

## Contacting us

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21<sup>st</sup> April 2008

Dear Member,

### **Urgent Call to Action – Nominet Board Election 2008** **This is an important letter about the future independence of Nominet**

As Nominet Board members, we have a legal duty to act in the best interests of Nominet. This extends to acting in the best interests of our membership and stakeholders as a whole. We feel that it is important to communicate concerns about the Board nominations and believe it is our duty to alert you, as members, to the following issues ahead of the election closing date of 30<sup>th</sup> April:

#### **Full Disclosure**

We are very concerned to ensure that all candidates disclose to members material facts relating to their suitability to be considered for election to the Nominet Board. We invite all candidates to issue further statements, which will be published on the Nominet web site ahead of the voting deadline. We call on all candidates to disclose:

- Any previous occasions that they have stood for election to the Nominet Board and the platforms on which they stood.
- How they would deal with the conflicts of interest that will arise from their current employment or roles.
- All legal actions involving domain names, or Nominet DRS cases where they have been a respondent, or otherwise involved.
- Any ongoing matters/ investigations of any nature to which they may be subject.

#### **Distribution of Profits**

Three candidates propose a distribution of Nominet's accumulated profits. As members know, Nominet is a not-for-profit organisation and a distribution is not possible under our current constitution. This has recently been confirmed in advice by Michael Todd, QC, whose full opinion is now published on our web site, which states:

*"The unambiguous effect of paragraph 6 of Nominet's Memorandum of Association is that any distribution by Nominet to its members would be ultra vires and hence void. Any members that had knowingly received any such distribution would have to repay them to Nominet. Such distributions being ultra vires Nominet, the payment of them would render the directors of Nominet personally liable for breach of fiduciary in misapplying Nominet's assets".*

#### **Nominet Board Structure**

Our structures were originally created on the assumption that there would be active member involvement in Nominet. These structures, when combined with the current low levels of member voting, make us vulnerable to capture both at Board and PAB level, by

those with interests that, in our view, conflict with those of Nominet, our members and our wider stakeholder group.

The Board strongly believes that independent directors would add considerable value to Nominet, ensure a balance of skills and experience and would be free from any relationships or conflicts which could interfere with the exercise of independent judgment, a legal duty under the new Companies Act.

Currently, three Board candidates are urging members vote against the proposal to introduce independent non-executives to the Board. Despite what some candidates say, these positions would be subject to a member vote.

### Call to action

Many Nominet members have said that they do not vote because they do not know any of the candidates, but would do so if they had a recommendation from the Board.

The Nominet Board has usually taken the view not to make recommendations as to how members should vote, however in this situation we feel that it is necessary considering the seriousness of these matters.

For those members seeking Board guidance, the Board<sup>1</sup> recommends that you:

- vote for** adoption of resolution 6 for the introduction of independent non-executive directors
- do not vote** for any of the three candidates that are against this resolution

This election is a significant test of the Nominet membership model, which is under active public scrutiny by stakeholders. We encourage all members to scrutinise every candidate's credentials and manifestos and to register your member vote carefully in this crucial election and AGM.



Bob Gilbert (Chairman)



Lesley Cowley (CEO)



Fay Howard, (Non-Executive Director)



Sebastien Lahtinen, (Non-Executive Director)



Gordon Dick (Non-Executive Director)

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<sup>1</sup> Gordon Dick formally declared his interest in this item, as a Board election candidate. Other directors declared an interest where candidates were known to them.