

## Policy Advisory Body Report

This report will be tabled for approval at Meeting 62

**Sixty first meeting of the Policy Advisory Body**  
**Victoria Park Plaza, 239 Vauxhall Bridge Road, SW1V 1EQ**  
**18 March 2009**

Those present:

Andrew Bennett	Elected Member
Ulrika Diallo	Appointed Member – Federation of Small Businesses
Gordon Dick	Nominet Board
Merlin Errol	Appointed Member – apComms
Clive Feather	Elected Member
Mark Healey	Elected Member
Nora Nanayakkara	Elected Member
Eric Ramage (Chair)	Appointed Member – ITMA
Stephen Rhodes	Appointed Member – BERR
Jarrold Robinson	Elected Member
Rob Taylor	Elected Member
Michael Toth	Elected Member

From Nominet by invitation of the PAB:

Martin Boyle, Senior Policy Advisor  
Clive Grace, Nominet Board  
Laura Hutchison, Policy Executive  
Leanne Kenny, Policy Executive  
Nick Wenban-Smith, Company Solicitor

### **PAB March Meeting – Report**

#### **1. Motion to dismiss PAB chair (proposed by Andrew Bennett)**

The Chair requested Gordon Dick chair this item on his behalf.

Gordon noted that Andrew had raised the motion to dismiss by e-mail but, following the publication of the agenda, he had asked for the motion to be withdrawn with no further comment on the allegations made. Andrew confirmed this and declined to comment further.

One member asked about whether such a motion needed to be seconded: it is not clear whether this is required for such a motion and it was requested that the PAB rules be added to the work programme for clarification.

#### **2. Welcome and apologies**

Apologies were received from Dave Evans. The Chair said that he had suspended Simon Bezant from attending the PAB meeting, following a complaint against Mr. Bezant under the PAB Code of Conduct

The Chair welcomed Tom Wills-Sandford, Deputy Director General of Intellect, the trade association for the electronic, software and computer services sector, on behalf of the PAB. He has expressed an interest in the work of the PAB and was invited to attend as an observer.

He also welcomed DS Stephen Truick & DS Chris Atack from the Metropolitan Police Central e-Crime Unit (attending for agenda item 6.a.i.), Richard Cox, Spamhaus (attending for agenda item 6.a.ii.), Richard Martin, APACS (attending for agenda item 6.b.), and Tony Willoughby, Chair of the DRS Expert Review Group and Nick Wenban-Smith Nominet's Senior Legal Counsel (both of whom were attending for agenda item 6.e.).

### **3. Declaration of Interests**

Jarrold Robinson declared an interest in item 6.a.i. as he runs a website which sells tickets online.

The Chair declared an interest in the DRS and also said that, because his trademark practice offers domain name management services that might be affected by any change in the DAC, he felt it better for avoidance of any doubt to declare an interest even though he would not be present for the discussion.

No other declarations of interest were made on any of the agenda items.

### **4. Approval of the January meeting report**

Two PAB members asked about whether Simon Bezant had been told that he could not attend the (cancelled) members' lunch in Bournemouth. The Chair said that he had registered independently for the lunch (one of his firm's offices being located a few miles from the venue) and Nominet had drawn to Simon's attention that he would not need to attend on this occasion.

The PAB approved the report of the meeting.

### **5. Matters Arising**

Gordon Dick confirmed that IDN implementation is in a queue with some higher prioritised projects ahead of it.

### **6. Policy Issues**

#### **a. Industry Standards**

##### **i) Metropolitan Police e-Crime Unit: ticket scam sites**

DS Stephen Truick introduced the Police e-Crime Unit. Currently with 25 officers and growing, its remit is on addressing crime committed using the Internet and telecommunications networks. This is a huge area and their focus is on prevention and disruption of crime.

He focussed on Internet ticket fraud websites – an old form of crime benefiting from the new medium. He noted the importance of rapid action: in the example he used, where PeCU had worked closely with the registrar, the site took over £200k on the morning immediately before it was taken down.

Overall the PeCU is content with the cooperation it receives from Nominet and our UK based registrars, but he did have concerns with some overseas-based registrars. DS Atack referred to concerns relating to the abuse of the London Olympics branding.

PeCU was keen to work closely with the industry to address criminal activity in an effective and timely manner. Steve recognised the need to build trust and he was keen to discuss how to ensure effective communication of requests which could be actioned.

In the discussion, PAB members asked about procedures and, in particular, the issue of liability in the case of error. How can we ensure a mechanism that cannot be misused? There is an interest in ensuring that there is confidence in the use of proper procedure.

The PAB were requested to consider the following:

- Section 328 of the Proceeds of Crime Act states “A person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.” What does this mean for Nominet? In response to a question, Steve suggested that notification by the police might be seen as giving reasonable grounds for suspicion;
- There is a risk to Nominet’s reputation if a .uk domain name is used in connection with criminal activity and Nominet does not take timely action;
- For Nominet to consider its procedures for taking down a website once notification has been received that it is involved in criminal activity.

