

Dear Sirs,

We welcome and appreciate the opportunity to comment on proposed changes and perhaps influence amendments to the current policy.

We would summarise the points made in our detail response as follows:

1. We would like specific clarification within and statement of exclusion from the DRS procedures where the complaint arises solely or mainly from:

a) Registrant negligence

- (i) Complainant as the previous registrant has failed to renew or Nominet has cancelled and re-issued the domain name.
- (ii) Complainant has not registered the domain in the name they use to trade or for which they own the trademark

We believe that the previous registrant should not be permitted to use the DRS in these circumstances or for these complaints.

b) Ownership rather than use

c) Complainants seeking to benefit under DRS from their own or their agents actions

2. Extension of DRS 'rules'

a) Complainant be limited to a single complaint under the DRS and/or required to accept DRS as final authority -

Except where the registrant has misled or falsely declared information

b) Both parties to declare if specific specialist advice has been sought on or the complaint composed by 'experts'. In the event of one of the parties seeks this 'advantage', the other party should be treated as 'litigant in person' and afforded input from 'expert' in form consideration of factors not mentioned in terms of DRS grounds, previous DRS decisions/case law and trade mark matters.

On questions specifically raised:

Q1

Defining protection or rights on certain types of words

We believe that Nominet is unwise in seeking to extend its role to that of policeman by becoming involved defining specifics in this area. These appear to be issues best left to the appointed 'experts' to consider in each case by reference to the specific use made of the domain and the right being claimed.

Q2.

Examples of abusive and non-abusive registration of domain names:

In respect of the examples quoted we would agree with (a) (General offer to sell) but not necessarily all instances of (b) (Sale of traffic) and (c) (Registering many domains)

We would like to see a more exclusive list of examples both for and against rather than allowing experts to decide if other examples should be considered or introduced except where the list is modified by precedents (agreed as 'good' decisions by peer group review)

Q3

Inclusion of statements regarding strength of rights and inferences from this.

We think your proposed statement is self evident and logical.

We would like a specific statement that the rights threshold applies when the current registrant first acquired their interest in the domain.

Q4

Fees charged and payment options:

We do not see why any option should be required to be cash flow or cost neutral – be this for Nominet or the complainant.

We would prefer an option where the complainant is required to make an up-front payment for each complaint made – we suggest £200 - £300

We suggest

- a) refunded to the complainant , less the registration costs and any other valid costs incurred by the registrant, if the registrant agrees some solution via Nominet's mediation efforts
- b) paid to the registrant if the complainant does not proceed to ask for an expert opinion following the mediation element of DRS
- c) deducted from the cost of the expert opinion if the complainant proceeds

We are opposed to this suggestion that loser pays

If this is introduced we would want a statement of the allowable costs payable included in the DRS, to be specified in detail, and would suggest that this refer to the expert fee £750.00 +VAT only

Q5. Enforcement of costs:

We believe that Nominet is unwise in seeking to extend its role to that of policeman by becoming involved in this area.

We see 'loser pays' affects both parties but benefits the party adjudged to have the greater 'right' to the domain. Given the reservations expressed as to the fairness of all decisions, this will invariably create greater injustice in certain cases.

Q6. Other options

We feel that the overall system should strive to provide an equitable solution for both parties while operating in a clearly defined framework.

We have comments on all the matters specifically raised by the consultation document in our detail response.

Q7. Other changes

- a) We refer to matters at the beginning of this summary
- b) We believe there should be limitations on attachments with penalties for exceeding volumes or supply items of dubious merit.
- c) We suggest that the DRS service should be independent of Nominet but continue to be funded for the mediation stage (by Nominet grant).
- d) We feel that each decision should be subject to peer group review before publication – check and correct before a final decision is 'published' rather than attempt to correct it afterwards
- e) We feel that DRS should be binding arbitration that must be accepted by the complainant as Nominet currently enforces it on the respondent.

