

Summary and Analysis of Reserved Short Domains Consultation Responses

Consultation Period: 8 March 2010 to 8 June 2010

This paper presents a summary of the responses to the consultation on Reserved Short Domains that was held between 8 March 2010 and 8 June 2010. It presents the full background to the consultation, a summary and analysis of the responses.

Next steps

A proposal for the amendment of the Rules of Registration and use of Domain Names will be put to the Nominet Board in September.

Background

Nominet's Rules of Registration and Use of Domain Names

(<http://www.nominet.org.uk/registrants/aboutdomainnames/rules/>) contain a number of restrictions as to the character sets that will be acceptable for registration in the second level registries operated by Nominet, including the open registries co.uk, org.uk and me.uk.

For example, Rule 5.2 provides that only the Roman characters a – z, digits 0 – 9 and the hyphen may constitute a domain name and Rule 5.3 provides that a hyphen cannot be used as the first or last character.

Of specific interest to the current consultation, Rule 5.5 provides that a domain cannot be only one character long, Rule 5.6 provides that a domain may not consist of only two letters, Rule 5.8 provides that a domain may not be identical to an existing current second level domain under .uk and Rule 5.9 provides that a domain may not be identical to an existing or approved top level domain.

The question of whether the restrictions in Rule 5.6 should remain was first referred to Nominet's Policy Advisory Body (PAB) in June 2001. The Executive paper presented the options of sealed bids, open bids or a sunrise process and concluded with the summary *"The need to open up two-letter combinations is undisputed. However the PAB needs to recommend which option would [be] of least risk to the integrity of Nominet"*. However by August 2002 the meeting report states *"One and two letter domains: It was noted that the PAB policy to date had been to open up these domains if a suitable release mechanism could be found. James Cronin reported back from the PAB workshop at the AGM explaining that it had not been possible to reach a consensus on a suitable solution during the meeting. The PAB felt that despite serious consideration over the last year it had not been possible to determine a method of release that would meet Nominet's corporate objectives without incurring the probability of significant business risk for the organisation"*.

The PAB therefore recommended that while the business risk to Nominet of releasing these domains remained greater than the risk of not releasing them, Nominet should retain the current restrictions on one and two letter domain names. The PAB also recommended that one character and two letter registrations be allowed in .ltd.uk and .plc.uk and any new second level domains.

The matter was referred back to the PAB in September 2008. In the intervening period a number of new top level domains had launched using a variety of "sunrise" mechanisms for the release of large numbers of new domain names. The issue of two letter domains had been placed on the PAB work programme in January 2008 but in the meantime, as stated in the executive paper for the September 2008 meeting *"[Nominet] has received a recent complaint from a prospective registrant that there is no good reason for two letter domains not to be available for registration, given that there is no longer any technical reasons for not using them ... This position is perverse and unreasonable, according to the complainant"*. The PAB was again asked whether two letter domains should be made available under co.uk and org.uk.

A PAB sub-committee reported to the November 2008 meeting. The PAB made the following recommendations:

1. *Nominet should make two-letter domain names available for registration ... There should be a special approach to releasing domain names with a staged sunrise process.*

- a. *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.*
 - b. *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.*
 - c. *There would be a third phase for releasing any remaining names. The majority of the group favoured a land-rush approach with a minority in favour of a lottery approach. There was no support for the idea of an auction other than as a possible means of resolving multiple applications during the sunrise.*
2. *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”.*
 3. *Subject to any technical considerations of which the PAB is not aware, we see no reason why these principles cannot be applied to the release of single character domain names at the third level.*
 4. *Nominet should ensure that registrars have adequate notice of any changes to enable them sufficient time to update their systems.*

The PAB committee also discussed releasing other “special” domains that are currently blocked under Rules 5.8 and 5.9. Whether SLDs and non ccTLDs should be released split the PAB committee, with some feeling they should be released and others that e.g. gov.co.uk had the potential to cause confusion. It was agreed that this question would be best left to some consultation debate.

A further paper on reserved domains was presented to the PAB in January 2009 and a sub-committee report was produced for the March 2009 meeting. The recommendations were as follows:

1. *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).*
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” ... 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).*

Nominet therefore appears to have policy recommendations for the deletion of the restrictions against:

- one character domains
- two letter domains (except uk)
- other TLD character sets (except com)

together with a recommendation to maintain the restriction against the registration of a SLD character set in the third level.

The practical effect of this would be to reduce the restrictions on domain registration to the following character sets:

ac, co, com, gov, ltd, me, mil, mod, net, nhs, nic, org, plc, police, sch, and uk

Any new SLD created would also be restricted (though it would not generally be applied retrospectively). Any new TLD, for example under ICANN's current new gTLD programme, would not be restricted. There is a clear recommendation for a phased rights holders' sunrise for the release of these restrictions, but no clear recommendation on the release of domains not taken up in the sunrise.

