

Revised draft set of recommendations from the issue group on dealing with domain names used in connection with criminal activity.

This document contains a revised set of draft principled recommendations which outlines the principles that the issue group has been able to reach consensus on so far. These revised draft recommendations will be discussed further by the issue group at their meeting on 20 October 2011. It is anticipated that the final group recommendations will be submitted to the Nominet Board for consideration in December.

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These are the recommendations of the Issue Group on Domain Names used in connection with criminal activity.

1. In line with the company's public purpose mission to promote a safe and trusted internet space, and in order to defend its private interests, Nominet should have a specific and published abuse policy that governs an expedited process by which it addresses the criminal use of domain names in its terms and conditions.
2. With a view to providing certainty and clarity for stakeholders, Nominet's abuse policy should clearly define the circumstances and procedures by which Nominet will suspend a .uk domain name following notification that it is being allegedly used in connection with criminal activity.
3. The policy's operation should be transparent and consistent, to promote the confidence of all stakeholders. It is important that Nominet's procedures replicate due process as far as possible to protect the rights and freedoms of registrants, and to mitigate the potential for disproportionate outcomes.

Scope

4. Nominet's policy must be proportionate in scope, giving recognition to the fair and legitimate interests of registrants.
5. To enable the relatively swift adoption of lightweight procedures, the scope of the policy should apply to a limited subset of criminal activity in the first instance. The policy must explicitly exclude civil disputes and cases where freedom of expression and other fundamental rights of the registrant or third parties are central to the dispute at issue.
6. [As a matter of principle, the issue group believes that the association of a domain with criminal activity should bring the domain within the scope of the abuse policy, potentially rendering it liable to suspension, and that with certain limited exceptions as noted above, the nature of the suspected offence is immaterial.] The way in which Nominet might address a wider set of criminal activities within the policy should be examined under the policy process after an assessment and review of the policy's implementation.
7. The policy should apply where:
 - a) the nature of the alleged criminal activity creates a clear risk of imminent serious harm to individuals. This would include, for example, phishing, the unlicensed sale of medicines, and botnets; or,
 - b) the domain is directly involved in the distribution of counterfeit goods.

Application and acceptable notification

8. Domain name suspension by reason of its alleged use in connection with criminal activity should only be undertaken following a notification by a senior officer of a UK public law enforcement authority that has criminal law enforcement duties and has established a "trusted relationship" with Nominet under the policy. As such, notifications from private party or foreign law enforcement agencies should be specifically excluded from this policy.

9. Where a foreign law enforcement agency wishes to make a notification to Nominet, this should be made through the usual mutual legal assistance channels and under a principle of double-criminality.
10. Nominet should develop and publish, in cooperation with UK public law enforcement agencies, a defined framework by which UK public law enforcement agencies can meet the “trusted” requirements. In addition to the requirements outlined at 14(b), this framework could include training, agreements to make notifications under the policy subject to audit procedures, and frameworks to establish SPOC-type procedures.
11. The ability to make a notification under the policy should only be available to those trusted UK public law enforcement agencies under the principle of “last resort”. “Last resort” is defined as the exhaustion of available alternatives before seeking a suspension via Nominet. Such alternatives may include approaching the registrant, the registrar, or the host.
12. An acceptable notification must:
 - a) Clearly identify the requesting law enforcement agency who must be recognised as a trusted law enforcement agency under the policy;
 - b) Comply with the procedure set out in the policy and any published materials such as templates by Nominet;
 - c) Include a declaration of an authorised senior officer on behalf of the agency that suspension of the domain is proportionate, necessary, and urgent and meets the standard set out in 7(a) or 7(b), and that the agency has exhausted available alternatives to deal with the domain;
 - d) Certify that the evidence gathered to support the notification has been to a prosecutorial standard and that it is ‘beyond reasonable doubt’ that the domain is integral to the carrying out of the alleged crime.

Notifications, appeals and redress

13. Nominet should take responsibility for notifying the registrant of the suspension unless compelled otherwise by law.
14. Nominet must provide for appeals mechanisms that enable registrants to swiftly challenge suspensions, to seek remedy through the reversal of the suspension, and potential redress through the contract should Nominet fail to apply the policy correctly. In this connection, the issue group recommends that the Board make available the following range of appeals mechanisms for registrants:
 - a) **A transparent and independent appeals mechanism** to assess and rule on Nominet’s administration of the policy to which registrants may make an application. Such a mechanism should provide a swift and fee-free opportunity for registrants to challenge whether Nominet has correctly applied the policy. The decisions of the appeals body should be published and it may be helpful to look to Nominet’s existing Dispute Resolution Service by way of example.
 - b) **The policy should enable recourse directly to the law enforcement agency that has originated the request.** It is recognised that registrants may wish to resolve the basis of a notification directly with the respective LEA.

- i. Only LEAs that undertake to operate a system of redress to respond to and resolve the registrant complaints within a swift and defined timeframe should be accepted as having a trusted relationship under the policy.
 - ii. Only LEAs that undertake to publish complaints and their outcomes should be accepted as having a trusted relationship under the policy.
 - iii. Nominet should cooperate with law enforcement agencies to agree what level of detail of information should be provided to registrants to facilitate direct recourse, but it is suggested that at a minimum the law enforcement agency and contact details of the senior officer who has authorised the notification should be provided.
 - c) **Registrants must also have the option of recourse to the judicial system.** On the basis that investigations undertaken by law enforcement agencies should be to a prosecutorial standard, enabling genuine registrants who dispute a suspension to substantively challenge the notification is an important feature of a transparent and fair process. The policy should provide for a procedure where Nominet can require a court order from the law enforcement agency within a set period of time in order to continue a suspension where requested by a registrant. The procedure should include measures to prevent abuse.
 - d) The policy should define under what circumstances the suspension of the domain might be reversed following remedy by the registrant. [Back to court order request by Nominet to LEA?].
15. Nominet should publish data related to suspensions on a regular basis. At a minimum, this data should include:
- a) The name of the domain
 - b) The date of the suspension
 - c) The name of the public law enforcement agency generating the notification
 - d) A statement of the nature of the alleged offence
16. Nominet should publish an annual statistical summary of the:
- a) suspensions
 - b) appeals
 - c) categories of alleged offences
 - d) requesting law enforcement agencies
- that have been subject to the policy.
17. There should be no implied obligation to act by Nominet and Nominet should not be restricted by the policy from acting under its existing procedures for breach of contract by a registrant.
18. When the policy is operational, the Nominet Board should establish an independent panel to report on how the policy is working. It should also provide an assessment of the relative adherence to the policy by Nominet and UK law enforcement agencies.
19. Nominet should hold further discussions under the policy process to review the acceptability and handling of third party requests for suspension.

20. Nominet should communicate the outcome of its policy development to Government to inform its own deliberations in this field.

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