

.ie Alternative Dispute Resolution
NETNEUTRALS DISPUTE RESOLUTION SERVICE

Decision of Independent Specialist

Case Number: 630

1. The Parties:

Complainant:	Department of Health
Respondent:	Damian McMenamin

2. The Domain Name(s):

nphet.ie and niac.ie	("the Domain Name")
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3. Procedural History:

I can confirm that I am independent of each of the parties. To the best of my knowledge and belief, there are no facts or circumstances, past or present, or that could arise in the foreseeable future that need be disclosed as they might be of such a nature as to call in to question my independence in the eyes of one or both of the parties.

The procedural history is as follows:

Action	Comment / date
Dispute received	20 th January 2022
Complaint validated	21 st January 2022
Notification of complaint sent to Complainant	23 rd January 2022
Notification of complaint sent to Respondent	23 rd January 2022
Forum Opened	24 th January 2022
Complaint Form received	8 th February 2022
Response received	20 th February 2022
Forum Closed	2 nd March 2022
Adjudication Started	3 rd March 2022
Adjudication Decision Posted	10 th March 2022
Specialist Decision published	10 th March 2022

4. Factual Background

The Complainant is the Irish Department of Health which is advised in certain of its functions by independent expert groups called the National Public Health Emergency Team (NPHE) and the National Immunisation Advisory Committee (NIAC). NPHE has operated since at least 2009 and has been called upon when required to advise upon public health emergencies including Swine Flu and more recently COVID 19. NIAC has been involved in advising generally on all matters relating to immunisation since 1988.

The Respondent is the registered holder of the domains NPHE.ie and NIAC.ie.

According to Whois data, NPHE.ie was first registered on 2/10/2020 and NIAC.ie on 31/03/2021.

5. Parties' Contentions

Complaint

A summary of the Complaint is as follows:

The Complainant asserts that the domains NPHE.ie and NIAC.ie have variously been used to redirect to sites which provide information that conflicts with public health advice relating to COVID 19 vaccination, including NoJabforMe.info and to the sites of the government political parties Fianna Fáil and Fine Gael.

The Complainant thus asserts that the domains have been registered and are being used in a manner which is damaging to NPHE and NIAC both in terms of their advice and in terms of their public perception as trusted and independent bodies, free from political influence.

The Complainant further asserts that there is a public interest in the domains being placed into the Complainant's hands.

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Response

A summary of the Response is as follows:

The Respondent asserts that the complainant is irked by jealousy and that the domains were registered by the Respondent out of a motivation to allow for free speech and for expression of opinion.

The Respondent asserts that the domains are acronyms for “No Propaganda Here Expect Truth” and “New Ideas Allow Conversation”.

The Respondent further asserts that the Department of Health lacks standing since NPHET and NIAC are independent bodies in their own rights.

The Respondent further asserts that neither NPHET nor NIAC holds a registered trademark, VAT number or Company number to facilitate them in establishing a recognised identity or in registering a domain.

The Respondent further asserts that the Complainant could have registered the domains at any time over a number of years in the past but failed to do so, and that the Complainant has not made any attempt to register domains for NPHET or NIAC in other formats.

The Respondent further asserts that the body NPHET is to be wound down.

The Respondent asserts that the actions of the Complainant are a waste of time and public resources that could better be expended in dealing with health matters.

The Respondent asserts that the Complainant’s actions are a frivolous attack on the Respondent’s intellectual property rights.

The Respondent further asserts that the actions of the Complainant are an attack on the Respondent’s constitutional rights to the enjoyment of private property and to freedom of speech.

The Respondent concedes that the domains were directed to the government political parties websites.

The Respondent concedes that the domains are were redirected on a regular basis.

The Respondent does not deny that the domains or either of them linked at some point to NoJabsForMe.info and further asserts that the Respondent could use the domains to direct to information from other agencies or countries, including WHO or USA.

The Respondent has invited the Complainant to discuss purchasing the domains.

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6. Discussions and Findings

The burden of proving a complaint under the ADRP is on the Complainant.

Matters to be proved:

Complaint Submission

The Complainant has proved in accordance with .ie ADR Policy that...

	<ul style="list-style-type: none">the Complainant would ordinarily be eligible to register the domain name in question if it was not already registered by the Registrant. This means that the complainant must prove its identity and it must prove that it has a substantive connection with the island of Ireland. If the complainant has other .ie domains registered in their own name this requirement is satisfied automatically; and
	<ul style="list-style-type: none">the Complainant has rights in the domain name or in marks or identifiers very similar to it, or that the Complainant's rights have been negatively impacted by the registration, and
	<ul style="list-style-type: none">the registration of the domain should be revoked as it has been registered or used abusively or in bad faith.

