

# APPLICATION FOR A NEW SLD *.ME.UK* - REPORT FROM THE NOMINET UK EXECUTIVE TO THE POLICY ADVISORY BOARD MEETING ON 5<sup>TH</sup> DECEMBER 2001

## 1. INTRODUCTION

An application for *.me.uk* has been submitted by Personal Domain Names Ltd. This is the second application for a *.me.uk* SLD to be submitted to the PAB for consideration. The first application, which was submitted by Alex Bligh, was approved by the PAB at their meeting on 1<sup>st</sup> August 2001, and is currently in the final stages of the published SLD procedure.

The application by Personal Domain Names Ltd., (PDN), a not-for-profit company, proposes a third party delegated registry managed and operated by PDN. An authorised reseller model would apply, with wholesale registration fees of £7.50 per year for the first year of trading and £5.00 per year thereafter. There would be a transfer fee of £5.00 per transfer.

## 2. EVALUATION BY THE EXECUTIVE

The application was received by the Executive on 2<sup>nd</sup> October 2001. Amended versions of the application were received on the 3<sup>rd</sup> and 4<sup>th</sup> October 2001 and the last version has been used for this report.

In accordance with the published Policy and Procedure, the application has been evaluated in advance of its submission to the PAB, and our comments are below.

## 3. ASSESSMENT OF COMPLETENESS OF THE APPLICATION USING THE CHECKLIST

### 3.1 Charter Contents

#### 3.1.1. Name - *.me.uk*

3.1.2. **Purpose** – covered in Draft Charter, page 2. – ‘to serve the evolving needs of the private individual by providing them with a distinctive place within the dot UK namespace’

3.1.3. **Eligibility** – covered in Draft Charter, page 2 – any legal entity would be eligible to register in the SLD. It is noted that the Draft Charter also states that ‘no restriction would be placed on an organisation such as British Telecom’ registering in the SLD.

3.1.4. **Application processing** – covered in Draft Charter, page 2 - registrations would be on a first-come, first-served basis.

### 3.2 The Statement

3.2.1 **Community of Interest** – covered in Statement, page 3. The community of interest would be ‘citizens and/or residents of the United Kingdom’.

- 3.2.2 **Anticipated number of Registrations** - covered under Financial analysis, page 13. It is anticipated that there will be 3 million registrations over the first three years.
- 3.2.3 **Necessity of new SLD** – covered under Foreword, page 2. The SLD is considered to be necessary as ‘individuals still find themselves unsupported in their search for an on-line identity’ and it would be ‘a key means of promoting greater individual access to the web’.
- 3.2.4 **Evidence of requirement** – partly covered in Statement, page 3 which refers to home internet access statistics and notes that there is ‘a desire by many to free themselves from the constraints of a free email address’.
- 3.2.5 **Application re-submission** – not applicable.
- 3.3 **Outline Rules** - covered in Appendix A, page 14. These appear to be similar to the previous *.uk* rules, but it is noted that the ‘mandatory rules’ appear to have been omitted, such as a second level being used at the third level.
- 3.4 **Application from Third Party Registries** – the application was submitted by the proposed third party registry, as required by the procedure. The required declaration is covered under Declaration, page 3.
  - 3.4.1 **Registry recognised as a neutral and impartial body by a substantial number of potential registrants** - this requirement has not been covered in the application, and no evidence been supplied to demonstrate fulfilment of this requirement.
  - 3.4.2 **Financial plans** – supplied in the Financial spreadsheet that accompanied the first version of the application.
  - 3.4.3 **Terms and Conditions** – supplied in Appendix C. These appear to be substantially copied from Nominet UK terms and conditions and claimed to be under PDN copyright.

It is noted that a number of the terms regarding consumer protection have been omitted, which is worthy of comment given the likely registrants in the SLD. In the recent review of the Nominet UK terms and conditions, these terms were added in order to comply with the Unfair Terms in Consumer Contracts Regulations 1999 and the Consumer Protection (Distance Selling) Regulations 2000.

- 3.4.4 **Application Fee** – supplied.
- 4. **ASSESSMENT OF APPLICATION WITH REGARD TO THE PROCEDURE**
  - 4.1 **Prescribed Form** – the application does not directly reflect the checklist format. However, the material was readily found.

## 4.2 Application Accompaniments

4.2.1 **Draft Charter** – supplied (see 3.1).

4.2.2 **Statement** – supplied (see 3.2).

4.2.3 **Proposed rules** – supplied (see 3.3).

## 4.3 Additional Accompaniments

4.3.1 **Contractual terms and conditions** – supplied (see 3.4.3).

4.3.2 **Third Party registry's declaration** – supplied to a certain extent, see Declaration page 3. The required explanation of how the delegation of the SLD would serve the interests of the Internet Community, rather than the Third Party Registry's own commercial or other interests has not been specifically specified.

4.3.3 **Detailed financial plans** – supplied.

4.3.4 **Application fee** – supplied.

## 4.4 Charter

4.4.1 **Name** – *.me.uk*.

4.4.2 **Criteria for eligibility** – not specifically addressed in the application, implying that no restrictions or criteria are to apply.

## 4.5 Statement

4.5.1 **Community of interest** – covered (see 3.2).

4.5.2 **Necessity of new SLD** – covered (see 3.2.3).

4.5.3 **Compliance with policy** – no confirmation provided (required under Procedure, para. 8.3).

## 4.6 Outline rules

4.6.1 **Contractual terms and conditions** – supplied (see 3.4.3).

