

# Direct UK Registrations

## *Response to Consultation Document*

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### **A. Executive Summary of Response**

This document is a response to the consultation document entitled “Consultation on a new .uk domain name service” published by Nominet in July 2013. It should be read in conjunction with my specific responses to the questions asked within the document. Numbering within section B of this document corresponds to the section numbering within Nominet’s own document.

The proposals to open up .uk for second level registration remain one of the least well thought-out proposals I have yet to read from Nominet. Whilst these proposal are less dreadful than their predecessors, they remain deeply flawed and should be abandoned. The proposals pay insufficient attention to the rights and legitimate expectations of existing registrants. They continue to conflate opening up domains at the second level with trust and security. They represent feedback to a one-sided consultation as if it were representative. And, most importantly, they fail to demonstrate that the proposals are in the interest of all stakeholders.

I hereby give permission to Nominet to republish this response in full, and encourage them to do so.

### **B. Answers to specific questions**

The following section gives answers to specific questions in Nominet’s second consultation paper. Areas of text in italics are Nominet’s.

*Q1. The proposal for second level domain registration*

*This proposal seeks to strike a better balance between the differing needs of our stakeholders and respond to the concerns and feedback raised to the initial consultation. We have ‘decoupled’ the security features from the proposal to address concerns regarding the potential creation of a ‘two tier’ domain space and compulsion to register in the second level. We have set out a more efficient registration process to enhance trust in the data and put forward an equitable, cost effective release mechanism.*

*Q1.a Do you agree with the proposal to enable second level domain registration in the way we have outlined?*

A1.a No, I do not agree with the proposal to enable second level domain registration as outlined.

*Q1.b Please tell us your reasons why.*

A1.a The reasons I do not agree with the proposal to enable second level domain registration as outlined are as follows:

In general, no persuasive case has been made to open up second level domain registrations at all, and the less than persuasive case that has been put fails to adequately weigh the perceived advantages of opening up second level domain registrations against the damage caused to existing registrants. In simple terms, the collateral damage outweighs the benefits.

Whilst it is agreed that domain names are not themselves property, in many ways they behave a little like property. Domain name registrants, whether they are commercial businesses, charities or speculators, invest in brands and other material connected with their domain names. The business models of some of these participants (be they arms companies, dubious charities or ‘domainers’) may or may not be popular with some, but a consultation purporting to deal with registration policy should not be the forum for addressing that. Like it or not, these are all people who have invested in their domain name and their brand around that domain name on the basis of the registration rules currently in place. Using the property analogy, they have built their house upon land they believed they owned. Nominet here is government, planning authority and land registry rolled into one, and proposes telling the domain name owners that whilst they thought they had bought the land that they have, now others may be permitted to build on top of them – but no matter, Nominet will still ‘continue to support’ their now subterranean houses. And for the princely sum of about twice what they are paying Nominet already, they may buy the space above their existing home. Of course this is only an option, and living in the dark, below whatever neighbour might come along is an alternative. In any other setting, this would be called extortion.

Of course there are undoubtedly good reasons to open up second level domains; were we able to revisit the original decision made when commercial registrations were first allowed in *.uk*, second level domains would probably not exist. However the option to revisit that decision is not open to us. Therefore, to change those registration rules Nominet needs a very good reason indeed; a reason so strong, and so powerful that it trumps the rights and legitimate expectations of all those existing registrants. No such reason has yet been presented.

Nominet claims in the introduction to its second consultation paper “*It was clear from this feedback [on its first consultation] that there was support for registrations at the second level*”; it does not say whether this support outweighed the opposition, and the full consultation responses have never been published. In the background paper Nominet says “*The feedback we received was mixed*”. In the press release after the first consultation, Nominet said “*It was clear from the feedback that there was not a consensus of support for the direct.uk proposals as presented*”. Nominet’s initial consultation document only told one side of the story; it presented the advantages of opening registrations at the second level without putting forward any of the disadvantages. It is therefore completely unsurprising that it found favour with some respondents particularly those unfamiliar with domain names who would not be able to intuit the disadvantages themselves, rather like a politician asking voters whether they would like lower taxes without pointing out the consequences. The second consultation is little better – nowhere does it set out the disadvantages of the proposal as a whole to existing registrants. Given this, it is remarkable how much opposition the proposal has garnered. I have yet to find anyone not in the pay of Nominet that supports this proposal, and it has managed to unite parts of the industry not normally known for their agreement in a single voice against Nominet.

