

# Contact Data Disclosure in the .uk WHOIS

## Summary of Consultation Feedback

Nominet .uk Policy Process Secretariat

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## 1. Introduction

Nominet is an internet company centred on managing the .uk namespace. As the registry for .uk domain names, Nominet holds the authoritative record of registrant information in the form of the .uk register. The .uk WHOIS is a free, publicly searchable database of .uk domain name registrants which currently publishes technical data related to the domain and registrant contact **information including the registrant's name and address.**

Nominet and our stakeholders have a high expectation of accuracy of contact records for .uk registrants. **It is one of Nominet's core functions** as a registry to ensure that the register holds high quality data and we want to ensure the WHOIS continues to meet the varied priorities of our stakeholders. Our research together with stakeholder feedback highlighted that the way in which domains are registered and used has changed over time and since the last review of the WHOIS in 2002. The use of privacy services has been prevalent in the gTLD space for some time and recently we have noted an increased use of privacy or proxy services in the registration of .uk domain names. Currently the only way for this to occur is for the domain to be registered in the name of the privacy service with the unintended consequence being that they take on the associated rights and obligations associated with the domain.

The combination of these factors indicated that a review of whether the WHOIS continues to meet the evolving needs of our stakeholders and the public interest was necessary and whether the contact data collected at the point of registration must necessarily be the same data that is made publicly available.

## 2. Consultation process

In October 2014 the Board approved a proposal to carry out a consultation with stakeholders on a review of the .uk WHOIS. The consultation ran from 12th March 2015 to 3rd June 2015. A full consultation document which included background research and our analysis of policy options was provided in addition to a condensed version of the consultation and registrar specific information which focused mainly on the practical implementation of the proposals. The consultation questions were consistent across all documents and were published on the Nominet website. We were also grateful to receive support from some of our stakeholders who raised awareness amongst their networks by highlighting the consultation in appropriate newsletters and communications.

The consultation sought feedback on two proposals:

- Refine WHOIS opt-out eligibility criteria to meet stakeholder expectations
- To enable registrar run privacy services to operate within a contractual framework

Respondents were able to give feedback using an online response tool and 38 responses were submitted through this functionality. A small number of respondents (6) gave feedback directly to the Secretariat by email. We also received an additional late submission significantly past the deadline for providing feedback. This input has been taken into account as part of this summary but was not provided to Moorcroft Market Research due to the lateness. We held a roundtable, two webinars, two industry events hosted with the British Computer Society and the Alliance for IP

and bi-lateral meetings either face to face or by phone. This summary takes into account all feedback gathered throughout the consultation process including responses submitted online and by email in addition to input gathered at the stakeholder events.

Responses were received from a broad range of respondents including registrars, industry and rights-holders, consumer organisations, privacy interests, public bodies, and individuals.

A number of stakeholders particularly representative bodies and Government expressed support for our approach to publish the research and evidence carried out prior to the consultation and for providing the analysis of the policy options as part of the consultation document.

*“The consultation paper reflects an impressive level of research and analysis, and the careful consideration of numerous alternatives. COA particularly commends the identification, in section IX of the paper, of a succinct list of policy objectives for .uk Whois services.”*

*“The Government welcomes the approach taken by Nominet, in publishing both a full consultation which sets out the rationale for the proposals and underlying research, as well as a short-form consultation. This level of transparency is important to enable the wider stakeholder community to respond to the consultation armed with all the relevant information.”*

### 3. Objectives of the policy review

The majority of stakeholders and all public bodies responding to this question (66%) agreed with the objectives set out in the consultation document, namely:

- a) The continued provision of a centralised register of registrant data and a publicly available WHOIS service
- b) The enforceability of the rights and obligations of all contracted parties (and intended parties)
- c) Maintaining high levels of data quality
- d) Enabling registry and registrar competitiveness whilst maintaining the public interest
- e) Minimising costs to stakeholders and implementation feasibility, harmonising where possible with existing processes
- f) A policy that is fit for the future taking into account potential changes to data protection legislation

Responses indicated a good level of understanding and support for the objectives but that the proposals would need further refinement in order to ensure they were met. The majority of stakeholders expressed support for the need for Nominet as the central register to hold the registrant contact data. These views were put forward in responses to various questions and were not limited to answers to this specific question. These are covered in the relevant section in this summary.

