

Draft Policy Advisory Body Report

This report will be tabled for approval at Meeting 63

**Sixty second meeting of the Policy Advisory Body
Victoria Park Plaza, 239 Vauxhall Bridge Road, SW1V 1EQ
13 May 2009**

Those present:

James Conaghan	Elected Member
Ulrika Diallo	Appointed Member – Federation of Small Businesses
Gordon Dick	Nominet Board
Sara Draper	Observer – Confederation of British Industry
Dave Evans	Appointed Member – Information Commissioners Office
Clive Feather	Elected Member
Mark Healey	Elected Member
Nora Nanayakkara	Elected Member
Eric Ramage (Chair)	Appointed Member – Institute of Trade Mark Attorneys
Stephen Rhodes	Appointed Member – BERR
Rob Taylor	Elected Member
Michael Toth	Elected Member
Tom Wills-Sandford	Observer– Intellect

By invitation of the PAB:

Leanne Kenny, Policy Executive, Nominet
Rosina Robson, Federation of Small Businesses
Helen Tomes, Interim Director of Operations, Nominet

PAB May Meeting – Report

1. Welcome and apologies

The PAB Chair welcomed James Conaghan, Michael Toth and Mark Healey back to the PAB. He also welcomed Helen Tomes, Interim Operations Director, Nominet, Rosina Robson from the Federation of Small Businesses, Sara Draper, CBI and Tom Wills-Sandford, Intellect.

2. Election of PAB Chair & approval of Appointed Members

Eric Ramage confirmed he was standing for re-election. Other PAB Members were invited to stand, however no other Member put themselves forward. Eric Ramage was re-elected as PAB Chair.

All existing Appointed Members agreed to be re-appointed. The PAB approved the appointment of Tom Wills-Sandford as the representative of Intellect to the PAB with effect from the end of the meeting. Members also agreed that Sara Draper from the CBI will be invited to attend PAB meetings as an observer on a permanent basis.

3. Motion to dismiss Simon Bezant (Proposed by PAB Chair)

The PAB Chair put forward a motion that Simon Bezant be dismissed from the PAB for refusal to accept the authority of the Chair. Mr Bezant having declined to reply to a complaint made against him by another PAB Member under the Code of Conduct, did not appeal to the PAB against the Chair's decision, or any part of that decision, (despite having been reminded of his right to do so). He persistently refused to comply with the Chair's decision despite having been warned of the consequences in writing, on more than one occasion.

All Members present entitled to vote voted in favour of the motion. One Member was absent and had not nominated a proxy. The motion was carried by ten votes in favour with one absent: Simon Bezant is therefore dismissed from the PAB with immediate effect.

4. Declarations of Interest

Clive Feather indicated that he had discovered an error in his Declarations of Interest posted online which he has now corrected.

Nora Nanayakkara declared that various parts of the group Sedo belong to use the DAC and the WHOIS. All Declarations of Interest had been declared on the form submitted to Nominet.

5. Approval of the March meeting report

The meeting report was approved.

6. Matters arising

There were no matters arising.

7. Board Response to PAB resolutions

It was highlighted that the Board were looking for feedback from the PAB on whether the phishing lock should have wider applicability to include domain names being used in association with other criminal activity. This discussion is dealt with under item 8.b.ii.

One PAB Member highlighted an error in the Board response to item 3 – Dispute Resolution Service – Summary Decisions. It was clarified that the Board has requested the Executive to draw the PAB's feedback to the attention of the DRS Experts Review Group. The paper will be amended to reflect this.

8. Policy Issues

a) Industry Standards

i. 'Inhibiting Enterprise – Fraud and Online Crime Against Small Businesses'

The PAB welcomed Rosina Robson, Federation of Small Businesses (FSB) to present the findings of the survey into Fraud and Online Crime against small businesses. This is the first time the FSB has done specific work on the impact of online crime on small businesses. In 2006 only 20 % of small businesses were concerned about the risk of online fraud. Now 54 % of businesses have been a victim of fraud or online crime and a significant 26 % of businesses are deterred from buying and selling online because of the fear and risk of online fraud.

There are three key areas which are of interest to the PAB:

- Phishing

- Corporate ID Fraud
- Card-not-present Fraud

The biggest issue is phishing, a threat which is continually evolving, with 37% of businesses saying that phishing emails had been a problem. Institutions such as HMRC and major banks are having their websites imitated. Both businesses and their customers are being taken in, although there is evidence that business is becoming more savvy. Phishing is currently seen as an irritant which creates concerns for businesses about trading online and erodes consumer confidence.