For over 20 years registrations have been made in subdomains of *.uk*, and since 1996 that process has been managed by Nominet. Nominet claims to be a ‘force for good’ that seeks to enhance trust in the internet. Turning its back on its existing registrants that have single-handedly funded its very existence seems to me the ultimate abrogation of that trust.

The remainder of my comments on this consultation should therefore be read in the context that the best course of action for Nominet would be to admit that in this instance it has made an error, and abandon this proposal in its entirety.

*Q2. Registration process for registering second level domains*

*We believe that validated address information and a UK address for service would promote a higher degree of consumer confidence as well as ensure that we are in a better position to enforce the terms of our Registrant Contract. We propose that registrant contact details of registrations in the second level would be validated and verified and we would also make this an option available in the third levels that we manage.*

*2.a Please tell us whether you agree or disagree with the proposed registration requirements we have outlined, and your reasons why. In particular, we welcome views on whether the requirements represent a fair, simple, practical, approach that would help achieve our objective of enhancing trust in the registration process and the data on record.*

A2.a Validation of address information and indeed any proportionate steps that increase the accuracy of the *.uk* registration database are desirable. However, this is ineffective for the desired purpose (increasing consumer confidence), and in any case there is no reason to link it only to registrations at the second level.

Nominet’s logic here is flawed. Would validation of address information and a compulsory UK address for service promote a higher degree of consumer confidence? I believe the answer to this is no for the following reasons:

Firstly, the fact that a domain name has a UK service addresses (which presumably would include a PO Box or similar) does not, unfortunately, guarantee that the content of the web site attached is in some way to be trusted. All it guarantees is that the web site has a UK service address. Web sites can contain malicious code whether placed there by the owner or by infection. Web sites with UK service addresses can sell fraudulent goods. Web sites with UK service addresses can turn out not to be registered to the person the viewer thought that they might be (see Nominet’s DRS case list for hundreds upon hundreds of examples). Nominet has presented no evidence that domain name registrations with UK service addresses are any less likely to carry material that should be ‘distrusted’.

Secondly, the registration address for a domain name is not easily available to the non-technical user using a web browser. Nominet appears to be around 15 years out of date in this area. Consumers increasingly do not recognise domain names at all, but rather use search engines. The domain name is becoming increasingly less relevant (despite Nominet’s research) as consumers are educated to ‘look for the green bar’ or ‘padlock’. This is a far better way, with a far easier user interface, to determine whether the web site is registered to whom the user thought it was. It is by no means perfect, but is far more useful than Nominet’s proposal (not least as it has international support). Nominet’s proposal serves only to confuse users.

Thirdly, the concept that UK consumers would be sufficiently sophisticated to know that domain names ending *.uk* had been address-validated (but not subject to further validation) unless those domains ended with *co.uk*, *org.uk* etc. is laughable. The user would have to know that *www.support.org.uk* is not address validated, but that *www.support.ibm.uk* would be address validated, which would require the average internet user memorising the previous table of Nominet SLDs. If Nominet hopes to gain support for address validation, it should do it across the board.

Fourthly, this once again means that existing registrants would be disadvantaged. By presenting (probably falsely) registrations in the second level as more trustworthy, this implies registrations at the third level (i.e. all existing registrations) are somehow less trustworthy, or in some way ‘dodgy’.

Nominet presents two other rationales for this move. Nominet claims it can enforce its contract more easily if the address is validated. This is somewhat hard to understand. Firstly, is Nominet not concerned about enforcing its contracts for other domain names? Secondly Nominet should insist on a valid address for service (Nominet already pretty much does this under clauses 4.1 and 36 of its terms and conditions). If the service address is invalid, Nominet can simply terminate its contract. Thirdly, a UK service address seems a rather onerous responsibility in particular for personal registrations, such as UK citizens who have moved abroad.

Nominet also suggests such a process would ‘enhance trust in the data on record’. This is a fair point, but should apply equally to all domain names. It is also unclear why having a foreign company’s correct head office address (outside the UK) would not be acceptable, whereas a post office box to forward the mail would be acceptable.