We have comments on all the matters specifically raised by the consultation document in our detail response.

Grahame Brownless
GBNames.net

Detail response attached

Detail response to issues:

After considering your document we would raise the following additional matters, which do not appear to be addressed directly by the questions tabled although perhaps obliquely by Q7.

1. We would like specific clarification within and statement of exclusion from DRS procedures where the complain arises solely or mainly from

a) Registrant negligence:

The previous registrant or their associates should not be permitted to use the DRS procedure for complaints arising on domains where:

(i) Nominet has cancelled and re-issued the domain name:

Specifically claims of non-renewal due to 'unfortunate mistakes' or 'oversight' should have no relevance or weight in any DRS complaint even if the complainant as the previous registrant has trademark or other established rights prior to the domain being released for purchase on a first come first serve basis.

We do not see this a charter for 'drop catchers' or abusive registrants but the natural consequence of negligence by the previous registrant with the resulting cancellation of any rights achieved by previous ownership of the domain in question. After all the previous registrant is obliged to maintain correct and up to date contact data and Nominet makes the effort to contact all registrants directly after the expiry date and before cancellation.

We accept that other tests for abusive registration should apply to these domains in so far as these do not solely flow from the failure of the previous registrant to renew the domain. E.g. if the domain current use abuses a trademark of the previous registrant.

(ii) Complainant has not registered the domain they use as a trade name or for which they own the trademark.

We do not see why a complainant should be able to claim rights under DRS to a domain name they have failed to register either on or before they registered a trademark or started trading.

Specifically we believe that:

- (i) trademark rights which do not specifically include a domain name in the trademark class should not automatically extend or be stretched to cover domain names
- (ii) a trademark owner should not, in effect, be able to prevent another party from owning or using a domain name they have failed to register themselves.

Again we accept that all other tests for abusive registration should apply to these domains.

b) Distinction between ownership and use:

We would like to see a clear distinction made between ownership of a domain name and using a domain name explicitly addressed in DRS rules.

Unless we have missed the point within the existing DRS, we feel that ownership per se should not be abusive whatever rights the complainant has and that, unless the majority of other tests of abusive registration are passed, the complainant should not be able to acquire any domains previously registered by a third party on that basis alone.

c) Complainants seeking to benefit under DRS from their own actions:

We believe that complainants should be specifically barred from benefiting from their actions, directly or indirectly, under a DRS complaint and that this should be explicitly stated.

Specific examples would be:

- a) offering a consideration for transferring the domain
- b) asking for a price to transfer the domain
- c) offering to buy the domain
- d) placing adverts or links on a website for the domain

The intention is to prevent actions amounting to that of an 'agent provocateur' then being used by the complainant to justify any form of evidence of abusive registration or use of the domain.

We would go further and suggest that agents or resellers of the complainant, whether in an exclusive or non-exclusive capacity, should be joined with the complainant in this test of 'benefit through their own actions'.

For example: the owners of the trademark say 'SunnyD' soft drink should not be able to use DRS to claim abusive registration and use of the domain sunnyd.co.uk if a website using that domain had adverts or links from say Tesco specifically for soft drinks, either including or not including 'SunnyD', while Tesco sells 'SunnyD' supplied directly or indirectly from the trademark owner or their agents.

2. We would like clarification and specific statements within DRS procedures:

- a) That each complainant or their associates be limited to a single complaint under DRS, whether this runs from Mediation through to Appeal or part of the process only.

We would suggest that as a safeguard this rule would be waived if it was proved or a reasonable inference that the registrant misled or falsely declared matters in their defence or responses to the complaint.

In addition we would like the complainant to be required to accept the DRS process as the final authority on the complaint as the registrant is obliged to do.

We are also suggesting under Q7 later that the DRS should be required to be viewed as an alternative not an additional procedure to pursue a claim for abusive registration.

b) We would like both parties to sign an additional declaration, when submitting the complaint, declaring the degree of professional advice from 'experts' taken before the complaint or the preparation of the complaint by a professional. Professional would include IPR experts, lawyers or trademark specialists.

