

Consultation Paper: Proposals to amend Nominet's Rules for the Registration of '.me.uk' Domain Names

1 Executive Summary

Nominet is seeking your comments with regard to proposed changes to Rule 9 (*Specific rules for .me.uk registrations*) of the Rules for the registration of .uk domain names.

In brief, the objectives of the proposed changes are as follows:

- A. To strengthen the charter of the .me.uk second level domain (SLD) for registration by "natural persons" (i.e. humans) as opposed to companies or other organisations;
- B. To remove the specific rule relating to the Dispute Resolution Service (DRS) so that all matters relating to the DRS are shown in the DRS Policy and Procedure and easily located.
- C. To remove outdated sections of the Rule

The changes follow the recommendations of the PAB subcommittee approved by the PAB at their August 2003 meeting (meeting papers available at: <http://www.nic.uk/Pab/PabMeetingReports/2003PabMeetingReports/PabMeeting27.html>), as endorsed by Nominet's Board in October 2003, subject to a minor change.

2 Questions

We ask you to respond to the following ten questions:

Question 1: What type of charter do you think the .me.uk SLD should have, and why?

Question 2: Do you agree that the former Rule 9.3 (the DRS abuse terms) is unhelpful and/or will serve no purpose with a stronger charter? If not, do you agree that it should be moved to the DRS Policy or Procedure, for clarity, rather than being retained as a Rule?

Question 3: Do you believe that 'use' should not be covered by the Rules, and any arguments as to 'use' should be dealt with under the DRS? If you disagree and think that 'use' should be covered by the Rules which 'uses' do you consider should be unacceptable and how would the potential problems outlined at paragraph 4.2 be dealt with?

Question 4: Do you believe that the proposed wording of Rules 9.2, 9.3 and 9.4 is sufficient to act as 'anti-avoidance' wording? If not, what changes would you suggest?

Question 5: Do you agree that there should be no requirement for a .me.uk domain name registration to be "similar" or identical to the registrant's name? If not, and you think that there should be some similarity, please explain why; and how 'similarity' is to be objectively judged.

Question 6: If you do believe that there should be some requirement of similarity, at what stage (registration, or later complaint) do you see it being enforced, and what views do you have about dealing with the potential problems raised in paragraph 4.3?

Question 7: Do you agree that companies should be able to hold a .me.uk registration if awarded it by a court or the DRS? If so, should they have freedom to use it like any other registrant, or be prevented from doing so, either as suggested in draft Rule 9.4 or otherwise? If not, what mechanisms would you propose to deal with a clash between a .me.uk registration and a trade mark?

Question 8: Do you agree a company should be able to hold a *.me.uk* registration if the transfer to them is agreed as part of the mediation stage of the DRS? If not, please explain your reasons, and/or make alternative suggestions.

Question 9: Do you agree that the revised rules should be applied to existing *.me.uk* registrations, subject to transitional arrangements?

Question 10: Do you have any comments on the proposed Rules 9.6 or 9.7?

3 Background

The Rules for the *.me.uk* SLD were introduced for its creation in January 2002. Some provisions relating to the launch of the SLD were deleted in February 2003 as part of the more general update of the Rules that took place at that time.

The *.me.uk* was 'weakly chartered' in that the Rules stated that the *.me.uk* SLD was 'intended' for natural persons, but in practice there is no absolute ban on any other organisations from registering in the SLD (subject to general rules of the law). The Rule also introduced special grounds for "abuse" under the Dispute Resolution Service (DRS).

Nominet's Policy Advisory Board (PAB), following the advice of a subcommittee, recommended changes to the *.me.uk* SLD Rules at its August 2003 meeting. Nominet has followed the advice of the subcommittee and accordingly proposes to change the Rules in respect of *.me.uk* registrations. The existing Rules are available at <http://www.nominet.org.uk/ReferenceDocuments/Rules/> and the proposed replacement Rule 9 is set out at Appendix A.

You are requested to consider the issues and to give your reaction to the proposals, and to highlight and give your views on any other issues relating to the proposed change to the Rules which are not covered in this paper.

4 Policy issues relevant to the proposed changes

The following are the key policy changes on which your views are sought:

4.1 Strength of Charter

A "weak" charter for a second level domain is one which says "This domain is intended for registrants of type X, but we will do nothing about it if registrants of any other type also register in this SLD." This is the type of charter that *.co.uk* and *.org.uk* have. These require no "policing" from Nominet.

