

# Child Pornography Allegations in .uk

## *Options for discussion by the PAB*

### Contents

1. Executive Summary .....	2
2. Background – how we got here .....	2
2.1 Underlying values and assumptions .....	3
2.1.1 Values .....	3
2.1.2 Assumptions .....	3
2.2 The thin end of the wedge? .....	3
2.3 Do we have a problem? .....	4
3. Who are the IWF? .....	4
4. The options .....	5
4.1 Option 1: use existing policies.....	6
4.1.1 Advantages of adopting option 1 and no other solution .....	6
4.1.2 Disadvantages of adopting option 1 and no other solution.....	6
4.2 Option 2: partnership with relevant authorities.....	7
4.2.1 Cancellation for false contact details – a fast track procedure .....	7
4.2.2 Illegal domain names .....	7
4.2.3 Innocent or ambiguous domain name + illegal content .....	8
4.2.4 Advantages .....	10
4.2.5 Disadvantages .....	11
4.3 Option 3: a home grown solution .....	11
4.3.1 Pros.....	12
4.3.2 Cons.....	12
5. Summary and Recommendations.....	12

## 1. Executive Summary

At its December 2004, the PAB made the following resolution:

*The PAB resolved to request the executive to bring a paper to the PAB detailing the various options available for Nominet's handling of allegations of (i) registrations which themselves may constitute "child pornography" or an advertisement thereof and (ii) registrations pointing at content that may constitute "child pornography", with a view that the PAB would come to an initial conclusion in order to subsequently prepare for a wider consultation.*

This paper has been prepared in response to the PAB's resolution and has been approved by the Nominet Board.

This is a complex issue on which members of the PAB have expressed opposing views. In summary, whilst no one supports the use or dissemination of illegal materials on the web, the role of the registry is less straightforward.

First, we do not provide hosting, and therefore have no direct control over content. Secondly, Nominet has always taken a neutral and impartial approach to such matters, reflecting our mission statement to operate the .uk domain in the interests of the UK Internet Community as a whole. We have always defended our automated registration system for the open SLDs, such as .co.uk, org.uk and me.uk, against requests from a number of stakeholders to pre-vet applications against a list of "banned" names. We have also moved away from making judgmental decisions (eg in the DRS), and towards implementation of the expert decisions of others.

Nominet's executive hope that this paper can assist in narrowing the topics for debate around three broad options:

- (1) use our existing policies;
- (2) work in partnership with relevant authorities (but make some changes); or
- (3) a home grown solution, which could involve changing the way we do registrations.

Although we make no formal recommendation, the executive's view is that the level of resources and impact on Nominet's operations as a registry envisaged by option 3 are not justified by the circumstances. Option 1 represents the status quo, but does not present a bespoke solution for this issue. We therefore hope that the PAB will focus its discussions on option 2, and will achieve a consensus based approach to the issue of child pornography allegations.

## 2. Background – how we got here

During the summer of 2004, Nominet held a consultation on proposed amendments to our standard terms and conditions of registration. Amongst the responses, we received two on the issue of child pornography: one from a children's charity which urged us to tie our registration system in with the IWF's database of banned terms; the other from the IWF which encouraged us to think about domain names as illegal advertisements.

The issue was referred to the PAB, and was discussed at the October and December 2004 meetings. The Executive was requested to draw up this paper of options as a result.

In preparing this paper, the executive has visited the IWF, and spoken to a number of PAB members individually, reviewed the instances of complaints about child pornography in the .uk domain to members of Nominet's staff. Nominet's technical department also carried out a basic query of our database using the IWF's list of terms which are used by paedophiles to indicate illegal content, in order to help us understand whether we had a potential problem in reality, or merely a hypothetical risk.

## 2.1 Underlying values and assumptions

This is an issue on which opinions are divided, and each individual brings to the debate a number of underlying values and assumptions. Therefore, before addressing the specific options in detail, a number of values and assumptions relevant to Nominet are set out, and the PAB are asked to consider the options below in the light of these.

### 2.1.1 Values

- Nominet's mission is to control, manage and operate the *.uk* Top Level Domain, and provide associated registry services, in the interests of the UK internet community as a whole. In this case, interested stakeholders could include: Internet users, children, Nominet's customers (both tag holders and registrants), relevant authorities for law enforcement and Nominet staff.
- Nominet's corporate and governance objectives include the following:
  - Non-discriminatory
  - Transparency
  - Legitimacy
  - Inclusivity
  - Checks and balances
  - Prevention of capture

Our corporate constraints include:

- Avoiding onerous regulation
- Our automated registration system, which is currently employed in *.co.uk*, *.org.uk*, and *.me.uk* allows cheap, quick registrations. It also supports the organic and rapid growth of the UK Internet industry, and avoids "onerous regulation" in the terms of our corporate constraints, and avoids capture of the registry process by one or more interest group (however legitimate their aims and objectives may be).

