

**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.**

I agree there should be protection for words which have a distinctive character however the "use" of the domain is also important here. However let's compare the following UDRP and DRS case:

WIPO Case No. D2006-1194 ryanaircampaign.org  
<http://www.wipo.int/amc/en/domains/decisions/html/2006/d2006-1194.html>

DRS 3655 ryanair.org.uk  
[http://www.nominet.org.uk/digitalAssets/8453\\_ryanair.pdf](http://www.nominet.org.uk/digitalAssets/8453_ryanair.pdf)

In the DRS case the respondent lost the domain name, as the complainant had a trademark on "Ryan Air". However in the WIPO case with the added word "campaign" (with the same website) the respondent got to keep the domain name.

What would happen under this proposal if the name had been ryanaircampaign.org.uk? I.e. A .uk sucks site. Doesn't Nominet support "freedom of speech" on the internet?

I also strongly suggest Nominet looks at the following on going High Court cases:

SubwayUncovered.co.uk [http://www.theregister.co.uk/2007/01/25/subway\\_domain\\_dispute/](http://www.theregister.co.uk/2007/01/25/subway_domain_dispute/)

VirginTV.co.uk <http://business.timesonline.co.uk/tol/business/article626377.ece>

And find out why the complainants choose the High Court (first) over the DRS.

**(b) Dictionary words which are protected by registered trade marks or good will.**

In a recent DRS case the complainant claimed rights to the dictionary word "mercer" and won the case:

DRS 03733 mercer.co.uk  
[http://www.nominet.org.uk/digitalAssets/8924\\_mercer.pdf](http://www.nominet.org.uk/digitalAssets/8924_mercer.pdf)

However on appeal the case was overturned and the respondent got to keep the name:

DRS 03733 Appeal  
[http://www.nominet.org.uk/digitalAssets/10429\\_mercer\\_appeal.pdf](http://www.nominet.org.uk/digitalAssets/10429_mercer_appeal.pdf)

Why was the appeal therefore necessary? What needs to be changed in the DRS for the domain to have been kept the first time around? Would the appeal still have been overturned under this proposal?

Also in the DRS appeal case of bounce.co.uk the experts found:

*"The mere fact that a generic word happens also to be a trade mark cannot lead to the trade mark owner monopolising all uses of the word. Certainly for the purposes of complaints under the DRS Policy there has to be something more."* DRS 03316

[http://www.nominet.org.uk/digitalAssets/10081\\_bounce\\_appeal.pdf](http://www.nominet.org.uk/digitalAssets/10081_bounce_appeal.pdf)

So what could have the respondent have done to keep the dictionary word domain bounce.co.uk? A website selling bouncy balls? A website offering email filtering?

Also take a look at the following UDRP cases where the SAME respondent got to keep the names:

Adrforum FA0611000843597 Pig.com

<http://domains.adrforum.com/domains/decisions/843597.htm>

WIPO Case No. D2005-0241 elephant.com

<http://www.wipo.int/amc/en/domains/decisions/html/2005/d2005-0241.html>

Under this proposal and if these domains had been .co.uk would the respondent have got to keep them?

I believe someone has the right to keep a dictionary word domain IF the person does not have something on the website that infringes the complainant's trademark.

I also believe someone has the right to register a dictionary term for no-use and just to keep it as an investment.

**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:**

I would like this proposal to be implemented however I don't want the term "domainers" to be used. How are domainers different from any other stakeholder or registrant? Domain Name Aftermarket is a better term to use.

**- A general offer to resell a domain name**

The important issue here is for Nominet and the DRS experts to acknowledge a domain has a value.

If Nominet auctions of two letter .uk domains for charity don't they become 'domainers'?

How will Nominet sell trademark names like BP.co.uk FT.co.uk BA.co.uk AA.co.uk?

How will they put a value on names like MK.co.uk 'Milton Keynes'?

Will they let some names go for a lower price like ZQ.co.uk?