We see this as replicating the situation that exists in the legal process.

We believe that this would provide both a quick guide to the expected quality of any complaint and response. In reviewing the actual complaint or response, the expert would be able to consider the points presented in light of factors not mentioned and the omission or inclusion of previous DRS decisions/case law and trade mark matters.

We suggest later that, by identifying parties acting without obtaining specialist advice or professional prepared pleadings, the mediation and arbitration process would treat the party without the resources to obtain or not having taken specialist advice akin to that of a 'litigant in person'. This would allow the expert to redress any imbalance between the parties and consider matter not specifically raised or addressed to the benefit of the 'small registrant'.

Addressing the questions posed in more detail.

Q1

We believe that Nominet is unwise in seeking to extend its role to that of policeman by becoming involved in this area. These appear to be issues best left to the 'experts' appointed to consider the specifics of each case.

(i) We do not see why attempts are being made to define the subtle distinctions in general terms when ultimately the specific circumstances of any use or abuse relative to the complainant and the domain name will have a significant impact on any decision.

To use the example:

- I) if anyone anticipated 'Orange' moving into broadband and registered the domain name 'orange' or 'orangebroadband', why should this be deemed an abusive registration even if the domain were used to promote broadband under the trade style of orange once 'Orange' decide to enter this market segment or decided that they did not like a third party operating on this basis..
- II) if we accept that 'Virgin' or 'Easy' have some trademarks, 'goodwill' or 'distinctive character', due to the high profile of the proprietors of enterprises associated these generic names or dictionary words being used as brands, why should this prevent other parties having or using domains incorporating these generic words in areas the brand owners are not involved in - for example 'virgintents' or 'easytents'.

(ii) Unless the point has been missed, surely trademarks are allocated to parties by 'class'.

Many parties may own an identical trademark on a name or dictionary word but only one trademark owner is permitted for each trademark class and the law protects the owner of each class for use of the trademark in that class alone.

How will the DRS follow this logic when there appears to be no class specifically and solely relating to domain names and that Internet use of a domain name is limited to the single instance irrespective of the number of a trademark classes registered?

Surely recognising the right of one class under the DRS is to the detriment of all other classes of that trademark unless the proposal is somehow to allocate preference to one class by virtue of date of registration, use or nature of the trademark owner. (Big multinationals or expensive lawyers preferred?) .

I am sure this issue will cause debate

Q2.

Examples of abusive and non-abusive registration of domain names:

In respect of the examples quoted we would agree with (a) (General offer to sell) but not necessarily all instances of (b) and (c).

- (i) We think that the following items should be classified as abusive registration:
- i) registration and/or use of any domain name and many variations of that domain name where the intention or effect of this clearly limits or prevents another party from registering or using these domains where that party had a pre-existing right.

For example: the registration of domainname.co.uk alone would not be abusive even with pre-existing rights (subject to other tests) but the registration of domainname.co.uk, and say domainname.com, domainname.net and domainname.org or domainname1.co.uk, domainnameany.co.uk and anydomainname.co.uk by the same or connected parties would be considered abusive.

- ii) registration of any domain and the registration of other domains generally or specifically associated with the domain or business of the complainant
For example: the registration of say anycarsales.co.uk and variations of names or domain names of 'local' car sales business would be abusive even if each domain name considered on its own merits alone might not be.

In this context we would accept additional alternative examples where any reasonable inference of the registrants behaviour is that, in taking their actions together and as a whole, the complainant is disadvantaged by multiple registrations and/or the actions of the registrant.

(ii) We consider Nominet should be required to advise any expert or arbitrator appointed under DRS procedures of all .uk domains held by the registrant of the domain name then under the DRS complaint together with all .uk domains held in the names of known associates or entities owned or known to act in concert with the registrant. This advice would be in the format of the PRSS so that the expert is able to consider variations in names and address and make reasonable inferences ('fuzzy logic') from registrar and name server data.