### 2.1.2 Assumptions

- Any solution should fit with Nominet's corporate and governance objectives and constraints. In particular any solution which involves a departure from an automated registration system should be approached with caution.
- Nominet's staff are not currently required to view illegal materials in the course of their work. It is assumed that this would not change unless fully justified by the circumstances. There a number of supporting reasons for this: not only concern for staff's wellbeing, but also possible costs of recruitment, training and counselling, and risks of criminal liability if any process were not handled correctly.
- Any solution should be proportionate to the scale and risks associated with the problem, and therefore significant input in terms of finance, staffing or infrastructure should be fully justified.
- Even if Nominet were to develop a policy to deal with child pornography, it would not want any action to be taken if the situation was ambiguous: for example if a "code word" domain name was used in connection with innocent content (eg "asparagus" in connection with asparagus farming), or no content at all.

## 2.2 The thin end of the wedge?

Clearly, the extent to which Nominet role as a registry should be involved in undertaking "policing" work of any kind is fraught with difficulty. The 'thin end of the wedge' argument is that in doing something for one interest group, we then set a precedent for others, ie if we agree to "do something" about child pornography in *.uk*, we will logically have to extend this to trade mark holders, equal opportunities campaigners (for race hate sites),

medicine licensing authorities, people who claim that they have been libelled, and possibly also those who object to domain names on grounds of taste and decency rather than legal grounds.

However, there are some differentiating factors in this particular instance:

- The law in the UK on child pornography is exceptionally clear-cut: except for very limited circumstances, it is a strict liability offence (ie there can be no defence), and it is illegal not only to take pictures but also to distribute and download them. The law also reverses the burden of proof, placing the onus on the defendant to prove that there was a legitimate reason for viewing child pornography.
- We are dealing here with a criminal, rather than civil, offence which is viewed as serious and is punishable by imprisonment.
- The IWF is not merely an “interest group”, but has statutory recognition as a relevant body for the reporting of child pornography crimes.
- This is one of the few criminal offences which carries with it a positive duty to report to relevant authorities in a timely manner if illegal materials are accessed.
- It is one of the few issues on which public opinion is united – that is, people do not defend the practice, although they may disagree on how best to deal with it in the context of the Internet.

In summary, although there is a risk that in addressing child pornography, Nominet creates a precedent for other issues, there are also material differences.

### 2.3 Do we have a problem?

So far as complaints from the public are concerned, we are not aware of ever having received a complaint about child pornography in connection with a .uk domain name. However, a number of staff members have given general advice about the issue on request, and pointed people to the IWF. Others recall handling very occasional queries from police officers relating to a wider criminal investigation of a particular registrant. As a result, we have never viewed Nominet as being particularly affected by this issue.

However, in preparing for this paper, we undertook a basic search of the register against the IWF’s list of terms. This resulted in a list of .uk domain names, the majority of which we believe to be false positives, but a few could indicate a connection with illegal content. We have taken our investigations no further at this stage, but are awaiting the PAB’s recommendations on this issue. Nevertheless, we are keen to ensure that the list is handed to the relevant authorities without delay in order to determine how many (if any) of the registrations actually relate to illegal materials.