## 4. WHOIS opt-out proposal

Currently in order to qualify to opt-out of displaying a contact address on the .uk WHOIS opt-out registrants must meet the following eligibility criteria:

- i. The registrant must be an individual; and,
- ii. The domain name must not be used as part of a business, trade or profession (the “trading” test)

The consultation put forward a proposal to refine the “trading” test element of the criteria in order to make it clear for registrants to understand and easier to apply consistently. The amended criteria proposed to retain the individual element of the criteria and sought feedback on a refinement to the “trading” test:

- i. The registrant must be an individual; and,
- ii. The domain name must not be used:
  - a) to transact with customers (merchant websites);
  - b) to collect personal data from subjects (ie data controllers as defined in the Data Protection Act);
  - c) to primarily advertise or promote goods, services, or facilities.

### a) General comments

The feedback highlighted an apparent lack of awareness of the existence of the opt-out and understanding of the current eligibility criteria including how it would be applied. This inconsistency was particularly noticeable when comparing comments received from non-UK based registrars to those based in the UK. The comments suggested that some registrars understood the proposal to be an introduction of the opt-out rather than a refinement of existing rules and expressed concerns that the service would compete with their own privacy service offering. Another was concerned with the ability for Nominet to enforce criteria based on the use of the domain by the registrant, which is how the criteria is currently applied.

*“Basing the eligibility criteria on the website/content use pointed the domain name seems outside Nominet’s mission scope and furthermore is pragmatically next to impossible to enforce.”*

*“...we believe that this change effectively puts Nominet in to competition with its registrar channels. When Registrars offer domains to customers at or below cost, it is with the hope that they will be able to offer other products, such as privacy, to their domain customers. If a Registry effectively begins to offer Registrar products for free, then much of the incentive to promote that TLD/Registry is lost.”*

This contrasts with the experience of one UK based registrar that responded to say that they educate their business customers in the importance of ensuring their contact details are available on the WHOIS in order to promote trust in their online presence. However it is not clear whether this approach is consistent across the registrar channel and the feedback indicates that Nominet could do more to provide information and education to registrars to ensure a common understanding of how the opt-out works.

We received very few comments regarding the intention to maintain the first part of the test relating to the requirement for the registrant to be an individual, other than a statement that objected to registrants being treated differently according to their status e.g. individual or company. Minor comments were received regarding broadening the availability of the opt-out to all registrants including those using their domain for trading purposes. This would potentially increase the likelihood that the opt-out would be perceived to be a comparable service to those provided by registrars, and therefore a competing service, at least where the registrant is an individual.

Another registrar questioned whether it was necessary for Nominet to continue to provide the opt-out facility given that the operation of privacy services would be formally recognised should the proposal go ahead.

*“We question whether an opt-out is required any longer, if a privacy service becomes available. What are the benefits for having both services? Privacy has become standard within the domain name industry, and is the correct way for Nominet to move. It strikes us that the opt-out service become defunct once privacy becomes an option.”*

It should be noted that Nominet is committed to continuing to provide a publicly accessible WHOIS service. As a data controller Nominet must comply with the relevant legislation relating to the processing of personal data and provide registrants with the protection to which they are legally entitled. The opt-out, which provides individuals with a mechanism of protecting their personal data from publication, free of charge enables Nominet to meet our obligations and act in the public interest.

An alternative suggestion put forward by one respondent was to change the current model from a default opt-in to a default opt-out. This would essentially opt out any registrant that specifies their registrant type as an individual at the point of registration. Whilst this would have the advantage of not requiring a positive action from the registrant to opt out it assumes that all individual registrants would want to be opted out of publishing their details in the WHOIS. It is also highly dependent on the correct registrant type being selected at registration and may result in a reduction in the amount of publicly accessible information available on the WHOIS, which would be problematic for law enforcement and those seeking to assert their intellectual property rights.

Registrars in particular expressed the desire for Nominet to as far as possible implement policies and procedures that were as aligned to existing processes e.g. in the gTLD space and a default opt-out may disproportionately impact registrar processes. The need for policies and processes to be aligned was also consistently highlighted regarding the privacy service proposal.

## b) Comments relating to criteria (b)

The feedback across a range of stakeholders, including the Information Commissioner’s Office (ICO), indicated that whilst the proposal to refine the “trading” element of the opt-out eligibility criteria was welcomed it would benefit from further clarity in order to be able to be understood by registrants and applied consistently by Nominet.

