

Policy issues arising out of the PAB subcommittee's draft rules

Background

This paper sets out policy issues arising out of the PAB sub-committee's proposed rules. The issues fall into two categories: A) restricted domains and B) .sch.uk rules.

The issues may be summarised as follows:

- Restricted domains. Certain categories of domain names are currently restricted from registration at present. Whilst there is no reason to discard the prohibition on single character domain name registrations, the PAB are invited to reconsider the position with regard to 2 letter domain names and domain names identical to existing TLDs and SLDs.
- net.uk The SLD Rules for .net.uk domain names are restrictive and Nominet is aware that they are not adhered to by a number of registrants. As a result the CoM have suggested that the PAB consider whether or not the .net.uk SLD become an "open" SLD.
- sch.uk. It is recommended that the Schools rules are removed from the .uk Rules as the Schools are not bound to Nominet's terms and conditions

A: RESTRICTED DOMAINS

The draft proposals presented by the PAB sub-committee contain the following three categories of domains which are specified as "protected" and therefore unavailable for registration by an applicant into any of the existing second level domains:-

- one character domains
- two letter domains
- domains which are identical to existing TLDs and SLDs

1.) One character domains

The first category of restricted domains is a domain consisting of one character only. Nominet is able to justify this restriction because these domains have been reserved for use as "splitters" to allow for future expansion of domain name variations, in conformance with international practice in the internet. There are no proposals to relax this rule.

2.) Two letter domains

Domains consisting of only two letters are restricted. The technical reasons for this restriction no longer apply, but they remain prohibited. Nominet is aware that many 2 letter combinations are registered trade marks, sometimes in more than one class and by more than one proprietor (eg AA for the Automobile Association and Alcoholics Anonymous)

Neither Nominet nor the PAB have established an agreed method of determining which of the many potential competing applicants (including trade mark holders) would have priority when domain name applications or DRS applications for the same two letter domains are submitted. As a result, and in consultation with the PAB, Nominet made a policy decision that these domains remain unavailable for registration within the existing second level domains.

Nominet has been receiving an increasing number of enquiries from potential registrants of two letter domain names, many of whom are aware that there is no longer a technical reason for restricting the registration of these names. It is recommended that now is an appropriate time to review this policy. Please see the proposals below.

3.) Existing SLDs or TLDs

In the draft rules prepared by the PAB sub-committee, the following domains are specifically listed as unavailable for registration within an existing second level domain:

arpa	ltd	org
com	mil	orgn
edu	mod	parliament
gov	net	plc
govt	nhs	police
int	nic	sch

Historically, the resolution of domain name registrations consisting of existing TLDs (eg net.co.uk) would have been likely to cause technical problems. However, that is no longer the case and there is no longer any technical reason to prevent Nominet from accepting the registration of any of the above domain names.

However, if these domains, and the resulting domain names, were allowed to be registered, it is anticipated that Nominet would face difficulties in allocating them, because they are so few in number, and are likely to be registered very quickly. One PAB member also expressed the view that the resulting domain names may cause confusion if they were actively used, an argument frequently put forward by trade mark holders to justify a proposed block on the registration of domain names incorporating their name or mark.

Nominet would essentially be faced with the same issues that surround the registration of two letter domains. Neither Nominet nor the PAB have established an agreed method of determining which domain name applicant or DRS applicant would have priority when allocating these domains.

Reserving these domain names without technical justifications contradicts Nominet's firmly established policy of "first come first served"; a policy which Nominet has defended on many occasions in response to pressure from various entities, including in response to the WIPO draft Second Report RFC-3, and in response to numerous trade mark holders who have requested that Nominet "block" registrations which include their trade mark.

As a result of the above issues, specifically listing these restricted domains in Nominet's new Rules is likely to renew requests for equivalent blocks to be imposed, and to remove any logical reason for Nominet to resist such a block. As a result, the "first come, first served" policy is likely to be significantly eroded.

It is proposed that, as a minimum, a further policy decision be made not specifically to list these reserved domains in the new Rules but merely to prohibit existing SLDs and TLDs from being registered as third level domains. However, a better solution would be for the PAB to formulate a firm policy with regard to how these domains should be allocated.

The PAB is invited to consider this proposal.

4.) Options for an agreed method of allocating "reserved" SLDs

Nominet has a variety of options which it could adopt in order to allocate domain names consisting of two letter third level domains or existing SLDs or TLDs as third level domains. Below is a list of options:

