

## LINX Response to consultation by Nominet “Raising Industry Standards”

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### About LINX

The London Internet Exchange (LINX) is an association of over 200 Internet Service Providers and major networks. Our membership includes all the major network operators with substantial operations in the UK. We are one of the largest Internet Exchange Points in the world, and currently carry approximately 120Gbps over our infrastructure, two thirds of which is passed over the multilateral public exchange.

LINX is a neutral body mutually owned by its members. We have operated a public policy brief on behalf of our members for nearly ten years; this was confirmed as a core part of LINX's mission in 2005.

## Introduction

LINX welcomes the consultation by Nominet on “Raising Industry Standards”.

LINX notes and supports Nominet’s basic objectives as set out in section 3 of the consultation paper.

We also note that the consultation paper repeatedly refers to Nominet’s membership model, to the fact that Nominet’s registrars have a variety of business models and that it does not wish to prefer or deprecate any particular model nor to interfere in the customer relationship between registrar and registrant. LINX strongly supports this position.

Nominet identified three broad strands of proposals within the consultation paper:

- *“Proposals to strengthen our contract with you, introducing achievable standards on good practice, data accuracy, technical and business competence, and publication of information about charges and service levels.*
- *Whether you would like us to introduce a “gold standard” for registrars.*
- *Whether you would support our working with other industry players in the wider Internet community to coordinate voluntary codes of practice.”*

Nominet also referred to having considered “How we can maintain a good reputation for the .uk ‘brand’?”.

LINX suggests that Nominet’s activities could be analysed by reference to the following areas:

- **Transactional area**  
This includes such matters as ensuring that domain registrations, de-registrations and transfers occur efficiently and reliably, that transfers do not occur without proper authority, and so forth.
- **Operational area**  
This includes such matters as ensuring the high availability of .uk to name resolvers, the security and integrity of the database, and so forth
- **Custodianship of .uk in the community interest**  
This includes such matters as selecting appropriate second-level domains (both in number and in specification), the representation of the interests of the stakeholders in .uk, as such, in discussions about the global governance of the domain name system, and so forth

## Questions 1-11 and questions 13-21

Our analysis is that questions 1-11 and 13-21 concern the relationship between Nominet and its registrar members, and grapple with the extent to which Nominet should seek to control the relationship between registrar and registrant, so as to ensure confidence in the transactional integrity of .uk domain registrations and transfers, while maintaining an appropriate balance with the independence of registrars and a desire not to prefer particular business models. We believe that these are entirely proper questions for Nominet to address.

We believe that it is reasonable to ask in each case “does this undermine legitimate differences between registrars?” LINX does not propose to offer specific responses to each question, but instead submits its broad support for the approach taken in seeking a rough consensus amongst Nominet’s membership.

## Question 12

### Introduction

We will treat question 12 separately, and in more detail.

Codes of Practice, and other forms of advice, guidance, self-regulation, co-regulation and official regulation often involve one or more of:

- consumer rights issues, including trading standards, customer complaint schemes, ADR, privacy and data protection;
- commercial issues, including regulation of SMP
- content issues, including acceptable/prohibited content, adjudication issues, and removal processes.

As we have said above, insofar as these issues pertain to the registration and transfer of .uk domains (or, for that matter, to other resource records for which Nominet might in future become the registry), LINX supports self-regulation by Nominet through its governance and consultation processes, as we have said above.

To the extent that question 12 merely refers to ensuring that other Codes of Practice are compatible with Nominet’s contracts with registrars and registrants, we do not see this as controversial. Indeed, LINX would welcome Nominet working with other organisations to raise awareness of the existence and provisions of its own contracts, and the remedies that they may provide. However, Codes of Practice in the Internet sector generally consider a much broader range of issues, and we infer that the intent of question 12 is to stimulate debate as to whether Nominet should extend its interests into these areas. Our analysis below refers to Nominet’s possible evolution as implied by that inference.

We also acknowledge that the Codes of Practice to which Nominet intends to refer are probably limited to voluntary or semi-voluntary tools of self-regulation or co-regulation, and that Nominet is not, in the main, referring to lobbying on the creation of regulation with force of law. Nonetheless, such Codes establish a normative reference, and one by which commercial and public bodies frequently feel strong pressure to abide, even against their own preferences. Therefore without denigrating the considerable importance of this distinction when it comes to selecting particular means of advancing such norms (LINX has been a

strong advocate of self-regulation in numerous fields of Internet public policy), we do not believe this significantly affects the analysis we conduct below.

### **The scope of Nominet's mandate**

The first challenge we see facing Nominet were it to seek to expand its role would be that it could lay itself open to the charge that it was abandoning the commitment reiterated in this paper not to prefer particular business models.

This objection would be strengthened to the extent that Nominet were seen to be unduly influenced by its largest members but, depending on the issue at hand, this criticism would still be strongly put were Nominet seen to be substantially influenced by registrars (i.e. its members) more generally. Conversely, this objection would be weakened if Nominet were to claim a broader public interest mandate and to take steps to ensure its position was seen as being more independent of its own members. However, such a course is problematic in other respects.

LINX believes that Nominet could legitimately claim to represent the interests of domain registrars, as domain registrars, on these broader matter, if it chose to undertake that role. However we understand that, guided by its custodianship of *.uk* in the interest of the community as a whole, this is not Nominet's ambition, and that the underlying consideration behind Question 12 is to investigate to whether with respect to a wide range of Internet-related policy issues Nominet might perform more of a co-ordinating or arbitration role in the general public interest, apart from the special interests of a particular class of stakeholders. We shall therefore now examine the possibility guided by this inference.