*“In relation to (b), Nominet may wish to consider that the definition of “personal data” within the DPA is potentially wider than is envisaged by the consultation, and the criteria as drafted could, for example, inadvertently include a blog which has the facility for readers to leave comments. The definition of personal data may also include information passively obtained from individuals such as an IP address...It should be noted that the definition of a ‘data controller’ refers to the processing of personal data. ‘Processing’ for the purposes of the DPA encompasses more than collection.”*

This view was echoed by a large number of respondents who also stated that the wording and definitions used in this specific criteria were too broad. It was highlighted that where registrants were using their domains purely for email it would be challenging for Nominet to assess whether such usage was indeed collecting personal data. A potential unintended consequence of the introduction of this test could be to significantly reduce the number of registrants eligible to opt-out. Some questioned whether the direct reference to the Data Protection Act suggested that Nominet act as an enforcement agency by proxy for data protection regulations, a role beyond our remit. It was also highlighted that some registrants who would be potentially caught by this test would actually be exempt from notifying the ICO that they were a data controller due to the context in which they were processing the data.

One registrar with a high degree of knowledge of the opt-out, highlighted that the proposed criteria would be potentially more confusing and challenging to enforce than the status quo.

*“We believe this may prove harder for Nominet to enforce than the existing trading test due to the complexities over 3<sup>rd</sup> party comment systems, subscription systems and other integrated web technologies which store/process personal data – but where the site owner doesn’t actually store or process the information directly, these and other similar situations may cause inconsistent judgments as Nominet staff investigating these cases would need intimate understanding of how site software works and how personal data is processed and stored to properly determine if the site operator is a “data controller””*

A small number of respondents cited the ongoing reform of the European Data Protection Regulation and the possibility that the definition of ‘personal data’ may well change in the near future.

A minority of respondents agreed with the introduction of this test but acknowledged the challenges for Nominet in enforcing it consistently. Some provided alternative suggestions as to how this criteria could be applied e.g. by publishing the ICO registration number or providing a link to the **ICO register of data controllers rather than publishing the registrant’s address in the WHOIS.**

### c) Comments relating to criteria (c)

The inclusion of the word ‘**primarily**’ in criteria (c) was also identified as an area which would benefit from further clarification. Respondents from the intellectual property protection community in particular voiced concerns regarding allowing any site that was being used for a commercial basis, whether that be minor or the sole purpose of the site to be eligible to opt-out. In particular the suggestion that a minimal presence of pay-per-click advertising on a site would be allowed was particularly contentious. This was a view shared by respondents from other sectors.

*“The consultation document says that “affiliate advertising and pay-per-click would generally only prevent a registrant from using the opt-out where it is the sole use to which the domain name is put.” This potentially leaves out website that exist to offer other services or content – meaning advertising is not the sole use of the site – but that substantially generate their revenue through such advertising. It may not always be obvious how a site is making money – for example a site could offer infringing content or content obtained fraudulently, and generate funds via downloads without the need for adverts.”*

*“a blog with “pay-per-click” advertising should not be eligible to opt out in my view. The word “primarily” is too open to interpretation. Suggest removing it from the criteria.”*

Some respondents were concerned with how the criteria would be applied and whether the criteria would include thresholds for the number of pay-per-click links or affiliate advertising that would be permissible without breaching the rules.

It is clear that in progressing **the proposal Nominet will need to balance stakeholders’ apparent** need for clearly defined criteria with a pragmatic approach that enables those who should be eligible to opt-out of publication of their contact details. A strict interpretation of the eligibility criteria has itself created enforcement challenges and a more balanced approach would be in line with stakeholder expectations. If the proposal is to proceed as set out in the consultation, it would be beneficial to provide guidance and examples of **how ‘primarily’ is to be interpreted and applied.**

## 5. Publication of the name of the registrant eligible to opt-out

There was no clear consensus view expressed by respondents to this question. Approximately 50% of respondents agreed that the registrant name should be withheld from publication where the registrant is opted-out with the remaining 50% stating that there should be no change.

Registrars generally expressed the view that they would prefer to retain the status quo of publishing the registrant name, a view that was shared by rights holders and law enforcement who were particularly concerned that non-publication of the registrant name could impede investigations.

