

Domain names registered to dissolved registrants

Contents

1. Overview	1
2. Background.....	1
2.1 Context	1
2.2 Our previous practice (pre-October 2004)	2
2.3 Current Practice	2
2.4 Cases involving dissolved registrants	2
2.5 Problems with the current practice.....	2
2.5.1 Reactive discovery	2
2.5.2 First come, first served.....	3
2.5.3 Proactive notification of dissolution – a new cottage industry	3
3. Operational improvements	3
3.1 Notification of contract termination.....	3
3.2 Changes to Automaton error messages	3
3.3 Optional suspension.....	3
4. Policy change.....	4
4.1 PAB resolution.....	4
4.2 Proposed solution.....	4
5. Recommendation	5

1. Overview

At its May 2005 meeting the PAB asked the Executive to review its practice in relation to domain names registered to one party that have been in the exclusive use of another party and where current policy would require the cancellation of the name. This paper presents a possible solution.

2. Background

2.1 Context

There are several reasons why a company may be dissolved or struck off the Companies House Register, including: because it has ceased business but does not have the assets to justify a formal liquidation, if the Companies House Registrar has reason to believe that it is not carrying on business or in operation, for failing to comply with the minimum requirements set out in the Companies Act (e.g. failing to file accounts), following a members voluntary liquidation or at the end of insolvency proceedings. In the latter case the final striking off usually occurs several years after the company has appointed an Insolvency Practitioner.

Figures available from Companies House suggest that in the last six months just less than one percent of the companies listed were dissolved. This equates to an average of just over 17,500 dissolutions each month.

It is common practice for contracts to terminate on dissolution of one of the parties to the contract. While a domain name is nothing more than a service contract, we recognise that domain names associated with web sites and email addresses can be enormously valuable to the users of the name. The difficulty arises where

either a third party has enjoyed the use of the domain name, despite the registration of the name for another party, or where associates (e.g. former directors) of the company listed as the registrant have continued to use the domain name after dissolution, often unaware that they no longer have any contractual right to the name.

2.2 Our previous practice (pre-October 2004)

Our approach to domain names registered to dissolved companies changed in October 2004 when the latest terms and conditions were introduced. Prior to the change the contract was silent on what happened if the registrant was struck off. As a result we acted as though the contract of registration continued and all such cases were referred to the Treasury Solicitor, on the basis that the domain name had passed to the Crown. If the Treasury Solicitor concluded that the domain name was an asset of the company at the point of dissolution, the domain name would be auctioned on their web site. In some cases this resulted in very high prices being paid for domain names, in others, if no one bid for the domain name, it would subsequently be cancelled.

Alternatively, if the Treasury Solicitor decided the domain name was not an asset of the dissolved company, because the registrant name was recorded ambiguously, or because the Treasury Solicitor accepted a third party's claim that it was transferred prior to dissolution, the resolution came down to a judgement by Nominet. These cases were seldom straightforward and it was hard to maintain a consistency of approach.

The terms and conditions were changed in response to a number of registrant problems that had arisen with the previous terms.

2.3 Current Practice

Currently, (and as a result of concerns raised by the PAB and others at the last consultation on the terms and conditions in 2004) the Nominet contract treats individual registrants (whether sole traders or not trading) differently from companies and other commercial registrants.

- When an individual dies, there is a grace period of up to a year in which the Executor or Administrator can sell or use the domain name in the same way as the deceased registrant. At or before the end of that year, the domain will be cancelled (unless it has been transferred in that time) – see clause 18,
- When a company ceases to exist, the contract immediately ends automatically – see clause 19.

In practice, of course, Nominet is not always aware of this, and so (at clause 38) we state that maintaining the domain on the register does not grant rights to the person using it, simply because Nominet is unaware of the change.

The current terms and conditions have created a level of certainty that generally works better. We still accept vesting orders, if obtained. However, we recognise that in some cases the new terms **have caused considerable inconvenience for domain name users.**

2.4 Cases involving dissolved registrants

Currently there are four main types of cases with dissolved registrants:

- Where someone who thinks that they are the registrant attempts to do a transfer, tag change etc.
- Where we are contacted by the user of the domain who wants to “correct” it to their name.
- Where a third party tells us of the dissolution because they want us to cancel the domain name so that they can have a chance to register it
- Where a third party does not realise that the registrant is dissolved but brings the domain to our attention for another reason (e.g. DRS)

2.5 Problems with the current practice

2.5.1 Reactive discovery

While the new system works well for cases where the dissolution of the registrant comes to our attention because of a positive act (e.g. a third party starts a DRS case against it) it does not work so well when our

discovery is reactive (e.g. because of an attempted transfer, tag change etc.) where the current user may not have realised that “their” domain was registered to a dissolved company. On being told this, and told that they should (a) allow it to be cancelled or (b) get a Vesting Order, they are often dissatisfied. There is the impression that they have been penalised for contacting us. It can also lead to domains being cancelled without notice, because the third party using the domain name is not be listed on the register and does not have a contract with us.

2.5.2 First come, first served

Once a domain name has been marked for cancellation we are often asked to supply the domain name user with the date and time of cancellation so that they can reduce the likelihood of another party acquiring the domain name. We are conscious that under the first come, first served system, we can only give very general advice on when the cancellation will take place. Even if we give the date of cancellation the actual time of cancellation is entirely random and a desirable name will normally be picked up within seconds by an automated system.

