

**Second Nominet consultation**  
**Joint response from Pinsent Masons and Royal Bank of Scotland Group plc**

Nominet is 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).

**Question 1: What do you think about our proposal?**

We disagree with the proposal.

**Question 1: Please give your reasons.**

**(a) We consider that Nominet should introduce a summary claim procedure**

We support a fast-track system for domain name disputes that simplifies the DRS process and reduces a claimant's costs for uncontested, no-response cases. However, we do not support Nominet's proposal in its current form.

A more efficient process is achievable.

Under Nominet's proposal, a DRS claim can be filed upon payment of a nominal fee of £10 plus VAT. If uncontested, the complainant can transfer the name registration on payment of a fee of £200 plus VAT. If contested, the DRS process is engaged as at present, with an expert's adjudication costing £750 plus VAT.

Nominet's proposal requires a complainant to file a complaint in full, including all arguments and evidence as to rights and abusive registration, before knowing whether or not the claim will be contested by the registrant. If the registrant does not contest the claim, the claimant will succeed without the merits of the case being assessed. If the registrant does contest the claim, the case is referred to an expert for adjudication. The claimant has no right at this point of proceedings to make additional submissions. Consequently, any complainant would be well-advised to file comprehensive arguments and evidence.

Rights-holders wishing to challenge abusive domain name registrations currently have to pay the fee of Nominet's appointed expert and either the fees of external legal advisers or the cost of their own management time if they construct the claim in-house. Nominet's current proposal reduces the appointed expert fee by £540 (i.e. £750 less the transfer fee £200 and the nominal filing fee of £10). It does not affect the costs of external advice or management time. Yet if the complaint is uncontested the detailed submission will not even need to be read and the effort and cost put into it will be rendered nugatory.

We recommend a system that lets the brand owner make a summary claim.

A summary claim would be a statement that a complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and an accompanying statement that the Domain Name, in the hands of the Respondent, is an Abusive Registration.

To deter rogue claims, prima facie evidence of Rights in a name or mark which is identical or similar to the Domain Name must be submitted with a summary claim in the form of a trade mark registration number. Additional evidence would not be required at this stage, though holders of only common law rights in a name or mark will be excluded from the fast-track process.

If uncontested, the name would be transferred, subject to safeguards (addressed below). If a registrant wishes to contest the complaint, the registrant files a brief notice of intention to defend. The claimant is then given a period of time to prepare a complaint in full, with supporting arguments and evidence. The registrant is then given a period of time to construct a defence.

The cost of making a summary claim should be £200. If uncontested, there should be no additional fee to transfer the registration. We do not see a benefit in a £10 nominal filing fee if a

transfer costs £200. If the minimum cost is to be £200, that may as well be payable up front. We believe that the higher filing fee is more likely to deter rogue complainants who might otherwise make multiple speculative complaints at £10 a go.

**(b) Nominet should introduce an additional safeguard**

We support the safeguards proposed in Nominet's proposal. We recommend one additional safeguard.

For avoidance of doubt, this recommendation is intended to complement Nominet's current proposal and our own recommendation for an alternative summary claim procedure.

Nominet has recognised that in order for its fast-track proposal to succeed there must be measures put in place to protect legitimate domain name holders from 'reverse hijacking' by unscrupulous operators.

We are concerned that some registrants do not keep their contact details up to date. A system that allows names to be transferred without consideration of the merits of a claim creates a risk that some names will be taken from legitimate owners who fail to keep their contact details up to date. If the domain name is in use, the grace period will protect the registrant. The loss of an unused domain name, such as a defensive registration, is less likely to be noticed.

It is a condition of registration that contact details are kept up to date. However, there has been little or no enforcement of this condition to date and the consequences of letting details lapse have been mild. The proposed change is significant and Nominet must make every effort to warn registrant's of the higher risk presented by out of date contact details. We consider that the only point at which the change can be notified effectively is at renewal of a domain name. It should be addressed in the conditions and highlighted within a separate notice as part of the renewal process (i.e. it is not sufficient to expect registrants to find the notice in a link or buried within the full set of conditions).

**Contact details:**

Name                      Struan Robertson  
Company name        Pinsent Masons  
Email address

Name                      Sinead Byers  
Company name        Royal Bank of Scotland Group plc  
Email address