

Child Pornography and the .uk Top Level Domain

Policy Issue for debate

1. Executive Summary

During the recent consultation on proposed revisions to the Terms and Conditions, Nominet received two responses, copies of which are attached at Appendix A, which request that the contract provides for certain steps to be taken if it is brought to Nominet's attention that a domain name is being used in connection with child pornography.

Clearly these responses raise policy issues for the PAB to debate.

This paper seeks to summarise the options available, and at Appendix B (**not for publication on the web site**) is privileged and confidential legal advice. However, the paper makes no recommendation, which the board feels is appropriate given the sensitive nature of the issue.

2. Child Pornography

As a result of the input of the Internet Watch Foundation (IWF), and the Children's Charities' Coalition for Internet Safety (CCHIS), as well as its own debate, the board has identified four options. The first three are drawn directly from the responses of IWF and CCHIS, with no comment. The fourth is a suggestion of the board.

1. Nominet to pre-vet applications and not allow names likely to be used in child pornography.
2. Nominet to have contractual right of cancellation/suspension if advised to take such action by IWF.
3. Any parent may be a complainant in DRS in respect of well known/child orientated brands being used for pornographic sites.
4. Nominet have a general right to cancel names which are likely to lead to criminal liability for Nominet.

The PAB is asked to reflect on the following questions:

- Who would decide whether a domain name registration is likely to be used in connection with a criminal offence, or that Nominet is likely to incur criminal liability y (if indeed this could be the case). Would IWF's authority be enough?
- Would some judicial finding need to be made, or would a mere allegation be enough?
- Would it be enough that a name were likely to be used as an illegal advertisement, or would actual use be necessary?
- Would this lead to similar requests eg from law enforcement agencies?
- Is the domain name registry the correct place to take up such requests, or should IWF be advised to go to ISP whose servers are hosting such sites (even if such ISPs are located out of UK)?
- What is the logical difference between cases of this kind, and allegations that a registry is involved in trade mark infringement by allowing a first come, first served system of registration?

Appendix A: Consultation Responses of IWF and CHIS

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The Internet Watch Foundation (IWF) was formed in 1996 and works in partnership with the internet industry, government and the police. The role of the IWF is to:

- foster trust and confidence in the internet among current and future internet users
- assist service providers to combat the abuse of their systems for the dissemination of criminal content
- assist law enforcement in the fight against illegal content on the internet

Our role has been acknowledged in a MoU under section 46 of the Sexual Offences Act 2003.

As you may be aware, IWF has been involved in the successful development and introduction of policies with regard to Usenet newsgroups carried by UK based ISPs and this has resulted in an estimated 500,000 illegal child abuse images per annum (per ISP providing access to newsgroups) not being available. One of the policies is based upon legal advice that a Usenet newsgroup name can be an illegal advertisement under the Protection of Children Act 1978. We have been similarly advised that a domain name could be an illegal advertisement.

Therefore, in response to the current consultation on terms and conditions, IWF propose that section 14 should include a further paragraph as follows: 14.8 if the Internet Watch Foundation advise that a .uk domain name is a potentially illegal advertisement under S.1(1)(d) of the Protection of Children Act 1978.

Brian Wegg
Head of Secretariat
Internet Watch Foundation

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I write on behalf of CHIS, the Children's Charities' Coalition for Internet Safety, which comprises Barnardos, ChildLine, Children's Society, NCB, NCH, NCVCCO and the NSPCC.

We very strongly support the view expressed by the IWF and would like to develop their point further. As a matter of policy we think Nominet should not accept registrations where the proposed new name could reasonably be understood as meaning that child pornography is likely to be made available at that location. To do otherwise would put Nominet in the position of aiding and abetting the advertisement of illegal images, and that is itself also a crime. To the extent that any automated processes might make the administration of such a policy more difficult to apply, Nominet should seek appropriate advice on how those processes might be modified to prevent or minimise the risk of it happening. The IWF has, for example, developed a database of names which are frequently used by paedophiles and criminals to communicate the nature of various illegal materials they might wish to display or sell. It is not hard to imagine how such a database might be connected to your registration processes.

Where Nominet is in any doubt about whether or not a given name would be likely to fall foul of this policy, it can refer the matter to the IWF for advice. Equally, where the IWF has ruled that a given, existing web site name amounts to an illegal advertisement, Nominet should cancel or withdraw the registration. Moreover, even where a web site name is not advertising

child pornography but the site in fact is in the business of supplying child pornography, and Nominet has been advised of this by the IWF, that registration should also be cancelled.

Our second point concerns the locus to complain about typo-squatting or misleading domain names. Where someone manipulates or misuses a name which otherwise will or is likely to have a very strong following among children e.g. the name of a popular music group or football team, and then puts on that site material which is wholly unsuited to children e.g. pornography, then any parent whose child has or may end up at that site ought to have the right to ask you to review its continued use.

Regards

John Carr
Secretary, CHIS