*“Effective and appropriate enforcement relies on robust evidence. The change would obstruct or slow down the identification of those involved in operating infringing websites.”*

One respondent highlighted that withholding the registrant name would create a practical problem for registrants who wanted to check the details of their own name. **Nominet’s** research highlighted that this is a key function for users of the .uk WHOIS and to remove this would have a significant impact on them and Nominet as a result of the increase in the number of customer support enquiries.

*“As a registrant, an option to suppress the individual’s name too would be desirable. This does however conflict with my need as a WHOIS user to independently check that my own domain still has the correct registrant.”*

Whilst the response from the regulator agreed that the registrant name should also be withheld from publication the Government response indicated no strong opinion so long as there was an effective disclosure process in place to provide registrant contact information to relevant third parties.

*“The government has no strong opinion on whether the name of registrants should also be withheld in the WHOIS, as long as it is clear and transparent how law enforcement agencies and other relevant parties may trace registrants when there is a legitimate reason to do so.”*

It should be noted that withholding the registrant name could be perceived to reduce the differentiation between the free opt-out service provided by Nominet and paid for privacy services operated by registrars albeit with the exception of the opt-out not being available to all types of registrant.

*“This is not straightforward – some registrants would prefer to have their names removed, others may not. Then it really is acting like a privacy service in many respects if all the information is withheld.”*

The feedback from registrars on the perception of the Registry competing with Registrars suggests this is a sensitive issue that could have a detrimental impact on the commercial performance of .uk. The consultation feedback does not demonstrate a clear mandate for withholding the registrant name where the domain is opted-out.

## 6. Mandatory highlighting of the WHOIS Opt-Out by registrars

Two broad perspectives were expressed regarding whether registrars should be under any obligation to bring attention to the availability of the WHOIS opt-out to registrants.

There was no consistent view expressed in the responses from registrars to this question. The majority stated they should have no obligation to highlight the availability of the opt-out with a minority of registrars suggesting the possibility that they could draw attention to it at the time of registration. One registrar highlighted the potential for registrants to be confused between the options for privacy and suggested that registrars could have a role to play in addressing this issue.

*“There should be no obligation for a registrar to have provide the opt-out service or draw attention to it.”*

*“Registrars should be required to highlight the differences between opt-out and privacy services and ensure registrants are able to make an informed choice between the 2 options. There is potential that some registrars may try to mislead registrants into purchasing privacy protection over opt-out even if the registrant is eligible - this should be avoided as it could diminish trust in the .UK namespace.”*

Conversely, public bodies and individuals were firmly of the opinion that Registrars have a role to play in explaining the privacy choices available to registrants including the opt-out. A common theme including from Government and the ICO suggested that registrars should be required to highlight the availability of the opt-out to eligible registrants over and above their own privacy service offering.

*“The Government believes that registrars should be open and transparent and have a duty to ensure all registrants and potential registrants are aware of the WHOIS opt-out*

*criteria and what the implications are, should registrants be eligible and wish to take up this option.”*

*“Information regarding the availability of an opt-out should be clearly presented to the registrant in appropriate cases, and they should not be unduly pressured or misled that an added-value privacy service provided by a Registrar would be the only option to opt-out of publication on WHOIS”*

*“Registrars should be obliged to make the availability of the opt-out known, and to honour the Registrant’s wishes, provided the eligibility criteria are met. They must not deliberately obscure details of the opt-out and promote a privacy service in circumstances where the opt-out would clearly be more appropriate.”*

Placing an obligation on the registrar to draw attention to a service that is not provided by them could introduce unnecessary complexity into the registration process. One registrar expressed concern regarding being able to apply the policy and procedure whilst another highlighted that a blanket obligation imposed on all registrars may not be appropriate due to the varying nature of registrar business models.

*“No obligation at all. The process or policy requirements may be not be possible to meet by registrars, so they should not be forced to implement this.”*

*“This may depend on the type of registrar as to what attention they bring on the opt-out function – corporate registrars by the nature of their clients may not notify clients as they cannot opt out and retail registrars may want to notify clients of the opt-out as a benefit of using that registrar.”*

Clearly it is important that registrants are aware of all the choices available to them in relation to protecting their personal data and privacy. The feedback suggests that there is more Nominet could do in order to ensure that both registrars and registrants are aware of the availability of the opt-out and understand the functionality and that a non-mandatory approach to this would be preferred.