On my site [www.domain-shop.co.uk](http://www.domain-shop.co.uk) I have egg.org.uk listed for sale as "Make Offer".

I feel I should be able to list a name without the need to worry about it being used in a DRS case against me. I could also list it with the thousands of other .uk domains on auction site like [www.afternic.com](http://www.afternic.com) and [www.sedo.com](http://www.sedo.com) or even [www.ebay.com](http://www.ebay.com)

Equally what is stopping any registrant with just one domain name hosting a page that says "this name is for sale" or replying to a cease and desist email/letter with the same message?

### - Sale of traffic (i.e. visitors to the domain name)

How will this be used in DRS cases? I.e. "Nominet says it is ok for me to park a domain".

Even registrars themselves these days park newly registered customer's domains with their own parking pages. However it's the registrant's job to check the content.

I feel it's the actual content of the parking pages that we should be looking at here rather than the accept concept of parking a domain.

For example on [www.egg.org.uk](http://www.egg.org.uk) my registrar has set parking pages for cooking and poultry keywords. Under those keywords I would expect to keep the domain name as I believe I'm not infringing anyone's trademark. However if the adverts displayed were for "credit card" adverts then I would expect to lose the domain name.

I also feel it necessary for Nominet to work with the parking companies like Sedo, TrafficParking, Google, Yahoo, Namedrive (most are Nominet members) to find better ways to prevent trademark names showing infringing content in the first place. You will also find the terms and conditions of the parking companies actually state that trademarked names should not be parked and dictionary terms like word.co.uk should show a general search page.

Also anyone with a website (not just domainers) can also use PPC adverts on their site for example if they sign up to Google AdSense at [www.google.co.uk/adsense/](http://www.google.co.uk/adsense/)

Finally as many parking pages or PPC adverts are automatically generated by the advertiser, I feel it necessary for the respondent during DRS mediation to have the chance to resolve the issue by removing the adverts.

### - registering many domains

Under a first come first serve policy I feel people should be allowed to register as many domain names as they like. After all Nominet does not have a Less-warehousing policy like the Norway registry <http://www.norid.no/regelverk/rammer/kvoteanalyse.en.html>

Also how many domains do you class as "many"? I believe 35,000 is the biggest portfolio of .uk domain names?

The DRS also uses a phrase called "pattern of abuse". IP lawyers and DRS experts tend to use the PRSS system to hunt for trademark names a person has (even if the name hasn't been involved in a DRS).

For example in the recent DRS case bounce.co.uk the experts write:

*"the fact that the Respondent has amongst his portfolio of domain names a number of names featuring the well-known trade marks of others – he therefore has a track record of hijacking other people's names."* DRS 03316

[http://www.nominet.org.uk/digitalAssets/10081\\_bounce\\_appeal.pdf](http://www.nominet.org.uk/digitalAssets/10081_bounce_appeal.pdf)

Yet that is the only DRS case the respondent has ever had?

Equally you could apply the same principle to companies that make the most DRS complainants. The Royal Bank of Scotland Group Plc (RBS) seems to be going after everything at the moment: <http://www.nominet.org.uk/disputes/drs/decisions/decisions4001/>

However in the DRS case privalige.co.uk RBS only won the name on appeal. Many DRS cases can lead to the complainant thinking they have rights to every name.

The respondent Robert Morrison also appears 12 times on the 3 cases respondent table:

<http://www.nominet.org.uk/disputes/drs/decisions/3cases/>

Therefore isn't it time the DRS experts made its decisions on a case by case basis? I.e. only taking into account the domain name in question.