Nominet spent several months conducting an internal review of the PAB recommendations, including an analysis of the technical issues. Nominet's technical team recommended that in any event com.co.uk, org.co.uk and net.co.uk ought not to be released on technical safety grounds, but that there was no technical reason against the release of any of the other domains which would be potentially made available. Other than for policy or technical reasons, Nominet is of the view that any restrictions should be removed. Nominet also recognises that all of the domains subject of this paper may to a greater or lesser extent be regarded as premium generic domain names and that there will be great demand for all the domains that may be released. Nominet therefore suggested a sealed bid auction for allocation of domain names where there is more than one equally qualified rights holder. Nominet also proposed a Dutch auction (i.e. descending price until a willing purchaser is found) for the release of domains not taken up in the sunrise. The latter approach was previously used successfully in the release by Nominet of domains under the new me.uk second level domain in 2004.

Given the recommendation to remove at least some of the restrictions, the wider public interest and the open questions of cut-off date for rights qualification, resolution of contention between equally qualified rights holders and how to deal with the domains not taken up in the sunrise, Nominet undertook a public consultation between 8 March and 8 June 2010.

The consultation

Nominet put the following questions to public consultation between 8 March and 8 June 2010.

1. Do you agree that two letter domain names should be released for registration in co.uk, org.uk, net.uk and me.uk as recommended by the PAB?
2. Do you agree that one character domain names should be released for registration in co.uk, org.uk, net.uk and me.uk as recommended by the PAB?
3. Do you agree that existing country codes under ISO 3166-1 such as fr, de, es, us etc be released for registration in co.uk, org.uk, net.uk and me.uk as recommended by the PAB?
4. We outlined the technical reasons why com.co.uk, org.co.uk and net.co.uk should not be released. Do you agree with these exceptions?
5. Do you agree that existing generic top level domains (e.g. biz, info) should be released for registration in co.uk, org.uk, net.uk and me.uk as recommended by the PAB?

6. Do you agree that existing .uk second level domains (e.g. co, org, ac, me, ltd) should also be released for registration in co.uk, org.uk, net.uk and me.uk?
7. Do you agree that “uk” should continue to be reserved from registration in co.uk, org.uk, net.uk and me.uk as recommended by the PAB?
8. We propose to take the same approach for two letter, one character and the other previously unreleased domains (e.g. pro.co.uk). Do you agree with this approach?
9. The PAB recommended a two stage release process: a first round for holders of registered trademarks, and a second round for names not taken by rights holders, open to holders of unregistered rights. Do you agree with this approach?
10. The PAB recommended a cut off date for qualifying rights for IP rights holders. They suggested 1996 and 2002 as possible dates. What do you think would be a suitable cut off date?
11. We propose that initially commercial organisations should have priority in co.uk and charities and not for profit organisations should have priority in org.uk. Do you agree with this approach?
12. We propose to hold a sealed bid auction for domain names where rights holders are competing, and for domain names not taken up by rights holders. Do you think there is a fairer way to allocate the first registration of these domain names?
13. We propose to hold a Dutch auction for the general release (“landrush”) of domains not taken up by rights holders. Do you think there is a fairer way to allocate the first registration of these domain names?
14. We plan to run this whole exercise on a cost recovery basis, and any surplus funds generated from auctions would be donated to Nominet Trust, a charitable organisation established by Nominet with the objects including the education, relief of financial hardship and protection of children in the area of the Internet and information technology. Do you agree with this approach?

Nominet also wrote to the holders of approximately 20,000 trademarks corresponding to the character sets potentially subject to release by any amendment to Rules 5.5, 5.6, 5.8 or 5.9. We also gave several press interviews in order to raise the profile of the consultation.

Summary of Responses and Analysis

A total of 152 consultation responses were received via the online form. In addition, 13 further responses were received directly by email. Nominet has reviewed all of the consultation responses received and would like to thank all participants in the consultation for their contributions.

In addition to responses to the consultation we also received numerous expressions of interest in two-letter and one-character domain names, together with a number of off-topic comments on subjects such as accented Roman characters, the release policy for domains which are registered and then not renewed, and changing registration policy to allow direct registration as the second level in .uk.

Whilst this consultation exercise is not in any way a referendum on the questions posed in the consultation paper, it is relevant to report the support for and against each question. In addition, we have summarised the comments made, both for and against each issue. This paper is not intended to set out verbatim each and every comment made but rather demonstrate the range of views expressed and to comment upon the issues raised in order to move the debate forward.

Next steps

A proposal for the amendment of the Rules based on the policy recommendations and consultation feedback that we have received will be put to the Nominet Board in September.

