

## Nominet consultation: response from OUT-LAW.COM / Pinsent Masons

We suggest two changes to the current Nominet procedure:

### 1. Endeavour to deter cybersquatting

Cybersquatting has never gone away, in part because there is no effective deterrent to cybersquatting.

Faced with an abusive .uk registration, trade mark holders typically turn to Nominet's DRS procedure in preference to a court procedure because Nominet's procedure tends to be more efficient and less expensive.

However, the DRS route is not cheap for brand owners: an expert's fee of £750 + VAT is paid and typically a lawyer is paid for preparing submissions. None of that money is recovered under the current DRS procedure. For brand holders that are common targets of abusive registrations, the costs associated with the protection of domain name portfolios are considerable – yet no money is recovered from the abusive registrants who frequently profit from controlling domain names for several months.

We suggest changing the rules to **give an expert the discretion to order that a losing party pay the cost of an expert's fee**. This will be appropriate in clear cases of abuse.

Consideration should also be given to a further level of deterrent: giving the expert the discretion to order that a losing party pay the expert's fee **and the claimant's legal costs**.

Nominet should make clear in its DRS policy and procedure that an expert's decision is an arbitral award for the purposes of The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. It follows that an order to pay an expert's fee or an expert's fee plus costs could be pursued in any territory that has ratified the Convention.

Even if such an order is not always enforced successfully, the change in the rules will help to deter cybersquatting.

### 3. Offer a choice of one expert or a three-member panel

At present a claimant pays £750 for an expert's decision and there is a right of appeal to a three-member panel that costs the appellant £3,000. We suggest a middle-ground: a choice between (a) a single-member panellist for £750 with a right of appeal at £3,000; and (b) a three-member panel with no right to appeal for, say, £2,000.

Clearly this is closer to the UDRP approach. For comparison, WIPO's fees for a UDRP procedure for 1-5 domain names are: \$1,500 for a single panellist; \$4,000 for three panellists.

The choice acknowledges that some cases are more challenging than others. Simple cases are suitable for a single expert; complex cases may be better suited to a larger panel.

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