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Your Ref:

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Nominet UK
Sandford Gate
Sandy Lane West
Oxford
OX4 6LB
England

By email to standards-consultation@nominet.org.uk

Dear Sirs

**Nominet Consultation
Raising Industry Standards**

We are pleased to have this opportunity to comment upon the Nominet Consultation Raising Industry Standards ("the Consultation").

MacRoberts is a commercial law firm based in Scotland, with offices in Glasgow and Edinburgh. Our technology media and communications unit, which is headed by David Flint. David is an independent expert under the Nominet Dispute Resolution Procedure.

Our TMC Group has a wide range of experience in advising an array of clients on the protection and exploitation of their domain names whether .uk or otherwise. MacRoberts have a proven track record of assisting clients in protecting and securing domain names worldwide and in presenting cases for clients before UK and international domain name dispute panels. MacRoberts also provides guidance to its clients on all aspects of website or computer contracts, including hardware purchases and sale, website software development, maintenance agreements, hosting agreements, licensing, escrow as well as related issues with copyright, trade marks, patents, design and database rights.

Questions Raised

1. Do you support the proposal to improve standards associated with the .uk domain name space?

MacRoberts as legal advisers to clients who have invested significant time and money into the promotion of their .uk domain names support any proposals to improve standards in this area.

2. How could standards be improved? For example, could this best be done within the existing contract framework between Nominet and the registrars, or through some kind of "added value" mark – a form of certification or additional commitment – to allow different levels of service depending on the nature of the registrar's business?

We would suggest that standard could be improved through an existing contract framework between Nominet and the registrars through a code of practice which is rigorously enforced with corresponding sanctions for breach.

Nominet's commitment to registrars:

3. Should we provide more support for developing the technical knowledge of registrars (for example training, e-learning packages, guides/manuals, better structured user interfaces)? If you are a registrar, what did you find most difficult in establishing your account?

N/A

4. Should we provide support to registrars to help develop business processes related to selling and maintaining .uk domain names?

N/A

5. How can we ensure consistent and high-quality service to registrants?

N/A

6. We are committed to improving clarity and transparency for all our communications. We believe that the existing registrar contract could be made clearer and easier to understand. Do you have specific comments on the current document?

N/A

Nominet's commitment to registrants: we have a contractual relationship with registrants and we will continue to support them. In particular, we will try to contact registrants before allowing a name registration to lapse (or if registered data appears to be incorrect). We will also continue to provide a direct service to registrants. However, we do not wish to get in the way of the registrar-registrant relationship.

7. How can we ensure the correct balance between back-up support provided by Nominet and the first-line support provided by the registrar?

Ensure registrant-registrar contracts are clear as to who to address concerns to and when, a clear process as to how complaints should be dealt with by the registrant before passing to Nominet may be of assistance..

8. Should there be a discount from Nominet for those registrars that provide more comprehensive support for their customers?

Financial rewards may be a real incentive for registrars to provide additional support to their customers, however, it would be difficult for Nominet to award the discount without monitoring such support to ensure that it is being adhered to. In any respect, we would suggest that the market will eventually reward those who provide a better service.

9. Should the contract between Nominet and the registrar contain dispute resolution conditions to address registrar-registrant disputes?

Yes.

10. Should Nominet set performance criteria, for example with timescales for updates? If so, how should these be enforced?

We note that much of the tag holder agreement refers to obligations to comply “without undue delay” and similar, and a more rigid timescale for compliance, will ensure that whether a breach has occurred or not will be easier to ascertain.

11. Should the contract between Nominet and the registrar apply to the actions of the registrar’s resellers?

Yes.

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

12. Should Nominet work with other bodies in the Internet sector in the UK to ensure better coherence between different codes of practice?

Nominet’s work with other bodies will always assist in expanding its understanding of the sector in general and gain an insight into the experience of other parties on which it can build its own.

13. The current registrant contract requires registrants to ensure that their details are accurate and kept up to date and that the WHOIS opt-out is used correctly. Should all three contracting parties – Nominet, the registrar and the registrant – have a responsibility to correct information that they are aware is incorrect (including inappropriate use of the WHOIS opt-out by trading entities)? And how could this be built into contracts between the three parties?

