

Draft issue group recommendations on 'Domain names used in connection with criminal activity'

'Domain names used in connection with criminal activity' - Draft Recommendations

Background

The issue group on 'Domain names used in connection with criminal activity' was set up in March 2011 to help bring external expertise and perspective into Nominet policy decision-making.

The process has been open to all stakeholders throughout.

Having met 3 times, the group is now preparing to finalise recommendations to put forward to the Nominet board. The issue group will meet to discuss the draft recommendations on 21st September 2011, and feedback from all interested stakeholders is welcome.

This document outlines the key recommendations, based on areas of consensus developed to date within the group. The issue group's recommendations will be presented to the Nominet board for its consideration.

It is anticipated that further discussion will take place under the policy process to consider issues where consensus has not yet been achieved.

Draft recommendations – key principles

- Nominet should have an abuse policy that specifically addresses criminal activity in its terms and conditions.
- Nominet should be able to act under an expedited process to suspend domain names associated with serious crime when requested by a law enforcement agency.
- An expedited procedure to suspend domain names should only be available where a) it is the last resort in dealing with the domain name, following requests with registrar, ISPs etc in the first instance or b) it is the most viable option to prevent imminent or ongoing serious consumer harm.
- The policy should exclude suspension where issues of freedom of expression are central aspects of the disputed issue.
- Nominet should consider establishing a registrant appeal mechanism.
- When the policy is operational, Nominet should set up an independent panel to review how the policy is working.
- Nominet should exclude civil or third party requests from this policy (which is focused on criminality), but these merit further discussion under the policy process.
- Nominet should communicate the outcome of its policy development to Government to inform its own deliberations in this field.

Summary of discussion and consensus

The issue group on 'Dealing with domain names used in connection with criminal activity' has considered and discussed the issue of the suspension of domain names associated with criminal activity by Nominet. The research, stakeholder contributions, and discussions have raised a range of complex issues across private, public and criminal law. The group has sought to consider how a Nominet policy should enable the company to act in a transparent and consistent way, whilst

addressing through contractual means possible liabilities that may arise. In examining this issue, the group has considered the range of views on how Nominet can act in a socially responsible manner and, in doing so, meet its public purpose.

The issue group has agreed that Nominet should have an abuse policy that specifically addresses criminal activity in its registrant terms and conditions. The strong consensus of the issue group is that Nominet should not itself be expected to determine criminality in any case. However the policy should enable Nominet to act swiftly where it has received a properly authorised request from a UK public law enforcement agency to suspend a domain. This would be over and above the evaluation process that Nominet would conduct when in receipt of *any* request for suspension from any party.

The group recognised that a Nominet suspension process operates alongside other mechanisms including requests for domain or account suspension directed toward registrars and ISPs. Procedures as to where requests are principally directed differ between law enforcement bodies at present. Following considerable debate, the issue group has identified two general categories of requests where it recommends Nominet apply the expedited procedure. These are:

- a) Requests that constitute a last resort in dealing with the domain name, following reasonable efforts to seek cooperation from the registrant, registrar, or ISP in the first instance;
- b) Requests that constitute the most viable option where the urgent suspension of the domain name is necessary to prevent serious and immediate consumer harm.

It was the consensus of the group that such requests should meet the criteria of 'serious consumer harm' and would include crimes as defined under the Serious Crime Act 2007 such as fraud, physical harm, counterfeiting, the unlicensed distribution of controlled substances or medicines, as well as phishing and botnets.

The issue group acknowledges that court orders are the preferred method by which suspensions of domain names for criminal activity should be made, but that in urgent cases this may not be possible or practical in order to prevent consumer harm. It therefore recommends that, before Nominet acts on a request, the policy requires law enforcement agencies to provide a declaration that the suspension is proportionate, necessary, and urgent and in accordance with this policy. Such requests should only be accepted from UK law enforcement agencies with which Nominet has a trusted relationship. The group recommends that the Nominet Board should therefore consider asking the executive to develop a process to establish trusted relationships, taking as a starting point the 'Single Point of Contact' (SPOC) model used for co-operative processes under the Regulation of Investigatory Powers Act 2000.

The issue group had broad consensus that the policy should explicitly rule out applying the expedited process to requests which involve disputes between private parties, freedom of expression or political speech, or requests relating to offences where prosecution would require the authorisation of the Attorney General or the Director of Public Prosecutions.

At this stage the issue group recommends a policy that would apply to requests from UK public law enforcement agencies. The issue group was not able to reach a consensus on the acceptability of requests from private parties, but agreed that further discussions may be fruitful to identify areas

where consensus might be reached on principles for addressing suspension requests from third parties. The issue group therefore suggests that the Board may wish to consider the option of further discussions under the policy process following a review of the implementation of the Board's decision, and following an assessment of the impact of recent judicial and regulatory developments. Given that the Government is currently considering the issue of domain suspension specifically to address online piracy, the group recommends that Nominet communicates the outcome of its policy development to Government to inform its own deliberations in this field.

The issue group views transparency of the process and Nominet's actions as being vital in ensuring trust. As such, the issue group recommends that the Board establish a registrant appeal mechanism that respects registrants' rights under general principles of law. It also recommends that the Board create an independent panel to review how the policy is working and whose findings could be published on a regular basis.