Disclaimer: we have not verified the identity of contributors to the consultation. If you feel that you have been incorrectly identified please contact us on <shortdomains@nominet.org.uk>. Where participants have requested that their identity is not disclosed, comments have been included unattributed.

Issue 1: Do you agree that two letter domain names should be released for registration in co.uk, org.uk, net.uk and me.uk as recommended by the PAB?

The vast majority of respondents (131 out of 152, 86 %) agreed that two letter domain names should be released.

Typical comments in support included the following:

“We believe that the justification for keeping the 2-letter combinations free is no longer relevant. Other registries have already released 2-letter combinations (e.g. .de) without adverse effect. There is also clear demand amongst the business community for these domains. (Simon Chapman, Lewis Silkin LLP)

“Why not? If there are no technical reasons – many other TLDs have already done this.” (name withheld)

“There are plenty of UK brands which use a valid two-letter identifier which could be legitimately used for a domain. Instances that come to mind include BA- British Airways, RR – Rolls Royce, TA – Territorial Army.” (Alan Rogers, DreamGenius Ltd)

“It is discrimination against companies with short brands not to be able to register short domain names.” (Hermann Peters GmbH & Co KG – registered trademark PE)

“There are lots of brand names with only 2 letters, such as VW, HP etc” (name withheld)

“I can’t see why two-letter names should be restricted where three-letter ones aren’t” (name withheld)

Comments were also made against release.

“Given the vast number of companies that could legitimately claim any two-letter abbreviation, I believe it would only cause confusion to the end user and see no benefit in releasing them other than a financial gain to Nominet that is unwarranted and unneeded.” (David Croft, Sargasso Networks)

“If we were starting again from scratch then I would allow 2 letter registrations but we are not. Organisations such as the AA have managed to deal with the situation as it is – to release the 2 letter domains now risks causing problems.” (Clive Goodhead, Cornwall Internet Limited)

“It will just open up a can of worms with IP lawyers having a field day. The number of 2 letter combinations is limited and the number of applications will far exceed the domain names available. Nominet does not need the money and should keep the lid firmly closed on these potential domain names.” (Hazel Pegg, Glastonbury Online)

“It will create a ridiculous scramble for names which is impossible to police. It is totally unnecessary and certainly divisive.” (Barry Peters, YorkshireNet)

“Nominet should not release these domains. It’s too late now to change the rules.” (CJW Fell)

The majority of comments however were in favour of release, subject to caveats. A sample of these is included below.

“Yes, but they should be made available to genuine registrants only. Not to professional domainers wishing to hoard and resell for unfair amounts.” (name withheld)

“Yes but to trademark holders only (to avoid chaos).” (name withheld)

“A qualified yes. Owing to their (perceived) value Nominet should offer them at a substantial premium, and should initially require evidence of substantial prior use. Thus it would be absurd if, for example, BP plc did not obtain the www.bp.co.uk URL, or if the Financial Times did not end up with ft.co.uk, but for the ones where there is no obvious candidate, a free market could prevail.” (Ian Byrne, National Energy Foundation)

“The release of these previously withheld domain names presents a fantastic opportunity for those that have a legitimate claim or right but, incorrectly policed, it could so easily promote further identity theft crises.” (Alan Rogers, DreamGenius Ltd)

“Should not be registered for selling only.” (name withheld)

“Subject to them actually being used and not just sat on by somebody hoping to make money out of it 10 years or more hence.” (name withheld)

“If any find their way into the hands of domain speculators, the entire exercise can be considered a failure.” (name withheld)

“It should not be a free for all.” (name withheld)

“Can Nominet make a big publicity thing about it and actively go seek the people that have the rights to the domains.” (Nigel Rigby, Red Oblong Ltd)

Commentary

It is clear that there is widespread support for release of the reserved two letter domains such as aa.co.uk, ab.co.uk, etc. However, in line with the PAB recommendations, this should be done in a controlled manner with appropriate protections put into place in order to protect parties with legitimate prior rights.

Issue 2: Do you agree that one character domain names should be released for registration in co.uk, org.uk, net.uk and me.uk as recommended by the PAB?

There was a clear majority in support for the release of one character domains, but at a lower level than for two letters (99 out of 149, 66 %).

Similar reasoning for release as for the two letter character sets was given. Reasons for a lower level of support included:

“There is substantial potential for genuine confusion on the part of end users.” (name withheld)

“Could be used as a directory listing service; public a-z?” (name withheld)

“Too short could cause issues like h.s.b.c.co.uk and cause other phishing problems.” (name withheld)

“Too much of an oddity, they make domain names look peculiar. Couldn’t something else be done with them for the good of everyone. My ideas: a big alphabet set of sites for educational purposes, sesame street sponsored by nominet; a large free index for everyone in the country.” (Nigel Rigby, Red Oblong Ltd)

Commentary

There is clear support in favour of releasing the one character domains such as a.co.uk, 1.co.uk, etc. However support is less clear cut than for two letter domains, and concerns were expressed as to confusion and potential fraud. It is not clear that these concerns are particularly well thought out. There are only a very small number of domains for discussion here. Where single character domains have already been registered (e.g. x.com, q.com, e.co) their rarity and hence value/desirability of the domains appears to be the main issue as opposed to confusion amongst Internet users more generally.