It was noted that the phishing lock being recommended by the Lock States sub-group (item 6.c.) would provide a useful tool for dealing with fraudulent websites.

Ulrika referred to a report prepared by the Federation of Small Businesses: this identified the under-reporting of crime by small companies. Steve agreed and said that it was hoped that the creation of the National Fraud Reporting Centre would lead to a more realistic assessment of the scale of the problem: reporting crime is encouraged. Ulrika agreed to circulate the FSB report to PAB members for further discussion.

## **ii) Spamhaus: WHOIS Data Problem Reporting System**

Richard Cox asked the PAB to consider the current system for reporting abuse of the opt-out facility of the WHOIS. He requested the PAB to examine the following issues:

- What is the perception of the opt-out facility and its use?
- What is the process of correcting an incorrect opt-out and is this sufficiently clear and easy to access?
- How can Nominet improve the opt-out and prevent abuse?

He noted that ICANN had now implemented an abuse (incorrect data) reporting procedure for the gTLDs, and reports were being followed up. This was leading to more responsible behaviour by registrars.

In the short discussion it was noted that there were problems for registrars to identify whether the registrant was trading or not. One member suggested that the default for .co.uk should be that it was a trading site and the assumption should be to opt in. The PAB agreed to continue this discussion.

Richard also alerted the PAB to the threat from version C of the Conficker worm and its use of the DNS to download command and control instructions.

## **b. Phishing: next steps**

Richard Martin from APACS presented his paper. In the discussion it was agreed that there are some key and priority areas for future work between Nominet and the PAB:

- Establishing good practice on take downs of domain names connected with phishing activity, recognising the need for a common understanding on responsibilities and accountability;
- Identifying a common approach to dealing with domain names involved in fraudulent activity, in particular looking at liabilities;
- The use of the Anti-Phishing Working Group landing page or something similar;
- Agreeing the approach to sharing data.

The PAB noted its continued priority for work on combating phishing and the Chair indicated that they were in favour of continuing to work together with APACS. Mark Healey, Gordon Dick and Stephen

Rhodes agreed to liaise with the secretariat and APACS in order to define the agenda for a workshop associated with the July PAB meeting.

### **c. Lock States**

The PAB received the sub-committee report on Lock States. It was suggested that the phrase 'trial period' be removed from the recommendation and replaced with 'reviewed after six months' as this better reflected the intention of the sub-committee.

The PAB discussed whether, when a phishing lock is applied to a domain name, there should be a standardised landing page explaining that it has been used in connection with phishing and providing consumer information. It was agreed that this would be useful, but that there might be liability issues and so Nominet should look at the practicalities of such a provision.

The PAB agreed to the resolution in the annex.

### **d. Reserved names**

The Reserved Names paper was approved by the PAB, which agreed to the resolution in the annex.

### **e. DRS: Summary review**

Nick Wenban-Smith gave a presentation on the Dispute Resolution Service and outlined the recent changes to the DRS and the introduction of the summary decision process. Tony Willoughby the Chair of the Expert review group also attended the meeting for this agenda item.

Nick noted that having an effective DRS was an important safeguard for the first-come first-served registration policy, and he cited a number of examples of cases addressed under the service. The service operated at arm's length from Nominet, with independent experts assessing cases against demonstrable claimant's rights and respondent's abusive registration. There are safeguards in the process, including an appeals process, and a preliminary step of mediation for contested cases. The move to electronic submissions had improved the administration and processing of the DRS.

The summary review process addressed comments in the consultation that, where the registrant did not respond and therefore mediation was not an option, the expert decision was simpler. The cost of the full decision was a barrier to small businesses and individuals pursuing legitimate cases. Nick estimated that the cost savings to complainants, who were overwhelmingly the victims of sharp practice carried out by a minority of persons familiar with the DNS, already amounted to almost £50k, since the service launched in July 2008. User surveys showed a reduction in complaints about cost from nearly 20% to 7%. In the view of the Executive, Summary Decisions had therefore been a successful innovation, although further observation and analysis would continue.

During the discussion the following points were raised:

- One PAB member asked why the presentation had covered material about the operation of the DRS. Nick noted that some members of the PAB did not have detailed knowledge of Nominet's operational services.
- Some PAB members were concerned by what they perceived to be a lack of transparency with the summary decision because the expert is only required to complete tick boxes rather than write a reasoned explanation. Nick noted that reducing the cost barrier was an important objective and that the cost of the DRS was the experts' time in reviewing cases and in preparing reports. Tony drew a comparison to litigation where there is no open trial, but noted that in the case of DRS, the experts assessed against criteria and certified this in the check boxes. One PAB member suggested that a solution might be to cut and paste the relevant statements from the complaint.

