

Summary of changes made as a result of consultation responses

Policy

1.1 Definitions: Bad faith replaced by defined term "Abusive Registration", which means a "Domain Name registered and/or used in a matter which, without due cause, takes unfair advantage of or is detrimental to the Complainant's rights". Change also made in Procedure

1.2 Definition of Contract expanded to include Terms and Conditions and Rules. Change also made in Procedure

1.3 Definition of Domain Name altered to reflect wording in Terms and Conditions. Change also made in Procedure

1.4 Definition of ISP changed to make it clear that the ISP is the agent through whom a domain name is registered, and not the registrant itself. Change also made in Procedure

1.5 Definition of Jurisdiction removed in both Policy and Procedure. Change also made in Procedure

1.6 Paragraph 2(a)(ii): The second stage of the two stage test is changed to "The Domain Name, in the hands of the Respondent, is an Abusive Registration".

1.7 Paragraph 2(b): The reference to the criminal standard of proof is removed. Instead, the complainant is referred to the model submissions, which will take the complainant through what evidence to provide at each stage of the submission

1.8 New sub paragraph 2(c) is added to recommend that both parties use Nominet's model submissions in the preparation of their evidence

1.9 Paragraph 3(a): changes reflect new defined term Abusive Registration

1.10 Paragraph 3: Two new grounds to suggest Abusive Registrations:

1.10.1 pattern of conduct (in combination with other circumstances suggesting bad faith)

1.10.2 independent verification that the registrant has provided false contact details.

1.11 Paragraphs 4 and 4(a): Changes to the title and text reflect the new defined term Abusive Registration.

1.12 Paragraph 4(b), Tribute and protest sites. The following changes have been made:

1.12.1 The scope of this paragraph is now limited to sites "operated solely" in tribute to or criticism of a person or business. The change is intended to preclude sites which have commercial uses.

1.12.2 Where the Domain Name is identical to the name in which the Complainant asserts rights, and has been registered/ used without authority, the burden shifts to the registrant to show that it is not an Abusive Registration.

1.13 Paragraph 5(a): The first sentence remains, and the remainder of the paragraph has been shifted to Procedure paragraph 7(b)

1.14 Paragraph 6(a): The reference to the time limit is deleted (it appears in paragraph 7(c) of the Procedure. References to paragraph 21 of the Procedure, which deals with fees, have been added.

1.15 Paragraph 7(a): Nominet's discretion to edit decisions has been removed.

1.16 Paragraph 8(a), Exclusions of liability: mirrors the wording of section 29 of the Arbitration Act on Counsel's advice. The same changes have been made to paragraph 22 of the Procedure.

1.17 Paragraph 8(b) is deleted, as contrary to public policy.

1.18 Paragraph 9, Appeals. The following changes have been made:

1.18.1 The appeal panel can consider appeals on the facts and on procedure.

1.18.2 Nominet has the ability to refer questions to the appeal panel.

1.18.3 Appeal decisions will be published, and will be there for guidance, but not have precedent value.

1.19 Paragraph 10, Implementation of Expert Decisions. We spell out that we will effect decisions by making any necessary changes to the Register. Sub-paragraphs (i) and (ii) are moved to paragraph 17(c) of the Procedure.

1.20 Paragraph 11, reference to paragraph 10 of the Policy is added for completeness.

1.21 Paragraph 12, Transfers during a Dispute: changes made to reflect the removal of the restriction of Jurisdiction to the Courts of England & Wales, Scotland and Northern Ireland.

