

PAB Performance Review

PAB Chair's paper

1. Introduction

Following the report to the Board on PAB Performance in May 2008, the Board invited the PAB to evaluate its performance and provide a progress report each year.

In preparation for this I requested members to provide feedback on:

- Three things the PAB has done well in the last year;
- Three areas where there could be improvement.

I note that only two PAB members provided written input in response to my invitation to comment.

At its meeting in May, the PAB considered a paper from one of its elected members on the future of the PAB and were in favour of looking at how to develop its policy advisory role. This discussion was started at the July meeting using an external facilitator.

2. Role of the PAB

The PAB role is:

“To provide non-binding advice to the Board on the non-operational guiding principles regarding the oversight of the .uk domain name registry. This includes:

Giving policy advice to Nominet's Board of directors. This advice is not binding but carries strong influence and the Board is obliged to take any such advice into consideration when making decisions.

Providing policy advice which:

- Is sufficiently clear to be acted upon and flexible enough to apply as a general theme/rule/idea.
- Assists in advising on the policy direction Nominet should be moving towards, but not how to get there.
- Considering and bringing to the attention of the Board any policy issues that may be of future importance or affect the .uk namespace.
- The periodic review of current policies.
- Periodic review of the performance of the PAB and PAB members.”

In its role of providing advice to Nominet, the PAB is expected to “agree, communicate to Nominet and publish a PAB response to Nominet consultations.” In this the PAB will want to consider whether the consultation specifically refers to a policy issue, and this might influence whether the PAB submits a detailed input.

The role also includes responsibilities in communications with members and stakeholders. That should include ensuring PAB representation at member and stakeholder events and engagement in discussions about implications of policy decisions. It also has a key role in education and awareness raising.

3. Assessment of Performance

3.1 Contributions to the Board and the Board's Response

In its main function of providing timely advice to the Board the PAB has performed well. A number of formal resolutions were put forward to the Board in the 16-month period since the last performance review the majority of which were either noted or accepted by the Board.

The resolutions, with the Board's responses are attached at Annex 1.

3.2 Identification of Issues

On wider issues affecting the overall environment for the development of the Internet the PAB has had discussion on:

- Domain name re-registration
- The Byron review
- .ltd.uk & .plc.uk rules
- Lock states
- Phishing
- Two-letter domain names
- Registrar parking pages
- Applicable law
- Industry standards
- DRS & the summary decision
- Reserved names
- Changes to the Domain Availability Checker
- WHOIS and reporting abuse

In addition we have had presentations from the CBI on its IT User Competitiveness Survey and from BERR (now BIS) on the EU Regulatory Framework.

For internal issues we have:

- Revised the PAB rules
- Revised our methods of work, including a more frequent review of the work programme
- Adopted a clearer Declarations of Interest form
- Started a discussion on the Future of the PAB

PAB members agreed that the work on Industry standards and phishing should be our key priorities for the foreseeable future. Those who commented saw these discussions and the proposals on lock states as the particular highlights of the year.

3.3 Engagement with Stakeholder Groups

In the last review the PAB made a commitment to reach out to other organisations to improve engagement with the wider community. This year the PAB has benefited from discussions with external visitors presenting at PAB meetings on specific issues:

- Richard Martin, UK Payments Administration to continue the dialogue on Phishing.
- Rosina Robson from the Federation Small Business (FSB) to present their survey 'Inhibiting Enterprise – Fraud and Online Crime Against Small Businesses'.
- DS Stephen Truick from the Metropolitan Police Central e-Crime Unit on ticket scam sites and

- Richard Cox of Spamhaus on the system for reporting abuse of the opt-out facility of the WHOIS.

Despite the successful dialogue with these external speakers, members have identified that the PAB continues to have limited engagement outside Nominet and that this needs to be addressed as part of the Future of the PAB discussion.

The PAB has held two joint workshops with the UK Payments Administration (November and July): this represents a major development in our ways of working with external stakeholder groups and we need to consider how to develop this work further.

The PAB have welcomed Tom Wills-Sandford, deputy Director General from Intellect as an Appointed Member and Sara Draper, CBI as an observer. This addition of an observer status shows that the PAB recognises the need for engagement with such organisations whilst appreciating that only some of the issues may be relevant for them. This is a useful step forward in showing that the PAB can be flexible in its approach to gaining stakeholder input into policy.

4. Methods of Working

Working in sub-committees – as we have done in the Lock States and the Two-letter domains discussions - has continued to prove successful. Working in smaller groups on specific issues allows members to have a specialist and detailed discussion and ensures the agenda at PAB level has more resources to address broader issues.

