

Proposed DRS default transfer process

We are proposing that in undefended DRS cases, the complainant should have the right to a transfer of the domain name registration on payment of a fee of £200 (plus VAT).
Please read our consultation paper for full details of this proposed default transfer process and then answer the questions below.

This document contains respondents between 113 and 113 inclusive.

1. What do you think about our proposal for a default transfer process?

- I agree with the proposal
- I don't mind one way or the other
- I disagree with the proposal

2. Please give your reasons for why you feel this way about the proposal

In its consultation document Nominet highlights an area of the DRS which requires some modification, but the mechanism suggested is, in my opinion, flawed. This may in part be due to insufficient documentation of the exact mechanism proposed, but there are additional objections on points of principle.

The statistics presented effectively demonstrate that cases where no response is made have an increased propensity to be decided in favour of the complainant. It would be surprising if this were not so, as all that is necessary is that the complainant make out a prima-facie case; that is in addition, of course, to paying £750+VAT for the complaint, formulating a complaint document (possibly at greater expense) and waiting for the wheels of justice to turn.

Nominet's proposal (i) substantially reduces the cost to the complainant (cost needlessly incurred where the registrant did not and could not respond), (ii) results in a quicker process, and (iii) potentially obviates the need for the complainant to demonstrate even a prima-facie case (though Nominet is given a discretion to reject these). The first two of these three aims are laudable, the last less so for the reasons set out by David Flint in his response. Nominet's proposals do not appear to relieve the complainant of the obligation to formulate a full complaint where the registrant is clearly uncontactable.

I am not convinced that the statistics themselves demonstrate that the proposal presented will solve the problem illustrated. Some proportion of those complaints that receive no response prior to decision, but still go to decision no doubt do so not because the contact details are inaccurate but because the registrant chooses not to respond. That choice may be made by the registrant on the basis that (i) to file a substantive response may incriminate him (in that in some case the registrant must either perjure himself or provide evidence that could be used against him); (ii) preparing a response has a noticeable cost which may exceed the value of a domain name; in a large portfolio of domain names losing the odd one or two to a DRS challenge might be viewed as an acceptable risk and the registrant might reasonably not wish incur the cost of preparing a response (this could happen irrespective of the legitimacy of the original registration); or (iii) there is always the chance that the expert will not consider that the complainant has made out his case (as has happened e.g. in DRS 00066 Fiat S.p.A and WDOT Internet Limited (fiatfinance.co.uk and others), DRS 00692 City id Ltd, Icon Media Lab Ltd. (cityid.co.uk), and DRS 02735 equazen.co.uk.). Unfortunately, the proposals do nothing to address cases of deliberate non-response by the registrant, as such a registrant could reply (perhaps automatically) "My response is that I put the complainant on proof", which presumably counts as a response, and leaves the complainant in the same situation as before the proposed changes to the procedure. Therefore the only situation where the proposals are likely to make a difference is where the contact details of the registrant are sufficiently inaccurate that the correspondence does not, under the existing procedure, reach him.

Nominet has existing operational procedures within its terms and conditions of registration that permit domain names to be suspended and eventually cancelled when contact information is inaccurate (for instance domains registered to "Mickey Mouse, 1 High Street, Anytown"); this is complaints driven (i.e. reactive to information supplied to Nominet rather than proactive on Nominet's part) and quite independent of the DRS. Nominet states within the consultation that "We will continue to make every reasonable effort to contact registrants when a complaint is received." It is unclear whether the proposed standard of reasonableness here is the same as that applied to the process of contacting a registrant that appears to have inaccurate contact details; I submit that there is no reason for a different standard to be applied. If a different standard is to be applied, this means that registrants whose names are subject to (possibly vexatious) complaints are in effect to be subject to a greater contractual duty to keep their contact information up to date; I fear this may affect legitimate but disorganised businesses just as much as those at whom the measure is targeted.

If no different standard is to be applied, it is unclear why such a large change to procedure is necessary, as the existing two procedures combined are either sufficient or nearly sufficient (see below) without the introduction of a separate test for non-response in the DRS procedure.

I therefore suggest a rather simpler modification to the existing procedure. First, that at any stage after initial contact from the complainant is made, if either Nominet reasonably suspects the contact address to be incorrect or the complainant so requests, Nominet commences the existing procedure for verifying contact information; this would run in parallel with the existing mediation period; clearly, if a response to mediation is received, then the registrant is contactable and the parallel process falls away. Secondly, that in instances where the procedure verifying contact information is running, the drop dead date for filing a DRS complaint be extended until a few weeks after that process has either located the registrant, or resulted in the suspension of the domain name concerned (though there would be nothing preventing the complainant from filing a full complaint in the normal course). Thirdly, that in the event that a domain is suspended due to poor contact information, and only in that case, that the 'default transfer' route be made available, subject to the complainant signing a form verifying that they both have rights in the name and believe the registration to be abusive setting out briefly for what reason; this could be a simple 'tick-box' form, possibly containing an indemnity in Nominet's favour; I believe such a safeguard is necessary to address the problems highlighted by David Flint in his reply. On submission of such a complaint, the domain name would be transferred after a minimum period (to be determined) of suspension during which no response from the registrant was received. If a response was received during this period, then the normal rules would apply. Under such circumstances, it would be unnecessary to have 'claw-back' provisions for the registrant, who would have lost the domain in any case under the terms and conditions. This would also avoid the requirement for the complainant to prepare a case (possibly at considerable expense) against a registrant that may not be contactable.

3. Please give us your contact details

Name

Alex Bligh

Company Name

Silverscale Associates Ltd

Email address