## 7. Registrar privacy services proposal

The feedback indicated general support for the principle of Nominet providing registrars with functionality to enable the collection of registrant data to be separated from publication. Respondents, including Government and Intellectual Property Rights protection advocates expressed the view that enabling functionality for registrars to be able to register the domain to the intended registrant would be a positive development as the registrant would be afforded the protection they were entitled to through the registration contract. They voiced support for any process that would provide the registry with registrant data that could be validated and would include an identifiable contact for the domain name as this would aid investigation and enforcement. Additionally a small number commented that the ability to identify domains registered to privacy services in the .uk WHOIS would increase transparency.

*“Creating a formal framework for privacy services would be a positive change”*

*“The government supports this approach, in order to protect registrants and ensure they remain the registered owner of a domain name, even when using a privacy service, and*

*that registrants will receive consistent service across the wide number of privacy services offered.”*

All respondents from the intellectual property community and law enforcement stated that a process for accessing the registrant data would be of the utmost importance in order for them to robustly investigate and enforce their rights. In addition the regulator advised Nominet to **consider publishing both the process for data disclosure and a ‘transparency report’ detailing the number and type of requests for disclosure.**

Conversely some registrars particularly those based overseas were not supportive of the proposed framework due to concerns regarding Nominet interfering with the relationship between the privacy service provider and the customer and because they perceived the proposed solution to be non-standard when compared to processes in the gTLD space.

*“...we believe flagging privacy in WHOIS is problematic, ineffective and potentially inserts Nominet into the relationship between the privacy provider and customer...Furthermore it is unclear what Nominet’s role would be if it were drawn in to disputes between registrants and privacy providers...Finally, we are concerned that these changes are another step outside the mainstream standard gTLDs and ccTLDs making .uk less attractive to a wider audience, and less competitive against new TLDs.”*

Clearly if the proposal were to progress in its current form Nominet would need to take into consideration whether there is a mainstream standard process for the operation of privacy services in the gTLD and ccTLD spaces and if so how to ensure its own process is as aligned as possible. In addition it may be worth investigating whether this generalised interpretation by registrars could be clearer in order that registrants have clarity about their privacy choices and the processes relevant to .uk. Nominet will need to work with registrars to ensure implementation of the proposal uses standard processes where possible in order to avoid unnecessary burden being placed on registrars which could discourage take-up of the framework.

A small number of respondents disagreed with the principle of allowing the proliferation of privacy services which they perceived would be aided by the proposal. One intellectual property rights respondent questioned whether the increase in privacy services was driven by demand from registrants or as a result of a lack of understanding.

*“The Research that Nominet refers to in the Consultation Document does appear to show an increased use of privacy services in the “.uk” domain space (although they appear not to be as prevalent as in other registries). Nevertheless, it may be that this increased use has more to do with the facts that (a) registrants have become familiar with such services in the context of other domain names and/or (b) these services have been sold to registrants by registrars in relation to those other domain spaces<sup>1</sup> and (c) registrants do not understand that the WHOIS regime at Nominet is different.”*

Indeed, in general, intellectual property rights advocates were concerned that an increase in privacy would reduce the amount of publicly available registrant contact data. This concern was somewhat mitigated by the proposal that the registry would hold the registrant data where the domain was registered with a privacy service using the proposed framework. Other concerns included the assertion that registrants may still continue to provide inaccurate contact data.

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<sup>1</sup> *“In this respect we would agree with the statement at paragraph 30 of the Consultation Document that “the comparison of [Registrar] processes also highlighted the relatively homogenised registration processes of registrars regardless of domain space...”*

The feedback indicated a good level of support across a range of stakeholders but further consideration is required to ensure the framework is implemented in a way that is easy for registrars to adopt. In addition the existing process for making registrant contact data available to third parties where there is a legitimate need will need to be reviewed to ensure it can also be used where a domain is registered to a privacy service.

