

At its meeting on 6<sup>th</sup> August 2003, the PAB resolved to create a Subcommittee to examine the specific details of the proposed SLD procedure, with specific reference to the questions raised by Nominet in its consultation. The PAB further resolved that the Subcommittee should work on the assumption that the proposals will be adopted broadly in their existing form, and consideration of whether or not this should be the case should specifically be outside the remit of the Subcommittee. The PAB agreed that no implication should be drawn from this resolution as to whether or not such adoption should in fact occur, and that this decision would specifically be reserved until the October PAB meeting.

The Subcommittee duly met on 17<sup>th</sup> September 2003. This report contains the Subcommittee's recommendation for the PAB's response to the RFD.

The Subcommittee consisted of Peter Gradwell (Subcommittee chair), Sebastien Lahtinen, Hazel Pegg, Clive Feather and Alex Bligh, and it found as follows:

### **Question 1.**

The Subcommittee believes that the underlying policy objective of taking a measured approach to the creation of new Second Level Domains in order to protect the stability of the existing name space, so that the Domain Name System continues to provide a clear navigation path for potential users is a sound policy.

### **Question 2.**

Firstly, the Subcommittee would recommend that the Panel *must* give due regard to all consultation responses. We make this recommendation because we believe the current wording may allow the Panel the option of ignoring some consultation responses, which the Subcommittee believes is undesirable.

Secondly, we believe that the insertion of the word "relative" so that C2 reads "the Panel will have discretion as to what relative weight to give the different criteria set out in this policy" would be of benefit because we do not believe the Panel should be able to ignore any of the criteria set out in the policy.

For the avoidance of doubt we believe that each of the criteria set out in clauses B1-B5 (as opposed to those in the rest of the document) are of equal importance and must be individually mandatory, i.e. they must each be fully satisfied in order for the SLD application to proceed.

### **Question 3.**

The Subcommittee believes that the Policy adequately describes the necessary qualities for an operator of an SLD.

### **Question 4.**

The Subcommittee believes that Nominet should be assessed by the same *criteria* as all other Applicants (as opposed to methodology). However, the Panel should give due regard to the demonstrable relevant experience and track record of all Applicants<sup>1</sup>.

### Question 5.

Firstly, we believe that current procedure does not clearly distinguish between “the Panel” and “the Pool” of potential Panellists.

We believe that the procedure for the appointment of Panel members is significantly flawed for the following reasons: Firstly, we believe it may take a considerable amount of time based on the ability of Applicants to repeatedly object to Panel members, and in the procedure’s current drafting, this delays the application’s consideration. Secondly, we believe that the process of limiting the number of **upheld** objections is unfair. Thirdly we believe that handling objections by the first Applicant separately to those from other Applicants is unjust.

However, we note that the Panel has no role to play until the starts of Stage 4. Therefore Panel selection need not be finalised until the end of Stage 3. This gives scope for design of a better procedure in which the possibly lengthy process of objections is run in parallel with Stage 3.

Therefore we propose the following modified system:

Firstly:

- Steps 3, 4, 5, 6,7 and 8 of Stage 1 (Section F) should be deleted.
- G.1(e) should be modified to read “the identity of each of the members of the Pool of potential Panellists”.
- G3 should have the parenthesised comment deleted and should be amended to say “notice of any objections to members of the Pool of potential Panellists”.
- G4 should also be deleted.

A new Stage should be inserted which is designed to run in parallel with the Initial Consultation. This Stage gives the Applicants the ability to offer reasoned objections to potential Panel members which if upheld shall be result in their removal. A Panel is then selected from the Pool, and each Applicant has a further chance to reject one Panel member without giving a reason. We suggest this stage have the following format:

Preamble:

- If at any point during this process the Secretariat is reasonably of the opinion that the Pool of Panellists is insufficiently large to provide a Panel with appropriate diversity of skills (through objections, notifications of removal, notified conflict of interests, non-availability of Panellists or for any other reason), the Secretariat shall re-advertise for further Pool members. The Panel Chair shall then, with the Secretariat’s assistance appoint such persons as he selects to the Pool of potential Panellists on a temporary basis (i.e. for the purposes of this SLD application only) in such quantity as it determines is necessary. The Applicants shall jointly bear the cost of this. Following the appointment of the new Pool members, each of the Applicants shall be given 5 working days to object to the new Pool members and Step 1 shall be repeated.