A "strong" charter for a second level domain is one which says "This domain is only available to registrants of type A and if anyone else registers, that name can be cancelled", but does not require Nominet to pre-vet applications: "First-come, first-served" still applies.

Note that these are both 'open' charters. A 'closed' charter would be one that is only open to registrants of a particular type, usually with pre-registration vetting. This is not proposed.

The existing charter for the 60,000 current registrations under the *.me.uk* SLD is essentially a weak one (it is 'intended as' a personal namespace and it is 'anticipated that' registrants will be natural persons), and no part of the specific *.me.uk* Rules contains a Rule enforceable by Nominet about the nature of the registrant. The existing Rule 9.3 does contain additional grounds on which a domain registration may be deemed abusive following a complaint to the DRS. It is clear from our discussions with registrants, DRS Independent Experts and third parties over the last three years that the purpose of the current Rule 9.3 is not widely understood and its placement in the Rules, not the DRS Policy or Procedure, is illogical.

The PAB recommended that the *.me.uk* rules should include a strong charter so that registrants must be 'natural persons' (i.e. human) in order to help ensure that individuals are protected from companies using the *.me.uk* namespace. The proposed changes to Rule 9.2 and new Rule 9.3 aim to provide for this.

Question 1: What type of charter do you think the *.me.uk* SLD should have, and why?

Question 2: Do you agree that the former Rule 9.3 (the DRS abuse terms) is unhelpful and/or will serve no purpose with a stronger charter? If not, do you agree that it should be moved to the DRS Policy or Procedure, for clarity, rather than being retained as a Rule?

4.2 Restrictions on Use, and Anti-Avoidance

Restrictions on use are not included in any SLD currently operated by Nominet. An example of restriction of use would be: "The only services which may be offered under this domain are Z, and if a domain name registration is used in relation to any other goods/service/activity it will be cancelled."

In general, both the present and proposed rules make no reference to the use made of the domain name. This is because Nominet has felt that to positively "police" the use made of domain names was outside of the role that Nominet was set up for, impracticable, time consuming and costly because (a) it would possibly require the review of thousands of websites, (b) it would possibly require us to ask to see what emails etc. have been sent using the domain name (c) potentially be a very subjective and human intensive task, and (d) given that it is simple to change the content of a web site frequently, it raises issues about where Nominet's investigations would stop – would one view of a web site be sufficient, or would it be necessary also to consider historical content, or future content on an ongoing basis? None of these were felt to be desirable or practicable. It is also contrary to the practice of the ISPs that host the sites, who do not positively check content.

One alternative would be 'reactive'. However, many of the difficulties outlined above would remain, including the difficulty of determining what constitutes 'use' in breach of the Rules. Use by the registrant for a website may be fairly clear, but is use of a sub-domain by a third party 'use'? Is giving an email address including that domain 'use'? Objective criteria are hard to set.

Limiting the registration of *.me.uk* domain names to 'natural persons' does not prohibit trading activity: a sole trader (i.e. a person doing business for himself without using a company) is a 'natural person' but clearly commercial.)

The PAB therefore recommended that because of the difficulty of dealing with any matter of 'use', there should be no provisions as to 'use' in the draft. They did, however, suggest anti-avoidance provisions to discourage the registering of *.me.uk* domain names by individuals acting as a 'front' for a company or other corporate entity. In order to achieve this, without straying into a requirement to police content, proposed Rule 9.2 requires that no record be made on the register that the registrant is acting in any capacity on behalf of another person or company who would not qualify. This wording seeks to avoid the registration of a *.me.uk* domain where the registrant is shown as "Mr Doe (a director of MegaCorp Plc) on behalf of MegaCorp Plc". Under proposed Rule 9.2 that would not be allowed, so the registration would just have to show "Mr Doe" and if MegaCorp Plc did use the name, they would run the risks inherent in relying on a domain name of which they are not the registrant: principally, that the registrant might block them from using it. This risk would possibly discourage such uses but is not a comprehensive anti-avoidance clause because it does not look at use (for the reasons stated elsewhere).

However, to provide a full anti-avoidance clause, it is necessary that some use must be considered. Proposed clause 9.4 (use by non-qualifying persons) seeks to achieve this. In order to reduce the potential burden (which potentially might exist for the reasons given above), the proposed clause requires that the informant do more than simply mention a

domain name to Nominet and then expect Nominet to perform a labour-intensive investigation. It specifically excludes party to party disputes, which should be dealt with under the DRS, and is limited to clear cut cases, in order to avoid so far as possible Nominet being drawn into discretionary decision making processes.

