

# Data Release Policy Paper

## *For information*

### 1. Executive Summary

This paper presents a review of data release issues, and attaches (at Appendix A) a Data Release Policy, which was approved by the Board at its October 2004 meeting. This paper is presented for information only. No decision is required of the PAB.

The paper has been written in response to, and expands on the ideas contained within, the PAB resolution of 4 August 2004, the text of which is set out below.

### 2. Data Release issues

#### 2.1 The PAB Resolution

Item 5 of the PAB's recommendations of 4 August states as follows (the Board's response is highlighted in red):

*The PAB **resolved** to recommend to the Council of Management that where data about a registration, in excess of that available by inspection of WHOIS and/or PRSS, is passed by Nominet to a third party, then Nominet shall inform the registrant by email at the registrant's email contact address if any (or if no such address exists, Nominet shall use reasonable endeavours to use an alternate contact mechanism) of the identity of the third party and the information passed to that third party, and such information shall be sent by Nominet no less than 2 working days prior to the disclosure of such information to the third party. This shall not apply:*

- (a) where the passing of such information is prohibited by law*
- (b) where it has been, prior to the passing of such information, shown by the third party, to Nominet's reasonable satisfaction, that there is a very substantial likelihood that the rights of others will be damaged by disclosing the fact that such information has been passed, or that law enforcement would be prejudiced.*

*The PAB further **resolved** to recommend to the Council of Management that it should take further legal advice in terms of the detailed framing of the policy.*

*Agreed in principle subject to legal advice*

There are two key legal issues raised by this recommendation:

- the timing of informing the registrant, and the effect that it has on the overall timeline of answering a request for information;
- whether or not the PAB intends that a registrant should be able to prevent Nominet from passing on its details to a third party under this system; and

#### 2.2 Terms and Conditions

The terms and conditions, which came into force on 25 October 2004, state as follows:

11 We will make your **personal data** available in the following ways, but not release it for any other purpose to any other person. We may:

[...]

if they ask in writing, give your **personal data** to people with a legitimate reason for asking for it (based on the exemptions in the Data Protection Act 1998 or similar laws that replace or follow it), including government or law enforcement agencies;

[...]

12 You may write to us to ask for a copy of the **personal data** we hold about you, or you can look at the **WHOIS**, or you can ask your **agent**. Please note that if, at any point, we discover that you are not a **consumer**, we may automatically cancel your opt-out (see condition 11.2) without **notifying** you.

13 By registering a domain name you agree to us using your **personal data** as explained in conditions 11 and 12.

## 2.3 Registrant's ability to object?

It is clear from the terms and conditions that:

- A registrant has no contractual right to prevent disclosure of personal data to people who have a legitimate reason for requesting it.
- There is an expectation that all registrants will have their names and addresses published on the WHOIS, with the result that their data can be viewed by anyone, without the registrant being aware that a query has been made.
- The opt out has narrow application, as it only applies to non-trading individuals. It therefore affects a small proportion of our registrants.
- We routinely opt back in registrants who are incorrectly opted out.
- In most circumstances, the person requesting the data has a legitimate expectation that the request will be answered within 2 working days (compare the speed of a WHOIS response). An inbuilt delay of another 2 working days may conflict with that expectation.
- Requests are processed in line with the exemptions under the Data Protection Act. The request is refused if the person requesting the data simply wants to buy the domain name.
- In answering requests from trade mark holders, we would ordinarily only provide the same data as would appear on the WHOIS (ie name and address, not telephone, fax or e-mail address). I read the PAB's recommendations as applying to such cases only if the registrant is correctly opted out.

It is clear that the registrant has no contractual right to prevent a disclosure, but agree that the registrant should in most circumstances be informed.

Currently, relatively few data release requests are received by Nominet, and these are usually processed within 2 working days.

## 2.4 Factors preventing disclosure

Occasionally, we provide to police and other law enforcement agencies the full details which we hold. We do this in connection with detection or prevention of crime.

We are sometimes requested NOT to inform the registrant that we have passed on details for the following reasons:

- If there is a criminal investigation, eg of fraud, the investigating officers have told us that it is vital that the registrant does not suspect that they are under investigation.
- In the context of trade mark policing work, there is a risk of cyberflight (ie transfer of registration in another jurisdiction) if the registrant knows that the rights holder is investigating the registration.

However, it is clear that in most circumstances, there is no reason why a registrant should not be informed that we have released data to a third party.

### **3. Outcome**

Having reviewed the issues, the Board agreed as follows:

1. these issues should be dealt with in the context of a wider "Data Release Policy", a draft of which is attached for approval.
2. With regard to the specific issues covered by the PAB's recommendation:
  - a. The registrant should be informed of such requests by way of information only, and disclosure to the registrant should happen at the same time as the data release request is processed, since the registrant has no contractual right to prevent the request from being fulfilled. As a result, Nominet's aim would be to process data release requests (including informing the registrant) within 2 working days.
  - b. The Data Release Policy should separate law enforcement requests (where the presumption should be of non-disclosure to the registrant), with other, more trade mark orientated requests (where the presumption should be of disclosure).

## Appendix A: Draft Data Release Policy

### 1. Overriding Principle

Nominet UK is the .uk Registry, and as part of its core objects has the purposes of being the .uk Network Information Centre, having a register of .uk domain names, and providing ways to search that register.

In view of current Internet standards, Nominet UK believes that a core element of access to the register is the provision of a WHOIS service, and that all that for all domain names there should be (together with technical data) the name and address of the registrant.

### 2. Inclusion on the WHOIS

For this reason, Nominet UK's terms and conditions for registrants make it (with one exception) a condition that such information must be included on the WHOIS, and that if consent for this is withdrawn, the domain name can be cancelled. All domains on the WHOIS also appear in the Public Register Subscription Service (PRSS) which provides, amongst other things, reverse searching facilities i.e. searches by registrant name.

### 3. The Opt-Out

The Data Protection Act 1998 provides constraints on the use of personal data which might normally allow all individual registrants to opt-out of the WHOIS. With the approval of the Office of the Information Commissioner, Nominet UK has produced a limited opt-out system for the WHOIS (and PRSS). This allows the address (only) to be withheld from the WHOIS and PRSS. This is only available to consumers (i.e. individuals who did not register and do not use the domain name as part of any business, trade or profession). If we discover that this opt-out is being used by someone who does not qualify, we will remove it without notifying the registrant of the change.

### 4. Information Release

- We will provide full registrant information (e.g. phone, fax etc.) to the police and other bodies that enforce criminal law, provided that they submit a written request confirming that they need this information for the purposes of a specific investigation.
- We will provide address information to other parties whom we are satisfied have a valid reason for requesting it. Primarily this consists of rights holders (e.g. trade marks) who apply for contact information in relation to those they believe have infringed their rights. We only provide address (not phone/fax) information in this case, and only if it is not already on the WHOIS (or is on the WHOIS after we remove an invalidly claimed opt-out). Such requests must be in writing and we may require justification for claims.
- We do not provide this information to those who simply wish to contact the registrant to enquire about purchasing it.
- We provide registrant information via other routes, such as the DRS.
- We will use reasonable endeavours to inform the registrant when we process a data release request relating to the registrant, except in the following circumstances:
  - Where the request has been made in connection with the prevention or detection of crime, and the authority requesting the data has asked that the registrant not be informed; or
  - where person requesting the information has demonstrated to our reasonable satisfaction that there is a substantial risk that the rights of others may be damaged if we inform the registrant.