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<sup>1</sup> Note that relevant experience will differ dependent on the type of SLD application. For example, applications with a large potential set of registrants (such as one similar to co.uk) then experience of running a large registry would be essential, whilst for a specialised SLD (such as one similar to police.uk) large registry experience may well be less relevant.

Step 1:

- Each of the Applicant's objections to potential Panel members should be examined by the Secretariat.
- If the Secretariat upholds any objection the potential Panel member should be removed from the Pool of potential members. Such a removal shall only have effect for the purposes of this SLD application.

Step 2:

- The Panel Chair should then select its proposed Panel and the Secretariat shall notify the Applicants.
- Each Applicant shall have the ability (within 5 working days) to notify the Secretariat that any proposed Panel member should be removed (without being required to give a reason<sup>2</sup>). The Secretariat shall act on only one such request per Applicant throughout the process.
- After the deadline for such notifications, if any notifications of removals have taken place, the Panel Chair shall replace the relevant Panel members with new Panel members from the Pool. For the avoidance of doubt, the Panel Chair may not reselect members of the Pool who have, in the context of this SLD application, either (a) been previously subject to an upheld objection, or (b) been previously the subject of a notification of removal. This step 2 shall then be repeated.

#### **Question 6:**

Whilst the Subcommittee believes that the proposal does provide sufficient scope for competition between potential operators, the desirability of such competition is outside the scope of the Subcommittee's remit.

#### **Question 7:**

The Subcommittee believes that the outlined communication and consultation processes for each application are inclusive and pitched at the right level.

The Subcommittee believes that, regardless of whether its part of the procedure, Nominet should proactively bring each consultation to the attention of its members.

#### **Question 8:**

(8.1) The Subcommittee sees no basis to believe that the fees are not fair and proportionate given the structure of the policy and procedure; whether or not such structure is desirable is outside of the scope of this Subcommittee.

(8.2) The Subcommittee believes that payment "stage by stage" successfully balances cost with accessibility for Applicants.

#### **Question 9:**

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<sup>2</sup> This allows Applicants to remove Panellists even when their objection is not upheld in the absence of an appeal process or where they do not feel they would be able to express their objection in a manner acceptable to the Secretariat.

The remit of the Subcommittee is to consider the proposal within its current structure therefore this report should not be taken as an endorsement or otherwise of the fairness of the structure as a whole.

Within the scope of this structure, however, we believe the proposals, subject to the amendments we have suggested, are fair and comprehensible.

### **Other observations:**

#### *Duration of appointment of the Panel Chair, Panel, and Secretariat*

The Subcommittee notes that the current policy and procedure does not contain scope for the replacement of the Panel Chair, the Panel, or the replacement of the Secretariat.

The Subcommittee would recommend that the Panel Chair, in consultation with Nominet UK, should be able to appoint and dismiss the Secretariat.

We are concerned that there is no mechanism for the removal of the Panel Chair or members of the Panel Pool. We believe that the members of the Panel Pool should be appointed on staggered fixed terms (we suggest 3 year terms). We recognise that there is an inherent problem in appointing a Panel that is both independent and accountable.

Whilst we believe that the Panel itself should have primary responsibility for its own constitution we believe that it is necessary for there to be some external safeguard to ensure that the Panel does not become self-perpetuating, stale or subject to accusations of cronyism.

Therefore we suggest that when Panellists are appointed, a Nominations Committee should first approve members from a shortlist drawn up by a Secretariat.

Nominet's Council of Management should select the Nominations Committee but each member of the Committee should be independent of Nominet.

Members of the Panel who are not reapplying should be eligible for selection to the nominations committee.

Non-retiring members of the Panel should then select replacement Panel members from those on the short list approved by the nominations committee bearing in mind the committee's comments (which shall have been published).

We also propose that the Panel may at any time remove one member from the Pool by unanimous vote of the rest of the Panel.

#### *The Panel's access to Consultees*

With regards to consultations, we believe that the Panel (possibly via the Secretariat) should have the ability to correspond with actual or potential consultation respondents should they believe it to be necessary.