## 3. Who are the IWF?

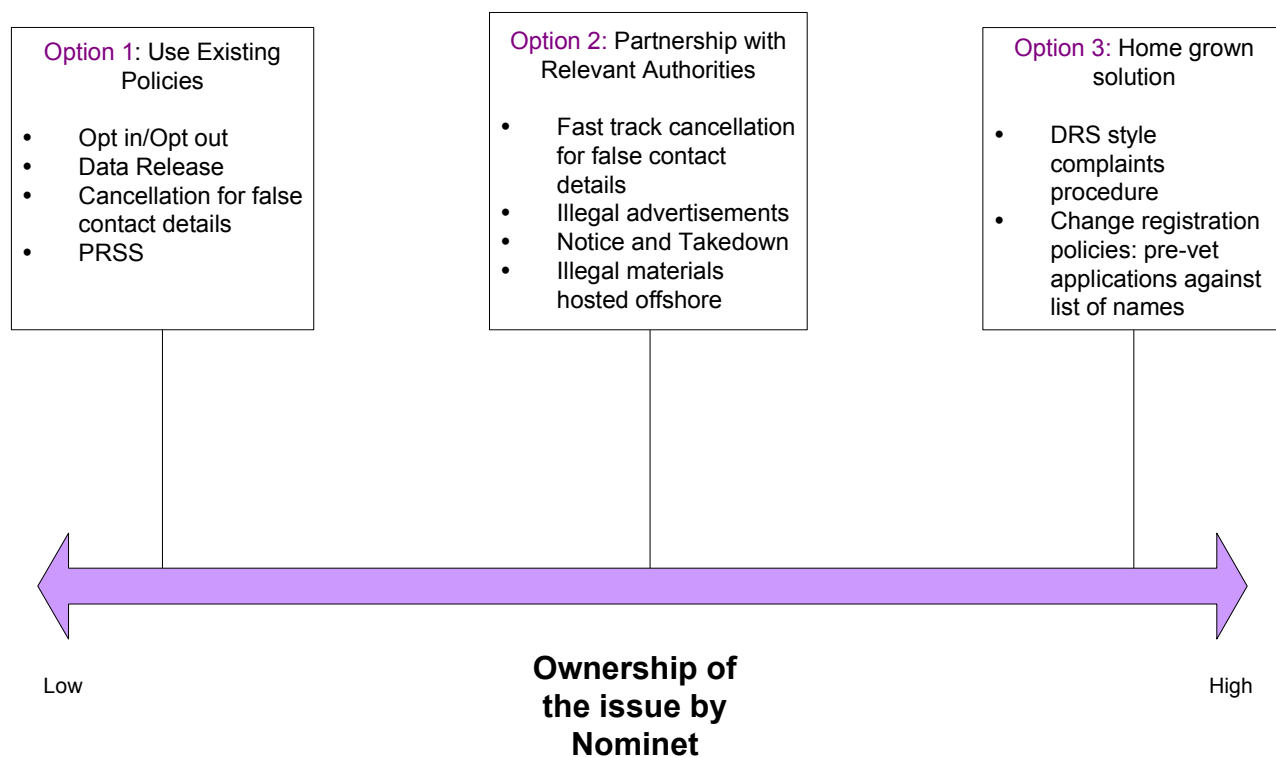
In December’s PAB meeting, it was agreed that the executive would meet with the IWF and find out more about its status, function, accountabilities and the position on liability.

The following information was gathered from the IWF:

- IWF is a not-for-profit company, limited by guarantee, established in 1997. It is currently applying for charitable status.
- It works in partnership with the police, government, mobile operators and the Internet industry. It has two board members from children’s charities, and attempts to navigate a course between these stakeholders’ (often conflicting) interests.
- Its role is recognised and operations protected by reason of an MOU to s46 of the Sexual Offences Act 2003, in which IWF is described as a “relevant authority” for the reporting of such crimes.

- It views itself as accountable to its board (made up of elected and appointed directors), its membership, its funding council, sponsors, and the community as a whole.
- It runs a hotline, and receives around 20,000 reports per year, with around 3,400 being assessed as potentially breaching the Protection of Children Act 1978. Most of these are hosted overseas.
- Its staff are specially trained, receive regular counselling, and work under controlled conditions to ensure that no illegal materials are unnecessarily copied.
- Its notice and takedown procedure applies to all ISPs located in the UK, regardless of whether or not they are members.
- For the past 2 years, it has done around 30 notice and take downs per year.
- IWF accepts liability for any mistakes it makes with regard to notice and take downs. To date, no notice and take down has yet led to a complaint from the registrant, let alone a legal claim.
- If a single page, or image, in an otherwise legitimate site is found to be illegal, then the notice and take down will relate not to the site as a whole, but the single page or image.
- Over the past 8 years, instances of child pornography on UK servers have decreased from 18% to 1%. The problem, however, has not gone away, it has just gone offshore.
- The IWF has close links with police and opposite numbers overseas, but there are certain parts of the world where their partnerships are less effective than others, eg Thailand and China.

