

Nominet publishes 2013 DRS summary
United Kingdom - Hogan Lovells LLP

Cybersquatting

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Nominet, the registry responsible for '.uk' domain names, has [published an analysis](#) of complaints filed in 2013 with its domain name Dispute Resolution Service (DRS). The [summary](#) highlights that the number of domain name disputes administered by Nominet decreased by over 17% in 2013 compared with the previous year, although there was a 2.7% increase in the number of '.uk' domain name registrations.

Nominet's DRS was established in 2001 to offer an efficient and transparent method to settle disputes relating to domain names registered under '.uk'. A distinctive feature of Nominet's DRS is that it has an initial mediation phase and only if this is unsuccessful (or if a party is not willing to participate) will the case go on to the formal dispute resolution process. The formal dispute resolution process may be resolved by either a summary decision (if the respondent fails to submit a response) or a full decision by a single panel.

To be successful under Nominet's [DRS Policy](#), a complainant must establish, on balance of probabilities, both that:

- (i) the complainant has rights in respect of a name or mark which is identical or similar to the domain name; and
- (ii) the domain name, in the hands of the respondent, is an abusive registration.

The DRS Policy provides that 'rights' means "rights enforceable by the complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning". 'Abusive registration', in turn, means:

"a domain name which either:

- (i) was registered or otherwise acquired in a manner which, at the time when the registration or acquisition took place, took unfair advantage of, or was unfairly detrimental to, the complainant's rights; or*
- (ii) has been used in a manner which has taken unfair advantage of, or has been unfairly detrimental to, the complainant's rights."*

Nominet reported that 674 domain name disputes were filed in 2013, compared with 818 complaints filed in 2012 and 706 complaints in 2011, which represents a decrease of over 17%. The total number of complaints filed in 2013 represents less than one tenth of a per cent of '.uk' domain name registrations.

Complaints filed with Nominet in 2013 originated from 54 countries. The majority of the complainants were from the United Kingdom, followed by the United States, Liechtenstein, France and Denmark. The majority of respondents also came from the United Kingdom, followed by the United States, China, Saint Kitts & Nevis and Germany.

Of the 674 complaints filed, 437 (or 65%) were resolved through the formal dispute resolution process (83 were resolved directly between the two parties, 87 were resolved by mediation, 177 were resolved as a result of an expert's summary decision, 87 as a result of an expert's full decision and three as a result of a decision by an appeal panel). The rest of the cases filed were either invalid, withdrawn or terminated for failure to pay the required fee. More than half of the cases (54.74% or 369 cases) resulted in a decision to transfer the domain name to the complainant.

Nominet's DRS has proven to be a faster and cheaper alternative to court proceedings. The 437 cases that progressed to formal dispute resolution represent an average saving of approximately £6.55 million (based on a conservative estimate of £15,000 per dispute in court costs and legal fees). In addition, Nominet reported that the average length of DRS cases is progressively decreasing. In 2013 mediated cases were resolved in an average of 49 days, compared with 52 days in 2012. Decisions delivered by a single appointed expert and appeals also took less time to complete in 2013.

The overview also highlights noteworthy domain name disputes in 2013. Amongst the most interesting decisions were those involving the domain names 'hvidbro-mitchell.co.uk' (DRS 12276) and 'opticalexpressruinedmylife.co.uk' (DRS 13417), both of which related to so-called 'gripe sites'. The first case was originally dismissed by the appointed expert on the basis that a personal and uncommon name was insufficient to establish the necessary rights for the purposes of Nominet's DRS Policy. However, the

decision was overturned by a three-member panel on appeal and the domain name was thus transferred to the complainant.

In the second case, the expert denied the complainant's request to obtain the transfer of a domain name that was pointing to a gripe site about laser eye surgery displaying commercial advertisements on the basis that said commercial activity was very minimal. The decision is contrary to previous rulings holding that commercial activity on a criticism site constituted an abusive registration, and underlines the importance of reviewing each case on its own facts.

Nominet's DRS procedure has come a long a way since it was launched in 2001 and it will be interesting to see how it will continue to evolve in the upcoming years, particularly with the recent [introduction of domain name registrations directly under '.uk'](#).

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