The survey found that whilst the numbers of people who fall victim to Corporate Identity Fraud are low – only 6% – it is a growing problem. Things have been done to try and reduce the risk. For example Companies House have tightened the access to their online documents. However there are issues around domain names being highjacked either to use for sending spam or to gain access to data on clients. This has an impact on the reputation of the business and has resulted in loss of contracts. In addition businesses responded to the report by stating that competitors had bought their domain name, or that the domain name had lapsed and had been quickly re-registered and used for a site which had nothing in common with the name.

15% of businesses have been a victim of Card-not-present fraud which has taken place either over the phone or the internet. Small businesses usually take payment over the phone and these transactions are not covered by schemes such as verified by Visa. On average this type of fraud costs businesses £760 a year, a cost which big businesses can absorb but which has a significant impact on small businesses. APACS statistics show that this type of fraud is on the rise.

A number of issues were raised by PAB members:

- It is important that people running small businesses are fully educated in how to run a business online securely.
- The average small business cannot afford to bring in IT consultants because of the cost but similarly cannot afford not to because of the security risk.
- Eroding confidence in online industry will impact Nominet and its stakeholders.
- There are some really good security initiatives out there – Get Safe Online and the Business Crime Reduction Centre were mentioned however these initiatives need more visibility so people know they exist. A central place for people to find out information would be useful but it is crucial that it is seen to contain trusted advice.

ii. **Follow up to the presentation by the Metropolitan Police on ticket scam sites**

There was general agreement within the PAB that Nominet should cooperate with the police if they receive a request to take down a domain name that is suspected to be involved in fraudulent activity. There were concerns over liability. It was confirmed that Nominet is currently used as a last resort and is only requested to take down websites if the registrar does not cooperate with the police. It is an operational matter for Nominet to decide how to deal with any fallout from wrong decisions. It was pointed out that there is a real risk to Nominet's reputation if it is not seen to cooperate.

One PAB member advised that Nominet should consider carefully what it accepts as suitable evidence from the police.

The PAB agreed the resolution in the attached Annex.

iii. **WHOIS policy and opt-out procedure**

Nora Nanayakkara declared an interest in this item.

Nominet's current policy was developed in connection with the Information Commissioners Office (ICO). The ICO confirmed that the current opt-out procedure is seen as good practice as it does allow for opt-out of private individuals but also contains elements of personal data for trading individuals.

The PAB briefly discussed how you can define whether a domain name is being used for the purpose of trading. One PAB member felt that the current definition of trading: any domain name which is used for a website which generates revenue, is weak. Others felt that the definition was clear: if you make money you are trading. The representative from the ICO confirmed that there are different expectations over the use of a domain name from an individual to a trading individual and that this provides a legitimate basis for processing personal data. The ICO is happy with the opt-out as it currently stands but acknowledged that there were things that could be done to improve the facility.

Concern was raised over making it too easy for people to complain about incorrect opt-outs as this may lead to people being incorrectly opted in. The question was put forward as to whether incorrect opt-outs which no one has complained about are an issue. The response to this was that this is a breach of the terms and conditions for registration, however it was acknowledged that many people who are opted out incorrectly are not aware they are not entitled to opt-out.

One PAB member referred to the process ICANN now have where there is a central point on the website where people can make a complaint about incorrect opt-outs. Nominet does not have clear, visible information on the website and this is something it feels it should address. It was felt that there is a necessity for a tool for the wider stakeholder community to use to inform Nominet and potentially Nominet can work together with registrars to help them ensure their own data on their customers is correct and up to date.

The PAB recommended that the function of the WHOIS and opt-out are operational and therefore outside of the PAB's remit.

b) i. July Workshop with APACS

Gordon Dick gave a verbal update from the sub-group working with APACS on phishing. Richard Martin from APACS has agreed to draft a discussion paper which will be brought to the workshop in July. It was commented that APACS were delighted to hear that the phishing lock had been implemented.

ii. Extension of the phishing lock to other on-line fraudulent activity

The Board response to PAB resolutions invited the PAB to comment on the possibility to extend the phishing lock to include domain names which were suspected to be involved in criminal activity. The reason for this is to stop a domain name being moved from registrar to registrar and thus preventing the website from being shut down.

Discussion followed regarding what would be Nominet's definition of criminal activity for example would this cover a domain name purchased with a stolen credit card. It was explained that Nominet did not have a position on this at present but would be happy to take policy suggestions on this issue.

There was a concern raised by one PAB member regarding extending the phishing lock before it has been used for any length of time.

The PAB agreed the resolution in the attached Annex.

c) Proposed changes to the DAC

Nora Nanayakkara, Michael Toth, Rob Taylor, James Conaghan and Mark Healey declared an interest in this item.