#### 4. The options

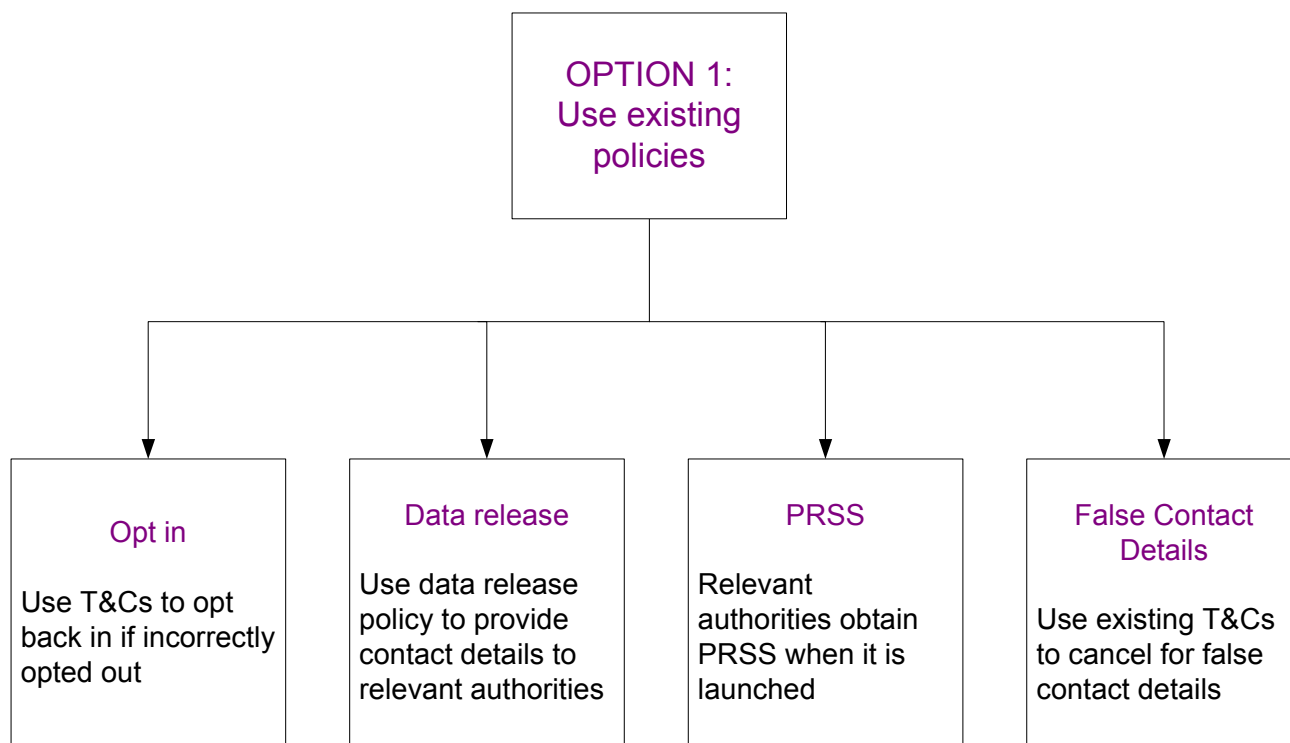


The diagram presents the options as points along a spectrum. From left to right, the level of involvement, both in terms of resources and “ownership” of the problem by Nominet increases.

If Options 2 or 3 were to be implemented, changes to Nominet's terms and conditions would be necessary, and this would necessitate open, public consultation.

#### 4.1 Option 1: use existing policies

The first option we have explored is whether our existing framework can assist in dealing with complaints raised with Nominet.



Option 1 draws together four elements of Nominet's current policy framework, which could be used by relevant authorities to find out about the registrants of *.uk* domain names. No differentiation is made here between registrations which could be "illegal advertisements" and those which are innocent in themselves but are used in connection with illegal materials.

The idea would be that the PRSS (when re-launched) could be used by relevant authorities such as the police or IWF in order to assist their investigations. Nominet's function in this would be solely to provide information on request, and react to queries about data quality: whether by opting in an incorrectly opted-out registrant, releasing information to relevant authorities in accordance with our data release policy, or by cancelling for false contact details.

##### 4.1.1 Advantages of adopting option 1 and no other solution

The advantages would include:

- These policies and the T&Cs have already been agreed by the PAB
- Adoption of these policies would go some way to address the concerns of those who believe we should do something, as they could result in domain name registrations being cancelled, or in our providing registrant information to relevant authorities.
- This option would safeguard Nominet's neutrality, and would not create a precedent for "different treatment" – we would do the same for any person.