Issue 3: Do you agree that existing country codes under ISO 3166-1 such as fr, de, es, us etc be released for registration in co.uk, org.uk, net.uk and me.uk as recommended by the PAB?

There was majority support in favour of releasing the two letter domains which also correspond to country codes under the ISO 3166-1 (86 out of 150, 57 %).

Comments in favour included:

“These character sets can have many different meanings and would not be viewed as country codes when displayed at the second, third or fourth level.” (Eric Gisolfi, Sabin, Bermant & Gould LLP)

“Yes. Not least because some, such as IT, are already out there and ICANN can always add new TLDs.” (Ian Byrne, National Energy Foundation)

“Yes. There is no delusion for internet users if there was a domain name such as www.de.co.uk because de could also be a brand name.” (Hermann Peters GmbH & Co KG – registered trademark PE)

“Irrelevant at this level.” (name withheld)

“Yes, I cannot see any confusion arising from the release of those, when used in conjunction with a .co.uk, org.uk, net.uk or me.uk ccTLD.” (name withheld)

“There is some argument that this might create confusion, but overall I agree these letters could also be released.” (Susannah Clark)

“I can see that these domain names are likely to coincide with abbreviations for names of real organisations” (Nathan Phillips, NobleTech Ltd)

“I personally don’t view these as country codes as they are just two letter domain names in relation to the .uk extension.” (name withheld)

Comments against included:

“No – still too confusing.” (name withheld)

“Such domains should be offered to the people of respective land so that they can make a better use of it rather than putting it up for sale.” (name withheld)

One comment simply recommends careful consideration be given to this issue by Nominet:

“Careful consideration should be given to the two letter combinations that correspond with ccTLD codes at the discretion of Nominet.” (International Trademark Association)

There was also a response based on a technical aspect of the DNS.

“I believe that the search suffix issues that affect “com”, “org” and “net” are just as significant for several ccTLDs (e.g. “br”, “in” etc). One might consider setting a threshold of query volumes below which the problem is considered “insignificant”. However in my opinion any such threshold would by definition be arbitrary, hence the restriction should apply to all ISO recognised country codes. I also believe that “arpa” should continue to be

reserved, as it's a critical name within the operating infrastructure of the Internet.” (Ray Bellis, in a personal capacity)

Commentary

There are over 250 ISO codes now, and the list is not static. This is a significant proportion (37%) of the possible two letter combinations. Some ISO codes are already registered in .uk as second level registries: “co” (Columbia), “ac” (Ascension Islands) and “me” (Montenegro).

The following were registered as domain names prior to Nominet’s incorporation in 1996:

- bi.org.uk (“bi” is the code for Burundi)
- bt.co.uk (“bt” is the code for Bhutan)
- cd.co.uk (“cd” is the code for the Democratic Republic of the Congo)
- et.co.uk (“et” is the code for Ethiopia)
- ga.co.uk (“ga” is the code for Gabon)
- gr.co.uk (“gr” is the code for Greece)
- it.co.uk (“it” is the code for Italy)
- mc.co.uk (“mc” is the code for Monaco)
- po.co.uk (“po” is the code for the Palestinian Territory, Occupied)
- sj.co.uk (“sj” is the code for Svalbard and Jan Mayen)
- tc.co.uk (“tc” is the code for Turks and Caicos Islands)
- tv.co.uk (“tv” is the code for Tuvalu)

Hence there are already exceptions to Rule 5.9 at both the second level and the third level.

Other ISO codes correspond to well known UK companies (“ba” is the code for Bosnia and Herzegovina, “bg” is the code for Bulgaria and as above “bt” is the code for Bhutan). Many other ISO codes correspond to short ordinary English words (“an” – Netherlands Antilles, “be” – Belgium, “do” Dominican Republic, “in” – India, “is” – Iceland, “it” – Italy, “my” – Malaysia, “no” – Norway, “to” – Tonga, etc). There are many legitimate uses for these character sets as third level domain names in co.uk, org.uk, net.uk and me.uk.

It would seem arbitrary and therefore unjustifiable to include some country codes but to exclude others. Given that the ISO list is not static then it would probably not make sense to release any two letter third level domain if this was a serious concern. It is notable that no country code top level operator or national government has expressed any opinion on the subject.

There is clear support for releasing all two letter combinations without exemption for the ISO codes with the exception of “uk” (see Issue 6 below).

