

DRAFT

This is the reply of the PAB to Nominet's consultation paper on Raising Industry Standards.

The PAB believes that there is a role for Nominet to play in raising standards, and acting at all times with discretion, helping to ensure reasonable standards are maintained in this branch of the industry in which Nominet plays a leading role.

Our replies and comments on the specific proposals contained in the consultation document are given below and are followed by brief comments on particular points raised in the consultation paper.

Proposition 1 ("Registrant Protection"):

Nominet proposes to introduce terms in contracts with all registrars to require clear publication of:

- The charges associated with .uk domain name registration, renewal and maintenance.*
- Details of how the registrar will inform their customers of changes to their charges.*
- The method of support provided, e.g. phone, email, web based help forms.*
- The cost of support e.g. if support is only provided by way of a premium rate telephone number.*
- The times and availability of customer support.*
- An explanation of the relevant service and how it can be invoked, together with details of the time the registrar takes to carry out the service. The registrar must comply with the stated time periods.*

Comment: Generally we agree with this but think that Nominet must clarify what is meant by "publication". For example we do not think that members should be compelled to publish tariffs publicly on a web site so long as customers are made aware of relevant charges, and how they are arrived at. Many members offer consultancy services with varying rates for different skills and levels of service.

Proposition 2: ("Accuracy of Data")

Nominet proposes that registrar and registrant contracts should include requirements to:

- Not knowingly give Nominet inaccurate data.*
- Make corrections if the registrar becomes aware that the data held by Nominet is inaccurate.*

- *To use the WHOIS opt-out facility responsibly, and not to make it available to consumers who are not eligible.*

Comment: We generally agree with this. The proposition that registrar and registrant contracts should include requirements to “not knowingly give Nominet inaccurate data” might be regarded as a minimum requirement. Nominet might give some thought to putting an obligation on registrars to take “reasonable” steps to verify information that is used. For example small registrars might reasonably perceive that “Mickey Mouse” is not the registrant’s real name, while larger registrars might reasonably use post code verification software. This is an option that might sensibly be included in any future discussion of so-called “Gold Standard” status, of which, more below.

It might put an unreasonable burden on registrars if they are required, unconditionally, to make corrections on becoming aware that the data held by Nominet is inaccurate. The whole proposition should be qualified as to what is reasonable.

Proposition 3 (Who is the registrant?)

Nominet proposes to include as a contract term that registrars will only register names in the name of the end customer, unless there are clear, written instructions to register in their own name or in the name of a third party.

Comment: There are many times it will be impossible to get “written” instructions, or when to attempt to do so would fatally delay getting a registration on file. Also, who is the ‘end customer’? The one by whom the bill is paid or the one in whose name the domain is to be registered? They are not necessarily the same. Also there may be circumstances in which a domain may legitimately be registered in the registrar’s name. Consequently, we propose that instead of requiring “written instructions”, it should be made clear that the registrar should only register a domain in a name other than in the name of the end customer either when there are “clear instructions” to do so (it being left to the registrar to defend its actions in the absence of “written instructions”) or when it has been made clear to the customer what the possible consequences will be if a domain is registered in a name other than that of the end customer.

Proposition 4 (Support for registrars).

Nominet proposes to introduce better technical support for registrars by:

- *Providing the facility for test registrations (including establishing a PGP key, submitting a request to the automaton, completing data fields and setting up nameservers); and*
- *Providing clearer information about our processes, including provision of more FAQs; and*
- *Possible accreditation processes for registrar staff to support their own staff training procedures; and*

- *Including a commitment to promoting technical competence in the contract between Nominet and the registrars.*

Comment: We support this, but "Possible *accreditation processes* for registrar staff.." would be better expressed as "Possible *tests of competence* for registrar staff...", so as to avoid conflict and misinterpretation with other types of accreditation. Online training (E-learning) will ensure that training is universally available

Proposition 5 (Accurate representation).