##### 4.1.2 Disadvantages of adopting option 1 and no other solution

The disadvantages of making this option (alone) our policy on child pornography include:

- This represents no change to our existing suite of policies, and is essentially a re-active position. To an external, and critical, audience this minimalist approach may be perceived as not going far enough.
- The policies make no differentiation between domain names that may be illegal in themselves, and those which are innocent but are being used in connection with illegal materials, a key difference which the PAB wished to explore in these options.
- The policies contained in the option were not developed with child pornography in mind, and a number of questions still remain:
  - They do not assist us to decide what would we do if the IWF or police informed us that, as a result of searches done on the PRSS, they had identified a number of names which were illegal advertisements, or which were innocent names used in connection with child pornography. In the former case, it could be the domain name itself which is the criminal act, and therefore the answer does not lie with the hosting ISP. In the latter case, the relevant authorities would approach the hosting ISP if located in the UK. However, this policy does not assist us in deciding whether or not Nominet would become involved and when: for example, if the domain name was hosted offshore.
  - Our standard processes for cancellation for false contact details may not be speedy enough for this issue. For example, it might not be perceived as appropriate to wait at least 30 days prior to cancellation if we know that the domain name is being used to publish child pornography during that time.

## 4.2 Option 2: partnership with relevant authorities

This option is not intended to be a total package. It contains a complex matrix of possibilities, any or all (or none) of which could be adopted.

Going back to the PAB's categorisation, there are two broad headings of domain names to be considered, ie those which are illegal in themselves, regardless of content, and those which are ambiguous or innocent and which can only be assessed in the context of their use. In order to consider the possibilities raised by the latter category, it is necessary to look at where the relevant materials are hosted, and whether they extend to the whole or just a part of a domain name's use.

Before considering either category, the PAB are asked to consider the possibility of developing a fast track procedure for cancellation for false contact details.

### 4.2.1 Cancellation for false contact details – a fast track procedure

Nominet could develop a fast track cancellation process, for use when advised by a relevant authority that a domain name with false contact details is currently being used to publish illegal materials. Clearly, as in our existing procedure, there would be an assumption that the address is real unless we have independent verification that it is significantly inaccurate, unreliable or false

- Advantages: a low risk way of Nominet demonstrating that it does not support child pornography (on the basis that there is a low likelihood of complaint from the registrant); if supported by contractual terms, exclusion or limitation of liability by Nominet; a swift reaction from Nominet could prevent a crime being perpetuated.
- Disadvantages: Unnecessary if the materials are hosted in UK (IWF notice and take down applies); if off-shore, it could be a blunt instrument as cancellation would affect the whole of a site, not just illegal parts of it.

### 4.2.2 Illegal domain names

There are certain domain names which, in themselves, could constitute and illegal advertisement, eg buychildpornpickshere.co.uk. We are informed by the IWF that such names are extremely rare. These are the options for Nominet if advised by a relevant authority that a domain name is an illegal advertisement:

- **Do nothing.**
  - Advantage: we do not get involved
  - Disadvantage: possible criminal liability for Nominet once it is on notice; possible for others to represent .uk as a “haven for paedophiles”.
  
- **Cancel/suspend only after a criminal court has made a finding that the domain name is an illegal advertisement.**
  - Advantage: fits with our policy on civil matters. We do not react to mere allegations, we await a judicial finding.
  - Disadvantages: potential criminal liability once on notice; could be viewed as irresponsible by the press or other external stakeholders; a possibly a self-interested and risk averse choice on Nominet’s part.
  
- **Cancel/suspend/”take down” on notification by relevant authorities**
  - Advantages: provides a low risk way of Nominet showing that it does not support child pornography (low risk because likelihood of complaints for getting it wrong are low); IWF may accept liability for incorrect notifications; if a clear cut case, it provides a swift remedy; a gesture to help “clean up” .uk; Nominet avoids risk of criminal liability.
  - Disadvantages: “thin end of the wedge”? Unlike illegal images, for which there is strict liability, and a clear understanding of what is an illegal image, the question of whether or not a string of words is an illegal advertisement is open to interpretation. In a recent case, **R v Cox (Earl Webster)** the Crown opened its case by stating that the domain names posted on the bulletin board gave an indication, but were not wholly descriptive, of the content of the images, and a person facilitating distribution of the domain names would not have known the level of material that was being distributed. The names included the following: *‘Underage-video.com; ‘Pre-t-erotica; ‘Pure Lolita; ‘Boy erection ‘Lolita Sweet; ‘Lolitas for sale; ‘Little pussy info; ‘Pre-teen goddess; ‘Lolita’s factor’* .
  