This would allow the expert or arbitrator to consider the complaint with the full access of 'facts' and matters relating to registration of domain names, which the complainant may not be aware of, or have access to via the PRSS, when making his complaint.

(iii) We do not believe the number of registrations in itself has any bearing on claims of abusive registration and is not evidence of abusive registration.

We would suggest that the test should be applied

- a) to ownership as outlined in (i) above and then
- b) use of domain names or keywords
- c) the composition of a registrants portfolio

In effect we are suggesting that the composition and use of a portfolio, together with any website on the domain under DRS complaint, should be viewed as whole to identify patterns of registration in 'clusters' or overall registration that a reasonable person would conclude is abusive behaviour or is unlikely to be non-abusive behaviour.

Q3

Inclusion of statement regarding strength of rights and inferences from this.

We think your proposed statement is self evident and logical.

However, given your earlier statement that " 'Rights' has a deliberately low threshold ", what purpose does the statement serve? The complainant will believe they have rights as will the registrant and ultimately the expert or arbiter will make a subjective judgement as now.

We think that there should be some explicit statement that relates any tests on rights to refer to the complainants rights at the time the domain name was first registered or transferred to the current registrant e.g. If the complainant seeks to use rights acquired through trade mark or usage which occurred after the registration or transfer this should be ignored.

We feel that any complainant who chooses not to acquire a domain before creating a right through trademark or usage should not be permitted to acquire the domain by use of the DRS subsequently. After all the choice of trademark or trading name is the choice of the complainant prior to the complainant creating that right he is now complaining is abusive.

We would accept that, in the interest of balance to a complainant's expectation not to be extorted/exploited, changes in the registrant after a complainants right was established should be excluded from this test. This would prevent a 'speculator' from acquiring the original registrants rights in a domain in a manner that could be abusive.

Q4

Fees charged and payment options:

(i) We do not see why any option should be required to be cash flow or cost neutral – be this for Nominet or the complainant. That a DRS complaint may be or should be less costly than resorting to the Courts for action/redress is a separate issue.

(ii) We would prefer an option where the complainant is required to make an up-front payment for each complaint made.

We do not think a payment of the nominal £50-£100 suggested in the consultation document is sufficient to deter speculative or nuisance DRS complaints.

We would suggest that this be in the order of say £200-£300 and should be disbursed as follows:

- d) refunded to the complainant , less their domain registration costs and any other valid costs incurred by the registrant, if the registrant agrees some resolution of the DRS complaint via Nominet's mediation efforts
- e) paid to the registrant if the complainant does not proceed to ask for an expert opinion
- f) deducted from the cost of the expert opinion if the complainant proceeds.

Rational:

Our experience in this area has been of a relatively small number of complaints regarding registrations of which about a third resulted in DRS complaints.

The quality of complaint varied considerably as did the amount the complainants were prepared to spend, in both their own time or on employing solicitors.

In each case the registrant is faced with the initial decision:

- a) do nothing, ignore mediation & hope no expert opinion is requested
- b) do nothing, ignore mediation & hope an expert opinion is favourable
- c) do nothing, ignore mediation & accept an expert opinion will not be favourable
- d) do nothing, agree at mediation & relinquish the domain
- e) respond, agree at mediation & relinquish the domain
- f) respond & hope no expert opinion is requested
- g) respond & hope an expert opinion is favourable
- h) respond & accept an expert opinion will not be favourable

The penalty for losing three cases is to be branded an 'abusive registrant' and automatically be guilty unless capable of proving ones 'innocence' in further DRS complaints.

The 'downside' of the specific complaint is both on the loss of the domain and future unknown impact this may have if other complaints are brought. The 'upside' is that you retain something you already owned and do not get a 'black mark' against you.