- "Reserving" the third level domains and vetting registrant applications to determine the most "worthy" registrant. This would involve Nominet exercising discretionary decisions, a practice which it has been seeking to minimise in other areas. It is also likely to lead to disputes with parties who allege that Nominet has failed to exercise its discretion appropriately.
- Allocating the third level domains to the highest bidder. This is likely to cause a conflict with Nominet's not-for-profit status. It is also likely to lead Nominet into uncomfortable situations, for instance where X bids £10,000 to register bt.co.uk, and BT bids £5 and states that if Nominet awards the domain name registration to X, Nominet will be knowingly participating in the infringement of BT's trade mark. An automated system of allocation allows for no subjective judgements to be made by Nominet, and is to be preferred.
- Allocating the domain names on a strict "first come, first served" basis and having any disputes be determined through the DRS procedure. Given the small number of domain names involved, it is highly likely that all would be registered in a matter of minutes, to a small number of registrants. Such a policy is likely to be regarded as irresponsible. It would also not conform to the approaches taken in the launches of the new gTLDs and the Nominet run .me.uk, where the registries involved took a variety of measures to safeguard the intellectual property interests of third parties.
- Restricting registrations to one domain name per registrant. This would be difficult (and costly) for Nominet to police, and in any event could be subverted technologically or by the use of proxies or pseudonyms with relatively little effort on the part of registrants.
- Allocating the domain names on a "first come, first served" basis with staggered pricing (following the .me.uk launch) to deter multiple registrations for registration of these domain names. The staged pricing process was a successful element of the launch of .me.uk, and Nominet is unaware of any substantive complaints about this practice, which was aimed at promoting an even distribution of registrations to registrants and at deterring the stockpiling of registrations by warehousemen. Any profits made in connection with such a policy would be used to offset any set up costs, and ultimately to drive down registration fees overall.

Proposal

It is suggested that the best way forward is for Nominet to adopt a policy to allocate these "reserved" domain names on a "first come, first served" basis with registrations at staggered prices. The level of the fees may possibly be higher than those adopted in the .me.uk launch to deter multiple registrations. A suggested initial price being £200. Any disputes would be dealt with by means of Nominet's Dispute Resolution Service.

The PAB is invited to consider this proposal.

B: .NET.UK domain names

The CoM have suggested that because the .net.uk SLDs are considered to be overly restrictive for this domain, and because Nominet are aware that the SLDs Rules are widely broken by registrants of .net.uk domain names, that the PAB consider whether or not the .net.uk SLD become an "open" SLD and subject to the first come first served principle. If the PAB were in favour of relaxing the current restrictions for .net.uk, the Rules would have to be amended accordingly.

The PAB is invited to consider this proposal.

C: SCH.UK RULES

1. As part of the exercise to re-draft the Rules, we have reviewed the proposed rules for the sch.uk SLD Rules. It has been suggested (see paper to Policy Advisory Board re: The Nominet Rules and Additional Information Section) that the sch.uk SLD Rules be removed from the Rules.
2. Set out below is a summary of Nominet's existing procedure of registering a sch.uk domain name, together with a proposal for amending the procedure.
 - Nominet's current policy regarding the sch.uk SLD has been to register the domain names allocated by the DfES to grant maintained schools in England and Wales. To date approximately 33,000 domain names have been registered and approximately a further 3,000 domain names are to be registered to grant maintained schools in Wales. Nominet is currently paid £5 per domain name by the DfES for each domain name registered for a grant maintained school on the understanding that the registration is to be an indefinite registration for the school unless that school ceases to function as a school.
 - Independent schools in England and Wales are to be allocated a domain name in the same way except the DfES is unlikely to fund the registration of those domain names. As a result, independent schools in England and Wales are likely to interact directly with Nominet, if they have not already registered a domain name, for registration of their allocated domain names.
 - Currently, schools who have had a domain name registered for them by Nominet do not agree to or even have sight of Nominet's terms and conditions and, as a result, do not accept or see the Rules. The current Nominet terms and conditions for normal registrants would not be appropriate for schools because Nominet's standard payment provisions and renewal clauses conflict with the schools' arrangement with Nominet through the DfES.
 - Before the DfES "School Names on the Net" allocated domain names to schools in England and Wales, some schools had already registered a domain name with Nominet. This could have happened in a variety of ways and no consistent approach was adopted to regulate the applications. The schools may have registered and accepted Nominet's terms and conditions, or may have registered directly with Nominet by sending a faxed request for registration which would have been manually processed by Nominet. The school would not have been charged and would not have received a certificate. The process was not well documented for schools who registered directly with Nominet and Nominet may only have a zone file record of the registration. These registrations are currently being re-allocated according to the "School Names on the Net" project.
 - Most schools in Scotland, and the equivalent local education authorities, have already been allocated domain names according to a strict algorithm determined by the Scottish Education Authority. These registrations would also have been processed manually by Nominet.
 - Registration of domain names for schools in Northern Ireland have been delegated to the ISP "Dialnet" using the automaton and standard Nominet

terms and conditions. The Northern Ireland Library Boards (equivalent of the English Local Education Authorities) has been approached by Nominet to register domain names but they were not responsive to the suggestion.

For the above reasons it is suggested that the sch.uk rules be removed from the draft Rules and made available in a separate area of Nominet's website. The PAB is hereby invited to consider this proposal.

Proposal

- It is suggested that Nominet regulate and record its agreement with the DfES and in so doing limit the registration of domain names for grant maintained schools in England and Wales to a ten year period, and include certain termination provisions, for example, if a school ceases to exist as a school.
- It is suggested that Nominet produce a short contract to enter into with independent schools in England and Wales registering domain names with Nominet to reflect similar provisions set out in the agreement with the DfES.
- It is suggested that Nominet enter into a simple contract with schools and EAs in Scotland to record the understanding between the parties and to reflect similar provisions set out in the agreement with the DfES.

The PAB is hereby invited to consider this proposal.