- **Cancel or suspend (either or notice and take down or following conviction) and block the domain name from re-registration.**
  - Advantages: once a name has been held to be an illegal advertisement, there is no-one who can lawfully register or use it. It would therefore be a proactive step to ensure that such terms could not be re-registered, once found to be illegal.
  - Disadvantages: “thin end of the wedge”? However, there is a key difference here, because most terms, for example trade marks, can be lawfully registered and used by some people (ie the trade mark holder), which is not the case here.

**4.2.3 Innocent or ambiguous domain name + illegal content**

The utility of either option presented at 4.2.1and 4.2.2 is likely to be fairly limited, given the estimated low instances of such cases.

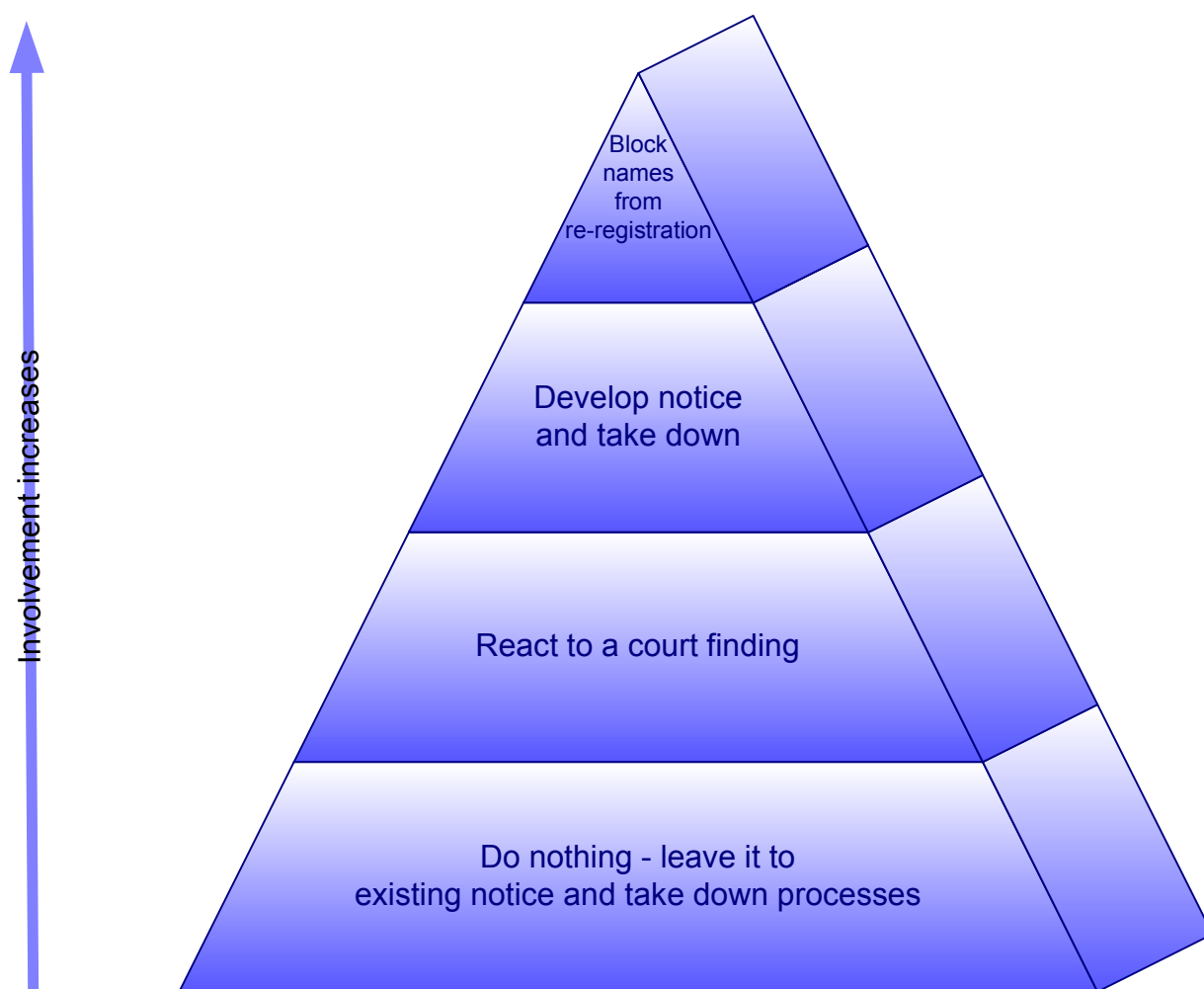
A yet more proactive stance would be for Nominet to consider involving itself in cases which are more frequent: that of coded or innocent domain names being used in connection with child pornography. Clearly, if such materials are being hosted in the UK (as 1% or so are), then there is an existing notice and take down procedure in place. But what about the domain name? Should that be affected, or should it stay on the register regardless of its use?