Question 3: Do you believe that 'use' should not be covered by the Rules, and any arguments as to 'use' should be dealt with under the DRS? If you disagree and think that 'use' should be covered by the Rules which 'uses' do you consider should be unacceptable and how would the potential problems outlined above be dealt with?

Question 4: Do you believe that the proposed wording of Rules 9.2, 9.3 and 9.4 is sufficient to act as 'anti-avoidance' wording? If not, what changes would you suggest?

4.3 "Legal names" and matching registrant name to the domain name.

Some people have expressed the view that a .me.uk domain name should correspond to the name of the registrant i.e. that the registration of *copperfield.me.uk* should be restricted to Mr Copperfield, and that a registration of that domain name to Mr Scrooge should be prohibited.

Equally, brand owners have suggested that this rule would help prevent trade-mark infringement, as the number of people with identical names to their brand is low.

Questions arise in respect of names which are common real names (e.g. *johnsmiths.me.uk*, *whsmith.me.uk*) but which are also trade-marks in respect of some goods and services, generic real names which may also be branded (e.g. *blacks.me.uk*), and words which are rarely names (*interest.me.uk*, *polo.me.uk*, *penguin.me.uk*) but may or may not also be brands.

A question also arises to the actual name of a person. This topic is also covered in the Terms and Conditions consultation, as it applies generally, but in the context of .me.uk registrations, if any rule was to be introduced or maintained which required the registration to match the registrants "real", "legal" or "correct" name the question arises of what that is. It is legal in England and Wales to use any name, whether formally adopted by Deed Poll (Change of Name Deed), Statutory Declaration, or otherwise, provided that is not deceptive, and subject to some other restrictions. If a registrant claims to be called 'xazaaz', and provides evidence from his friends that this is what they call him, that is, in one sense his 'name', and this argument was alluded to (but failed) in DRS case 00292 where the registrant claimed to be known as 'Nokia'.

Finally, the question arises as to what is similar. If Mr AB Smith has registered *whsmith.me.uk* (potentially claiming that the 'wh' letters have personal significance of some sort) is that 'similar'? What evidence is sufficient to prove this – a letter from the registrant, or a letter from his friend to confirm that this is what he is known as?

Therefore policing a requirement that the domain name correspond with the domain name is likely to be problematic. In all cases the current position is that the general 'first-come, first-served' rule applies to all .me.uk registrations, and if the registration is abusive, it can be challenged via the DRS, and the PAB has recommended that this remain the only principle of allocation.

As this is the default position, no specific wording to this effect is included in the draft Rule 9.

Question 5: Do you agree that there should be no requirement for a .me.uk domain name registration to be "similar" or identical to the registrant's name? If not, and you think that there should be some similarity, please explain why; and how 'similarity' is to be objectively judged.

Question 6: If you do believe that there should be some requirement of similarity, at what stage (registration, or later complaint) do you see it being enforced, and what views do you have about dealing with the potential problems raised above?

4.4 Use of the DRS for *.me.uk* domain names by companies

As shown above, there have been cases where companies have used the DRS to obtain *.me.uk* domain names that had been abusively registered or used. If there was an absolute ban on registrations of *.me.uk* domains by companies, an impossible situation would arise where these companies either would be unable to take any action, or having taken DRS or court action, find that the domain name was immediately deleted as a breach of the rules and possibly re-registered by the original defendant/respondent. Therefore it is proposed that companies or other organisations who are awarded a *.me.uk* domain name by a court or the DRS be able to have that name, but should not use it i.e. should be able to hold it as a blocking registration.

The PAB did suggest that a DRS Expert should be able to order that the domain name be put in a special state where it had no registrant but was blocked from registration. Nominet's Board, whilst agreeing with the PAB's recommendation on policy, decided that the implementation of this in the way that PAB had suggested would be difficult, and instead proposes the system of suspension shown in Rule 9.4 of the draft.

If a company can obtain a *.me.uk* registration via the DRS mediation, there is a potential for avoidance: since the DRS is free up to that stage, a director could register it, his company could commence DRS action against him and obtain it at the cost of the transfer fee. However, prohibiting transfer under DRS mediation removes from users one of the most attractive features of the DRS and could lead to a strange situation where, despite agreement having been reached and the dispute ended, the complainant is in effect being forced to pay for a decision (which would list both parties names publicly), which they run the risk of losing as the Independent Expert would not know what had been agreed in (confidential) mediation.

It is therefore recommended that draft rule 9.4 should also cover agreements in mediation, with the inclusion of the words "as a result of the Dispute Resolution Service".