*Q3. Release process for the launch of second level domain registration*

*The release process prioritises existing .uk registrations in the current space by offering a six month window where registrants could exercise a right of first refusal. We believe this approach would be, the most equitable way to release registrations at the second level. Where a domain string is not registered at the third level it would be available for registration on a first-come, first-served basis at the start of the six month period or at the end of this process, if the right of first refusal has not been taken up.*

*Q3.a Please tell us your views on the methodology we have proposed for the potential release of second level domains. We would be particularly interested in your suggestions as to whether this could be done in a fairer, more practical or more cost-effective way.*

A3.a The release mechanism proposed is less invidious than the previous scheme in that it gives priority to existing registrants. This change is to be welcomed I suppose, though is not a substitute for the correct course of action (scrapping the idea of opening the second level up at all).

The remaining challenge is how to deal equitably with the situation where two different registrants have registrations in different SLDs. The peaceful coexistence of such registrants was facilitated by the SLD system, and opening up *.uk* negates that facilitation. The current proposals give priority to the first registrant. This has the virtue of simplicity.

I have heard arguments that this penalises *co.uk* owners, who are likely to have spent more building a brand. In particular, it is argued, this penalises owners of two letter

*co.uk* owners, as these were released after two letter domains were released in other domains (handled under Q3.b below). To the first, the counter argument is that to prefer *co.uk* penalises *org.uk* owners (for instance); no doubt the minute there is speculation that Nominet might prefer *co.uk* owners, there will be an active market in registering names in *co.uk* that are only registered in *org.uk*.

*Q3.b Are there any categories of domain names already currently registered which should be released differently, e.g. domains registered on the same day, pre-Nominet domains (where the first registration date may not be identified with certainty) and domains released in the 2011 short domains project?*

A3.b I see no merit in treating pre-Nominet domain names differently provided the domain name holder has accepted Nominet's terms and conditions.

I see no merit in treating domain name registered on the same day as different, provided Nominet can still ascertain the order of registration.

If Nominet cannot ascertain the order of registration, I would inform each party of this and invite evidence. If after admitting evidence Nominet still could not determine which registration was first, I would either allow an auction or choose at random.

With respect to the short domains project, I would argue Nominet has dug its own grave. Just like all of its registrants before, Nominet did not predict it was to open up *.uk*. For consistency, it could re-auction two letter domains in *.uk*. However, a simpler, fairer, and more equitable result would be to not open up *.uk* at all.

*Q3.c We recognise that some businesses and consumers will want to consider carefully whether to take on any potential additional costs in relation to registering a second level domain. Therefore we are seeking views on:*

- *Whether the registrant of a third level domain who registers the equivalent second level should receive a discount on the second level registration fee;*
- *Developing a discount structure for registrants of multiple second-level .uk domains;*
- *Offering registrants with a right of first refusal the option to reserve (for a reduced fee) the equivalent second level name for a period of time, during which the name would be registered but not delegated.*

*Please tell us your views on these options, or whether there are any other steps we could take to minimise the financial impact on existing registrants who would wish to exercise their right of first refusal and register at the second level.*

A3.c These proposals risk introducing excess complexity. The most equitable path would be not to open up registrations at the second level at all.

If, despite all objections, the second level is opened up, it is vital that the interests of existing registrants are protected. A simple and fair way of achieving this would be to allow any existing registrant (and only existing registrants) the registration of their *.uk* second level domain for free for four years (or failing that at a very substantial discount to the existing prices in third level domains). As this would be a single registration to an existing registrant for a single period the marginal costs would be low. This would be sufficient time for the registrant to change stationery, letterhead etc. in the normal course of events. This should be permitted through registrars other

than the registrant's existing registrar to encourage competition. Save for the altered price, this registration would be *pari passu* with any other.

*Q4. Reserved and protected names*

*We propose to restrict the registration of <uk.uk> and <.com.uk> in the second level to reflect the very limited restrictions currently in force in the second level registries administered by Nominet. In addition, we would propose to reserve for those bodies granted an exemption through the Government's Digital Transformation programme, the matching domain string of their .gov.uk domain in the second level.*

*4.a Please give us your views on whether our proposed approach strikes an appropriate balance between protecting internet users in the UK and the expectations of our stakeholders regarding domain name registration. Can you foresee any unintended complications arising from the policy we have proposed?*

*A4.a This is one of the stranger proposals from Nominet.*

In essence a government programme (internal to the government) has removed the right of certain organisations to register within *gov.uk*. *gov.uk* is not administered by Nominet. I fail to see why those organisations that turned out to be on the wrong side of a government IT decision should have any special status whatsoever, especially when compared to registrants that have been Nominet's customers for many years. I notice Nominet's consultation does not even offer any rationale for this.