General

	<ul style="list-style-type: none">the Complainant would ordinarily be eligible to register the domain name in question if it was not already registered by the Registrant, and
	<ul style="list-style-type: none">the Complainant has rights in the domain name or in marks or identifiers very similar to it, or that the Complainant's rights have been negatively impacted by the registration, and
	<ul style="list-style-type: none">the registration of the domain should be revoked as it has been registered or used abusively or in bad faith.

Complainant's Rights

The meaning of "Rights" is defined in the .ie ADR Policy as follows:

	<ul style="list-style-type: none">the Complainant has rights in the domain name, or in marks or identifiers very similar to it (sufficiently close to the domain that there would be a strong likelihood of confusion), or that the Complainant's rights have been negatively impacted by the registration. Any legal right or entitlement can be considered, including but not limited to:
	<ul style="list-style-type: none">Trade and service marks protected in the island of Ireland, or
	<ul style="list-style-type: none">Personal names (including pseudonyms) by which the Complainant is commonly known or has acquired a reputation in on the island of Ireland, or
	<ul style="list-style-type: none">Geographical indications that can prima facie be protected in the island of Ireland,
	<ul style="list-style-type: none">Unregistered rights acquired through use; and the registration of the domain should be revoked as it has been registered or used abusively or in bad faith.

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Complainant Rights Negatively Impacted

The Complainant rights are negatively impacted by the domain registration or use as shown by:

	<ul style="list-style-type: none">• The domain name registration or use is misleading or confusing to its customers, or
	<ul style="list-style-type: none">• The domain name registration or use is commercially damaging to its business through activities such as passing-off, content scraping or impersonation, or
	<ul style="list-style-type: none">• The domain name is being used to circulate defamatory material relating to the Complainant, or
	<ul style="list-style-type: none">• The domain name is being used for the purpose of making unauthorised use of material in which the Complainant has a copyright or another protected interest

Domain Used or Registered Abusively or in Bad Faith

.ie ADR Policy defines “Abusively Registered” as:

Abusively registered refers to a Domain Name which was registered or used to take unfair advantage of or was unfairly detrimental to the Complainant's Rights;

The domain has been registered or is being used Abusively or in Bad Faith by the Registrant as evidenced by:

	<ul style="list-style-type: none">• The domain name was registered or is being used with the primary purpose of selling or renting it specifically to the Complainant (or a competitor) for more than the Registrant paid for it, or
	<ul style="list-style-type: none">• The domain name was registered or is being used with the primary purpose of preventing the Complainant registering a name or mark in which the Complainant has rights, or
	<ul style="list-style-type: none">• The domain name was registered or is being used with the primary purpose of unfairly disrupting or interfering with the Complainant's business, or
	<ul style="list-style-type: none">• The domain name is being used in a way that is likely to confuse people or businesses into believing that it is registered to, operated or authorised by, or otherwise connected with the Complainant, or
	<ul style="list-style-type: none">• The domain name was registered or is being used for an unlawful purpose (e.g. it is engaging in suspected fraudulent activity, engaging in other criminal/illegal online activity), or
	<ul style="list-style-type: none">• The domain name is registered to a company which currently has a dissolved company trading status, or
	<ul style="list-style-type: none">• The domain name is being used to facilitate the circulation of defamatory or racist material, or
	<ul style="list-style-type: none">• The domain name is registered to a Registrant which does not have (and never had) a connection to the island of Ireland, or

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	<ul style="list-style-type: none">• The domain name was registered as a result of a relationship between the Complainant and the Registrant, and the Complainant<ul style="list-style-type: none">a) has been using the Domain Name registration exclusively; andb) paid for the registration and/or renewal of the Domain Name registration; or
	<ul style="list-style-type: none">• Failure by the Registrant to use the Domain Name for the purposes of email or a web site, the Registrant offering a domain name for sale, or use of domain parking services that may include advertising related to the keyword content of the domain name are not of themselves evidence of abuse or bad faith, however the Specialist may consider these issues in combination with other factors when deciding a case.

The Complainant has established:

The Complainant has established that it would ordinarily be eligible to register the domain names in question if they were not already registered by the Respondent. The identity of the Complainant and its connection with the Island of Ireland are not in dispute.

The Complainant has established standing to register the domain names in question. The Complainant has established that the bodies NPHET and NIAC are long established, and I conclude that while they are established to *act* and to *advise* independently, they are not separate bodies from the Complainant in their own right. As they are constituted within the Complainant the Complainant is therefore entitled to register domains relating to them. Moreover, the Respondent has argued continuously that the Complainant could have registered the domains and others in respect of NPHET and NIAC, and in so arguing may be taken to have conceded that the Respondent is entitled to register the domains were they not held by the Respondent, and it cannot now be heard to argue otherwise.