2.5.3 Proactive notification of dissolution – a new cottage industry

The current system has given rise to a new phenomenon, the practice of scouring Companies House for dissolved companies, identifying domain names registered to these companies, providing lists to Nominet and therefore causing the cancellation of domain names in the hope that the party reporting the dissolution of the registrant will be able to secure the domain name.

3. Operational improvements

We have identified a number of operational changes that we will implement to make the current system work better. These are not policy issues and therefore are presented for information only and to inform the policy discussion outlined below.

3.1 Notification of contract termination

When we become aware of a domain name registered to a dissolved company we will issue the following notifications:

- Email notification will be issued to the listed registrant using the contact details available on the register
- Email notification will be issued to any potential users of the domain name using contact information available from the homepage or contact page of the web site and by emailing generic email addresses (e.g. postmaster@domainname) – this is similar to the default notification processes in the DRS.
- Email notification will be sent to the current tag holder at the notification email address supplied. This will currently be a manual email from the support advisor handling the case but in the future we would hope that this will be a machine readable message to enable automated processing by the tag holder.

3.2 Changes to Automaton error messages

Once a domain name has been identified as registered to a dissolved company a flag is set against the domain name to prevent future renewal. If an attempt to is made to renew a domain name flagged in this way the renewal is rejected and an error message is returned to the tag holder. However, the current error message is unhelpful. We will change the error message to make it clear that the domain name cannot be renewed and why.

3.3 Optional suspension

Our practice has been to cancel domain names registered to dissolved companies without a period of suspension. This was introduced because in many cases the former user of the domain name does not want the domain name to be inaccessible for a period of time and would rather attempt to re-register the name. In

addition suspension followed by cancellation would be likely to alert more people to the imminent cancellation of the domain name thus reducing further the domain name users chances of re-registering.

However, we recognise that where, for whatever reason, the user of the domain name is not aware of the imminent cancellation of the name a period of suspension would serve to alert the user. We therefore propose to make suspension prior to cancellation our standard practice unless we are explicitly asked not to suspend by the domain name user.

4. Policy change

In addition to the operational changes outlined we could implement a policy change, which effectively allows an existing, but uncontracted registration to be adopted by the party that is using it (but has no contract with us), and provide a mechanism to change the registrant field to reflect this. The PAB is asked to consider this policy change.

4.1 PAB resolution

At their May 2005 meeting the PAB agreed the following resolution:

The PAB resolved to recommend to the Board that it present to the PAB a review of its current policy regarding situations where (a) a domain name has been registered by one party, (b) it has been in the exclusive use of a second party, (c) current policy would require the domain name to be suspended or cancelled, (d) the second party can adduce evidence that the domain name was originally meant to be registered in its own name, and (e) no party contests this.

4.2 Proposed solution

In response to the PAB's resolution the Executive have now completed a review of the current mechanism for dealing with domain names registered to dissolved registrants. This review has also considered customer feedback and non-steer discussions on this topic.

The Executive propose that we should offer certain parties the opportunity to take on the domain name without the explicit consent of the defunct registrant, but only if they can demonstrate prior use of the name.

In practice this would mean that the user of the domain name would be given three options:

- apply to take over the domain name
- proceed to cancellation (and, if desired, seek to obtain registration thereafter), or
- obtain a Vesting Order (and refer them to the Treasury Solicitor's note)

We do not propose to set out the operational system for dealing with these cases in this paper, but in broad terms the organisation seeking to take over the domain name would have to:

- demonstrate that the listed registrant is now dissolved
- provide evidence of their established use of the domain name, this may include:
 - order forms and invoices relating to the domain name
 - evidence of historical use of the domain name e.g. historical web pages showing clear use
 - the ability to receive and respond to emails sent to an email address at the domain name
- certify that there is no dispute or third party claim that they are aware of
- provide an indemnity in the event that a third party can demonstrate a claim to the name

The process would be time limited and the organisation would be required to provide these details in a structured way. The organisation would also be required to pay any outstanding registration or renewal fees associated with the domain name. The transaction would be chargeable and it is anticipated that the fee would be similar to the current transfer fee (£30).

We would not provide an appeals procedure in the event that we decided against a request to take over the domain name. Instead, the applicant would need to consider which of the other options to take, namely cancellation or a vesting order.

- Advantages
 - We would be allowing a process that is quick and cheap for some cases where the veracity of the claim is clear.
 - We would be offering a clear process with time limits, and where we are asking for clearly defined evidence/documents.
- Disadvantages
 - As with any change to a domain name it runs the risk of fraudulent documents
 - The only other instance in which we recognise a third party's rights to a domain name is through the DRS. Decisions under the DRS are made by independent experts and not by Nominet staff.

It should be noted that this proposal differs from the PAB's resolution in that it does not require the registration to have been in the exclusive use of the domain name user. This is a deliberate change intended to capture those situations where the domain name has been used by a company and then subsequently used by associates (e.g. former directors) of the company listed as the registrant.

5. Recommendation

The PAB is asked to consider the following resolution:

"The PAB resolves to recommend that the procedure for dealing with domain names registered to dissolved registrants be changed such that a third party organisation that can demonstrate established use of the name is permitted to take over the name."