



nominet

Advanced ADR Workshop  
Day 2: session 1

Date 04/09/07

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Nominet's origins and functions

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## Brief history

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- Founded in 1996 as the manager of the *.uk* ccTLD
- Replaced "UK Naming Committee"
- Private company
- Not for profit, limited by guarantee

## Core functions

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- Maintain the integrity of the *.uk* Register
- Operate and maintain the zone file for *.uk*
- Perform transactions in a fair and efficient manner
- Provide information to the public
  - WHOIS
  - DAC
  - WHOIS2
  - PRSS
- Provide a Dispute Resolution Service

## Management structure

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- Board of 6 Directors
- Chairman and CEO, plus 4 non-executives elected by members
- 115 employees
- One site

## Ownership and governance

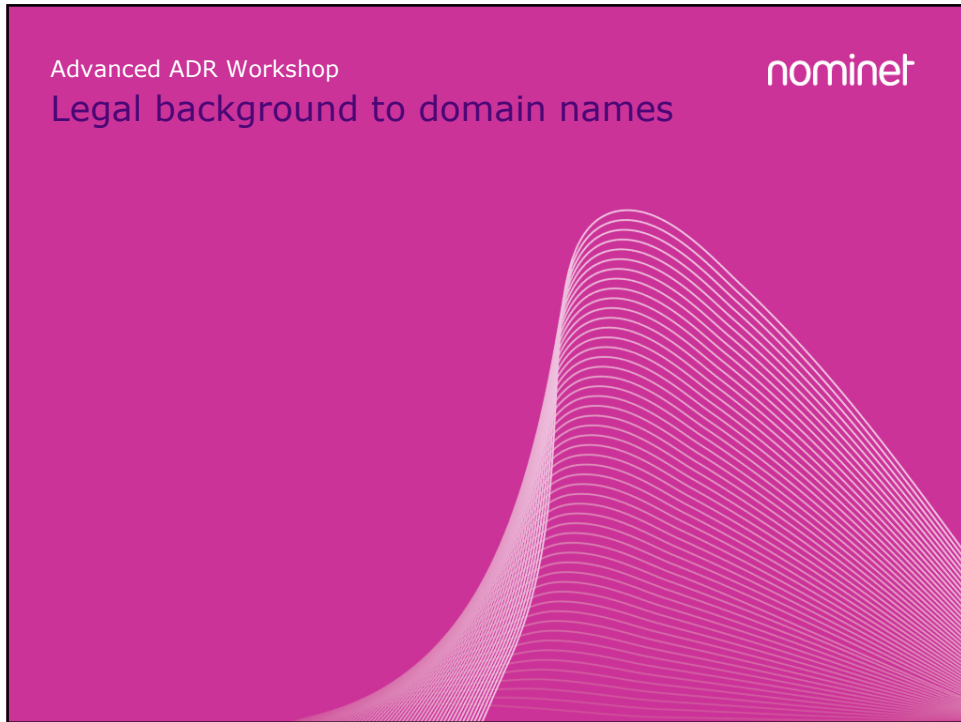
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- 3,000 members
- Highly consultative and consensual in approach; adaptive and responsive
- Policy Advisory Body
- Proactive communication: Registrar days, .uk day, discussion forums, account management

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## Legal background to domain names

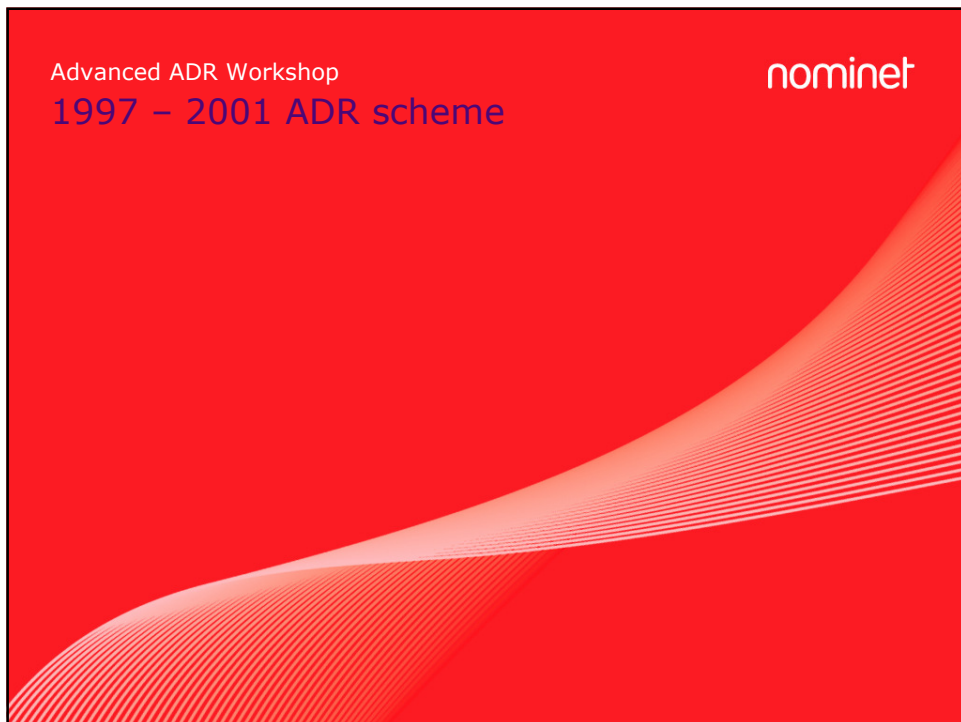
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## 1997 – 2001 ADR scheme

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1997 – 2001 ADR scheme

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## The original service

- Started in May 1997
- Ended 23 September 2001
- 1,500 cases handled

1997 – 2001 ADR scheme

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## The original service

- Written submissions
- Informal Mediation
- Decisions made by Nominet
- Discretionary grounds:
  - Where it is brought to Nominet's attention that the domain name is being used in a manner likely to cause confusion to internet users
- Appeal to independent experts
- Free of charge throughout

1997 – 2001 ADR scheme

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## UDRP – why not?