In our last review members agreed that the PAB should “concentrate on pure policy issues and avoid getting bogged down in detail or operational issues”. The feedback received from current members for this review indicates that this is an area which still requires work. Some feel that whilst considering issues in a careful and diligent manner is necessary it should be levelled at the broad issues rather than operational detail.

5. Next steps

The PAB identified that the recent Nominet Governance Review has given them a chance to think radically about its structure. There is a need to drive the policy debate and lead on policy issues and this should be outwardly promoted in order to represent stakeholders effectively and show a thriving self-regulation industry.

In the first discussion on the future of the PAB, all PAB members indicated that they are not entirely satisfied with the way the PAB currently operates and that the current process is too reactive and inward looking. With this in mind we will continue our assessment on the future of the PAB to try to identify how we can make the PAB more inclusive and participative in nature.

The future of the PAB discussion was agreed in May and started at the July meeting. We will continue this discussion at the September and November meetings and we hope to be able to put forward our recommendations to the Board on the future of the policy advisory functions by the end of the year.

PAB Resolutions and Board Responses

July 2008

.ltd and .plc registrations

The PAB resolved to recommend that Nominet suspend .ltd and .plc domain name registrations with characters such as @, / and other characters permitted by Companies House but not domain name rules, whilst the situation is investigated.

Agreed. Noted. The Executive has suspended registration as requested, and issued a news release.

PAB Performance

The PAB resolved that the Chair submit to the Board a report on performance.

Noted: the Board recognizes the contribution from the PAB and welcomes its assessment of how to evolve the PAB. We believe that the July agenda shows a clear willingness to develop the role of the PAB: we would welcome an annual report on progress against this ambitious programme of work.

PAB Rules

The PAB Chair resolved to ask the Board whether clause 4.2 of the PAB rules should be amended in the light of the Board's decision only to appoint one representative to the PAB.

Agreed: it is useful for the PAB to examine the continued relevance of the rules and we believe that the PAB should update the rules to avoid any perceived ambiguity about Board representation on the PAB

September 2008

Phishing

The PAB recalls its earlier advice on Phishing.

It recognises the responsibility of registrars for timely and effective action.

It welcomes current work in Nominet to share information and intelligence, in particular to support members' own work with evidence and best practice.

The PAB resolved to recommend that the PAB, the Board and the executive work with other key stakeholders to prepare a joint industry–law-enforcement workshop to help improve understanding of options and cooperation with other organisations.

The Board welcomes the priority that the PAB has given to addressing the issue of Phishing. It agrees with the approach outlined above and requests that the Executive develop proposals for the workshop.

Byron Review on Child Internet Safety

The PAB resolved to draw the attention of the Nominet Board and of Nominet members to the Byron Review on the risks to children from exposure to potentially harmful or inappropriate material on the Internet and in video games, Safer Children in a Digital World.

The Byron Review has a clear message for industry to show that the self-regulatory approach is effective: that it is taking the lead in addressing child safety on line. The emphasis is on industry identifying and adopting good practice, evaluating and benchmarking its actions.

We welcome Nominet's work in this area. We would encourage Nominet to maintain its leadership role. It should continue to make information available about the Nominet Best Practice Challenge, the UK-Internet Governance Forum and other initiatives.

Many Nominet members are small and might find useful to receive updates of initiatives from time to time: for example, Nominet could help draw the implications of the review to the attention of the wider membership. In addition, it could provide a channel of communications about other industry action like the Internet Watch Foundation.

The Byron Review shows an expectation that the industry will assess the success of its actions. This implies building an evidence base continued auditing and benchmarking to demonstrate responsible behaviour. Nominet could help members keep up to date by sharing information about good practice and monitoring activities.

We recognise the importance of maintaining industry standards to ensure the continued good reputation of the .uk name space. We would like to look at the promotion and enforcement of industry good practice and acceptable standards, and will schedule this into the work programme for future discussion.

Nominet could identify to the Nominet Foundation the importance that the Byron Review placed on education in addressing child protection. However, we recognise that funding decisions are for the trustees.

The PAB recommends that Nominet monitor the work of the new UK Council on Child Internet Safety (UKCCIS).

The Board recognises the role that Nominet can play in helping the membership respond to the challenges identified by Dr Byron. We will continue to work towards making a positive difference to Internet users and to shape the development of the Internet, and have placed this at the centre of our mission statement and supporting strategies.

The Board requests that this is posted as a policy statement on the Nominet website.

Applicable Law

The PAB resolved to ask that the Executive examine the possibility, and if they consider it reasonably practical to take action, to change the registrant terms and conditions to allow all registrants based in the UK the same choice of law that is currently available to consumers.

Noted.

