

Raising Industry Standards Consultation

Responses and recommendations

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1. Executive summary

This paper provides a summary of the responses to the Raising Industry Standards Consultation, recommendations for taking this initiative forward in the form of a revised Registrar Contract (to replace the existing Tag Holder Agreement) and a set of Good Practice Terms. Drafts of these documents are included in appendices A and B.

The paper also seeks PAB input on the method for dealing with enforcement and complaints.

2. The Consultation

The consultation on Raising Industry Standards was launched in January 2006 and ran for four months until the 31st of May. The consultation received 20 responses (of which one was received after the deadline but is included in the feedback for completeness) mostly from registrars and members but there were five responses from the wider stakeholder community.

The consultation was publicised by EURIM in their newsletters, by the CBI in their e-Business update, and in various press reports (ItWales.com and Netimperative.com to name a couple). Members were sent two reminders to let us have their views and our customer support team promoted the consultation when speaking to members and tag holders. We also used member meetings as an opportunity to ask for contributions. The consultation was extended from three months to four months to encourage input. We also used the consultation and the promotion of self regulation along with Internet Governance as a focus of discussion in a number of meetings we have had with MPs.

Overall, we were very pleased with the quality of the responses and grateful to those who took the time to respond. Whilst some responses dealt with each question separately, many took the opportunity to respond to the proposals more generally and offer their opinions on the concept of raising standards within the Internet industry.

This paper sets out our analysis of the responses to the consultation and also our recommendations for further action.

3. General findings

Overall there was support for a general move to raise standards within the Internet industry. 82% of the 11 responses to the question “Do you support the proposal to improve standards associated with the .uk domain name space?” were in favour of the proposal put forward in the consultation.

22% (out of 9 respondents) supported the proposal to improve standards by strengthening the registrar contract, whilst 45% thought that standards could be improved through a combination of the strengthened contract and some kind of added value/certification.

3.1 Accurate data

There was also general support for registrars, registrants and the registry taking responsibility for the correction of registrant data that they know to be incorrect. There were concerns over registrars being held accountable for inaccurate data and a call for only those registrars who repeatedly provide inaccurate data or fail to correct data they know to be incorrect to be penalised. One registrar who responded has entirely automated systems for registration, therefore did not feel they had enough control over the information the registrant submitted to agree to this clause and did not appreciate why it is a problem if a domain name is registered to a fictitious name and/or address.

It has also been highlighted that the transfer fee may be an element which is contributing to inaccurate data on the database, as some are reluctant to pay the fee and therefore leave the domain name registered to the wrong entity. This issue does not relate specifically to this consultation. However, it is being picked up in a separate review of the transfer fee.

3.2 Publication of information by registrars

3.2.1 Pricing

Four out of the seven responses on this issue felt pricing should be published clearly on a registrar’s website whilst another respondent (the PAB) felt that this was not necessary as long as the customer was made aware of the relevant charges.

3.2.2 Service Level Agreements

Some felt it is not feasible to require registrars to publish their Service Level Agreement as whilst it may be good practice to have them, not all businesses do. Also some information in relation to pricing and Service Level Agreements may be commercially sensitive.

One suggestion was that Nominet should produce standardised information that registrars would be required to publish particularly on the role of Nominet, the relationship between registrar, registrant and Nominet and pricing.

3.3 Dispute resolution conditions to address registrant-registrar disputes

There was not overwhelming support for the contract to state that a dispute between a registrar and registrant should be handled by a modified version of our DRS. However, the respondents were not entirely against having a provision in the contract that stated disputes would be attempted to be resolved through an Alternative Dispute Resolution process. There were concerns over the type of dispute that might occur and whether, if these were connected to non-registry matters it would be appropriate for Nominet to become involved.

3.4 Performance Criteria

It was suggested that in order to ensure a consistent and high quality service to registrants we could introduce performance criteria with penalties for those who consistently underperformed. (For example taking too many days to carry out a registrar change.)

4. Additional training for registrars

Generally people thought that Nominet should not be providing technical training to registrars either because of cost implications (they felt training would be funded by registration/membership fees) or because it was felt that, a registrar that required such training should not be a registrar in the first place. An alternative suggestion was that we should provide clearer communication in the form of basic guides and FAQ's. Others felt that if they had a problem or didn't understand something they could contact us for help. A suggestion from someone in favour of more technical training was to develop toolkits and e-learning packages so that the training was accessible to all. Some would also like to see a differentiation between the types of training e.g. technical training on such things as setting up a PGP key and customer service training on explaining the three way contract, the PAB and the Board.