The Complainant has established that it has rights in the domain name. The acronyms NPHET and NIAC were thrust into the Irish public limelight by the COVID 19 pandemic: NPHET by the public health measures introduced following its advice in March 2020 and subsequently; and NIAC upon the introduction of emergence of COVID vaccines in the latter part of 2020. I conclude it is likely that most members of the public in Ireland would equate the acronyms NPHET and NIAC to the two bodies established identified above, which in my experience featured almost daily in national news.

The Complainant has further established that the Complainant's rights have been negatively impacted by the registration, in that the domains have been used to lead visitors towards information which contradicts the advice of NPHET and NIAC (eg. NoJobsForMe.info) and/or which could cause confusion or doubt about the independence of that advice (eg. the websites of the Government political parties). On balance this can be viewed as confusing for visitors, or indeed defamatory to any extent to which the

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bodies and their members are thereby characterised as not supplying independent advice.

The Complainant has established that the domains were registered or are being used abusively or in bad faith, as follows.

As regards registration abusively or in bad faith, in its first exchanges with the Complainant within this process, the Respondent invited the Complainant to discuss purchase of the domains. This on its own would not be sufficient evidence of abusive registration or bad faith. However, coupled with:

1. the timing of the registrations (each consequent upon the rise to national prominence of the acronyms NPHET and later NIAC at times when the Respondent could not have been unaware of the bodies concerned);
2. the immediate invitation to discuss purchase of the domains;
3. the regular redirection of the domains to sites which it appears to me were designed to annoy the Complainant or have that effect and/or potentially interfere with its performance of its function and/or further impugn its reputation;
4. the later labelling or characterisation of the domain sites as venues for the protection and expression of free speech and ideas, but without any content and without any credible evidence in support of such a purpose whilst contradictory intent was evident;

it must be concluded that the Respondent registered the domains opportunistically when the associated acronyms came to public prominence with the primary intent and purpose of either selling or renting them specifically to the Complainant (or a competitor) for more than the Respondent paid for them, or of preventing the Complainant from registering names or marks in which the Complainant has rights, or of unfairly disrupting or interfering with the Complainant's statutory function.

As regards use of the domains abusively or in bad faith, the redirection of the domains to sites which either contradict the Complainant's message or which create confusion or doubt about the independence of the advice of the bodies in question can be viewed as clearly disrupting or interfering with the Complainant's statutory function. This alone is does not constitute abusive or bad faith use unless the disruption or interference is *unfair*. The Respondent has raised Free Speech and Expression of Opinion, and Private Property as justifications for such disruption or interference, however, I see no evidence of a genuine intent on the part of the Respondent to use the domains to promote free speech and expression of opinion. Indeed, such professed intent is contradicted by the actions of the Respondent which seem to me more designed only to create a worry or unease on the part of the Complainant enabling the Respondent to hold the domains to

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ransom. Even the words “No propaganda here expect truth”, which the Respondent states are the basis for the acronym NPHET, seem to be loaded with that intent, especially when there is nothing else on the site. On balance, I conclude that that constitutes unfair disruption or interference in the Complainant’s activity.

This is not balanced out by the Respondent’s property rights argument, since domain names are only ever held subject to the .ie ADR policy, they are not absolute, and both Respondent and Complainant have been afforded a fair hearing and their arguments and submissions in relation to their entitlements to the domain in accordance with the ADR policy have been given a fair, full and impartial consideration.

The Complainant’s argument that there is a public health interest in the domains being in the Complainant’s hands is not relevant to these proceedings which can only be decided on the basis of the .ie ADR policy.

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Domain Holder Response

Showing that a Registration is not Abusive or in Bad Faith

The Registrant may provide information to counter any statements within the complaint and can submit its own evidence to show that its registration and/or use of the domain is not unreasonable, including but not limited to demonstrating any of the factors below:

	<ul style="list-style-type: none">• The Registrant has established rights in the domain name, or in marks or identifiers very similar to the domain name including but not limited to:
	<ul style="list-style-type: none"><ul style="list-style-type: none">○ Trade and service marks protected in the island of Ireland, or
	<ul style="list-style-type: none"><ul style="list-style-type: none">○ Personal names (including pseudonyms) by which the Complainant is commonly known or has acquired a reputation in on the island of Ireland, or
	<ul style="list-style-type: none"><ul style="list-style-type: none">○ Unregistered rights acquired through use.
	<ul style="list-style-type: none">• Prior to any notice of the dispute, the Registrant used the domain name or a name reasonably corresponding to the Domain Name in connection with a bona fide offering of goods or services or made demonstrable preparations for such use, or
	<ul style="list-style-type: none">• The Registrant (as an individual, business, or other organization) has been commonly known by the domain name or similar name, even in the absence of a registered trademark, or
	<ul style="list-style-type: none">• The domain name is generic or descriptive and the Registrant is making fair use of it, or
	<ul style="list-style-type: none">• The domain name is being used solely for tribute or criticism, or
	<ul style="list-style-type: none">• The domain name contains or references the Complainant's mark but the Registrant is making fair use of it.

