

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 132 and 132 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

The Default Transfer proposal may seem attractive on the surface but dig deeper and you will find it is fundamentally flawed. These are the reasons I'm against the Default Transfer proposal:

1. Current No response & No Action Cases

In the following cases there was "no response" by the respondent, yet there was still "no action" in the DRS case:

DRS 04882 athletics.co.uk
DRS 04683 g4s.co.uk
DRS 04635 martinyale.co.uk
DRS 04129 royalb-of-scotlandonline.co.uk
DRS 03999 sublinsport.co.uk
DRS 03658 spafinders.co.uk
DRS 03657 spafinder.co.uk

Please explain to me why under a default transfer process should a complainant get the names above when they haven't demonstrated they have rights to the name or the respondent hasn't been using it abusively? Under the current system the registrant got to keep the name. In my opinion every DRS case needs to be looked at by an independent expert before a decision can be made to transfer a domain name.

2. No Minimum response

There is no definition of a minimum response under the DRS. Even if Nominet introduces one under this policy will we now see responses like "I disagree with everything in these allegations" or "no comment" or even "HAHA now you got to pay £750 instead of £200"? I believe the "default transfer process" will provoke people to reply like this and it will turn very ugly indeed. Someone could even setup defaultreply.co.uk with an email form template. So what? you might say....however what I would also like to know is if the respondent makes a response like that, is it as bad as not replying at all? We all know not replying is not a good defense, however does replying like that mean your "in contempt" of the DRS process? Or are we just back to square one with the problem unsolved?

3. It doesn't answer the problem

It is not as simple as the respondent doesn't want to reply.
If you look at those in the "3 cases respondent table" who are most likely not to reply:
<http://www.nic.uk/disputes/drs/decisions/3cases/>
These are clever wealthy individuals who know how to defend themselves if necessary.
They will respond and with some force if they feel they need to.
For example: DRS 03676 Robert Morrison privalige.co.uk Appeal
Maybe it is the case they do not want to get their comments Googled for all to see?
Also under the default transfer system will the cases still be listed online? Will we have a 3 cases default transfer table?

I agree with DRS expert David Flint when he says: "the thought of automatic forfeiture for non-response is, in my opinion, not a proportionate response to the problem".

Also let's say cyber squatter A has a high value PPC traffic trademarked domain registered to a PO Box/overseas Address. Another Cyber squatter B then decides he wants trademarked domain and files a DRS from his PO Box/overseas address. He also creates a company similar to the trademark domain and sends it on behalf of the company. Cyber squatter A doesn't respond because his address is fake/never checked and Cyber squatter B who doesn't have to prove rights to the name gets high value PPC name for £210.

4. It puts large domain portfolio owners at risk.

If you are someone who has registered a large number of high value generic domain names in the past your names are under greater risk from this default transfer process. What happens if they start receiving high volumes of DRS letters constantly month after month because of the "default transfer process"?

Nominet may want to make the DRS cheap for everyone however for those people their solicitors bills will go through the roof. Even I myself could have a go at "andrew.co.uk" for example in the hope the registrant wouldn't reply. Recently we have also seen a rise in people creating limited companies so they can register .ltd.uk domain names. Does this provide people with enough justification/rights to go after the .co.uk version? If someone has @ Company Ltd or even Company Ltd how can Nominet reject a DRS on company.co.uk?

5. Inconsistent transfers.

I feel the "default transfer process" will put Nominet in a difficult position legally.

With clear typo squatting or cybersquatting domain names like DRS 04630 thomascookgroup.co.uk Nominet could transfer the domain names without any hassle. However what happens when someone gets a default transfer on a high profile company domain like google.co.uk (someone far bigger than Nominet loses a name) or a high value generic domain name like business.co.uk? Will Nominet carry out the default transfer policy then?

If they do will they get a High Court Injunction? How can Nominet remain impartial when deciding if a name should be transferred or if a DRS case is to go ahead?

6. Not always possible to contact the registrant

Of course all registrants should keep their details up to date. However often there are reasons why this is not the case and why they may never get the DRS email/letter. Maybe they have moved house/office? Maybe their web designer registered the domain? Maybe they are on holiday? Maybe the international post takes 2 weeks to get there? We have already seen this happen in the bounce.co.uk case where Nominet has had to make a public apology for poor service. Do we really need to go through all this again?

Also what happens if the respondent has a disability, can't read, English isn't their first language or can't afford representation?

7. It shifts the cost on to the respondent and favours the complainant

If the complainant uses a city law firm to make the DRS complaint and sticks in a few folders worth of annexes.... It will cost the respondent a substantial amount to hire a lawyer to respond and fight the case. This policy shifts the cost on to the respondent and is in favour of the complainant. Under the current DRS system one doesn't have to respond to win the name.

8. Consultation document error

Nominet have admitted an error with the consultation document on Nom-Steer and have tried to correct this with confusing language. The corrected figures given are still misleading. I agree with the analysis on this issue provided by Jim Davies and Dr Nick Flowers.

You also have to remember if it wasn't for members like myself who complained about the DRS consultation findings and in doing so set up www.drsconsultation.co.uk we wouldn't even be having this consultation!

I also don't like the way a number of graphs to do with default transfer were shown in a presentation by Nominet in South Africa <http://www.domaindisputes.co.za/content.php?tag=25> and then later used as justification of the policy to members and the PAB.

9. Argument based on cost

People seem to be suggesting that £750 + VAT is too much for a complainant to pay when the respondent doesn't bother to respond. In a DRS case the expert gets £750 + VAT for spending a few hours of their time reviewing and writing the response. Under a "default transfer" the expert wouldn't see the case at all and the money (£200 + VAT) will go directly to Nominet. Are we going to risk the reputation of the whole DRS process for the sake of £550? Which actually improves the quality of a complaint in the first place?

Also a £10 upfront fee is ridiculously small and is not in line with a large upfront fee wanted by the majority in the DRS consultation to improve the quality of complaints.

10. Argument based on "Default judgment" court process

Nominet prides itself on the DRS being an alternative to the courts.

However by imposing a "default transfer" and trying to copy a default judgment it is becoming one. It also leaves itself open again that Nominet should become judicially reviewable like in the itunes.co.uk case. Where the judge actually said "I express no view about whether the defendant is amenable to judicial review". The proposed default transfer system puts too much discretionary power into the hands of Nominet.

3. Please give us your contact details

Name

Andrew Bennett

Company Name

Whois-Search.com

Email address