We believe that, irrespective of the quality of the complaint, any registrant of more than a few domains is forced to submit a comprehensive rebuttal of the claim and defence of their actions in registering the domain to avoid the possibility of being branded an 'abusive registrant' even if they are prepared to hand over the domain to the complainant.

However, the complainant can make the most outrageous claims safe in the knowledge that Nominet will pursue the matter and, apart from their time to produce the complaint, there are no cost implications for them unless they decide to take it to the next level.

Our view is that our proposal changes the balance of relative risks and rewards to both registrant and complainant and this will be equitable to both parties.

The complainant is now required to make a decision before starting the DRS complain – Does my claim have merit and is the domain worth £750 + VAT to me?

In effect this presents the complainant with the same decision necessary to pursue a case through the 'Small Claims Court'.

The results are:

- a) If the complainant believes their claim has merit, it would not be a bar to commencing the complaint, as the presumption must be that they would seek an expert opinion to obtain the domain in any event and the total cost to pursue an expert decision is not changed by the revision.
- b) If the registrant accepts the complainants' arguments and agrees some compromise during mediation process, the registrants direct costs are refunded, the domain is transferred and the complainant recovers the balance of the advance payment.
- c) If the registrant and complainant cannot agree during the mediation process and the complainant is not prepared to take the matter to an expert opinion then the registrant is 'awarded' an amount against his 'costs' of defending the DRS complaint. The complainant 'pays' for their failure to compromise or pursue their complaint further.
- d) If the expert opinion is for or against the complainant, the cost of the exercise remains limited to that known at the very start of the process.

If the claim had merit, the domain is recovered for a fixed fee by the complainant, at less cost than via Court proceedings, and the registrants own costs were incurred through a failure to compromise at an early stage.

If the claim was without merit, the registrant has retained the domain and has incurred no further costs than those involved in his decision to rebut the claim.

Counter argument:

We accept that our proposal implies that:

- a) every domain will be given a value of up to £750 + VAT from the moment it is registered and that this appears a charter for 'domainers' to profit from any registration.
- b) the complainant has to pay up to £750 + VAT to acquire a domain where the registration was abusive.

Against this we would suggest that the DRS should not be a charter to allow complainants the right to obtain a domain at negligible cost through a failure to register or maintain a domain name before commencing trading or using the a name.

Any case where the domain name incorporates a right but it is used obliquely rather than directly abusively should already be covered by the existing 'rules' and will be decided as a matter of opinion on the merits of the particular case as it is now.

Overall:

The complainant has a clear decision in all cases which is no different from the existing position – is the domain name worth £750 + VAT to them. If the complainant does not place this limited value on the domain, why should they be allowed to use DRS?

The difference is that

- a) the complainant must commit to making a payment, irrespective of the merits, which he will lose if he does not follow through with the complaint
- b) the registrant receives some compensation for their costs in defending their registration and complaints when these are without merit.

iii) We do not see why Nominet should introduce a 'loser pays' proposal in the instance of a successful DRS complaint, which in effect means the existing registrant will be required to lose the domain and pay for the privilege.

We are opposed to this suggestion

A clause of this nature merely reinforces the advantage of the wealthy/big business to obtain results favourable to them.

However we believe that if this option were to be introduced:

a) it should apply only to complaints taken to an expert decision and not apply to mediation or appeal cases.

b) it should explicitly state what costs are to be included and that these should be limited only to the initial fee paid to the expert.

We understand that the complainant already has the option of recovering any costs by way of civil action at present. Why Nominet should wish to make this any easier is beyond us.

Q5. Enforcement of costs:

We believe that Nominet is unwise in seeking to extend its role to that of policeman by becoming involved in this area.

We believe 'loser pays' affects both parties but benefits the party adjudged to have the greater 'right' to the domain. We are not convinced that there are sufficient safeguards to ensure that this would be equitable in all cases and, given the reservations expressed as to the fairness of all decisions, this will invariably create greater injustice in those cases.

Q6. Other options

We feel that the overall system should strive to provide an equitable solution for both parties while operating in a clearly defined framework.