One example is *independent.co.uk* which is the site of The Independent (a UK newspaper). However, *independent.gov.uk* does not seem to be active. This is perhaps the most obvious example, but there are no doubt others. There is simply no reason why those ejected from *gov.uk* should have preferential treatment over domain name holders in *.uk*. At the very most, they should be given secondary status after existing domain name holders, but I fail to see why they can't take their chances in the domain name market like any other organisation.

I am afraid this proposal smells like Nominet pandering for support from government for its otherwise unpopular proposal.

*Q5. General views*

*Q5.a Are there any other points you would like to raise in relation to the proposal to allow second level domain registration?*

1. Nominet should abandon its current proposals in their entirety. Nominet has failed to explain why the proposals *in toto* are in the interests of its stakeholders, in particular the registrant community (who after all will have this change inflicted on them). Unless there is a high degree of consensus amongst all stakeholder groups in favour of the proposal, it should be abandoned. I believe no such consensus exists.
2. Nominet should disaggregate the issue of registrations within *.uk* and the issue of how to help build trust in *.uk* in general. I said before that Nominet should run a separate consultation for opening up *.uk*, as a simple open domain with the same rules as *co.uk*, and Nominet has failed to do this having retained different rules for validation, address verification and price. Both consultations conflate the issue of opening up the second level domain with issues around consumer trust (although admittedly the second consultation does this less than the first). Whilst consumer trust and so forth are important, they are orthogonal to this issue.

3. Nominet should remember that a core constituency of its stakeholders are those who have registered domain names. If new registrations are introduced (permitting registration in *.uk* for instance), Nominet should be sensitive to the fact that these registrants will feel compelled to reregister if only to protect their intellectual property. Putting such pressure and expense on businesses to reregister is one thing (and a matter on which subject ICANN received much criticism in the new gTLD debate); pressurising them to reregister and rebrand by marketing their existing *co.uk* registration as somehow inferior is beyond the pale. Whilst the second proposal is less invidious than the first, it is still a slap in the face for existing *.uk* registrants.
4. Nominet should recognise that there is no silver bullet (save perhaps one used for shooting oneself in the foot) for the consumer trust problem, and hence it will have to be approached incrementally.
5. Nominet should be more imaginative and reacquaint itself with developments in technology and the domain market place. Nominet's attempt to associate a particular aspect of consumer trust with a domain name is akin to attempting to reinvent the wheel, but this time with three sides. Rather, Nominet should be looking at how to work with existing technologies. For instance, if Nominet was really interested in providing enhanced security, it could issue wildcard domain validated SSL certificates for every registration to all registrants; given Nominet already has the technology to comprehensively validate who has a domain name, such certificates could be issued cheaply or for free (and automatically). This might make Nominet instantly the largest certificate issuer in the world. If Nominet wanted to further validate users, it could issue EV certificates. And it could work with emerging technologies such as DANE to free users from the grip of the current overpriced SSL market.
6. There is no explanation as to why these domains should cost £4.50 per year wholesale rather than £5 for two years as is the case at the moment. If the domain name validation process is abandoned (as it should be) these domains should cost no more to maintain than any other. Perhaps the additional cost is to endow a huge fund for potential legal action? The increased charges add to the perception that the reason for Nominet pursuing opening domains at the second level is simply financial self-interest, rather than acting in the interests of its stakeholders.

*Q5.b Are there any points you would like to raise in relation to this consultation?*

To reiterate the point I have made before, this consultation and its ill-fated predecessor fail to put their points across in an even handed manner. That is they expound the advantages of Nominet's proposal, without considering its disadvantages. That is Nominet's prerogative, but if that is the course Nominet takes then it should not attempt to present the results of such a 'consultation' as representative, as their consultees will have heard only one side of the story.

Please see:

<http://www.alex.org.uk/nominet/directukresponse.pdf>

and

<http://www.alex.org.uk/nominet/seconddirectukresponse.pdf>

for further details.