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Dear David

Following your letter of 15th October 2008 regarding Nominet's role, and concerns about how its constitution and structure met its stakeholder responsibilities, the Nominet Board, based on your suggestion, commissioned an independent governance review to look at this issue in detail.

Before we move onto the review and its recommendations, we would like to acknowledge your feedback on Nominet's positive example of a self-regulated UK Internet, which the Government favours, and our positive contribution to public policy. We too believe that self-regulation has generally worked well, but we also acknowledge that it will need to be more responsible and responsive to wider stakeholder concerns moving forward. There are a number of challenges to be addressed if we are to be successful in the future. Our goal is to ensure, via the actions outlined below, that wider stakeholders, including yourself, are satisfied that the UK domain name industry remains capable of self-regulation, thus avoiding the need for any form of Government intervention in the sector, whether by way of regulation, legislation or otherwise.

Self-regulation, if structured to support the interests of all stakeholders, is desirable for a number of reasons:

- a) For the .uk domain name system it has produced outstanding results in terms of Nominet's technical and service excellence, and also Nominet's standing and contribution to the global development of the Internet and its governance;
- b) It is the best system for an industry that depends on creativity and innovation for its health and future development. In particular, it is crucial that key infrastructure is managed as closely as possible to the technical and user community, allowing rapid responses to any threats and quick decisions on investment and innovation;
- c) It supports a technically innovative environment for the development of the .uk domain name system, as a key national resource in the UK's information infrastructure;
- d) It embodies the spirit of the founders of the Internet and of Nominet, and can ensure this spirit continues to inspire new generations of Internet users and developers.

For these reasons we strongly advocate responsible and responsive self-regulation.

The Governance Review & Responses to BERR's Questions

Following receipt of your letter, the Nominet Board commissioned an independent governance review. The review was undertaken by Professor Bob Garratt of the Cass Business School, an acknowledged expert in corporate governance, and by Mutuo, the organisation that brings together consumer co-operatives, building societies, mutual insurers and friendly societies and other mutual societies to work together to promote their shared interests to the Government, media and other decision makers. The reports of that review, together with an overview and summary of the main recommendations, are attached for your consideration.

Your letter posed five questions on the issues that face Nominet and the wider industry. The reports of the independent governance review give important guidance as to how Nominet's structure and governance will need to change to ensure that self-regulation is sustained. The responses to those questions are as follows:

Question 1: How far do Nominet's constitution and Board structure follow accepted best practice in terms of corporate governance as set out in the Combined Code?


Whilst the Combined Code is mandatory only to UK listed companies, Nominet has previously sought to apply the requirements of the Combined Code, to the extent that it was appropriate and practical to our status as a not-for-profit organisation. This status means that Nominet is not listed, does not have share capital and is debarred from distributing any surplus to its members.

In his review, Professor Garratt made a detailed comparison of our current compliance with the Combined Code. He concluded that there are some areas of the Combined Code which are inappropriate and impractical to apply to Nominet and there are some areas that it meets successfully. He also concluded that there were some fundamental constitutional issues that need to be addressed if Nominet is to follow a best practice model. These issues relate to the structure of the Board, the requirement for independence (given recent changes in directors' responsibilities brought about by the new Companies Act) and the structure of the membership (in relation to member interests).

The Nominet Board has already taken a positive step to temporarily address Board structure with the recent appointment of an independent, non-executive director to fill one Board vacancy. It is our intention to similarly fill the remaining Board vacancy as soon as possible. Both of these posts would be subject to re-appointment by our members at the next AGM. Difficulties at Board level now seem to have been overcome following the resignation of two directors, and all Board members now enjoy sensible and responsible relationships with each other and are focused on delivering for all our stakeholders. The Board is committed to working with our members to address the recommendations, as part of a detailed consultation, including a long-term commitment to the election of independent non-executive directors.

Question 2: How effectively does the company ensure that the directors of the company reflect the wider stakeholder interest?