Only in a case like DRS 04135 aliance-leicestercommercialbank.co.uk + 66 other names should it apply:

[http://www.nominet.org.uk/digitalAssets/10610\\_aliance-leicestercommercialbank\\_66.pdf](http://www.nominet.org.uk/digitalAssets/10610_aliance-leicestercommercialbank_66.pdf)

**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.**

I believe this proposal could have been used in the following DRS cases:

DRS 3747 Finechesses.co.uk

[http://www.nic.uk/digitalAssets/8799\\_finecheeses.pdf](http://www.nic.uk/digitalAssets/8799_finecheeses.pdf)

DRS 03886 SussexSkips.co.uk

[http://www.nic.uk/digitalAssets/9598\\_sussexskips.pdf](http://www.nic.uk/digitalAssets/9598_sussexskips.pdf)

Had this proposal been implemented at the time would the DRS cases have gone the other way? I.e. the respondent got to keep the name.

**Question 4: Please tell us which payment option you would prefer and why: no change; a small upfront fee; or loser pays?**

**Option 1. No change.**

Out of the three proposals this is the one I prefer. This is because I believe the current £750 + VAT paid by the complainant means:

- Domain names can be sold for say £500 without going to a DRS.
- The DRS doesn't go ahead until the complainant has paid.
- The DRS expert will also get paid and a reasonable sum for their time.
- It stops vast amounts of (poor standard) DRS cases from being submitted.

I did wonder however why the appeal fee isn't three times that of the DRS fee (three experts) however I'm told it is because an appeal takes longer. But £3000 + VAT is still a lot of money for an individual to pay.

However there has only been 15 appeals ever submitted, would a lower fee encourage more appeals? Should people accept what the expert says the first time around?

**Option 2. Introduce an upfront non-refundable fee**

I accept that an upfront fee may increase the quality of DRS complaints.

However since:

- The DRS fee goes entirely to the expert
- The payment of the fee is voluntary, but if you do not pay it the case does not go ahead.

I feel the complainant should only pay the full price at the time of the DRS decision.

**Option 3. Introduce a system where the losing party pays for the decision**

This is the most shocking proposal I have ever heard from Nominet in recent times.

One day a registrant could register a name for £5 and a month later they could get a DRS bill for £750 + VAT?

How would Nominet actually enforce this proposal and make them pay the "fine"?

Even Nominet members get DRS cases from time to time will it take its own members to court?

In cyber squatting cases like DRS 04135 alliance-leicestercommercialbank.co.uk + 66 I agree the registrant might 'think twice'. However I believe it would just cause them to register names like this in fake details so they can not be traced.

Also in most recent DRS cases like bounce.co.uk mercer.co.uk finecheeses.co.uk the outcome is not clear (they are not outright cyber squatting cases). The loser in these types of cases might not be very happy to pay the bill and may then take Nominet court.

The only people I think this kind of system would deter (along with a policy of taking them to court) are the people in the 3 cases respondent table:

<http://www.nominet.org.uk/disputes/drs/decisions/3cases/>

**Question 5: How would you enforce any system of refund (outlined in option 3)? Which section of the community would you imagine would most benefit from a refund system?**

This is just another example of how "loser pays" would be a legal minefield for Nominet.

If someone loses a DRS case but wins on appeal will they have to pay the £750 and the £3000? Or will they get the £750 back?

**Question 6: Do you have any comments about the proposals to change aspects of the procedure, payment, drafting, appeals, expert decisions, abusive registrations or miscellaneous issues?**

**Procedure**

I feel the respondent should have the right to reply again (complainant shouldn't have the last word).

**Payment**

If a respondent wants to pay the DRS fee VOLUNTARY then fair enough. Does this apply to the appeal fee to?

**Drafting**

'Unfair Registration' is even more confusing than 'Abusive Registration' in my opinion.

**Appeals**

The Appeal timeline should be kept the same. How long does it take to contact someone abroad? How long does it take for someone to find £3000 + VAT?

See Nominet apology on bounce.co.uk Appeal DRS 03316  
[http://www.nominet.org.uk/digitalAssets/10081\\_bounce\\_appeal.pdf](http://www.nominet.org.uk/digitalAssets/10081_bounce_appeal.pdf)

Allowing new evidence to be introduced in Appeals should make things "interesting" to say the least!