A question might also be raised as to who precisely Nominet claimed to represent. As a membership organisation it is well placed to represent its registrars, and can justifiably claim to represent the interests of domain registrants *as* registrants. Nominet is also undeniably an important *stakeholder* in broader issues as they relate to *.uk*. Were Nominet to claim a broader mandate, to act as a *co-ordinator* or *arbiter* in matters of Internet-related public policy more generally, it might find its authority subject to legitimate challenge: other membership bodies having broad membership and an even broader base in the customers of their membership might make at least as persuasive a claim.

This is not to question Nominet's claim to act according to the general public interest in matters pertaining to its custodianship of the *.uk* domain; quite the contrary. Were any of the existing (or a new) organisation to seek a similar "co-ordinating" role over policy as its relates to *.uk* and to registrars and the registry, Nominet could quite fairly insist that its processes ought to be respected, and that although other organisations can be recognised as stakeholders Nominet is entitled to the lead role as co-ordinator and (subject of course to the trump status of authorities operating with force of law) as final arbiter. However, the inverse of this is also true: when the issue does not pertain to the custodianship of *.uk* other organisations may well have a better claim to the lead role.

Further, if Nominet allows itself to become too embroiled in policy disputes that go beyond good practices for *.uk* it will come under pressure to be a solution – which is to say a sanction: inviting the argument that suspension or transfer of the domain name is an appropriate tool of policy for reasons going far beyond mis-practice in registration.

We urge Nominet to reject any suggestion that "bad" activity by registrants in *.uk* brings Nominet or *.uk* into disrepute, merely because the registrant used a *.uk* domain for the

activity. The mere fact that use of the domain was necessary to the activity and that Nominet has the power to withdraw the domain does not fundamentally distinguish Nominet's position from the electricity company. Moreover, consequentially the implication of the alternative would be to abrogate to Nominet the responsibility and duty to police and enforce behaviour that goes far beyond Nominet's reasonable scope or capacity to make fair judgement with commanding authority.

### **An new independent body for industry norms**

One option for Nominet in seeking to avoid being seen as claiming an unwarranted authority would be to avoid developing a policy position of its own, but instead to establish an endowment for a new independent body charged with improving Internet public policy and Codes of Practice. This body would be charged to act in the general public interest, without being given a more specific, pre-ordained policy objective. Superficially, this appears an attractive way to reduce Nominet's accumulated surplus. It does, however, come with its own problems.

Firstly, if Nominet's own membership base is deemed an insufficiently broad to determine general questions of public policy itself, how would an independent body be superior? Such a body could not realistically attain a genuine democratic mandate: with the exception of the extreme case where there would be an inherent challenge to Parliament in success, there would be an inevitable self-selection bias in the electorate. Public consultation and transparency in policy development, while important and laudable, could not overcome the ultimate necessity of final decision-making. Nor could "expert" opinion substitute: the policy choices you get depend on which experts you select to make the choices: a welfare economist and a public choice economist will have different views on consumer protection policies, while an information scientist and a social policy expert specialising in the protection of vulnerable groups will tend to differ about policies to deal with potentially harmful content.

Secondly, no body set up charged with co-ordinating Codes of Practice and developing policy options can realistically be expected to conclude that existing processes are sufficient; its own organisational needs would demand a more activist role for itself. This is not mere cynicism: in founding such a body Nominet would be implicitly declaring that it had already found existing policies and the institutions for developing policy to be inadequate.

When established without a clear institutional policy agenda such a new body becomes an attractive target for interest group capture if it is well resourced, particularly if it is well financed, but also when is endowed with a strong brand through its founders' reputations. The very first question such a body will face is the search for an agenda, which requires an analysis of what might be inadequate about existing arrangements. Narrow special interest groups come prepared with just such a narrative (however partial or contentious it may be). This makes a supposedly independent body created on this model inherently susceptible to capture by narrow and partisan interest groups.

For these reasons, if Nominet chooses to establish an independent body to develop and co-ordinate policy it is likely to face criticism for funding a body that reflects a narrow, specialist viewpoint using funds generated from its unique position in running *.uk*, quite possibly in support of policies which do not attract the support of Nominet's own membership or the Internet community more generally.

Finally, such a body would risk duplicating or, worse, coming into conflict, with the numerous specialist bodies of various descriptions that already provide policy advice to government and industry.

The Nominet Council of Management has previously considered an approach similar to that described above, and rejected it. LINX believes it was right to do so, and that it would be mistaken in going down this route now.

## Conclusion

LINX supports Nominet's membership model and the consultation process. Our trust in this model makes us confident that it will enable Nominet to select a sensible and appropriate balance between the independence of registrars and the Nominet's needs as an institution and as custodian of *.uk*, as well as enabling continual improvement of such policies. We do not wish to submit particular recommendations on the implementation of such a balance.

With regard to question 12 we caution against too expansive an approach.

LINX supports Nominet's primary role in regulating practices for the registration and transfer of *.uk*, and supports Nominet in raising awareness of its role and ensuring that other codes of Practice and tools of policy recognise and remain consistent and compatible with Nominet's role.

LINX also welcomes and encourages Nominet's greater involvement in policy matters directly relevant to its custodianship of *.uk* and its expert contribution as an important stakeholder in its own right. We draw particular attention to its contribution to the global Internet governance debate at the World Summit on the Information Society as an exemplar of this kind of activity.

We nonetheless caution Nominet against undue expansion of its remit in matters of public policy, beyond the interests of its membership and those matters arising directly through its custodianship of *.uk* (and such other registries as it may in future come to operate). We urge Nominet to reject any suggestion that "bad" activity by registrants in *.uk* brings Nominet or *.uk* into disrepute merely because the registrant used a *.uk* domain for the activity in question.

We further recommend that Nominet does not establish a new independent body to make general public policy recommendations for the Internet.