Issue 4: We outlined the technical reasons why com.co.uk, org.co.uk and net.co.uk should not be released. Do you agree with these exceptions?

There was very strong support for the exclusion of these three domains from any release (140 out of 148, 95 %).

There were very few comments.

Commentary

There is clear support that com.co.uk, org.co.uk and net.co.uk remain restricted.

Issue 5: Do you agree that existing generic top level domains (e.g. biz, info) should be released for registration in co.uk, org.uk, net.uk and me.uk as recommended by the PAB?

There was a narrow majority in support of the release of existing generic top level domains (81 out of 147, 55 %).

The comments made in relation to this issue tended to focus on the probability that any new gTLD character sets which may be launched would already be registered domains within co.uk, org.uk, net.uk and me.uk:

“Yes. Travel.co.uk is already a registered name as is post.co.uk. With the impending launch of possibly hundreds of new TLDs there is no valid reason to try and block a subset of generic top level domains.” (Michele Neylon, Blacknight Internet Solutions Ltd)

“Logically all gTLDs should be excluded if .com, .net and .org are, but since many of them have already been registered and not protected, and since the list of gTLDs may grow in an unpredictable way this is not practicable and the restriction should be as narrow as possible.” (Ed Phillips)

“Applying different policies to different gTLDs seems odd – why should .biz and .info be regarded differently from com/org/net? Saying that, with ICANN more gTLDs we are likely to find that those names are already assigned within .co.uk etc. I note that in practice (info/biz).(co/net/org).uk are assigned anyway, so I guess the ship has sailed here.” (Robin Stevens, University of Oxford)

The point was also made that it is the first handful of gTLDs which are still most prominent in the minds of the public:

“These domains are lesser known – and therefore wouldn’t confuse people as much.”

Comments made against typically referenced the risk of confusion:

“I think it would just add to confusion.” (name withheld)

Comments made by those against the release of character sets corresponding to gTLDs also refer to the difficulty arising from new gTLDs:

“I don’t believe that those should be released, and furthermore any existing gTLD clashes (e.g. info.co.uk) should be reserved if the existing .uk registration lapses. I recognise however that the future predicted large growth in gTLDs may cause issues if that policy was universally applied.” (Ray Bellis, in a personal capacity)

Commentary

The comments made capture the issue well. Whereas initially a very small number of well known gTLD character sets (com, net, org, etc) were prevented from registration as a result of Rule 5.9, the more recent addition of new gTLDs such as .museum, .aero, .info, .post, .cat, .tel etc has meant that an increasing number of exceptions to this rule now already exist. This is likely only to increase in the future (with the introduction of further new gTLDs).

No objections or comments were received from operators of gTLD registries.

Issue 6: Do you agree that existing .uk second level domains (e.g. co, org, ac, me, ltd) should also be released for registration in co.uk, org.uk, net.uk and me.uk?

The majority of responses were narrowly against the release of second level character sets (81 out of 147, 55 %).

Confusion was cited in almost all comments made:

“I think this will cause confusion.” (Temi Odurinde, Velnet UK Ltd)

“No need to release these. Will just confuse.” (name withheld)

“You should not be entertaining nhs.co.uk – we already have nhs.uk, so that one should be reserved and not issued. Similarly police.co.uk and police.org.uk should not be acceptable.” (Bob Harvey)

“I strongly oppose the confusing use of names like .nhs or .sch at other levels. [They] should be safeguarded in the public interest.” (name withheld)

“I firmly believe that these should either be used by the current operator of that SLD, for example allowing PNN to have use of police.co.uk, or they should continue to be blocked, due to the possibility of confusion.” (Mark Healey, KCOM plc)

It was also pointed out that:

“Although there is a risk of confusing domains ... there will be a tiny handful of these and they are likely to be controlled by identifiable people.” (Ed Phillips)

Commentary

There remains significant opposition on the grounds of potential confusion to any change in policy restricting the use of character sets that correspond to second level domains.

Issue 7: Do you agree that “uk” should continue to be reserved from registration in co.uk, org.uk, net.uk and me.uk as recommended by the PAB?

There was very strong support for “uk” to be a reserved character set (134 out of 149, 90 %).

There were very few comments, including the following.

“It’s obvious. It just adds to confusion and makes no sense at all to have uk.co.uk etc.” (Susannah Clark)

Commentary

There is overwhelming support for the current restriction on “uk” to be maintained.

Issue 8: We propose to take the same approach for two letter, one character and the other previously unreleased domains (e.g. pro.co.uk). Do you agree with this approach?

There was strong support for this proposal (122 out of 146, 84 %)

There were very few comments, including the following:

“We think consistency and fairness should be maintained throughout the process.” (Kenny Fish, U International Ltd)

Commentary

The same release process should be used where at all possible.

Issue 9: The PAB recommended a two stage release process: a first round for holders of registered trademarks, and a second round for names not taken by rights holders, open to holders of unregistered rights. Do you agree with this approach?