The table compares types of domain names (columns) against location of hosting (rows) and presents possible options for each combination:

	<b>IWF “code” word + illegal content</b>	<b>Innocent Domain Name + illegal content</b>
<b>Hosted in UK</b>	<ul style="list-style-type: none"> <li>▪ Do nothing but leave it to existing notice and take down procedures with UK ISPs</li> <li>▪ Cancel/suspend following criminal</li> </ul>	<ul style="list-style-type: none"> <li>▪ Do nothing but leave it to existing notice and take down procedures with UK ISPs</li> <li>▪ Cancel/suspend following criminal</li> </ul>

	<p>conviction of registrant</p> <ul style="list-style-type: none"> <li>▪ Develop notice and take down procedure for domain name</li> <li>▪ Cancel (either before or after conviction) and then block the domain name from future registration</li> </ul>	<p>conviction of registrant</p> <ul style="list-style-type: none"> <li>▪ Develop notice and take down procedure for domain name</li> </ul>
<b>Hosted Overseas (where good IWF contacts)</b>	<ul style="list-style-type: none"> <li>▪ Do nothing but leave it to existing notice and take down procedures with overseas ISP/INHOPE partner</li> <li>▪ Cancel/suspend following criminal conviction of registrant</li> <li>▪ Develop notice and take down procedure for domain name</li> <li>▪ Cancel (either before or after conviction) and then block the domain name from future registration</li> </ul>	<ul style="list-style-type: none"> <li>▪ Do nothing but leave it to existing notice and take down procedures with overseas ISP/INHOPE partner</li> <li>▪ Cancel/suspend following criminal conviction of registrant</li> <li>▪ Develop notice and take down procedure for domain name</li> </ul>
<b>Hosted Overseas (where poor IWF contacts)</b>	<ul style="list-style-type: none"> <li>▪ Do nothing</li> <li>▪ Develop notice and take down procedure for domain name</li> <li>▪ Cancel (either before or after conviction) and then block the domain name from future registration</li> </ul>	<ul style="list-style-type: none"> <li>▪ Do nothing</li> <li>▪ Develop notice and take down procedure for domain name</li> </ul>

The table above separates the options according to where the domain name is hosted, and whether the domain name itself is a “code word” or completely innocent. In this way, the PAB can consider whether different elements of the matrix require different treatment. However, the options can be summarised graphically as follows:



#### 4.2.4 Advantages

The advantages of adopting a combination or all of the elements of option 2 would include:

- It would make a statement that Nominet viewed the issue seriously: *.uk* could be viewed as “cleaner”.
- It would represent a good example of industry self-regulation in practice, since we would be working with public and private sector players (ie police and/or IWF) to create solutions.
- None of the elements above would require significant investment or training on Nominet’s part
- The decision-making would be outside of Nominet’s scope, with liability covered by IWF
- The likely number of cases is small
- Given the clarity of the law, and that viewing such materials is a criminal offence, we would have strong arguments to resist adopting a similar stance in other contexts.