Nominet proposes that the registrar contract be expanded so that the registrar is required to:

- *Provide a brief and accurate description of who Nominet is and the relationship between the registrar, Nominet and the registrant.*
- *Explain that registering a .uk domain name means entering into a contract with Nominet, and accepting our contractual terms.*
- *Provide clear links to our contractual terms upfront.*
- *Make this information available before a registration is made and, on request, demonstrate how this is done.*

Comment: We are reluctant to stipulate that registrars be compelled to link to the Terms on Nominet's site as an alternative to providing Terms on their own site. We note Nominet's view that only their site can be relied upon to provide a completely up-to-date version of the Terms. Nominet should provide a standalone page containing only the necessary Terms so that registrars can link to that to minimize risk of customers being distracted by other matter. Draft materials and information for links should be made available to support registrars. Nominet should also take steps raise its own profile among registrants and potential registrants.

Proposition.6 Simplification of registrar and reseller relationships

Nominet proposes that the registrar contract be changed so that the actions of the reseller are the responsibility of the registrar. This means that if the reseller breaches the registrar contract this places the registrar in breach of the contract.

Comment: Generally we agree with this, but Nominet is urged to act with discretion to ensure that registrars are encouraged to bring errant resellers into line rather than penalize registrars for occasional indiscretions on the part of their resellers.

Proposition 7 How to ensure the new agreement is effective?

Nominet proposes that the most appropriate approach to enforcement is:

- *To work with a potential registrar at the time of application to ensure they fully understand and meet the requirements of the registrar agreement.*
- *To carry out ongoing enforcement on a reactive basis.*
- *Straight breach of contract issues should be dealt with directly by Nominet.*
- *To introduce a system similar to the Dispute Resolution Service to handle the more complex disputes between registrars and registrants.*

Comment: There is some concern whether Nominet can (or should) get involved in any breach of contract issue between a registrar and a registrant, but we are happy to see an arrangement whereby Nominet will offer mediation in allegations of “straightforward” breaches of contract with the facility for more complex cases to be referred to a “modified DRS” system. Whether (and the extent to which) involvement of any system similar to the Dispute Resolution Service should involve a charge being levied on complainants, should be subject of separate discussion.

Proposition 8 (What happens if things go wrong?)

Nominet proposes to work with a new registrar at the application stage to ensure they meet all the relevant requirements. Once the registrar is active, they propose to apply a set of published sanctions to include naming and shaming and real sanctions in proportion to the nature of the breach of the contract. Your views regarding sanctions are very important and will be used to develop detailed proposals for how we could deal with breaches. These sanctions will therefore be determined after the consultation once the changes to the registrar contract have been agreed, and in consultation with our Policy Advisory Board.

Comment: We are concerned about the wider implications of the so-called “naming and shaming” policy which might have far reaching effects on the registrar’s other business interests. We recommend that this issue be subject of a detailed review and discussion between Nominet and the PAB.

The “Gold Standard”

Nominet needs to clarify its thinking and define what is meant by a “Gold Standard”. The concept appears to be above and beyond the basic concept of offering “gold stars” for compliance with the basic standards to be laid down for registrars to meet. Nominet must consider and say where it wants to set the Gold Standard. Is it to be an incentive for those who comply with the basic standard or is it to be used as a standard above and beyond the base line? We think it would be prudent to have the basic level set up first and consider the Gold Standard after this has been running for six months or longer.

Nominet's commitment to registrars:

Nominet should provide more support for developing technical knowledge of registrars, and should offer support in developing "Best Practice". "Toolkits" might be offered by way of standard texts that can be used or adapted by registrars, and greater use made of e-learning packages.

Nominet's commitment to registrants:

We think there should not be a discount from Nominet for those registrars that provide more comprehensive support for their customers. Those who disproportionately use (or misuse) Nominet's resources should be penalized.

We do not see how the contract between Nominet and the registrar can impose dispute resolution conditions on the registrant.

Nominet should set performance criteria, for example with timescales for updates. These may be proper subjects for discussion on the Gold Standard criteria.

So far as the contract between Nominet and the registrar apply to the actions of the registrar's resellers, it should do so.

Nominet's commitment to Internet users and other stakeholders in the UK:

Nominet should work with other bodies in the Internet sector in the UK and abroad to ensure better coherence between different codes of practice. It should also work with and have regard to other relevant national campaigns

Nominet, the registrar and the registrant should all accept reasonable responsibility to correct information that they are aware is incorrect (including inappropriate use of the WHOIS opt-out by trading entities)?