There was strong support for this proposal (118 out of 148, 80 %).

There were many comments made. The following summarises the rationale for trademark holders to have priority:

“This to us seems the fairest approach as the trademark holders are the most deserving – the domain name directly relates to their company/brand/trademark, which means the domain name is more likely to be put to fair/sound commercial use as opposed to making a business of reselling to make a direct profit out of the process.” (Kenny Fish, U International Ltd)

Most comments in support also referenced how the sunrise for rights holders should be run:

“Sunrise should take into account best practices used in other ccTLD launches including an examination of the mark, its status and ownership. Nominet may also wish to obtain a declaration from the applicant that the trade mark is in use together with evidence in the form of publicity material.” (International Trademark Association)

“Buyers should not be protected by privacy.” (Mark, Splashweb)

“I don’t like it, but it’s probably the best way of avoiding messy legal processes.” (name withheld)

“You must at all costs avoid a situation where fake sunrise claims are made, as was seen in the .eu names release.” (Susannah Clark)

“The key aim is to exclude trademark registrations made with this process in mind; ideally the test would be before this consultation and submit accounts to show at least £x business transacted by the organisation under that TM while a use test is not something that Nominet normally favours this is a limited number of domains on a one off basis.” (Ed Phillips)

“IP protection and usage should eliminate certain solely entrepreneurial applicants!” (name withheld)

“The open process in Germany showed that “first come first served” results in a huge fight. A two stage release process is much more professional.” (Hermann Peters GmbH & Co KG – registered trademark PE)

“Given the difficulties of registering purely 2-letter trademark (absent any other word/logo element), holders of unregistered marks with a reputation would be unfairly prejudiced by opening the 1st round to registered trademark holders only. Therefore, our recommendation would be for the first round to be aimed at registered trademark holders and holders of unregistered rights with a reputation (satisfied by filing a witness statement containing evidence of the reputation).” (Simon Chapman, Lewis Silkin LLP)

“UK trademark holders should be given priority over eu or other trademark areas.” (Simon Lance Burgess, UV Ltd)

“Favoring registered trademark holders over and above those with unregistered rights is an approach that favors big business and is fundamentally unfair.” (Servitor Ltd)

“[priority should be] to those rights holders that have invested the time and money to obtain registrations for their two-character marks either in the UK of the CTM and have continuously used their trademarks for the past eight years.” (Vineeta Gajwani, Electronic Arts, Inc)

Those against a staged release included the following:

“I don’t agree with trademark holders given first rights. Under the DRS process an IP holder does not only have to prove rights to a domain but also bad faith on the part of the respondent. It also seems to contravene the first come first served policy.” (name withheld)

“How about choose by a lottery.” (there were several suggestions for a lottery)

“Round 1 (release to IPR holders) should be abandoned but registrations should only go live if, after a 2 month period, no DRS claim is made. It should work like me.uk, start at (e.g.) 655,360 per domain and halve the price every day until you reach five pounds.” (Alex Bligh)

“Allocate a selection of domain names to tag holders with Nominet for 10 years or more.” (Joe Telford, The Agency for Educational Support Ltd)

“Drop the domains for FCFS basis. Nominet is a non profit organisation is it not?” (name withheld)

Commentary

A phased release process (“sunrise”) allowing trademark holders priority in domain name registration is now standard practice where new domains are released. The sunrises for .eu, .asia and, more recently, .co registries provide templates for the orderly release of domains and were a material factor in the change of opinion from the PAB between 2001 and 2008. The consultation responses indicate that this is the route which Nominet should also follow.

Issue 10: The PAB recommended a cut off date for qualifying rights for IP rights holders. They suggested 1996 and 2002 as possible dates. What do you think would be a suitable cut off date?

A huge range of cut off dates were suggested, ranging from 1955 to having no cut off at all.

Comments included the following:

“A cut off date is irrelevant.” (Alex Bligh)

“I think the cut off date should be December 1996. 1996 is far too old.” (name withheld)

“January 1st 2010” (Simon Chapman, Lewis Silkin LLP)

“A cut off date before the date of this consultation is the minimum requirement. 1996 is too early, a lot has happened since then, not least to Nominet.” (Ed Phillips)

“I would suggest a more recent date; businesses and their initials can move quickly and it may be that a business could lose out on a URL that is now trademark protected.” (Jo Edwards, Zurich Insurance)

“I think that it should be done on those which are registered first and passed to the oldest first and given 30 days to respond then passed on to the next one etc” (Rupert Pearson, Adsure Limited)

“Why not use the same criteria used by .co? 2002 is far too early and restrictive in my opinion.” (Michele Neylon, Blacknight Internet Solutions Ltd)

“I believe that 2002 would be the best choice, as this is when the discussion first landed on the table.” (Mark Healey, KCOM Group PLC)

“A cut off date of 1996 or 2002 would unfairly prejudice businesses which have registered a trademark more recently. To avoid opportunistic trade mark applications/ registrations (made in order to benefit from the sunrise period), all that is required is a cut-off date from just before this consultation was announced.” (Jason Rawkins, Taylor Wessing LLP)

“I would suggest 1 year prior to the date of the sunrise as the cut-off.” (name withheld)

Commentary

A cut off date is typical in domain name sunrises. It prevents applications from parties who register trademarks purely to participate in the sunrise, which would defeat the purpose of using a sunrise launch in the first place.