1.22 Paragraph 13, Modifications to the Policy and Procedure. Words "Policy and" added to title. Wording adopted from T&Cs. Final word changed from "over" to "concluded". The same changes have been made to the Procedure (paragraph 23)

1. Procedure

- 2.1 Definitions: generally, changes made reflect changes made to Policy Definitions (see above).
- 2.2 Definitions: typos corrected "this Policy" changed to "the Policy and this Procedure".
- 2.3 Definitions: "Reverse Domain Name Hijacking" defined.
- 2.4 Paragraph 2: generally, the word "practical" is changed to "practicable".
- 2.5 Paragraph 2(a)(i): the field names are changed from "organisation or administrative contacts" to "registrant or other contacts".
- 2.6 Paragraph 3: "At times" in the second sentence has been replaced by "In exceptional circumstances". If we have to refuse applications, we will post a message on our web site.
- 2.7 Paragraph 3(b)(i): word limit of 2000 retained, but does not include annexes.
- 2.8 Paragraph 3(b)(v): wording changed to reflect defined term Abusive Registration.
- 2.9 Paragraph 3(b)(viii): wording changed to reflect removal of the restriction of Jurisdiction to the Courts of England & Wales, Scotland and Northern Ireland.
- 2.10 Paragraph 3(b)(ix), exclusion clause: wording mirrors T&Cs and Arbitration Act.
- 2.11 Paragraph 4(c): time limits start to run from the earliest date on which a communication is deemed to have been received.
- 2.12 Paragraph 5(c)(i): word limit of 2000 retained, but does not include annexes.
- 2.13 Paragraph 5(c)(iv): the word "other" is removed. The effect is that the Registrant has to tell us if any legal proceedings have been commenced in connection with the Domain Name.
- 2.14 Paragraph 6(a): The Complainant "may"../submit a reply, but does not have to. The word limit is increased from 1000 words to 2000 words. Under the previous draft the Complainant had to submit either a reply or a form (Form A) to state that the Complainant was not going to submit a reply. If the Complainant failed to file either a reply or Form A within a week, the complaint was deemed withdrawn. In the revised draft, the reference to Form A is deleted. If the Complainant does not submit a reply, the matter will just move on to the next stage, Informal Mediation.
- 2.15 Paragraph 7(b) has been moved from paragraph 5(a) of the Policy.

- 2.16 Paragraph 7(c): "the" Expert has been changed to "an" Expert. A reference to the time limit for paying fees (paragraph 21(c)) is added.
- 2.17 Paragraph 8(a): the ten day time limit for payment of fees has been added from paragraph 6(a) of the Policy. A sanction for failure to pay, which was omitted from the previous draft in error, has been added (deemed withdrawal of complaint).
- 2.18 Paragraph 15: Adherence to the word limits is made stricter, by removing Nominet's discretion. Under the revised draft, Nominet will return to a party any submission which is over the word limit.
- 2.19 Paragraph 16(a): As well as deciding the complaint on the parties submissions, experts may apply any rules and principles of law that he or she deems applicable.
- 2.20 Paragraph 16(d), Three Strikes and You're Out is limited in time: if three decisions are made within a 2 year period, the complainant will be barred from making complaints for a further period of 2 years.
- 2.21 Paragraph 17: the title is changed to reflect the addition of clauses from paragraph 10 of the Policy regarding the implementation of decisions.
- 2.22 Paragraph 17(b): the wording is altered to reflect the removal of Nominet's discretion to edit decisions from paragraph 7 of the Policy.
- 2.23 Paragraph 17(c): the wording is taken from paragraph 10 of the Policy.
- 2.24 Paragraph 18(a): the word "five" is added to "within 5 Days" for consistency.
- 2.25 Paragraph 20: wording changed to reflect removal of the restriction of Jurisdiction to the Courts of England & Wales, Scotland and Northern Ireland.
- 2.26 Paragraph 21(a), Fees. Staged fees scales to take account of disputes involving more than one domain name. However, NB 3(c), which states that the complaint may relate to more than one Domain Name, so long as the names are registered in the name of the Respondent. A statement has been added that fees are set on calculated on a cost-recovery basis and are passed in their entirety to the Experts.
- 2.27 Paragraph 21(d): the reference to complaints involving more than one name has been removed because it is now covered in paragraph 21(a).