**Expert decisions**

These proposals are very important to introduce.

For example how can an expert base a decision on a Google search:

*"Indeed a Google Search for "Fine Cheese" discloses only the Complainant (and not the Respondent) and includes recommendations from such culinary worthies as Delia Smith. A search for "fine cheeses" provides a similar result."* DRS 3747  
[http://www.nic.uk/digitalAssets/8799\\_finecheeses.pdf](http://www.nic.uk/digitalAssets/8799_finecheeses.pdf)

Correcting "typographical errors" is one thing. However for Nominet to delete whole sentences is another thing altogether! See the case DRS 03195 [sundeckvip.co.uk](http://www.acorndomains.co.uk/domain-name-disputes/5229-warning-nominet-can-doctor-drs-results.html)  
<http://www.acorndomains.co.uk/domain-name-disputes/5229-warning-nominet-can-doctor-drs-results.html>

By the phrase "Incorporate tests set out in previous decisions" I believe you are referring to things like the Tony Willoughby four stage test. See DRS 00292 [chivasbrothers.co.uk](http://www.nic.uk/digitalAssets/1027_chivasbrothers.pdf)  
[http://www.nic.uk/digitalAssets/1027\\_chivasbrothers.pdf](http://www.nic.uk/digitalAssets/1027_chivasbrothers.pdf)

*"Where a Respondent registers a Domain Name:-*

- 1. which is identical to a name in respect of which the Complainant has rights; and*
- 2. where that name is exclusively referable to the Complainant; and*
- 3. where there is no obvious justification for the Respondent having adopted that name for the Domain Name; and*
- 4. where the Respondent has come forward with no explanation for having selected the Domain Name,"*

I am not a lawyer so I don't know if this should be included in DRS policy or not.

### Abusive registrations

These seem reasonable suggestions however aren't we now calling them "unfair registrations"?

### Miscellaneous

Please could you introduce a system allowing people to submit DRS cases (all material) online instead of having to submit three paper copies?

Also should experts be allowed to express their disagreement on appeals?

DRS 02201 vikingdirect.co.uk

[http://www.nominet.org.uk/digitalAssets/10082\\_vikingdirectappeal.pdf](http://www.nominet.org.uk/digitalAssets/10082_vikingdirectappeal.pdf)

*"Dissenting Opinion of Tony Willoughby*

*I regret that I am unable to agree with my colleagues. Had the decision been left to me, I would have allowed the appeal and directed that the Domain Name be transferred to the Complainant".*

**Question 7: Do you have any other changes you would like to see within the DRS, or topics within the DRS that you wish to comment on? In particular, if you have any views about any of the following topics which have been the subject of discussion, please let us know:**

**- Length of submissions and word limits.**

These are the only references I can find on this:

*"In addition to this you must send the signed hard copy version (plus three copies of any exhibits/annexes) to us before we can open the case. If Nominet receives an incomplete form or if you exceed the 2,000 word limit, we will return the complaint to you and we will not go on with your complaint until you fix any problems that we tell you about".*

<http://www.nominet.org.uk/disputes/drs/complainant/complaintformhelp/>

*"An appeal notice should not be more than 1000 words and should explain your full reasons for appealing, but should not give any new evidence or attachments. This is your only real chance to put your case to the appeal panel, but do not forget that they will already have all the paperwork from the first decision".*

<http://www.nominet.org.uk/disputes/drs/appeals/>

Both word limits seem a little on the low side however I suppose the DRS expert has to read it (paid for their time) and digest the information. However if "new evidence" is allowed in appeals is the word limit high enough?