4.6.2 **Neutrality** – the outline rules are based on the *.uk* rules and include operation on a first-come, first-served basis. It is assumed that the mention of 'existing names' under rule 4 is in error.

## 4.7 Application by proposed third party registries

4.7.1 **Application by third party registry** – the application is submitted by the proposed third party registry.

**4.7.2 How the SLD delegation would serve the interests of the Internet community, rather than the Third Party Registry's own commercial or other interests** – briefly covered in Foreword page 2, para. 7 and Declaration, page 3, para. 3. However, the application strongly emphasises that the 'project could act as a catalyst for our "seaport to e.port" vision and set into motion a whole chain of events that could assist the City of Liverpool, with its regeneration'.

**4.7.3 Prejudicial facts, information or risks** - covered in 'Declaration', page 3. There are none stated.

**4.7.4 Third Party Registry's Resources** - The technical resources are covered under the Infrastructure section, which begins on page 4. It is noted that these resources will be supplied in association with BT Ignite, Tucows Inc. and Nominum Inc. The staffing resources are not fully covered. In the financial analysis, job creation section, it is estimated that PDN will employ 50 staff. Under the About –Personal Domain Names Ltd, section, page 31, brief details of the Managing Director and one Non-Executive Director are provided.

#### **4.8 Third Party Registry Contract**

It is assumed that PDN will enter into a contract containing the specified provisions.

#### **4.9 Legal Costs**

Legal costs are payable by the applicant when the above contract is drawn up and it is noted that these costs have been included in the PDN financial projections.

### **5. DETAILED COMMENTS ARISING FROM THE ASSESSMENT**

**5.1 Sufficiency of Resources** - little information has been provided to enable an assessment of the staffing resource of PDN. The governance and management structure have not been supplied. However, page 31 provides brief details of the Managing Director and one of the non-Executive Director. In particular, experience of running a registry, or a registry of a similar size to that being projected, has not been covered.

The financial resources of PDN are covered in the spreadsheets supplied. It is noted that registrations are priced at a wholesale rate of £7.50 per year for the first year and £5.00 per year thereafter and that transfer fees of £5.00 would be charged. Registrars /Resellers (terms used inter-changeably) would pay a one-off set up fee of £100 and an annual licence fee of £100. The financial model assumes a total of 2,375 registrars. Set-up costs are estimated at £1.6m by week 12. The company is projected to make a deficit of £2.2m the first year, a surplus of £1.6m in the second year and a surplus of £5.6m in the third year. The company is shown to move to a positive 'cumulative net position' by month 29. The sources of funding for the period for months 1 to 29 are not fully disclosed. It is noted that the letter of support from Liverpool City Council, shown on page 32, includes the possibility of

some financial support by means of a job creation grant. The intended uses of the surpluses in years two and three are not mentioned.

- 5.2 Start-up Mechanisms** – the application does not contain details of the way in which the registry will cope with the initial months of operations, or deal with the potential rush of registrants as soon as the SLD is open to accept applications. The recent gTLD experience, for example, *.biz* and *.info*, suggests that this aspect should have required careful consideration
- 5.3 Dispute Resolution Service (DRS)** – it is noted that PDN propose operating a Dispute Resolution Service on a very similar basis to that operated by Nominet UK. This is detailed in Appendix B, page 15. This policy appears to be copied from the Nominet UK DRS policy, and is claimed to under PDN copyright. It is assumed that the reference to Nominet in clause 12 is an error.

No estimate of the expected number of disputes has been given, nor details of the staff required to manage the process and their relevant experience. No details have been given regarding the recruitment of experts.

- 5.4 Stakeholder recognition and Policy Formation** – no evidence was supplied to demonstrate that the potential registry is recognised as a neutral and impartial body by a substantial number of potential registrants. It is also noted that the application does not offer mechanisms by which all relevant stakeholders may be involved in policy formation, policy changes or decisions which may have a major impact upon them.
- 5.5 Consumer Protection** – it is of concern that the proposed terms and conditions omit consumer protection clauses (sect. 3.4.3.), regarding warehousing and reselling. It is noted that PDN ‘would be prepared to forgo the financial attractiveness of such practices by implementing systems that would prohibit the re-sale or sub-licensing of personal domain names.’ No details have been given as to how this would be achieved, particularly in light of the registrar/reseller model being proposed and the existence of a £5.00 transfer fee. If this prohibition should require judgements to be made by PDN, the company could be exposed to unquantifiable legal risk.

## 6. RECOMMENDATIONS

The executive is satisfied that the application provides sufficient material as required by the checklist, procedure and policy for them to be able to evaluate the application.

In the view of the executive, the application meets policy rules 3, 4, 5 and 7. Policy rule 6 is also met, given that the preceding *.me.uk* application has not fully completed the SLD approval process. The executive does not make a recommendation regarding the creation of the *.me.uk* SLD as proposed in the application, as the creation of this SLD has already been approved by the PAB.

In the view of the executive, the application does not meet policy rules 9 or 11. Regarding rule 9, it is considered that the third party registry has not demonstrated that it is recognised as a suitably neutral and impartial body by a significant number of potential Registrants in the SLD.

Regarding rule 11, whilst there is clearly a strong motivating factor regarding the regeneration and economic development of the City of Liverpool, this is not sufficient in itself to overturn the policy predisposition towards Nominet operated SLDs. In addition, there are concerns regarding registry experience, sources of funding, the uses of surpluses, start-up mechanisms, the proposed DRS, stakeholder input and consumer protection.

In the circumstances, the executive recommend that the PAB reject the application.