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The Registrant has established:

The Respondent has not established that the complainant is irked by jealousy nor that the domains were registered by the Respondent out of a motivation to allow for free speech and for expression of opinion.

The Respondent assertions that the domains are acronyms for “No Propaganda Here Expect Truth” and “New Ideas Allow Conversation” are accepted.

However, the Respondent has failed to establish that the domains were registered for the purposes of establishing venues for the promotion of truth and the free expression of ideas. The Respondent has not supplied any information or evidence of a means, mechanism or plan, course of action or otherwise for how it intended or intends to promote Propaganda-free information, the Truth, or expression of New Ideas and Conversation. The Respondent is not required to prove its innocence. That said, the actions and argument of the Respondent, including the current use of the domains, tend very much to contradict this stated intent. The only allusions to the above appear in the words chosen to give rise to the acronyms on the holding sites recently created, which contain no other content; before those sites appeared, the domains redirected as described elsewhere above. On balance, the evidence points to a domain squatting purpose and use rather than a promotion of free speech purpose and use.

The Respondent has not established that the Department of Health lacks standing or that NPHET and NIAC are independent bodies in their own rights. Indeed, the Respondent has conceded that the Department of Health is entitled to apply for the domains, that it could have done so for many years, and, indeed, has invited discussions with a view to selling the domains to the Department of Health.

The Respondent has further not established that neither NPHET nor NIAC holds rights in the domain names. The acronyms are widely associated with the bodies in question, despite not being unique.

The Respondent has failed to establish that the body NPHET is to be wound down. Perhaps the Respondent has confused ‘wound down’ with ‘stood down’ or ‘stepped down’?

The Respondent has not established that the Complainant’s actions are a frivolous or unjustified attack on the Respondent’s intellectual property rights.

The Respondent has not established that the complaint is an unjustified or unlawful attack on the Respondent’s constitutional rights to the enjoyment of private property and to freedom of speech.

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I therefore readily conclude:

Free speech, freedom of expression and of opinion, criticism, enjoyment of personal property and other constitutional rights are precious rights and privileges which must be at all times protected, respected, and defended. They must not be open to hijack by those who by their words profess to be championing them but only out of convenience to justify their wrongful actions.

I conclude that the Complainant would ordinarily be eligible to register the domain names NPHET.ie and NIAC.ie if they were not already registered by the Respondent, and

I conclude that the Complainant has rights in the acronyms NPHET and NIAC and that the Complainant's rights have been negatively impacted by the registration, and

I conclude that registration of the domains should be revoked as they have been registered or used abusively or in bad faith by the Respondent, and

I conclude that the domains should be transferred to the Complainant.

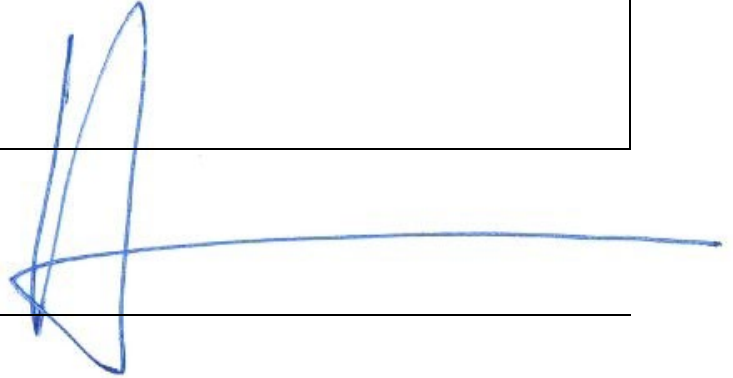

I reach the above conclusions on the basis only of the evidence and argument properly placed before me and only on an application of the .ie ADR policy. For the avoidance of any doubt I have not based any of my decision on any argument that there is a public health interest or national interest in the domains being held by the Complainant – my decision is based solely on an application of the .ie ADR policy which does not admit such argument or basis. Further, I have not based any of my decision on any argument that there is a public health interest or national interest in suppressing sites which contradict official public health advice - my decision is based solely on an application of the .ie ADR policy which does not admit such argument or basis. Finally, for the avoidance of any doubt, I hereby declare that I make no special allowances for the fact that the Complainant is a public body, or that the Respondent is a private citizen, nor has that influenced any of my decision – I would reach the same conclusion on this case had the Complainant been a private citizen or entity, or, indeed, had the Respondent been a public body.

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7. Decision

The domains shall be transferred to the Complainant.

Signed:



Dated:

10 March 2022