.ltd.uk and .plc.uk registration rules

The PAB resolved to recommend that Nominet should review the rules on ltd.uk and plc.uk domain names based on the following principles and proposals:

Recommendation A:

The policy underpinning the ltd.uk and plc.uk second level domains (SLDs) is:

1. Only limited companies should be able to have names in these SLDs (with the type of company determining which of the two SLDs it uses).

2. There should be a clear and obvious relationship between the name of a limited company and its domain name, so that anyone seeing the name can determine which company it is. This should be algorithmic rather than requiring human judgement.
3. There should never be the possibility that two different companies could be entitled to the same name.
4. A company should be limited to a single domain name within these SLDs.
5. So long as it does not breach the above policy points, where there are cosmetic variations possible in a domain name (e.g. inclusion or omission of hyphens), the company rather than Nominet should have the choice of which exact variation is adopted.

The Board agrees that these principles are a useful basis for the ltd.uk and plc.uk second-level domains.

Recommendation B:

Nominet should liaise with the Department for Business (BERR) and Companies House to have the proposed Regulations changed so that every legal company name has an equivalent that uses only letters and digits.

Agreed.

Recommendation C:

The Executive should monitor changes to the Companies Act, associated Regulations, and Companies House practice and – via the PAB – propose changes to the ltd.uk and plc.uk rules to remain in step with them

Agreed: the Board instructs the Executive accordingly.

Recommendation D:

Where a company X has a “similar name” to a company Y as may be defined in the proposed new Regulations (as and when they come into force), then one of the following shall apply:

- If company Y already has a ltd.uk or plc.uk domain name, company X shall choose a different ltd.uk or plc.uk domain name that nonetheless conforms to the relevant rules;
- Company X shall choose a ltd.uk or plc.uk domain name that company Y would not be able to choose under the rules; or
- Company Y shall explicitly consent to the choice of name.

The Board requests the Executive to assess this proposal for implementation, in the light of the new Regulations as and when they come into force, and the Executive’s discussions with Companies House.

Recommendation E:

Until new rules are put in place to match the new Regulations, it should not be possible to register names based on company names containing characters not in the DNS.

Agreed: the current bar will remain in place until the rules are changed.

Recommendation F:

Where a company either has a name containing a non-alphanumeric character, or chooses to omit part of its name (in accordance with the rules) when converting the company name to an .ltd.uk or plc.uk domain name, it shall certify that, at time of application:

- There is no other existing company that would be entitled to the resulting domain name;

- Any other existing company that would be entitled to the resulting domain name already has a different .ltd.uk or plc.uk domain name; or
 - Any other existing company that would have entitled to the resulting domain name has agreed to the application;
- and it shall be responsible for any error or false statement.

The Board requests the Executive to assess this proposal for implementation.

Recommendation G:

Where a DRS dispute occurs between two companies in relation to a ltd.uk or plc.uk domain name, the complainant would be able to register the name under the Nominet rules in force at the time of the dispute, and the registrant would not be able to register the name under those rules, then:

- The complainant company is deemed to have rights in the name.
- If the registrant company was registered at Companies House after the complainant company, this shall be conclusive evidence that the registration is a “blocking registration” under paragraph 3.a.i.B. of the DRS policy. However, if the registrant company can demonstrate that, at the time of the registration, the complainant company either:
 - had a different ltd.uk domain name registered, or
 - had agreed to the registrationthen this shall be conclusive evidence that it was not a “blocking registration”.

The above points are without prejudice to any other aspect of the DRS policy (e.g. under paragraph 3.a.ii or 3.c).

The Board is concerned that the effect of this recommendation would effectively be to amend the DRS policy and procedure, which have just been the subject of a lengthy consultation and revision process. It requests the Executive to update the DRS experts on revisions to the ltd.uk and plc.uk rules as and when they come into force and to draw attention to the PAB’s views.

Retrospective Action

The PAB also resolved to recommend that Nominet consult on the issue of retrospection.

The Board would welcome further discussion in the PAB about the implications of retrospective application of registration rules to help inform any consultation. The Board asks the PAB to note that any retrospective application of changes to the ltd.uk and plc.uk rules would also involve a change to the general rules of registration (rule 4.7). We recognise that, in a few cases, there may be consumer confidence issues associated with some domain names under ltd.uk and plc.uk. We recognise the important point associated with trust in the Internet.

PAB Rules

The PAB resolved to propose changes in the rules as identified in the Annex

Agreed. The Board requests the Executive to revise and post the rules as proposed by the PAB.

November 2008

Nominet Vision and Mission Statement

The PAB resolved to keep Nominet’s vision and mission statement central in its future policy advice.

Agreed.

Phishing

The PAB draws the attention of the Board to its intention of holding a workshop with APACS to discuss responses to Phishing.

The Board welcomes this initiative. Working with key stakeholders is vital if we are to address this issue effectively.