## 8. Registrar standards

The consultation asked for stakeholder views regarding any specific standards registrars should be asked to meet in order to provide a privacy service. All registrars answering this question indicated that they should be required to meet some standards and all selected at least one from the list provided in the consultation document with preference in the following order:

- Being required to respond to or transmit abuse complaints from third parties to the registrant
- Being required to reveal contact details on receipt of a DRS complaint from a third party
- Acting as an address for service for the registrant & Provide their own contact details to be published in the WHOIS
- Highlight the availability of the opt-out to registrants

This view most likely reflects the concern some registrars expressed regarding the perception of **possible 'interference' from** Nominet in the relationship between the privacy service and their customer in relation to direct communications. The registrar responses indicate that they believe this is something they should be required to do and would prefer to do.

There was general agreement across the other groups of stakeholders incorporating individuals, public bodies and intellectual property rights organisations that registrars should be required to meet some standards, with government specifically stating that registrars should meet all of the criteria set out in question 11. **The lack of 'other' comments indicates that respondents agreed** with the options put forward in the consultation. The **very few 'other' comments** related to suggestions that privacy services should be required to document and publish their complaints procedures and that perhaps the process for data disclosure could only apply to commercial entities.

The feedback suggests that if the proposal moves forward in its current form that stakeholders would expect at least the standards set out in the consultation to be introduced. This would appear to be something that both registrars and other stakeholders would welcome.

## 9. Disclosure and release of data to third parties

**It was evident from the feedback that Nominet's current process for disclosing registrant data** was not explained clearly enough in the consultation document as many of the comments, particularly from intellectual property organisations required clarification of what would be **considered a 'legitimate need'** and highlighted the need for a transparent and efficient process for releasing registrant data. The Nominet terms and conditions of registration include provisions

whereby Nominet may make a registrant's personal contact information available. Further detail on this process is published within the privacy policy on Nominet's website. The feedback received from stakeholders indicates that it would have been beneficial to have drawn attention to this process more explicitly in the consultation documentation and would have provided clarity to stakeholders regarding the existing policy and procedure.

Of particular concern to intellectual property organisations was that an increased number of domains being registered with privacy services would result in a reduction in the amount of publicly accessible registrant data in the WHOIS and significantly impede investigation and enforcement of intellectual property rights. The existence of a process whereby third parties could request the data from Nominet was of great importance.

*"We note the refinements suggested to the WHOIS opt-out criteria, as well as the recognition of privacy services, will result in less publicly available contact data for .uk registrants. In our experience we have found that complicates our ability to contact registrants when it becomes necessary in our day to day work, including to protect the intellectual property rights of our member companies. However this, in and of itself, may not be a concern assuming that users like ourselves continue to have the ability to use existing Nominet abuse and dispute resolution processes and that these processes continue to operate in the effective and professional manner even when modified opt-out criteria and future privacy services are in place."*

Many, including stakeholders from other sectors also commented on the need for clear criteria for disclosure and that the process should be transparent.

*"...Nominet should include appropriate safeguards to ensure it collects and retains accurate data on owners of all .uk domains that were registered under a privacy service, and that such data can be accessed by rights holders, such as Ukie members, with a legitimate interest."*

Registrars highlighted potential issues with this approach due to the perceived expectations of the privacy service customer in relation to the drivers behind registering with a privacy service and whether that related to the desire to not have their contact details published, to not have their contact details disclosed to third parties, or both.

*"A major concern with the proposal regarding privacy services is around the fact that registrars will be required to disclose the actual registrant data to the registry. A key service component of a privacy service is the fact that registrant data is not disclosed publicly or to third parties, including the registry. They trust that they have a single point of contact that works with them to decide if and when privacy should be lifted. Requiring registrars to disclose privacy data to the registry would undermine the privacy service, and may result in registrants using third-party privacy services that are as such not recognizable as a privacy service, are not even run by the registrar, and as such would not be subject to the policy."*

One international registrar fundamentally disagreed with the principle that Nominet would release registrant data on receipt of a legitimate request despite the registry's requirement to comply with the law. In addition they voiced concerns regarding whether the process could be 'gamed' creating undue and unnecessary burdens either on Nominet or the privacy service in responding to requests for data. This concern over gaming of the process was also raised by another registrar who was concerned regarding the potential for 'tipping off.'