Further to the executive paper, Helen Tomes explained why Nominet felt it was necessary to bring in the changes to the DAC. One PAB member explained that the reasoning behind requesting a vote to delay the changes to the DAC until further review was that he felt that these changes alienated the

dropcatcher community. He further clarified that he does not now have any problem with the proposed changes.

In the executive paper the Board requested the PAB review the policy on Domain Name re-registration, however it has since been brought to their attention that this policy was reviewed in May 2008, therefore there is now no need to add it to the work programme.

9. PAB internals

a) PAB Performance review

The PAB Chair confirmed he is still waiting for feedback regarding the PAB performance over the last year. It is important to have this feedback as a means of assessing the effectiveness of the PAB. The Chair requested PAB Members who have yet to give feedback email him as soon as possible with their comments.

b) The Future of the PAB

This paper was introduced by Nora Nanayakkara. The last revision of the structure of the PAB was in 2006. In her paper Nora identifies key issues which have come to light from personal experience, stakeholders feedback and the Governance Review. Nora invited the PAB to consider how they can make the PAB more value adding. She requested support in establishing a sub-committee to debate this issue and confirmed that she feels the PAB has a huge amount to offer and it must maximise its potential.

It was pointed out that the future of the PAB was an important issue as far as BERR was concerned and it links in with the Governance Review. BERR questioned whether this subject would merit a special meeting of the PAB itself.

The PAB were in favour of discussing their future as a whole and it was thought that this was a good paper to get the discussion going. One PAB member commented that the Governance Review gives the PAB the chance to think very radically about its structure and it would be useful to examine how other organisations get policy input. It would be beneficial to consider how, in the light of the governance review we can establish new structures and processes that are more inclusive and participative in nature. It was pointed out that IGF events, which are effectively about international internet policy get very large numbers of attendees and everyone is able to give their input into policy, while input to the current PAB structure is very limited. Perhaps we need to question if the structure itself is what places barriers to participation.

It was clear that all members present wanted to take part in any discussions on the subject; therefore the Chair said that he would ask Nominet to arrange an extraordinary meeting of the PAB (hopefully in June) to discuss this and review the future of the PAB, its role and structure. The PAB agreed to hold a PAB meeting as soon as possible to discuss this topic in more detail.

c) Declaration of Interests

There were few comments on the new Declaration of Interest form proposed by the executive other than:

- One PAB member suggested that it would be useful to have further guidelines on the level of investment that needed to be declared.
- One PAB member commented that the proposed form still wasn't detailed enough.
- Another PAB member asked what the auditors do with the information. It was confirmed that if they find something of concern they would check to see what action was being taken by Nominet.

The PAB Chair offered to trial the proposed new form and give feedback to the Executive.

d) PAB Rules

Due to lack of time only a short discussion took place noting the need for the rules to be updated. There are now two vacancies for elected members and it was pointed out that one of these vacancies could be filled by co-option. However there is no mechanism for identifying suitable candidates to co-opt from. Because of the lack of time, the Chair suggested that these issues be discussed in more detail at the meeting which he hoped could be set up in June to discuss the future of the PAB, because it was recognised that the outcome of the "Future of the PAB" discussion could alter this discussion significantly.

10. PAB work programme including:

a) New Items for the Work Programme

There were no suggestions of new items for the work programme. However one PAB member requested that the item on the '.uk brand' be put back on the work programme. This item will be reinserted into the work programme.

11. Matters arising from nom-steer and pab-suggest

There were no matters arising

12. AOB

One PAB member drew to the PAB's attention the registration by Simon Bezant, of ericramage.co.uk, martinboyle.co.uk, lesleycowley.co.uk and bobgilbert.co.uk and asked what, if anything, Nominet could do about it. The PAB member felt that these domain names had been registered by a PAB member contrary to the spirit of the PAB. It was confirmed that Nominet does take the interests of its staff very seriously, and that there was no easy answer to this problem. Nominet would welcome feedback from others on this issue.

Resolutions

Industry standards

a) Domain names involved in criminal activity

The PAB resolved to recommend to Nominet that:

On receiving a request from the police or another law enforcement agency to take down a domain name which is suspected to be involved in fraudulent or criminal activity, should take action providing it believes there are reasonable grounds for suspicion and that due process has been followed.

The PAB also recommends that Nominet look into ways of helping registrars to follow best practice.

b) Extension of the phishing lock

The PAB agreed that the phishing lock should be extended to other domain names suspected of being used in connection with other criminal activity. The PAB suggested that Nominet should look at extending the lock after the planned review following 6 months usage.

WHOIS and opt-out

The PAB recommended that the function of the WHOIS and opt-out are operational and therefore outside of the PAB's remit.