Question 7: Do you agree that companies should be able to hold a *.me.uk* registration if awarded it by a court or the DRS? If so, should they have freedom to use it like any other registrant, or be prevented from doing so, either as suggested in draft Rule 9.4 or otherwise? If not, what mechanisms would you propose to deal with a clash between a *.me.uk* registration and a trade mark?

Question 8: Do you agree a company should be able to hold a *.me.uk* registration if the transfer to them is agreed as part of the mediation stage of the DRS? If not, please explain your reasons, and/or make alternative suggestions.

4.5 Transitional matters

There are some 60,000 existing *.me.uk* registrations, some of which are held by companies (which would be prohibited under the proposed rules). As a transitional measure, proposed Rule 9.7 would allow these registrations to continue as they currently are, until they are next cancelled (e.g. for non-payment) or transferred. This follows a recommendation of the PAB.

Proposed 9.6 is the old Rule 9.4, but with the sentence that permits charging for transfers removed, as all transfers are currently charged. The ability to make a differential charge remains.

Question 9: Do you agree that the revised rules should be applied to existing *.me.uk* registrations, subject to transitional arrangements?

Question 10: Do you have any comments on the proposed Rules 9.6 or 9.7?

5 How to give feedback

This consultation will run from 21 May to 23 August 2004.

In order to give input please email pab-feedback@nominet.org.uk with the subject line 'me.uk rules consultation'. All consultation responses will be published on Nominet's website at <http://www.nominet.org.uk/Pab/PabConsultationPapers/meukRulesConsultation/meResponses.html>.

We reserve the right to remove any materials which in our reasonable opinion are defamatory, offensive or unintelligible.

APPENDIX – A PROPOSED NEW RULE 9

9. Specific rules for the .me.uk SLD

9.1. Introduction

These are the specific rules for the *.me.uk* SLD, administered directly by us. They form part of and, in the case of conflict, take precedence over the Rules.

9.2. Charter

The *.me.uk* SLD is intended to provide a personal namespace within the *.uk* Top Level Domain. Unless Rules 9.5 or 9.7 apply, registrants of *.me.uk* domain names must be, and remain at all times, natural persons (a “qualifying person”), and shall not be recorded on the register as being the agent, trustee, proxy or representative for any person or entity (whether having an individual legal personality or not) which is not a natural person.

9.3. No actions unless in accordance with the Charter

Unless Rules 9.5 or 9.7 apply, no registration, transfer, renewal or change may be requested to a *.me.uk* domain name which would be in breach of Rule 9.2, and any such request may be rejected. If, despite the previous sentence, such an action is requested and does occur, Nominet may reverse that action at any time in addition to any other rights Nominet may have by contract or otherwise.

9.4. Use by non-qualifying persons

If sufficient evidence is provided to, or obtained by, Nominet that a non-qualifying person or persons is/are clearly receiving the benefit of a *.me.uk* registration, and that the situation is not one which could be dealt with under the Dispute Resolution Service(DRS), Nominet may, but shall not be obliged to, put the name into special status, cancel it or require undertakings as to future use from the registrant, in addition to any other rights Nominet may have by contract or otherwise.

9.5. Transfers to non-qualifying persons under the DRS or by the Courts

- 9.5.1. Where, as the result of the DRS or judicial proceedings (of relevant jurisdiction) a *.me.uk* domain name is to be transferred to a person who would not qualify under Rule 9.2 (the “transferee”), the transfer to, and continued registration by, the transferee shall be permitted provided that no use is made of that *.me.uk* domain name for any purpose, for so long as the transferee holds the domain name.
- 9.5.2. To prevent a breach of Rule 9.5.1, Nominet may put the domain name into a special status e.g. by blocking the entry of any nameservers onto the record for that domain.
- 9.5.3. The transferee under clause 9.5.1 will be able to transfer the domain name to a qualifying person, in which case the use restrictions in respect of that *.me.uk* domain name are lifted and this Rule 9.5 will no longer apply to that domain name.

9.6. Fees and charges

Any charge for the transfer of a *.me.uk* domain name registration made may be different to charges (if any) made to transfer registrations within other SLDs.

9.7. Transitional Arrangements

Where, before [date when *.me.uk* Rules change], the registrant of a *.me.uk* was other than a qualifying person, then (as a transitional measure) Rules 9.2, 9.3 and 9.4 shall not apply to that *.me.uk* domain name and the use of the name will be unaffected by Rule 9.5 until it is next transferred or cancelled.