Nominet was created as a membership organisation, but with the expressed commitment to our wider public purpose (enshrined as an 'objects clause' in our Memorandum of Association). Our leadership within organisations such as ICANN and the Internet Governance Forum is testament to our commitment to fulfilling our public purpose. However, Nominet's current constitutional structure does not support this principle - the reports conclude that it is not currently possible for Nominet to ensure that its directors reflect the wider stakeholder interest due to the current constitution. In particular, the way the directors are elected to the Board, together with the limit on the number of directors, and the new requirements of the Companies Act 2006 relating to conflicts of interests are significant barriers.



The Nominet Board supports the need for our constitution to change to protect wider stakeholder interests, whilst at the same time ensuring a competent Board with a balance of relevant skills and experience

Question 3: In particular how does Nominet ensure the continued development and evolution of industry self-regulation in order to protect wider stakeholder interests?

The reports make a number of recommendations to ensure the continued development and evolution of industry self-regulation. The Board's goal is to make certain that Nominet's members, stakeholders and Board members work together to continue to provide the secure and reliable operation of the .uk namespace. In this we recognise our responsibilities to our members, our wider stakeholders and the Government to ensure the fair and equitable management of the UK Internet space, and that this should be kept under constant review.

There is also an ongoing responsibility for continued international dialogue so that the Government, and other bodies involved in Internet governance, can continue to be sure that the industry is capable of self-regulation of the domain name space in the public interest and that it can deserve your trust and confidence. We want to remain a beacon of industry self-regulation.

Question 4: What arguments would you employ to convince my Ministers that the present relationship between Government and the company is appropriate in ensuring that public policy objectives in relation to the management of the domain name system and the standing of the UK in the Internet community are understood and taken into account?

In the past self-regulation has been a success, and this has been recognised by Government and industry as such. There is a clear commitment from the Nominet Board to continued self-regulation and the protection of wider stakeholder interests. Government, wider industry and stakeholders interviewed as part of the review process have also clearly stated the view that self-regulation is the optimum model for the UK Internet. However, Nominet's Board recognises that fundamental constitutional issues must be resolved, via consultation with our members and broader stakeholders, to ensure this can continue and to enable us to present the strongest possible case to Ministers.

The Nominet Board remains confident that, in considering the detail of the independent governance review, our members, can find a solution that means Government intervention in the sector will be unnecessary and undesirable. We are committed to working with our members and stakeholders to make this happen.

Question 5: Are there any actions that either the company or the Government -- individually or together -- might take in the short term to address any of the concerns identified in relation to the above questions?

Following your letter, the Nominet Board acted quickly to set up an independent governance review. We now have clear, independent recommended guidance on what improvements must be made if we are to fully meet best practice guidelines and to earn the full confidence of Ministers. Together, the Board and the membership must now consult with stakeholders to review the recommendations with the goal of making self-regulation work in the short and long-term. The Nominet Board's goal is to have an active, engaged dialogue with members on these issues. It is clear that only with broad participation, and collective recognition of the role of the membership and other stakeholders as part of a successful self-regulatory model, that these fundamental constitutional changes can be made.

We would appreciate feedback from BERR and other stakeholders regarding the conclusions in the governance report.

With that in mind, it is the Board's intention to now start the consultation process with our members and stakeholders with the objective of putting proposals to a Nominet EGM in late Autumn.

In Conclusion

The current Board is united as it strives to make sure that the growing pains experienced by Nominet and the .uk namespace over the last 18 months are not repeated and that, with members' support, we can dispel any fear that either you or your Ministers may have had that the industry is not up to the task of carrying out the responsibilities with which it is entrusted without regulation.

I would welcome your reaction to the reports and I hope that you will welcome our approach to the implementation of the recommendations outlined in this letter. I strongly believe that, working together with our membership, we will be able to deliver an industry-led solution that will be able to respond to your concerns, and I would reiterate our continuing commitment to providing a robust and secure .uk infrastructure and to ensuring our accountability to all .uk stakeholders.

Yours sincerely



RM Gilbert
Chairman