*“There is also the potential issue of cyberflight. A possible scenario might be that a domain squatter makes use of the privacy service to hide its details on the WhoIs and a rights holder asks for the underlying details to be revealed. The registrant would presumably be informed of the reveal and could then take the opportunity to transfer the domain name to a different entity. This could potentially have an impact on future DRS proceedings with implications relating to showing evidence of an abusive registration, etc.”*

Other registrars were not opposed to the principle of providing Nominet with the data and for Nominet to release it under specific circumstances as set out in the disclosure process, however they did assert that they would want to be notified prior to disclosure or that a better solution would be for them to simply remove the privacy service as per their contract with the customer. In moving forward it would be beneficial to consider any existing processes already place and how customers of privacy service expect their contact data to be disclosed.

One respondent representing views from a number of other copyright industry companies stated that the existing process would continue to meet the needs of this particular group of stakeholders.

*“Our participating organisations that actively use.uk WHOIS services on an ongoing basis advise us that the existing Nominet abuse and dispute resolution policies generally operate in a consistent and reliable manner, to enable prompt access to registrant contact data directly from the registry upon a showing of need for the purpose of protecting intellectual property rights of third parties.”*

This would suggest that the existing process could be examined in order to determine whether the registrar concerns could be taken into account so that the process can adequately deal with requests relating to domains registered to privacy services. This would mitigate in part the concerns expressed regarding a reduction in the amount of publicly available registrant information.

Other suggestions included providing a link on the WHOIS query result page with a Captcha so that WHOIS users could contact the registrant directly, that registrant data should not be released without a court order, and whether the disclosure process could solely apply to commercial registrants. It is unlikely that these views would be supported by IP rights holders wishing to enforce their rights against the registrant and thus requiring the contact details in the course of their investigation or by law enforcement.

## 10. Technical and operational processes

Registrars in particular provided comments on the detail of the implementation of the proposed framework. A common suggestion, particularly from those who either operate in the gTLD space or already provide a privacy service was for Nominet to as far as possible adopt a standard approach which would mirror the gTLD process as this would have the least impact on existing registrar processes.

The transfer process was highlighted as an area which might benefit from further examination if the proposal proceeds in the way set out in the consultation. The issue of managing transfers between registrars was raised and Nominet will need to consider whether any amendments to the current process are necessary in order to accommodate domains registered with privacy services.

*“It should be carefully considered how registrar transfers will proceed if the new registrar does not offer a privacy service. Additionally as many registrars will charge for this service it may be inappropriate to transfer a name to the new registrar’s privacy service if that service has not been paid for.”*

It will be necessary to ensure that registrars have adequate time to implement any changes to their existing processes in order to adopt the proposed framework should it progress. As this is a non-mandatory solution, this would appear to be less of an issue and registrars will have time to make any necessary adjustments to their own processes when convenient to them. However the current process can pose significant issues for registrars due to the domain being registered to the privacy service and therefore should the proposal progress it would be prudent to ensure a framework that is easy for registrars to implement and available in a timely manner that will address this issue expeditiously and encourage adoption by registrars.

## 11. Registrar access to functionality

The consultation also asked stakeholders for views on whether the provision of the framework should be available only to registrars who are either Accredited Channel partners or Channel Partners excluding Self Managed Tags. Many respondents had no opinion on this issue or **answered ‘don’t know’ reflecting the technical nature** of the question and that stakeholders without intricate knowledge of the Nominet registrar structure may have found this point too discrete to comment on.

Registrars put forward responses ranging from only Accredited Channel Partners should be eligible to those who thought that the framework should be provided not only to Self Managed Tag holders but also to third parties. This raises questions as to how and under what form of contractual arrangement Nominet would provide access to third parties, however the possibility that registrars may wish to use a third party as their privacy service provider was raised and could merit further examination.

## 12. Out of scope of the consultation

A small number of stakeholders provided feedback on issues that were not directly referred to in the consultation document, namely the registration process and the accuracy of registrant data. Law enforcement in particular cited that the lack of checks on registrant data in the registration process in favour of a post registration validation process impeded their ability to identify registrants in the course of investigation due to inaccurate or incomplete data. In addition the open registration policy for .uk in that there is no geographical restriction on where registrants are based in order to register .uk domains was questioned. Both the data quality policy and the registration policy have been subject to both review and public consultations relatively recently and have been subject to much discussion with stakeholders. As a responsible registry, running .uk we endeavour to develop policies that meet stakeholder needs and the public interest and ensure .uk remains a competitive and relevant choice for registrars and consumers. We are committed to working with our stakeholders to ensure .uk remains safe, trusted and secure.