

Using the Dispute Resolution Service for .uk domain names online survey

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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) response: A distinctive use made of a word is a non-permanent event, it may be recurring but it cannot be permanent. It can also change over time. If use is made of a word e.g. orange to sell mobile phones then if Orange plc decide to change business and get into farming oranges then it stands to reason that another mobile phone operator should then have precedence over the name because of the aforementioned "distinctive character".

"Distinctive Character" is ephemeral and no basis for deciding ownership of useage of a domain name.

- b) response: A dictionary word is basic constituent of our language – [oops can't use the word "word" as it "belongs" to someone, can't use the word "basic" as it belongs to someone.]

OK rephrased [oops take out OK - used by someone else]

Rephrased, these constituents are fundamental to expression of our identity. Nominet as an independent guardian for the secure storage and licensing of a database of words should have no authority to decide on who can have a generic word.

Any user of that language should (even if that is the only word they know) should have equal rights to useage. To allow otherwise would show Nominet to be influenced by the wrong ethical code, that of big money and not of fair play. If there is a useage infringement covered under trademark law, then the issue should be dealt with under existing or amended trademark law and should apply to the USEAGE of that string of letters.

Similarly if there is a problem where someone is deliberately and consistently gaining money from the pretence of being someone else i.e. passing off, then that can be dealt with through existing case law on passing off.

Nominet should not put itself in a position to have to decide whether to transfer a domain like eni or rwe to companies called "ENI" or "RWE" that noone has heard of (despite being some of the largest companies in the world and many multiples bigger than Orange plc) unless it is given an order by the courts to do so based on the two aforementioned legal areas.

To invent and use a kangaroo court like the DRS where one person can determine the useage of a domain is pathetically ridiculous, which makes the question similarly ridiculous except as a means to formulate clear guidance prior to registration of a domain name.

1st issue: Trademark law for dictionary word domains

2nd issue: The distinction between a domain name and useage of a domain name

3rd issue: The restriction of domain names and monopolistic practice

1. Trademark law. There are 43 groups for trademarks and there is one possible domain available for useage and development. Nor are these 43 groups all encompassing, there are more valid reasons for useage of words and terms that are not corporate and that are not covered by these definitions.

With just one main brand domain extension (.co.uk) this false market will continue to cause tension between parties wanting the same domain.

Some parties will do more than others, in fact, anything they can think of to get a domain they want.

Nominet should not put itself in the position of having to field this corporate aggression from a legal or any other standpoint, as it by definition is trying to alter the security of the ownership of a particular domain name.

Nominet should exist to protect the security of ownership of domain names and not be conflictingly also be part of its main security weakness, i.e. as respondent to legal and quasi-legal challenges by aggressive clients.

To run the DRS as a further conduit to enhance this weakness and for these DRS individuals to make their own decisions independent of trademark and passing off law is patently anti security.

2. The ownership vs useage of a domain name.

Useage of a domain is already covered by existing laws. Generic words are deliberately not classified in trademark law except by their image and layout useage.

Nominet should not start inventing its own quasi ideas, and a subset of quasi legal caselaw judged by less than 12 good men and true.

Most searching on the internet is done through SEARCH ENGINES and DIRECTORIES.

When a site is found it's useage and abuseage is covered by existing laws.

The domain name itself is not relevant except as a signpost to the site. If I put a signpost at the end of my road saying "Orange this way" That might be misleading but not illegal and nor should it be. People would look and would expect different things when they saw it. Not everyone would expect it to be Orange plc, but as the DRS stands it is under debate and if found guilty by e.g. three prior strikes, or not responding in time, or not paying, Nominet would therefore immediately hand over that sign to Orange with no recompense to me.

In reality, people might go where this sign points (two steps up the road, or a click with the mouse) and determine that it is or isn't what they are actually looking for which may or may not be the plc. This is no big deal, is no particular nuisance to anyone, and should not be illegal and nor should Nominet even be taking a view on it.

3 The restriction of domain names and monopolistic practice

More and more legal representatives are becoming involved as the assets that are domains increase in importance.

The more there are, there the more differing positions they will have.

Nominet's choice will always have to be one of compromise and will always upset large groups of interests.

Why? Because there is a false market.

The .uk domain market is deliberately restricted and managed by vote, which itself is increasingly being influenced by a distinct group of specialist lawyers rather than any inherent fairness or even commercial ideal.

More domain extensions should be issued and managed, and not just by Nominet. It is monopolistic practice and only influenced in one direction, according to just a few managers at just one non-governmental, non-corporate, profit-making but officially non-profit-making institution.

Where there is demand from several different interest groups, this demand should be satisfied or else it becomes uncompetitive for one group or other. Nominet is effectively dictating what, how and where companies, organisations and individuals should represent themselves. Nominet simply should not put itself in this position.

Clear guidelines about relevant laws should be presented at the contractual stage in a way that everyone can understand and read, and Nominet should then act as guardian of the ownership of that property until some undeniable event forces it to change - e.g. court order.

