

DRS Consultation

Firstly, I would like to make it clear that I believe there is a much needed place for Nominet's Dispute Resolution Service. Having said that I believe currently that the DRS has many problems which may hopefully be resolved through this consultation.

Question 1

Please give us feedback on our proposals that the DRS should include: (a) protection for words which have a distinctive character as a result of the use made of them. (b) dictionary words which are protected by registered trade marks or good will.

A. Single dictionary words or family names should not be protected. Previous damaging DRS decisions (damaging to Nominets total credibility) regarding "Bounce" and "Game" must be avoided in order to give a logical structure to potential DRS cases. Many previous DRS decisions are used as "case law" and allowing such travesties of justice to have ongoing implications for future cases must be resolved now.

Question 2

Please give us your feedback on our proposal that the DRS should include the following as examples of things that are not necessarily evidence of abuse: · a general offer to resell a domain name · sale of traffic (i.e. visitors to the domain name) · registering many domains

A.I strongly agree that the DRS should not consider the general offer to resell a domain name, the sale of traffic or a large domain name portfolio as evidence of an abusive registration.

Question 3

Please give us feedback on our proposal that the DRS should include a statement that, where the evidence is finely balanced, the weaker the rights that the complainant has, the less likely it is that abusive registration or use will be inferred.

A. I suggest a list of requirements before a DRS case can be brought.

The Complainant should provide evidence that all the following factors have been satisfied:

That the Complainant has a trademark on the exact phrase

That the Complainant currently trades or does business under the name in dispute

That the Complainant has evidence that the Respondent approached them with an offer to sell

That the Complainant tried to purchase the domain when it was available under Nominets first come first served policy.

That the Complainant has contacted the Respondent directly in order to resolve the matter before escalating the matter to DRS

Any evidence submitted using anonymous email addresses to gather information from the respondent will be disregarded.

Complainants should have to satisfy the rights test before the evidence of an abusive registration may be considered. If the complainant can not prove rights to a domain name the case should be dismissed at that point. I agree that if the complainant's rights are weak, it should be less likely that registration would be classed as abusive.

Fees

It has always been free to file a DRS complaint and the money paid for expert decisions is passed on to the independent experts. We do not charge for our administration and mediation services. Some people have suggested that the free system encourages poor quality complaints and we should perhaps charge an upfront fee.

Our proposed options on fees are:

1. No change
2. Introduce an upfront non-refundable fee (£50-100) and reduce the expert decision fee accordingly, to keep the change cash-flow neutral
3. Introduce a system where the losing party pays for the decision

Question 4

Please tell us which payment option you would prefer and why: no change; a small upfront fee; or loser pays?

A. I believe an up front fee is essential to prevent complainants wasting the time of Nominet and the respondent. From the given options I would agree with a 'small upfront fee'. However I would suggest this fee to be as high as possible to ensure that the complainants are not timewasters.

A. I strongly disagree with the 'loser pays' option. Large Corporates with deep legal coffers would have an unfair advantage over individuals. The mere threat of losing £750 may be sufficient to force an individual to release what was a genuinely registered domain. This would go part way to creating a new opportunity for the IP lawyers of "Financial Domain Hijacking"

Question 6

Further proposals

Currently abusive registration can be proved by either the respondent having his domain parked on a portal where advertisements are shown for the complainant (and the complainant protests that there is no link between him and the respondent and is therefore misleading, or, there are no links to the complainant but there are to his competitors, in which case he is losing business. Complainant having cake and eat it methinks. This no-win scenario for the Respondent must be addressed.

The current system of the Complainant having opportunity to put together a case over many months and also have the opportunity to reply to any response from the Respondent favours the Complainant. The Respondents have only one time limited attempt in order to defend themselves. The Complainants have basically " 2 bites of the cherry". Either the Complainant AND Respondent have one opportunity to put their case or two. Whichever it is it must be the same for both parties.

I would strongly argue that mis-spellings should not be considered for abusive registration.

Nominet have opened up potential miscarriages of justice by deciding that a 2 character difference between 2 domains is still similar enough to be abusive ?(Privilege and Privalige

DRS Number 03676 The Royal Bank of Scotland Group Plc, Direct Line Insurance Plc and Privilege Insurance Company Limited -v- Robert Morrison)

This means that Nominet may consider BAG and FAN to be similar enough to create confusion ? The question that needs to be asked is at what point does a word cease to be a mis-spelling and be a totally separate word ?

I see no point in renaming the term 'Abusive Registration' to 'Unfair Registration' – the existing term is recognised and is adequate.

I support any attempt to rewrite any policy in 'Plain English'.

I support any information which shows how experts review and weight evidence. This might help us all understand some of the decisions made and avoid potential abusive registrations in the future.

I do not believe new issues or new evidence should be raised by experts – they should act totally impartially and should not bring new evidence which supports the case of either party.

I do not believe that 'a likelihood of confusion' should be used as evidence of an abusive registration.

I agree that a significant delay in the start of a DRS case after domain registration without adequate explanation should weaken the case of the complainant.

Question 7

Additional changes

I disagree totally that having 3 abusive registrations is in itself proof of abuse. Some registrants have many thousands of domains therefore 3 abusive registrations would only be a small percentage of otherwise bona fide domains. I suggest a percentage rule whereby abusive intent may *possibly* be assumed if the registrant has 3 abusive registrations per 1000 domains owned.

Ray Broughton
Registrant