

Contact Data Disclosure in the .uk WHOIS

Nominet Consultation Document

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I. BACKGROUND

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 domain name registrants that has existed in its current form since 2002, when Nominet decided to expand the WHOIS to publish more registrant contact information. This was in line with the approaches of other international registries and compatible with our efforts to increase transparency. The .uk WHOIS currently publishes technical data and registrant contact information for domain names, including the registrant's name and address.

Although country code top level domains (ccTLDs) and generic top level domains (gTLDs) have inherent differences in the way in which they operate, we note the continued convergence of standards and developing expectations of stakeholders. We are committed to working with our stakeholders to ensure that we do not introduce unnecessary differences in a converging market.

As the registry for .uk domains, Nominet and our stakeholders have a high expectation of accuracy of contact records for .uk registrants. At the same time, there appears to be a growing concern or sensitivity amongst registrants about public disclosure of their contact details and we are aware that the matter of contact data disclosure is one that other registries and the ICANN community are also reviewing. Changes in attitudes and market behaviour, together with the increased use of privacy or proxy services in the registration of .uk domain names suggest that it is appropriate that we review whether our policy continues to meet the evolving needs of stakeholders and the public interest.

II. OBJECTIVE OF THIS CONSULTATION

This consultation considers issues relating to contact data disclosure of registrants in the .uk WHOIS lookup service. Its purpose is to seek feedback from stakeholders on changes to the disclosure framework in the form of two proposals, which take into account research and evidence in addition to informal input from a range of stakeholders gathered over the past few months.

Feedback to this consultation along with any further evidence gathering will help inform the final policy decision to be made by the Nominet Board, which will then be published.

Our consultation is intended to be accessible and we encourage feedback from a broad range of interested stakeholders including registrants, consumers, internet users, registrars, business, public bodies, law enforcement agencies, rights holders, and those with interests in privacy.

This document is intended to:

- Outline the context, issues, and expectations associated with a review of the contact data available in the .uk WHOIS

- Highlight the key pieces of evidence gathered to inform policy development and policy objectives
- Set out the main elements of possible approaches that we have examined and review their potential impact on our objectives
- Put forward two proposals:
 - to refine the WHOIS opt-out criteria to meet stakeholder expectations
 - to enable registrars who register domain names on behalf of third parties (Channel Partner and Accredited Channel Partner Tag holders) to sell privacy services within a framework that supports our policy objectives.

A short form consultation document is also available for stakeholders. This contains a condensed version of the key aspects of the two proposals, without the background detail of research and other options that were considered.

As part of this consultation, we are also publishing research and analysis carried out to inform our understanding of the landscape and stakeholder expectations to ensure that we have a WHOIS that is fit for purpose and meets our stakeholders' needs. The findings are highlighted in this document, and also available as appendices.

We are committed to maintaining the central authoritative record of domains and ensuring that registrants always have the protection of the Nominet safety net. We also want to explore ways in which we can continue to support our registrars to enhance .uk's relevance and competitiveness in an evolving landscape.

We would welcome stakeholders' views on one or both proposals, and comments on whether our proposed approach meets the objectives for the .uk WHOIS and publication of contact data set out in the consultation. These are outlined in section IX and we include them here for ease:

- 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

In responding, we ask stakeholders to take into account any public interest in the process of domain registration, whether there are any technical issues, together with the effectiveness and proportionality of any potential restrictions on access to contact data in the .uk WHOIS service.

III. HOW TO TAKE PART

Responses to this consultation must be received by 3 June 2015. It would be helpful for your submission to include direct responses to the questions outlined in this document or the short form version of this document. In order to give appropriate weight to the responses received, we would appreciate it if you would explain why you hold your views, how these proposals might impact you, and provide any supporting evidence where possible.

- We encourage responses via our online consultation form at nominet.org.uk/WhoisConsultation as this helps us to review and process responses most efficiently.
- If you prefer, you can email your response to WhoisConsultation@nominet.org.uk along with a consultation coversheet (you will find this at Section XIV – About You).
- You can also participate in a webinar or stakeholder roundtable. Please visit nominet.org.uk/WhoisConsultation for details of dates and locations.

If you have any questions about this consultation, please email WhoisConsultation@nominet.org.uk.

IV. HOW WE WILL USE YOUR RESPONSE

Nominet will publish all written responses received in full (subject to editing or redaction on legal advice), including your name and organisation/affiliation, unless you explicitly request otherwise. We may publish or disclose information you provide us in response to this consultation, including personal information. For example, we may publish an extract of your response in Nominet's summary of responses received, following the consultation.

Nominet will process your personal data in accordance with the Data Protection Act 1998. We may give your response and information to a third party for processing for the purposes of consultation feedback analysis. Your data will not be used for any other purpose.

V. WHY ARE WE REVIEWING OUR POLICY?

1. As the registry, Nominet has responsibility for the integrity and accuracy of records on the .uk register. When a domain name is registered, the registrant provides their contact information to Nominet as part of the contract of registration with Nominet. Making registration data, including the contact name and address of who has registered a domain publicly available through our WHOIS is considered one of the registry's core functions. Whilst the collection and publication of contact data has always had the potential to raise sensitive issues, we note that stakeholders have had a generally good acceptance and understanding of the .uk WHOIS policy, and that the policy appears to have struck the right balance of interests over the past twelve years.
2. We want to ensure that the register holds high quality data and continues to meet the varied priorities of our stakeholders. Market developments and changes in attitudes, combined with the increased use of privacy or proxy services in the registration of .uk domain names suggest that it is appropriate to review whether the WHOIS continues to

meet the evolving needs of our stakeholders. This has also raised the question as to whether the data collected at registration must necessarily be the same data that is publicly available.