1. Right of reply

We believe that the registrant should be allowed to comment on the complainant's response to their defence of the claim. This response should be allowed to address/rebut points made by the complainant and seems to follow rules of natural justice. However the response should be subject to word and time limits.

2. Procedural

Introducing clarity of procedural rules and dealing with exceptions would be welcomed as would the introduction of specific allowances for defined categories/ circumstances if bulky paper appendices are to continue to be allowed e.g. registrants with non UK addresses. Some extension of time limits would be preferred in addition to clarifying the procedures on failure to adhere to specific rules

3. Payment

Fine providing this would then be taken as definitive 'proof' of non-abusive registration and prohibit further DRS complaints being lodged.

Any registrant so motivated by his rights to a domain should obtain protection from future complaint by this action

4. Drafting

The use of 'plain English' where ever possible is to be applauded.

However we strongly disagree with the use of the term 'unfair' as opposed to 'abusive' as we believe it will increase expectations unrealistically and be counter productive. We assume that this is not a disguised proposal to reduce still further the level/burden of proof required to succeed with a complaint.

5. Appeals

We do not see the need to amend time limits

The introduction of 'new evidence' is an area of potential disputes notwithstanding the intention to introduce 'fairness'. We believe this should only apply to responses on or contradictions of matters introduced/considered by the expert in their decisions(see below)

6. Expert decisions:

We would agree that the points raised in the consultation should be addressed

i) We believe that

- a) Nominet should be required to supply the expert with a full list of domain names held by the registrant and held in the names of known associates or entities owned or known to act in concert with the registrant
- b) the expert should be required to consider/ research these domain names and the use of the domains at the time of the decision or the complaint
- c) the expert should use their expertise to consider matters when making a judgement even where the parties to the complaint have not raised the issues.

We would accept that both parties have the right to receive details of these points prior to the decision being made and the opportunity to make substantive and substantiated responses on or in contradiction of these points for consideration by the expert before any decision. .

ii) As suggested in our response to Q7, we believe that decisions should be subject to peer group review **before** 'publication'. This would enhance perceptions/opinions of the DRS and the avoid errors and inconsistencies.

Perhaps all decisions might be 'published to the parties' alone and be subject to confirmation/ 'public publication' after say 14 days thus allowing the parties time to review the decision and advise the expert of errors of fact or typos before the decision is binding.

It should follow that errors not identified until after a decision is published should be capable of correction. However, given the nature of the DRS, this might imply transfer to the complainant or reinstatement of the original registrant, contrary to the previous decision, if financial compensation is unacceptable to the party.

7. Abusive registration

i) Likelihood of confusion

This might be acceptable to the extent that confusion is clear and with a clear intention to confuse. i.e. in phishing style with a clear intention to deceive.

However we would be against weakening this test as it introduces a whole new area that relies on subjective interpretation of the intellectual capacity of the viewers of any website and/or an assessment of the proportion of viewers of each intellectual capacity accessing the website. If anything we would prefer this test to be strengthened to avoid abusive use of the clause and place a burden of proof that on the balance of probabilities it did occur.

An American lawyer used the argument that the very use of a domain confused the viewer and caused their client to lose sales, as the viewer did not end up at their client's site. There was no assessment that a person of reasonable intelligence could clearly see the lack of trademark or different style or content of the site and would not be confused or mislead which we believe demonstrates the difficulty in defining likelihood of confusion as well as that lawyers argued/stated view of the low IQ of an average Internet user.

ii) Past abusive use

We believe it should be a defence that, while past abuse may have/has occurred, it ceased when it was drawn to the attention of the registrant.

This allows for the eventuality of any use being unintended abuse.

We would accept the clear intention to confuse/deceive, repeated/intermittent past use on that domain or repeated activity of a similar nature over a number of domains owned by the registrant or associates would define abusive use and not allow this defence to be effective.

iii) We are in agreement with the other points raised.