Lock states

The PAB recommends that:

- Nominet should have a registry lock to be used in line with the domain name terms and conditions as necessary. A registrar should be notified when this is used on a domain name on their tag.
- There should be the function within Registrants Online to allow a registrant to set a lock to prevent the automatic transfer or cancellation (surrender) of their domain name(s) regardless of whether a registrar is subscribed to the lock-state service.
- A registrar should be able choose to allow their registrants access to an extended lock state service via Registrants Online. This should be done in a manner that enhances the registrar channel, for example via a co-branded system (unique to each tag) that allows a registrant to set various locks on their domain name(s) including the function to lock a domain to a particular tag. This service would include the following features:
 - The default of this service would be for all registrars to be opted in and then they can choose to opt out if they wish.
 - When a domain name is moved from an opted-in tag to an opted-out tag through Registrants Online, then the registrant will get a warning that the new registrar doesn't allow them to set lock states. If the registrant chooses to complete the tag change then all lock state settings will default to being unlocked.
 - When transferring between two opted-in tags then all details currently locked on a domain name will remain locked.
- A registrar should be able to view the locks that are in place on a domain name on their tag and should be notified of any changes.
- A registrar should have the ability to turn on a registrant lock on behalf of their customer but not to turn it off again.
- The tags subscribed to the lock-state service should be regarded as public data and the information made available to all.

We welcome this analysis and invite the Executive to assess how this might be implemented.

Registrar Parking Pages

The PAB requests that Nominet remind registrars that they should be following the existing registrar good Practice terms and specifically draw their attention to the risks that a registrant could face if their domain name is associated with a parking page.

Agreed: we invite the Executive to draw this resolution to registrars' attention.

January 2009

Two-letter Domains

The PAB recommends that:

- Nominet should make two-letter domain names available for registration; making such alterations to its Rules as appropriate. There should be a special approach to releasing domain names with a staged sunrise period.
 - The first phase should be for holders of registered trademarks recognised and enforceable in the UK Courts, which are identical to the two-letter combination applied for. There should be provision for dealing with multiple applications for the same name and a cut off date for trademark registration to be set at some point in the past.
 - The second phase should be for parties with unregistered rights recognised and enforceable in the UK Courts, which are identical to the two-letter combination applied for. This phase could include registered Companies who can establish that they own such rights.
 - There would also be a third phase for releasing any remaining names. The majority of the group favoured a land-rush approach with the minority in favour of a lottery approach.
- ccTLDs should not be reserved at the third level. The only exception to this is “uk” which should be reserved to avoid confusion, or used by Nominet for an appropriate purpose such as promoting the UK namespace “brand”. Currently reserved SLDs should continue to be reserved, regardless whether or not they are also ccTLDs pending further discussion.
- The PAB sees no reason why these principles cannot be applied to the release of single character domain names at the third level.
- Nominet should ensure that registrars have adequate notice of any changes to enable them sufficient time to update their systems.

The Board welcomes this analysis and invites the Executive to assess how this might be implemented.

March 2009

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.

The Board welcomes the recommendations and the phishing lock was implemented on the 5th May 2009. It considers that the phishing lock should have wider applicability to include domain names being used in association with other criminal activity and invites the PAB’s comments on extending the lock to include this.

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.

The Board thanks the PAB for its recommendations and has asked the Executive to incorporate these proposals in the assessment of the procedures for releasing 2 letter domain names.

Dispute Resolution Service – Summary Decisions

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

The Board notes the comment from BERR about the need to protect the wider stakeholder interests. BERR has previously commented publicly on this issue.

The Board has requested that the Executive to draw the PAB’s feedback to the DRS Experts Review Group to consider the practicalities of explaining the basis of summary decisions in the light of the comments on the need to protect legitimate interests.

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.

The Board reminds the PAB of the need to protect the .uk database. As a result, it has decided:

- *To implement the time delay DAC in response to the needs of registrars with large numbers of customers*
- *To make several changes to the service in order to enhance the performance of the real-time DAC.*

These changes will be:

1. *The real time DAC will be available on dac.nominet.org.uk on port 3043*
 2. *The registered flag will be limited to a Y/N response*
 3. *The suspended flag will be removed*
 4. *The registration status field will be removed*
- *To implement a revised set of changes to the DAC Terms and Conditions.*

May 2009

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.

The Board welcomes the recommendation from the PAB and agrees that Nominet should cooperate with the relevant law enforcement agency on this issue. The Board will also work with the Executive to identify ways in which registrars can be encouraged 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.

The Board is pleased that the PAB recommends the phishing lock should be extended.

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.

The Board acknowledges the PAB's recommendation and will work directly with the Executive on ways of improving the current WHOIS and opt out facility.