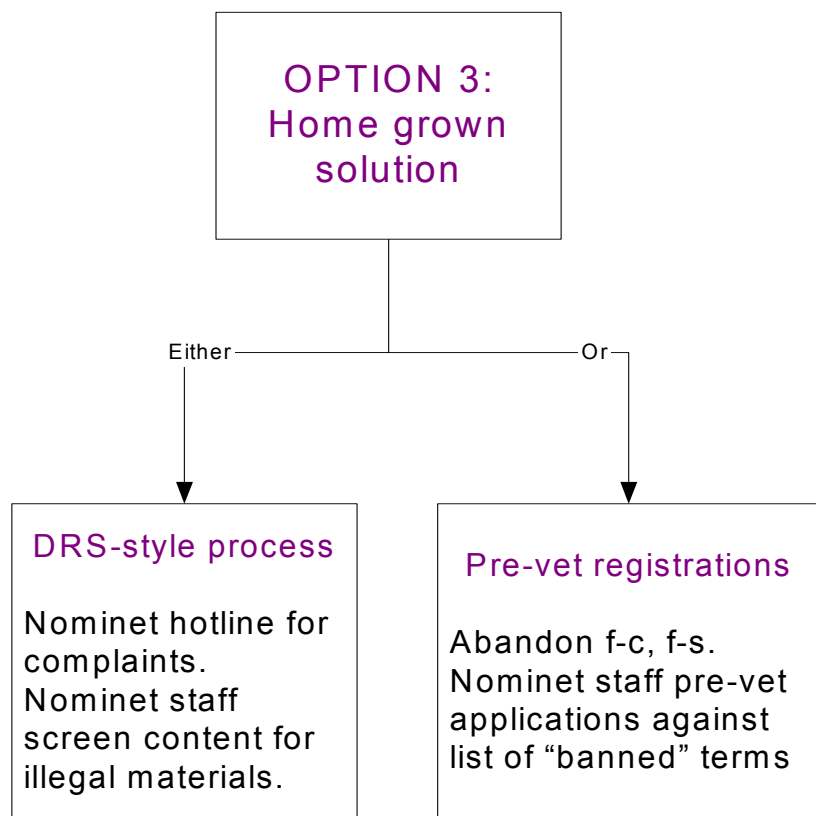
### 4.2.5 Disadvantages

The disadvantages of adoption any or all of the above elements would include:

- Is it necessary given that we've never had substantial complaints about this issue?
- Could set a precedent for other interest groups, although they would need to have the same legal status as the IWF.
- Turning off an entire domain name because of perhaps one illegal image is a blunt instrument, as opposed to the ability of a hosting ISP to delete an image or a page only. In addition, there could be ramifications and potential liability for Nominet if it deleted a domain name with multiple users at the fourth and subsequently levels, eg a-customer.demon.co.uk contains child pornography – should all of Demon's customers lose their web sites as a result?
- Blocking a domain name from future registration could be a blunt instrument, given the wide spectrum of terms included in the IWF list. There are many terms which could be used innocently by a wide range of potential registrants. There are others, which are not illegal but may perhaps be offensive or in poor taste. Nominet has not previously involved itself in determining such matters. However, there is a small category of domain names (difficult to define but easier to evaluate when you see them) for which it is difficult to imagine an innocent reason for registering.
- Could undermine Nominet's neutrality if the reasoning behind *only* doing these things in respect of child pornography was not clear or convincing.

### 4.3 Option 3: a home grown solution

The two elements below represent the farther end of the spectrum for Nominet's potential involvement.



The diagram shows two alternative processes which lie at the higher intervention end. The DRS-style process would involve keeping an automated registration system, but would involve Nominet staff in handling complaints. The outcome would either be decided on by specially trained staff, or could be outsourced to experts in the field, assuming that these could be found.

The alternative would be to adopt a new system of registration, under which applications are checked against lists of “banned” terms. This approach was advocated by John Carr of CCHIS.

#### **4.3.1 Advantages**

The advantages of adopting either element of option 3 would include:

- It would show that Nominet took the issue exceptionally seriously
- A pre-vetting policy would adopt the “prevention is better than cure” argument
- It would differentiate us from other registries in our approach
- MOU to 2003 Act gives permission for those involved in the industry to view and copy illegal images in the course of a timely report to relevant authorities.

#### **4.3.2 Disadvantages**

The disadvantages of adoption of either element would include:

- Out of proportion to the extent of the problem
- Would require substantial investment and training of staff, including total revision of our registration systems. This is because many of the terms in the IWF could be used innocently. In most cases, they would only take on a sinister meaning if words were combined with others to convey a meaning. Hence, it would be necessary for a human to evaluate whether or not a term was ambiguous, innocent, or illegal. It would be difficult to programme a computer to make such complex judgements, and therefore we believe that implementation would involve abandoning our current automated systems, and replacing them with human beings who scan applications for banned terms.
- We do not have existing expertise in house
- Substantial risk of criminal prosecution if we fail to control the work environment, or fail to report in a timely manner. The MoU under the 2003 Act was intended for people who occasionally come across illegal materials in the course of their work, but it is doubtful that a specialist hotline or pre-vetting system would be covered under the MoU.
- Huge strategic and costly change for us.

## **5. Summary and Recommendations**

The PAB are asked to review the options detailed at section 4. It is felt that option 3, however, represents a step too far for Nominet at this stage, which is not proportionate to the scale of the problem. It would also break a number of our fundamental principles, as well as requiring substantial financial and technical investment.

In reality, it appears that the real choice is between option 1, and any or all of the elements of option 2.