distinctive character should be protected, but ONLY IF, that word/domain name is used within that class of goods that has been trade marked.

**(b) dictionary words which are protected by registered trade marks or good will.**

If however a distinctive word is also a generic word no such protection should be awarded to that word if it is used in any classes of goods or services.  
i.e. such as "travel" and the word is been used for what the word means..

If the complainant does not agree he also has the option to go to court.

**Question 2: Please give us your feedback on our proposal that the DRS should include the following as examples of things that are not necessarily evidence of abuse:**

I agree with Andrew Bennett that the word "domainer" should not be used as I believe it can be used unfairly against the registrant. We are told in society not to label individuals but here we see this going on, on a regular basis. We could also instruct the experts not to use words like these against registrants.

**(a) · a general offer to resell a domain name**

Just like any business asset, domain names can be bought and sold, and it is up to the asset owner to determine what the market will pay for the name. Just because you got a product cheap to resale, doesn't mean you will sell it cheap. It is a legitimate business practice and used to great success by the likes of Sedo, After Nic etc. Nor do I see any problems to having a general "for sale" sign on the site. I owned ([www.simple.co.uk](http://www.simple.co.uk)) and was approached by the well known company who now use it. We agreed a price and I sold it. They have many trade marks for that name but I did not use it specifically within any them. It did however point to the front of a PPC ([www.unitedkingdom.co.uk](http://www.unitedkingdom.co.uk)) site that may have had searches on it within their Trade Marks, but they did not class that as abusive, merely a side effect. For example, a user may have typed in the search box "simple" but was not necessarily looking for that particular product or if they were looking for that product were intelligent enough to realise that it was not the site of the "simple" product. There was no abuse

**(b) · sale of traffic (i.e. visitors to the domain name)**

Experts already say the use of a PPC site is a legitimate business practice, so I see no problem with selling traffic. Again For example, a user may have typed a trade marked word into a PPC search box but was not necessarily looking for that trade marked product or if they were looking for that product were intelligent enough to realise that it was not the site of the trade marked product. Therefore no abuse has taken place. If this is to be an issue then maybe the PPC providers could be contacted and the use of trade marks within their system not be allowed.

**(C) · registering many domains**

People/companies should be able to register as many domain names as they like.

The experts in the [www.bounce.co.uk](http://www.bounce.co.uk) DRS case said that the registrant had a pattern of abusive registrations. I disagree because all the ones mentioned were not been used in any of the classes that had trade marks, and at least one of the others is the name of the registrants house. Therefore without very in depth research it is very hard to prove abusive registration under the "SIMPLE SYSTEM" that Nominet says it is. If things get complicated and assumptions have to be made then fail the complaint or send it to court.

Again I see registering many domain names as a legitimate business practice, just like the government selling off number plates to dealers, or companies registering 100.s of trade marks for future use, or dealers registering thousands of Limited companies to sell "off the shelf companies with history". If the government allows this, then why shouldn't Nominet. And if they do not like it maybe we should vote for the government to take over Nominet.

**Question 3: Please give us feedback on our proposal that the DRS should include a statement that, where the evidence is finely balanced, the weaker the rights that the complainant has, the less likely it is that abusive registration or use will be inferred.**

I believe that this proposal could have been used in the following cases

[www.bounce.co.uk](http://www.bounce.co.uk)  
[www.finecheeses.co.uk](http://www.finecheeses.co.uk)  
[www.sussexskips.co.uk](http://www.sussexskips.co.uk)  
[www.mercer.co.uk](http://www.mercer.co.uk) not the appeal

Had caution and common sense been used in the above cases they should have gone the other way. i.e the name would not have been transferred

**Fees**

**Question 4: Please tell us which payment option you would prefer and why: no change; a small upfront fee; or loser pays?**

If Nominet works on a cost recovery basis then maybe the fees should be collected before mediation and at the point of filling of the DRS.

Some appeals have obviously been started to get back names from adverse decisions. I feel that if the appeal is won, the original complainant should then have to pay the £3,000 back to the registrant plus £3000 to pay the expert. This would be a good deterrent to a complainant filling a reverse domain name DRS hijack, and stop any "have a go" lawyers or companies taking a chance.

**Question 5: How would you enforce any system of refund (outlined in option 3)? Which section of the community would you imagine would most benefit from a refund system?**

I would enforce my ideas in the way Nominet has all of us to sign up to the terms and conditions, whether we agree to them or not.

**Question 6: Do you have any comments about the proposals to change aspects of the procedure, payment, drafting, appeals, expert decisions, abusive registrations or miscellaneous issues?**

DRS decisions.

If someone brings a foolish DRS against you then decides not to pay for a decision, I think the registrant should be able to pay for it to prove no abuse has happened. This DRS decision could then be used in other DRS cases.

Procedures and experts.

If procedures have not been followed or experts have made a mistake, or found to be in conflict and the resulting DRS decision is proven to be flawed, then the DRS should be struck off the record or wound back to the mediation stage.

ALL initial letters to the registrant should be sent by "courier" and not deemed as service until signed for. Emails sent in "HTML" format (**this is how Nominet sends them**) have a habit of falling foul of todays spam filters. They should be sent in "**plain text**" as per Nominet procedures.

15 working days is not sufficient, as we see there are many registrants living in foreign lands. For example and for the record I live most of the year in the "**Turks and Caicos Islands**" where the normal first class post by which Nominet sends letters, takes approximately "**6 to 8 weeks**" to get there. Couple that with an email not getting past the spam filters and we have a major problem.

Experts should not be allowed to add there own evidence as in the bounce DRS, where the registrant could have proved that this evidence introduced was not true.

Finally I feel that, if a miscarriage of justice has taken place now or in the past the decision should be revoked and started again.