5. Our recommendations for the registrar contract

On the basis of the responses received we recommend that we avoid an overly prescriptive approach to the requirements placed on registrars through the registrar contract. This is important given the different business models that registrars operate, how they acquire customers and the commercial sensitivity of some registrar/registrant relationships. Having said that, we still feel that there would be significant benefits to registrants if a revised contract were to be introduced incorporating the following:

- Greater clarity regarding what the registrant can expect from their registrar covering pricing, services and customer service provision
- The provision of accurate registrant data where practicable and a requirement to take action once inaccurate data is brought to the attention of the registrar.
- Clarity regarding the relationship between the registrar, the registrant and Nominet.
- A term which states that, unless the registrant's explicit consent is given, the domain name will only be registered in the name of the customer.
- A term in the contract which states that the contract also applies to the resellers of the registrar.
- A requirement for new registrars to demonstrate a basic level of knowledge regarding .uk business processes through the completion of a series of online tests. These to be supported by the provision of revised FAQs and other online materials.

We recommend that as an adjunct to the registrar contract we introduce a set of good practice terms. These will be contractually binding but will seek to explain both the motivation and the requirements of the terms in a way that would not be appropriate in the contract itself. Changes to the contract will be subject to a notice period during which registrar views will be sought.

The proposed registrar contract and Good Practice Terms are attached as appendices A and B respectively.

6. The introduction of a ‘gold standard’

It was clear from the responses to the consultation that people were reluctant to fully support the concept of a ‘gold standard’ at this stage as they felt the proposal was too vague. 33% (of 9 respondents) were opposed to the proposal. Some felt that the question of the introduction of a ‘gold standard’ began the debate regarding whether establishing a code of conduct and enforcing it is within Nominet’s role or outside our jurisdiction.

Concerns were around the following:

- The cost of setting up such a scheme
- The number of potential levels within such a scheme i.e. whether ‘gold standard’ would categorise registrars as simply good or bad with no intermediate level.
- Whether a multi tiered system of registrars would cause more confusion than exists currently.
- Whether the benefit to the customer would justify the cost, time and effort in setting up such a standard.

We recommend that we look in more detail at the problem areas that we would like the ‘gold standard’ to address and explore whether any of the issues can be tackled through our existing procedures.

If this is not feasible we will draft a proposal which outlines the standards we would expect registrars to reach in order to achieve a ‘gold standard’. The proposal should also address the above concerns. This proposal will have a separate consultation.

7. Enforcement

There was some concern over whether Nominet, would have any jurisdiction to apply sanctions should a registrar be in breach of any of the terms.

Where the terms form part of a contract between the registrar and Nominet it is possible to suspend or terminate the contract under normal contract provisions. The issue therefore becomes what constitutes a logical and reasonable sanction and who should impose it, rather than whether action can be taken.

7.1 Proposals

7.1.1 Financial penalties

Three of the six respondents to the question regarding sanctions indicated their support for the introduction of financial penalties. However we were reminded that we are not a regulatory body and that the registrar should be given every opportunity to rectify a problem before sanctions were imposed. In addition it was felt to be very important that, if we did impose sanctions, there was an independent appeal process in place for any decision to be appealed. Alternative suggestions were to suspend the tag or review whether the particular registrar should be allowed to continue with registrar status.

7.1.2 Name and Shame

Respondents were not in favour of a name and shame sanction.

7.1.3 Modified DRS

There were objections to this proposal from some of the respondents who expressed reservations about our present Dispute Resolution Service. In addition registrars may already be obliged to adhere to alternative dispute resolutions, for example under the Communications Act 2003.

Therefore we recommend that, where a registrar is already bound by other ADR procedures or codes of practice, that those requirements are not duplicated in any requirements we make.

7.2 Recommendations

In 2003 we ran a project to ensure that all registrars were making registrants aware of our terms and conditions. If the registrar could not already demonstrate that they were meeting the requirement to incorporate the terms and conditions into their customer's contract with us, we worked with the registrar to explain the requirement and provided support, where required, to ensure compliance. Registrars were given several weeks to comply and various notices regarding the need to meet the requirements. In a handful of cases the registrars refused to comply with the requirement and in these cases the registrar's access to our systems was suspended (the "tag" was suspended). If the registrar did nothing further the agreement was ultimately terminated. Of the several thousand registrars who were contacted, it was only necessary to eventually terminate a couple of registrar agreements.

The final sanction applied in this project was severe but we feel it was appropriate given the efforts made to work with the registrar prior to action being taken. We recommend a similar approach to the enforcement of the new Registrar Agreement.

In addition, and borrowing a suggestion made in response to the proposal to introduce financial penalties, we recommend the introduction of an appeals mechanism. In the event that either party is dissatisfied with the decision taken, an appeal could be made. Possible parties who could consider the appeal include:

- The Chief Executive
- The Board
- The Policy Advisory Board

We are seeking the PAB's views on both the in-house enforcement proposal and the appeals mechanism.

We recommend that enforcement of the Registrar Contract is two fold:

- When a registrar first joins Nominet we will work with them to ensure they fully understand and meet the requirements of the Registrar Contract and the Good Practice Terms. The new registrar will also be asked to complete any training/tests required.
- In respect of existing registrars we will respond to complaints received.