Bona fide use of a trademark at a date prior to the 2008 PAB recommendation to change policy meets this criteria and allows for newly established marks to participate, making this a reasonable threshold for participation in any sunrise.

Issue 11: We propose that initially commercial organisations should have priority in co.uk and charities and not for profit organisations should have priority in org.uk. Do you agree with this approach?

There was strong support for this proposal (125 out of 150 in favour, 83 %)

Comments included the following practical concern:

“In principle, commercial organisations should have priority in .co.uk and NFPs would take precedence in .org.uk distribution. However, the question is who is going to check the status of each organization applicant? There is such a variety of organizational formats (and some are not one or the other!), that it would be practically impossible and certainly onerous, to try to ensure that these guidelines are adhered to in practice by prospective new registrants. The cost of ensuring a rigorous process for such checks would be high, particularly if outsourced and could detract from the available funds raised by the release for the Nominet Trust. (Matthias Meyer-Schoenherr, Sedo GmbH)”

Commentary

This practical point is well made. It illustrates why both the co.uk and org.uk sub domains are operated as “open” registries despite the expressed in intention in the Rules that co.uk is provided for commercial registrants and org.uk for not for profit and charitable registrants.

However, in the circumstances where there are two rights holders both applying for the same co.uk and org.uk character set we would if possible like to avoid contention by allocation according to the nature of their operations. For example if there were two qualifying applicants for “xy” and one was a for profit private company and the other a charity, we would like to steer them to the co.uk and org.uk respectively without the requirement for an auction to break the deadlock.

Issue 12: We propose to hold a sealed bid auction for domain names where rights holders are competing, and for domain names not taken up by rights holders. Do you think there is a fairer way to allocate the first registration of these domain names?

A narrow majority of consultation responses were opposed to sealed bids deciding between competing rights holders (77 out of 146, 53 %).

Some responses indicated that opposition was based on the lack of transparency in sealed bids:

“Just straightforward auction would be better – more transparent.” (name withheld)

“Sealed bids are not transparent enough in my opinion for an organisation such as Nominet; a live auction would be fairer.” (Richard Thompson, Central Technology Ltd)

“If you were to have an auction, which I do not agree with at all, it should be done on an eBay style platform as this would allow maximum transparency.” (Servitor Ltd)

“Nominet is in the public interest and so all bids should be visible, via an online auction along the lines of eBay. I understand people’s concerns about domains going to the highest bidder – those with the deepest pockets. But that’s the same with anything of value. I don’t like car number plate comparisons but these 1 and 2 letter domains will be cherished and when something is cherished people will pay good money for it. I don’t think that can be avoided.” (name withheld)

We also had feedback from a domain name auction specialist:

“As a global leader in domain name services provision, Sedo would not recommend sealed bid auctions as a fair allocation method. Sealed bid auctions do not provide transparency for participants or for external stakeholders. As the national registry, it is important that Nominet ensures the chosen process is completely transparent and ideally, that it is accessible to all. During sealed bids auctions, applicants will generally submit a bid of the most they can afford, in an effort to secure the domain ... As such, sealed bid auctions tend to artificially inflate the value of domain names and thereby has knock-on effects on the remainder of domains, for the resale market and for any potential disputes at a later date.” (Matthias Meyer-Schoenherr, Sedo GmbH)

Others were opposed to the principle of price being the tie-breaker between two or more applicants who satisfy the criteria for inclusion in the sunrise:

“FCFS, registrants should be UK domicile only” (Paul Wilson, Wilson Leppard LLP)

“I feel that such price-based allocation risks unfairly treating smaller but more established UK organisations.” (name withheld)

“I appreciate the sealed bids idea has its own merits, but really, how can someone even begin to calculate the value of a domain such as those being proposed for release? (Gary Smith, Bangor University)

“FCFS – no more than one per person!” (Olly Mooney, dijital media)

“Small organisations with equal rights to a domain name are at a serious disadvantage. A lottery is fairer.” (Stephen Wright, SY Electronics Ltd)

“We feel it should be decided by luck/chance rather than by who has the biggest budget ... the next best alternative would be an open bid with all parties present for complete transparency.” (Kenny Fish, U International Ltd)

“In our view the allocation should be based on circumstances such as the following: extent of global market presence, global recognition of trademark, physical presence in the UK, size of corporation, evidence of trademark registration in the UK ...” (name withheld)

Commentary

The proposal of a sealed bid auction as a tie breaker between equally qualifying rights holders was made on the basis that this would be relatively quick and simple for Nominet to administer. Nominet was not persuaded that technological advantage (first come first served) or luck (lottery) should be the tie breaker. An auction is most commonly used in sunrises but given the consultation feedback we will consider an open auction as opposed to sealed bids as a method of managing contention for the same domain.