We suggest that some specific time limits be introduced to exclude complaints, say 2 years from first registration, and acceptable inaction, say 6/12 months from registration/transfer.

The explanation required for delay between these limits should be increasingly robust.

iv) We refer to the matters raised under (a) (b) and (c) at the beginning of this document as matters which may be appropriate to include here.

8. Miscellaneous

We are in agreement with the inclusion of anti-avoidance provisions and changes on communications and service.

In clarifying the role of representatives we believe that the expert should be compelled to take into account the relative expertise of the representatives used and not be influenced by the use of solicitors and IPR expert's presentation of information. The expert's action should be akin to that of the judge where the defendants represent themselves (litigant in person) and consider relevant matters not raised or rebutted by the un-represented party.

Q7. Other changes

We would comment on the specific points raised.

i) We believe the current length of submissions might be subject to a small increase in words but believe the volume of attachments permitted should be limited.

In particular any attempt to influence or intimidate the expert by increasing the volume of attachments through the inclusion of duplicated exhibits, exhibits of dubious or scant relevance or advertising material of limited relevance should count against the complainant. We see no need for a 4 page complaint to be backed by hundreds of pages of exhibits.

ii) As indicated under 8.Miscellaneous above, we would agree to the expert finding for abusive registration on issues not raised by the complainant BUT ONLY where the complainant was not a professional or expert themselves. While this may at first sight to be one sided, we think this fairly reflects the interest of the 'little registrant' having a legitimate complaint but not the resources to follow it up or legitimate defence but not the knowledge to present the points or the resources to identify and present them. We do not believe those complainants who have the resources to employ 'experts' or present their cases in a professional manner should not be granted this relief/ latitude.

iii) We understood that the experts are obliged to declare any prior involvement with the parties to a complaint and bar themselves from acting in the matter. We do not believe it appropriate for an expert to be actively involved in both presenting and judging DRS/IPR cases even if the parties are different. This point seems established in the Legal System, where you are Council or Judge but not both simultaneously, and should apply here.

Unless we have misunderstood the point, that an expert is permitted to represent other parties on other non-DRS/IPR issues seems an irrelevance to maintaining standards of expert opinion for DRS/IPR cases.

In addition to the matters raised under (a) (b) and (c) at the beginning of this document, we would raise the following additional matters:

1. We suggest that the service should operate independently of Nominet.

The DRS should be undertaken via a body separate from Nominet, both 'ownership' and location, and like most arbitration services. This is not a criticism or complaint again Nominet or the service supplied but an important perception for the service being delivered

We would suggest that Nominet should fund the administration and mediation element of the service by means of cash grant against an annual budget. I.e. funded in the manner it is perceived to be at present. Expert decisions and appeals should be self-financing as now.

The argument that this would be a financial burden on users is nonsense as we suggest the service should continue to be 'free' merely separate from Nominet.

That costs might increase is accepted but the majority of the costs incurred under separation of the DRS would continue to be those incurred now, only perhaps then separately and explicitly identifiable by virtue of independent accounting by the new organisation.

2. We suggest that all decisions should be subject to 'peer group review' **before** 'publication' to ensure, as far as possible, no errors exist or inconsistencies created. As explained earlier we suggest also the possibility of 'publication to the parties', to allow them to identify or query errors of fact, and a decision subject to ratification **before** 'public publication'.

This suggestion would form part of the general attempt to both avoid errors being made and to provide a mechanism for correction of errors.

3. We believe that the DRS should be capable of being used only once by each complainant and their associates and that its use should be binding on both parties. In this context associates should be any connected party as generally defined in law and extent to parties that have acted in concert with the complainant in the past.

In particular the complainant should accept that the entire DRS process applies if it is used by them and waive any ability to pursue their claim once the DRS has ruled (if it goes against them). I.e. DRS should be used as an alternative not an additional procedure to pursue a claim and not be used as a cheap precursor to argue issues before legal action.