

**The issue group has brought together a cross-spectrum** of interested stakeholders who have worked through a consensus driven approach to develop a set of principle-based recommendations to the Board on the matter of dealing with domain names used in connection with criminal activity.

In constructing the recommendations, the issue group has sought to recommend a policy that is deliberately restricted in scope, minimises interference with freedom of expression, and enables registrants recourse to the judicial system. It is further recognised that the necessity of producing a policy to clarify the circumstances around which Nominet would, under revised standard terms and conditions, provide an expedited process to suspend domain names in a cost and time-effective manner. Nominet should continue to exercise its responsibilities to maintain a safe and resilient domain name system and to act on information supplied through, for example, phishing feeds and computer emergency response teams (CERTs). It is noted that to date, Nominet has sought to cooperate with law enforcement agencies by applying its existing terms and conditions, such as enforcing against the provision of inaccurate data, although they have proved unsuited to this purpose and increased uncertainty.

1. In line with the company's public purpose mission to promote a safe and trusted internet space, and in order to protect 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, the issue group strongly recommends that Nominet's abuse policy 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 incorporate procedural fairness mechanisms 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 and users.
5. To enable the relatively swift adoption of lightweight procedures, the scope of the policy should apply only to a limited subset of criminal activity in the first instance. The policy must explicitly exclude civil disputes and criminal cases where freedom of expression and other fundamental rights are central to the complaint, particularly where prosecution would require authorisation of the Director of Public Prosecutions or the Attorney General, such as cases involving obscenity or hate speech.
6. The policy should apply as a principle of last resort where urgent suspension is necessary to reduce harm to individuals. "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.
7. The scope of these recommendations relates to offences where suspension is deemed to be the most appropriate way in which to effectively minimise the harm caused by the alleged crime. An acceptable notification should meet the following criteria:

- a. The nature of the alleged criminal activity creates a clear risk of “imminent serious harm” to an individual or individuals. “Imminent serious harm” is defined as urgent or on-going harm. This would include, but is not limited to, the following examples: phishing, fraud, the unlicensed sale of medicines or other regulated goods and services, and botnets; or,
- b. The domain is directly involved in the criminal distribution of counterfeit goods.

### **Application and acceptable notification**

8. Domain name suspension by reason of notification of its alleged use in connection with criminal activity should only be undertaken following formal receipt of a notification authorised 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.
9. Nominet should publish a list of law enforcement agencies with whom it has a trusted relationship. Notifications from private party or foreign law enforcement agencies should be specifically excluded from this policy.
10. Where a foreign law enforcement agency wishes to make a notification to Nominet, this should be made through a UK public law enforcement agency and reflecting the principle of double-criminality under international criminal law.
11. 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 15(b), this framework could include training, agreements to make notifications under the policy subject to audit procedures, and frameworks to establish ‘Single Point of Contact’-type procedures, similar to those established under the Regulation of Investigatory Powers Act 2000.
12. An acceptable notification must:
  - a) Specify the alleged offence and indicate whether it is within the scope of 7a or 7b, or both;
  - b) Identify the requesting trusted law enforcement agency;
  - c) Comply with the procedure set out in the policy and any published materials such as templates by Nominet;
  - d) Include a declaration of the authorising senior officer on behalf of the agency that suspension of the domain is proportionate, necessary, and urgent, and that the agency is seeking suspension under the principle of last resort;
  - e) Include a certification that the authorised senior officer is satisfied that:
    - i. The evidence gathered to support the notification has been to a prosecutorial standard (i.e. a reasonable prospect of conviction);
    - ii. the domain name is integral to the commissioning of the alleged crime.
  - f) Where Nominet accepts that very urgent action needs to be taken, Nominet may accept verbal notification from a trusted law enforcement agency, provided written notification in compliance with the policy is provided within [12] hours.

## Notifications and appeals

13. Nominet should take responsibility for notifying the registrant of the suspension unless compelled otherwise by law.
14. In the cases of suspension notifications that fall exclusively within the scope of 7b, Nominet should notify the registrant prior to suspension, giving the registrant reasonable opportunity to object, and informing them of the procedures and timeframes by which they may do so.
15. Nominet must provide for appeals mechanisms that enable registrants to swiftly challenge notifications or 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:
  - a) **A transparent, independent, and fee-free appeals mechanism** to enable a registrant who objects to the suspension to seek an assessment and decision on Nominet's correct administration of the policy. The mechanism should provide swift and defined timeframes, and should be subject to a published review. Outcomes of appeals should be published. It may be helpful to look to Nominet's existing Dispute Resolution Service as an example of good practice.
  - 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 the registrant complaints within a swift and defined timeframe should be accepted as having a trusted relationship under the policy. Where an LEA does not respond to a complaint within the defined timeframe, Nominet should reverse the suspension.
    - ii. 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 requesting officer of the notification should be provided.
  - c) **Registrants must also have the option of recourse to the judicial system.** Registrants must be able to substantively challenge a suspension as part of a transparent and fair process. The policy should provide for a procedure where:
    - On the provision of a review and assessment of a registrant statement by an independent expert, Nominet can require a court order from the respective law enforcement agency within a defined period of time in order to carry out or to continue a suspension.
    - The independent expert should provide a deterministic opinion to Nominet, on the basis of a statement or other evidence provided by the registrant, as to the validity and seriousness of the registrant's objection.

- Registrants must provide a verifiable legal address for service in the UK to the independent expert in order to submit to this procedure.
16. The policy should define under what circumstances the suspension of the domain might be reversed following remedy by the registrant. At the very minimum, this must provide for defined timescales by which Nominet will reverse suspensions.

### **Reporting and Operations**

17. 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
- e) The outcome of any related appeal

18. 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.

19. There should be no implied obligation under the policy for Nominet to act and Nominet should not be restricted by the policy from acting under its existing procedures for breach of contract by a registrant.

### **Next steps**

20. If the Board accepts these principles recommendations and the policy becomes operational, the Nominet Board should establish an independent review to report on how the policy and its operational bodies including the appeals mechanisms are working. It should also provide an assessment of the adherence to the policy by Nominet and UK public law enforcement agencies.

21. Any broadening of the scope of the policy to address a wider set of criminal activities or the acceptability of handling of third-party requests for suspension must be examined under the .uk Policy Process after an assessment and review of the policy's implementation.

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