The WHOIS database is currently the best method of obtaining information regarding who operates a particular domain name as it is often the case that such contact information is not stated on the website. We have often used the WHOIS database to discover who is behind the registration of a particular domain name so that relevant enforcement proceedings can be taken.

Often, however, we have found that the WHOIS record contains misleading, incorrect or confusing information. In a majority of cases it is the actual registrar’s details which are completed, masking the identify of the registrant. Under the Data Protection Act 1998, the data controller of personal data requires to keep personal data accurate. If the registrant is an individual and their details are incorrectly noted on the WHOIS database, then the holding of incorrect information or a failure to correct it may be a breach of the Act and it should be clear who is the data controller in these circumstances.

The Registrar’s commitment:

14. Should Nominet require the registrar to publish information and if so what? How could this be enforced?

We consider that relying on registrars to self-publish compliance may not be useful as those registrars which are complying will publish details and those which are not will not comply with the requirement to publish.

15. Should registrars be required to publish service level agreements as part of their commitment to Nominet and to their customers? How could this be enforced?

Service level agreements should not have to be published, particularly where they may disclose confidential information of either party, however, where model service level agreements are in place, these should be prominently displayed on the website of the registrar and a hard copy sent to the registrant.

16. How can we improve the quality of registrant details?

N/A

17. Should there be an explicit requirement for domain names only to be registered in the name of the registrant unless the registrant requests otherwise? Should there be an automatic right to correct misallocation?

We think it is imperative that domain names are registered in the name of the registrant. If a .uk domain name is found to be infringing the intellectual property rights of another or, for instance, contains defamatory material, then the fact that the domain is registered to a party other than the content owner may imply some liability. If registrars are recording themselves as the registrants of domain names then they may subsequently become liable for content in that domain as they do not state that they are merely acting as agents on behalf of a disclosed other party.

We agree that registrars should register domain names in the name of the registrant unless explicitly provided for otherwise. We do not consider, however, that registrars should be able to register domain names on behalf of registrants as there is already an ability for individuals to opt-out of the WHOIS database.

We would approve a requirement to correct misallocations should be automatic and quick to ensure any infringements of others rights can be resolved quickly.

18. Should registrars be required to publish clear information about the role of Nominet, including contractual requirements with Nominet?

We note that registrars are obliged to make registrant's aware of Nominet's terms and conditions but this does not always occur. Registrars should be required to provide clear links to Nominet's contractual terms as suggested by Nominet. We would suggest, however, that a mere link to Nominet's terms and conditions may not be sufficient to incorporate the terms into the contract with the registrar and so we would suggest that on registration, Nominet's terms and conditions are required to be opened and scrolled down and accepted, whether by way of a tick box or click icon, to ensure they are incorporated and therefore enforceable.

19. Should new registrars qualify against predefined objective criteria? If so, what?

N/A

20. How should we monitor quality and compliance with standards and/or best practice? Should this be done reactively (i.e. in response to complaints)? Or through on-going assessments? And how should decisions be made (e.g. through Nominet's operations team, through an independent mechanism)?

Noting Nominet's observations that it does not have the staffing to proactively manage compliance with standards then we would suggest that reactive responses to complaints would be the best method of ensuring compliance.

We would suggest that compliance with standards should be assessed through Nominet's operations team, with an ability to appeal decisions to an independent third party.

21. What should we do if it goes wrong? Should we apply sanctions for failing to comply with the registrar agreement? And, if so, what? And how should we assess appeals?

We note that Nominet proposes to introduce a similar system to the Dispute Resolution Service to handle complex dispute between registrars and registrants and that straight breach of contract issues will be dealt with by Nominet.

We would suggest that an independent third party is able to review any decisions made by Nominet (whether in a straight forward dispute or complex) to ensure that registrants are entitled to a fair hearing and appeal process. The third party may be an independent legal expert appointed with the consent of both parties who could assess the dispute objectively.

We consider that both categories of sanctions should be included to ensure compliance with breaches of the registrar contract, naming and shaming for perhaps minor offences with the "real" sanctions of fine, suspension or withdrawal of service for continuing minor or material breaches.

Yours faithfully

**MacRoberts
Solicitors**