**- The impact of Internationalised Domain Names, if introduced.**

I find this an interesting quote on the WIPO website:

*"The Center also offers dispute resolution services for registrations in non-Roman ("non-ASCII") scripts such as Arabic, Chinese, Cyrillic or Korean ("internationalized" domain names) and has so far received 60 complaints in relation to such names, of which six are pending. The number such cases is expected to increase in future. The Center has managed proceedings in 12 languages, namely, Chinese, Dutch, English, French, German, Italian, Japanese, Korean, Norwegian, Portuguese, Russian and Spanish".*

[http://www.wipo.int/edocs/prdocs/en/2006/wipo\\_pr\\_2006\\_464.html](http://www.wipo.int/edocs/prdocs/en/2006/wipo_pr_2006_464.html)

Will Nominet have to have experts that understand these languages?

**- Whether experts can find a registration abusive for reasons not spelled out in the complaint.**

This might lead to all sorts of confusion and claims against experts. Only the other day an expert quoted an abusive registration in a case but didn't outline a pattern of abuse.

See DRS 04176 [xpforum.co.uk](http://xpforum.co.uk)

[http://www.nominet.org.uk/digitalAssets/11770\\_xpforum.pdf](http://www.nominet.org.uk/digitalAssets/11770_xpforum.pdf)

"The Complainant continues to operate the forum at the website [www.vista-xp.co.uk](http://www.vista-xp.co.uk)"

**- Whether there have been any practical problems with the treatment of 'Without Prejudice' material.**

On the bottom of <http://www.nominet.org.uk/disputes/drs/legalissues/> you say:

*"Without Prejudice" is a legal label used on letters and emails which are part of a genuine attempt to settle a legal case. Without Prejudice material can (in most cases) be kept secret from the court, so that parties can talk about ways of avoiding litigation without ruining (or 'prejudicing') their case. However, in cyber squatting cases, the offer to sell a domain name for an exorbitant amount of money is actually often the main evidence of abuse - yet it could be hidden behind the "Without Prejudice" label.*

How does this fit in with Question 2 "A general offer to resell a domain name"?

**- Whether experts should be able to represent parties in other disputes, and if not how to keep the quality of experts high.**

I want to see clear rules on how experts can represent complainants:

DRS 02505 [royalandancient.co.uk](http://royalandancient.co.uk)

[http://www.nominet.org.uk/digitalAssets/3646\\_royalandancient.co.uk.pdf](http://www.nominet.org.uk/digitalAssets/3646_royalandancient.co.uk.pdf)

"The Complaint, which is dated the 29th March 2005, is made and verified by Willoughby and Partners, solicitors, acting on behalf of the Complainants".

DRS 01649 [hedonism.org.uk](http://hedonism.org.uk)

[http://www.nominet.org.uk/digitalAssets/3971\\_hedonism.pdf](http://www.nominet.org.uk/digitalAssets/3971_hedonism.pdf)

"represented Messrs. Willoughby & Partners"

The Pitman Case

<http://www.nominet.org.uk/disputes/courtcases/pitman/>

"Ms. Emma Himsworth (instructed by Messrs. Willoughby & Partners)".

Who are also involved with UDRP cases:

WIPO Case No. D2006-091 [waynerooney.com](http://waynerooney.com)

<http://www.wipo.int/amc/en/domains/decisions/html/2006/d2006-0916.html>

"Tony Willoughby - Sole Panelist"

That quotes a .co.uk domain which is under DRS:

"On the same day he registered the domain name <waynerooney.co.uk>"

DRS 03844 [waynerooney.co.uk](http://waynerooney.co.uk)

[http://www.nominet.org.uk/digitalAssets/9378\\_waynerooney.pdf](http://www.nominet.org.uk/digitalAssets/9378_waynerooney.pdf)

**- Whether the detail of the DRS can be taken out of the contract and updated more regularly.**

I think it is important that “registrants” are notified of DRS contract changes at the time of renewal or registrations.

May be Nominet needs to either email all registrants or ask its registrars to put notices on their websites? How will registrants be notified to changes of the current DRS contract?

**Name: Andrew Bennett**

**Company: Whois-Search.com**