Issue 13: We propose to hold a Dutch auction for the general release (“landrush”) of domains not taken up by rights holders. Do you think there is a fairer way to allocate the first registration of these domain names?

A majority of consultation respondents agreed that there is no fairer way to allocate domains not taken up in the sunrise (90 out of 143, 63 %).

Responses included:

“These domain names would be very valuable to potential owners due to their branding potential and the simple fact that they are extremely memorable. Such domains could fetch six- or seven- figures each. We would warn against simple landrush, or a first come, first serve basis for the distribution of these names. FCFS is not truly democratic or equitable process as it favours those who have the software and computer programmes written to monitor and immediately register newly available domains. Sedo believes that these high value domains should not be offered to only large corporations or those with a technology advantage, but to any .uk stakeholder that is interested in purchasing them for a fair market value. Sedo proposes that after the rights holder phase, the remaining available names be auctioned in an open to all, transparent online process to the highest bidders. This process would enable all .uk stakeholders to have a true opportunity to purchase these rare domain names and further Nominet’s goals of making the Internet something ‘which everyone can be a part of’.” (Matthias Meyer-Schoenherr, Sedo GmbH)

“There is no fair way – price is not fair either” (Barry Peters, YorkshireNet)

“Fairest way is to set a fixed price (e.g. £100) for the domains and then raffle them.” (Mark Newby, Camiloo Limited)

“Keep the Dutch auction, but regulate how many domains an individual can register at any given time period” (Paul Matthews, PM Computer Services)

“Let the market decide”

“A Dutch auction favours those with the systems best placed to say “yes” quickly – it’s not just a test of nerves. A normal upwards bid (where the limit is financial, not technical) would seem more likely to release the domains to someone who would use them quickly.” (Ed Phillips)

“The auction process should be an open one and not a Dutch auction.” (Simon Lance Burgess, UV Ltd)

“An auction is best. Again the type of auction is not as important as the fact it is an auction.” (name withheld)

“Just a straightforward auction would be better – more transparent and more accessible to all. Just let people bid whatever price they want in a straightforward manner.” (Susannah Clark)

“May I remind you that the PAB said: “There was no support for the idea of an Auction other than as a possible means of resolving multiple applications during the sunrise.” (Eric Ramage, Alexander Ramage Associates, and Chair Nominet’s PAB)

In terms of the level of starting price, the following comments were made:

“At least £10,000 for a 2 letter that makes no sense, those that mean something would be multiples of £10,000 e.g. be, us, me; at least £100,000 for a 1 character.” (Nigel Rigby, Red Oblong Ltd)

“It should be a large starting price – something nearer £5,000, provided it decreased rapidly” (name withheld)

“£100,000” (Nick McCloud, Descartes)

“I’d suggest no lower than £100,000 for each” (name withheld)

“£50” (Craig Ing, V International)

Commentary

As can be seen from the consultation feedback, there is a very wide range of opinion on this topic.

Nominet will have to consider this and then decide on a straightforward and fair allocation method for the orderly release of any domains not taken up in any sunrise. Given the likely demand however, we do feel it necessary to ensure that release is carefully controlled.

Issue 14: We plan to run this whole exercise on a cost recovery basis, and any surplus funds generated from auctions would be donated to Nominet Trust, a charitable organisation established by Nominet with the objects including the education, relief of financial hardship and protection of children in the area of the Internet and information technology. Do you agree with this approach?

There was strong support for this proposal (119 out of 141, 84 %)

Comments included the following:

“Great idea” (name withheld)

“There is no reason to give the surplus to the Trust specifically; why should this particular surplus-producing activity be any different from any other” (Alex Bligh)

“.uk is a national asset. Any proceeds ... should go directly to ... paying down the national debt.” (name withheld)

Commentary

The release of restrictions for registration of domains in .uk should not be for the purpose of generating additional revenue for Nominet. However auctioning of domains at a premium to the usual price (either as a tie-breaker between two or more qualifying participants in a sunrise or as part of an orderly release of domains) may have this effect.

After taking account of the cost of running this project, any surplus should be made available for good causes in the sphere of operation of the Internet. The Nominet Trust is a charitable organisation specifically set up by Nominet for this purpose.