- One PAB member considered that justice needed to be seen to be done and that Nominet members had a responsibility to oversee the service. Others also needed to be able to see why decisions had been taken.
- Some members considered that a lack of clear justification would be a problem in setting precedents for decisions. Nick responded that the summary decision was not considered to provide any case law or establish precedents.
- Members noted that calling the summary decision “summary transfer” was unhelpful as it implied a default process.

Stephen Rhodes noted that the Department for Business considered the DRS an important governance issue and that BERR would not want to see a weakening of the service.

The PAB requested that Nominet look into ways of explaining the basis for summary decisions.

## **7. PAB internals**

### **a. Follow up from PAB election**

Deferred to May meeting. One PAB member suggested that membership could be reviewed as part of a more detailed review of the PAB – he suggested reducing the number of elected members to six. The chair noted that a PAB member had volunteered to prepare an initial discussion paper, and he would try to follow this up in time for the May meeting.

### **b. PAB Performance review**

Deferred to May meeting

## **8. PAB work programme including:**

### **a. New items for the work programme**

One item proposed was discussed at the meeting (item 9). Further action on other issues is identified under the relevant agenda items.

## **9. Matters arising from nom-steer and pab-suggest**

### **Proposed changes to the Domain Availability Checker (DAC)**

It was noted that there had been considerable discussion on nom-steer about the proposed changes to the DAC.

Some PAB members expressed their concerns regarding the service changes to the real-time DAC, namely the removal of the “suspended” status field, suggesting that this might have an impact on ability to drop catch for some members. The larger limits available to registrars with large numbers of domain on their Tags under the new Real Time DAC service was also raised as a concern. The access limits in the new T&Cs could affect some drop catchers who use the DAC to query the register database in order to compile extensive drop lists. One member suggested that it ought to be possible for smaller registrars to buy a larger access limit.

It was pointed out that the tool was being used for things that it had not been designed for and that there was a real concern about the protection of the database, a concern that was acknowledged by some PAB members.

Michael Toth requested it be recorded in the meeting report that he asked for the implementation of the changes to the DAC contract to be suspended.

Eight PAB members supported the suspension of the changes to the DAC until further review. Nominet was invited to provide a briefing paper on the new mechanism, including an assessment of the impact of the changes.

## **10. AOB**

### **Declaration of Interests**

One member expressed concern that appointed members were not required to complete a declaration.

The PAB were reminded that Appointed Members are representing their organisations but that they are expected to declare any interests which members of the public might reasonably think could influence their judgment, in the same way as Elected members.

Some members noted that one question on the declaration of interest form appeared to be irrelevant: the secretariat noted that the covering notes for the form emphasised that it was about relevant interests, but agreed that it does need to be reviewed. However, the current version had been agreed by the PAB: a review of the declaration of interests form will be added to the PAB Work Programme.

### **Retiring members**

The chair thanked Andrew Bennett and Jarrod Robinson, both retiring from the PAB, for their contribution to the work of the PAB.

## **11. Date of next meeting 13 May 2009**

## Resolutions

### Lock States

The PAB resolved to recommend to Nominet that:

Nominet should implement a “Please notify me if my registrar doesn’t renew my domain name” lock. This causes the system to act as though the DNR flag is not set and a reminder email will go to the registrant to notify them that the domain name is due for renewal. The lock can only be set and removed by the registrant.

Nominet should implement a Phishing lock to allow a registrar to lock a domain name that has been used for phishing. This would prevent the domain name being moved to another registrar and could remove the name servers or redirect the domain to a standardised information page. It will be clearly stated to registrars that this lock is only to be used in cases of phishing and that abuse will be severely punished. This lock will be reviewed after six months and usage will be carefully monitored during this period.

### Reserved Names

The PAB resolved to recommend the following to Nominet:

1. The PAB recognises that the registration of any .uk SLD (whether run by Nominet or a third party) at the third level could lead to confusion, and should continue to be prevented.
2. Registration of the same *domain name* at the 2nd and 3rd levels is standard registry practice and need not be prevented. Any issues can be addressed through the DRS system.
3. The PAB recommends that the registration at the third level of new SLDs applied for under the new SLD process before the application for that SLD has completed be prevented (if available); making such alterations to its Rules as appropriate.
4. The PAB recommends that Nominet should make any other names currently reserved under Rule 5.9 not covered by the recent discussion on two letter domain names available for registration, excluding “com”; making such alterations to its Rules as appropriate. There should be a special approach to releasing domain names with a staged sunrise period as with two letter domain names.
5. The PAB recommends that Nominet does not have to block registrations for any new TLDs which are announced by ICANN (or any replacement body which controls the creation of new TLDs); making such alterations to its Rules as appropriate.

### Dispute Resolution Service – Summary Decisions

The PAB requested that Nominet look into ways of explaining the basis for summary decisions.

### Domain Availability Checker

On the basis of a vote in favour by the majority of members, the PAB requested the suspension of the changes to the DAC for further review and asked Nominet to provide a briefing paper on the new mechanism.