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- No mediation; low percentage of cases settled
- An international solution - developed for the gTLDs
- Based on trade mark rights
- No means to safeguard consistency
- Nominet had existing infrastructure and experience as an ADR provider

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## Current Nominet DRS

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## Types of disputes

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- Ex-employees
- Contract disputes with missing web designers
- Scams
- Distributors and suppliers
- Competitors
- Pay Per Click
- Initial Interest Confusion
- Tribute/Criticism sites

## Overview

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A successful complainant must show...

- 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.

## Overview

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### An Abusive Registration

- 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**
- has been **used** in a manner which took unfair advantage of or was unfairly detrimental to the Complainant's Rights

## Overview

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### What are Rights?

- **Rights** includes, but is not limited to, rights enforceable under English law. However, a Complainant will be unable to rely on rights in a name or term which is wholly descriptive of the Complainant's business.



## Overview

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### Burden of proof:

- Complainant has burden of proof
- Standard of proof: balance of probabilities

## Overview

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### Non-exhaustive evidence of Abusive Registration:

- Offer for sale
- Blocking registration
- Disruption of business
- Actual confusion
- Pattern of conduct
- False contact details
- Failure to use is not in itself enough

## Overview

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Non-exhaustive evidence that registration is not an Abusive Registration:

- Genuine offering of goods or services
- Commonly known by or legitimately connected with the name
- Legitimate non-commercial or fair use
- Generic or descriptive name of which fair use is being made

## Overview

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- Written submissions:
  - Complaint
  - Response
  - Reply (optional)
- Informal Mediation (10 working days)
- Fee paid by complainant (£750 + VAT)
- Expert decision
- Appeal

## Mediation

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### The process:

- Conducted informally
- By telephone
- 10 working days, subject to mediator's discretion
- Without prejudice
- Confidential
- No mediation fee

## Mediation

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### The practice:

- Carrot and stick approach
- ~ 60% success rate!
- Implications ...
  - Published decisions are heavily weighted in favour of no response cases which do not proceed to mediation (c. 70%)
  - Nominet's culture
- 2 full time dedicated non-lawyer trained mediators
- Nominet handles 13% of all UK commercial mediations
- Globally acclaimed and award-winning

## Some more unusual mediations

- Settlements for:
  - Products (fleece, computer game)
  - A tour of a factory
  - Shared links (to each other's site)
  - Donation to charity (at least 10 cases)
  - Tickets to a comedy club
- One case was settled because the mother of the complainant and respondent told them over Sunday lunch to sort it out

## Expert decision

- Fee of £750 + VAT, payable by complainant
- Impartial and independent
- Next available expert takes the next case, subject to:
  - Conflict of interest
  - Availability

## Appeal


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- Appeal to three person panel
- Time limits more flexible
- Fee is £3,000 + VAT, payable by appellant

## Expert selection

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- Open application process
- National advertising campaign
- 37 experts selected, including 8 non-lawyers


Dispute Resolution Service

## Can you weigh up the evidence?

**Nominet UK manages the Registry for Internet Names ending .uk. Following successful consultation, Nominet is introducing a revised Dispute Resolution Service (DRS) in autumn 2007 and is seeking independent experts for the DRS panel.**


Nominet's Dispute Resolution Service, established in 1997, attempts to mediate between two parties in dispute over the registration of a Domain Name. If mediation is unsuccessful, the case is referred to an independent expert for a decision under Nominet's Rules.


Nominet is now seeking approximately 30 independent experts to evaluate (DRS) submissions and prepare written decisions on cases. You will be joining a team of highly regarded experts in the field.

Candidates must have a general knowledge of Domain Name issues as well as experience of working on disputes; a legal background is useful but not compulsory. Suitable candidates may be industry figures, those involved in mediation or arbitration, IT consultants or academics with the relevant expertise to decide on disputes.


A fixed fee is offered at £750 per case.

Applications are invited in the first instance by sending a covering letter and CV to:  
Sharon Barwood, HR Manager, Nominet UK,  
Sandford Gate, Sandy Lane West, Oxford, OX4 6LB.  
Or e-mail: [recruitment@nominet.org.uk](mailto:recruitment@nominet.org.uk)




  
THE UK INTERNET NAMES ORGANISATION

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UK Case law relating to Domain Names



## Leading cases

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- Harrods Ltd v. UK Network Services Ltd
- Pitman Training v. Nominet UK
- Dixons Group plc v. Prince Sports Group Inc.
- Prince plc v. Prince Sports Group Inc
- BT plc v. One In A Million
- Montblanc Simplo GmbH v. Just Results plc
- Easyjet Airline Company Ltd v. Dainty
- Global Projects Management Ltd v. Citigroup Inc
- Phones4u Ltd v. phone4u.co.uk Ltd