Any sort of dictatorial management is effectively treating Nominet and the single effective domain extension that it manages (.co.uk) as a brand. One brand. One target market. One focus. This should not be. Nominet can have a brand, but the national asset that it manages should be available to all types of brand and market. Any request for e.g. prices to go up so that the domains are owned by a better class of owner may strengthen the brand of Nominet and the .co.uk domain but does not by definition of a BRAND serve all comers.

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

There are almost infinite combinations of letters to create domain names, even with the 64 character limitation, there are still 26^{**2} combinations of 2 letter ccSLDs to add to .co.uk eg. .aa.uk .ab.uk etc not even considering the numbers. To decide that registration of more than x number of them - given that they are being bought and paid for on equal terms to any other - is a decision that would be based in part on the fundamental premise that there is a restriction of domains - this is unnaturally brought about by Nominet issuing just .co.uk and only under severe restrictions, .org.uk and .me.uk available to all registrants.

Nominet should not be restricting the usage or ownership of domains, in fact subject to existing law it should not even involve itself except to protect the database.

There should be another extension like .gb run by someone completely different so that Nominet does not tend to monopolistic and dictatorial practice. It is not enough to say that current management is doing "a good job".

The useful life of a domain will exist long after the demise of current management. So large numbers of domains awaiting development, provided they are not abusive according to passing off or trademark law is a non-issue.

Pay-per-click is usage of a domain.

Passing off law will determine whether if a brand holder decides to allow their adverts to be shown on a domain that matches their name should be considered passing off or fair business. Some businesses would like very much to advertise their business in places that people likely to be searching for their brand will visit.

Some businesses will do all in their power to own that space and will try anything to get that domain name. It is dirty business and Nominet should not put itself at the centre of it. Nominet should be fighting for the security of current ownership, or else it is in conflict with being a good secure registrar.

Any opinion along the lines of "x is making money out of a domain by allowing adverts to be placed on it" are patently ridiculous in a commercial world. "we propose to clarify . . . etc" Get out of it. It's not your business to in any way give grounds for the transfer of a domain name unless ordered to do so by the courts.

Question: General offer to sell domain name.

Answer: Not your problem. The domain is not stolen property. If the company wants their domain name and thinks it has rights. Nominet should establish a domain extension for rights holders and clearly state that before purchase. This quasi after-the-fact meandering is unnecessary interference and against the principle of Nominet providing a security for domain names.

There are many alternative domains already in existence for most brands. At last look orange.ltd.uk is still available and orange plc already has orange.plc.uk, why is it that it should even be considered that they should own all versions of that string of letters, everywhere, without condition.

Let the courts decide and Nominet should be the secure registrar and not some self appointed single opinion dictatorial arbiter that "sometimes makes mistakes".

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.

Nominet should not involve itself in this. If the complainant does not have rights as decided by trademark law, then Nominet should strongly err on the side of maintaining the security of ownership against a possibly highly paid commercial tirade to get it back.

Any loopholes like "weak rights" "less likely" are all wide open doors for well funded legal challenge to get it's way.

Do your job. If a trademark holder owns a domain, protect it. If a non trademark holder owns a domain, protect it until a court order determines that you have to change it over.

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

One expert deciding a subset of law regarding extremely valuable intangible assets is against any fair legal system guidelines.

Any decisions already made should be opened up again for reconsideration, and no less than 12 people should be guided by current trademark and passing off law and not guided by jealous rants or assumed righteous patter until a fair and just caselaw can be established.

Once there is sufficient case law, only then should this be considered overkill.

This as I have stated should be independent of the Nominet stable. Fees should be paid toward establishing an educated group of people from whom the court can call as witnesses and contributors. It should not be Nominet choosing just one of the "experts" to determine someone elses property ownership. It is not just. Legal representatives will offer their own choices of fee structure independent of Nominet.

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?

No comment. I am not clear about the technicalities of what is required here.

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?

Clarify all rules prior to registration (this is pretty fundamental and should have been pressed as a failure of management to not have dealt with it earlier.)

Vote for another registrar to operate a UK extension in direct competition to Nominet.

Issue more ccSLDs to reduce the pressure on the .co.uk space.

Make the DRS independent.

Establish a forum where complainant and respondent can discuss the issue prior to court.

Concentrate on security of the domain database and its useage. Leave all loopholes and arguments to the courts.

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.
- The impact of Internationalised Domain Names, if introduced.
- Whether experts can find a registration abusive for reasons not spelled out in the complaint.
- Whether there have been any practical problems with the treatment of 'Without Prejudice' material.
- Whether experts should be able to represent parties in other disputes, and if not how to keep the quality of experts high.
- Whether the detail of the DRS can be taken out of the contract and updated more regularly.

I have addressed most of these issues.

Please give us your contact details

Name

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Company Name

ATL Strategic Communications Ltd