3. A review of the role and function of privacy services provided by registrars (which are explained in more detail in paragraph 7 below) has been planned for some time. The result of initial evidence gathering and recent developments relating to the introduction of domain transfer functionality which enables Nominet registrars who are Accredited Channel Partner Tag users, to transfer a domain on behalf of their customer, as well as stakeholder feedback about the application of the WHOIS “opt-out” has suggested that we examine both issues under the broader topic of WHOIS data publication.
4. Our .uk WHOIS averages some 33 million queries each month. As evidenced in our research on WHOIS usage at Appendices B and C, a considerable number of stakeholders query the WHOIS for a broad range of reasons. A major proportion of these queries can be attributed to bulk users, although high volumes of queries are also made by individual users. Any change to the WHOIS in terms of nature and quantity of data available will therefore impact those users, and also has the potential to impact operationally and competitively on .uk and on Nominet.
5. Registrants have a range of domain spaces available when choosing to register their domain name. These can be in the .uk namespace (e.g. .co.uk) or in a gTLD (e.g. .com). We note the increasing convergence of standards and channels to market across these namespaces, and are conscious of the need to maintain pace within the industry. Some Top Level Domain Registries (TLDs), particularly those operating in the gTLD space publish a “thin WHOIS”, which means that the registry does not publish registrant contact data. Alternatively, gTLD registrars are required to make available their own WHOIS, and frequently publish more than 45 fields, including phone numbers and email addresses (please see paragraph 10 for more detail).
6. The .uk WHOIS opt-out was developed in cooperation with the Information Commissioner’s Office and has been in operation since 2002. It enables a registrant who is an individual and does not use, or intend to use, their domain for “trading” purposes to opt out of displaying their contact address in the WHOIS. For domains where the registrant has opted out of displaying their contact details, the address is not shown, although their name is published. Until now, the test that we have applied to ‘trading’ domains has been drawn quite strictly which has occasionally given rise to complaints from registrants who disagree with the criteria used. Changes to registrant expectations and the way in which registrants use domains suggest that it is timely to consider whether the way in which we have allowed individual registrants to “opt out” of contact disclosure in the WHOIS continues to be appropriate.
7. Another trend that we have observed is the increasing use of privacy services in the registration of domain names in .uk. The contact data that is used in the registration process is used to denote the legal registrant of that domain and subsequently used in the WHOIS. Our current framework does not allow for registrants to avoid disclosure of contact information through use of a privacy service, without relinquishing their position as a registrant. Privacy services, of the type offered by registrars, work by registering domains in, or transferring domains to, the name of a privacy service provider, (usually a subsidiary of the registrar) in order to shield the details of the

registrant. For .uk domains, the effect of this is that the privacy service is the registrant of the domain. This has in turn had a detrimental impact on Nominet's visibility of the intended registrant, our ability to service the Contract of Registration, the registrant's rights, and the rights of third parties (e.g. via the Dispute Resolution Service or to mitigate abuse). Early research indicates that in the sale of privacy services registrars do not intend to "take over" the contract as the registrant together with all the associated rights and obligations, this is however the unintended consequence.

8. Privacy services are most frequently offered to registrants as a value-added service. The registrar industry is very competitive and the ease of registration and standardisation of processes is important to registrars in making domains available to customers. The registration process across top level domains sold by larger registrars suggests that regard for their preference for harmonisation is necessary, in order to maintain .uk's competitiveness and influence.

VI. A CENTRALISED REGISTRY AND THE .UK WHOIS

9. In common with many other country code top level domains (ccTLDs), Nominet acts as the central, authoritative source of domain registration data for the .uk namespaces that we manage. One of the purposes of collection of registry data has been for publication in the .uk WHOIS. The purposes of the .uk WHOIS have been articulated by Nominet for some time and made available on our website. In particular, these include:
 - to identify whether or not the domain name is registered;
 - to identify the person or host responsible for a domain name (e.g. to confirm that this matches the apparent provider of a website, email or other service related to the domain name);
 - to allow registrants of .uk domain names to see information about their domain name;
 - to show publicly if a domain name is in a special status; and
 - to locate and contact the registrant and/or host of the domain name in relation to the prevention or detection of systems abuse, or to establish or defend legal rights (including an intent to use the Dispute Resolution Service).
10. Registration data is used to populate the "thick" .uk WHOIS. This is in contrast to the "thin" WHOIS model used by TLDs that operate a decentralised model, such as .com. The .uk WHOIS displays the name of the registrant, and an address, in addition to other technical information such as nameservers, registrar, date of registration and expiry of the domain, status and validation status of the domain. Email addresses, phone numbers and fax numbers, are not published. Consequently, the concern over the .uk WHOIS being mined for abusive purposes (such as for spam) has not been as prevalent as in gTLD. An example of a .uk WHOIS entry follows below:

Result of WHOIS query:

```
Domain name:
  shinycleanhouse.co.uk

Registrant:
  Andrew Other

Registrant type:
  UK Sole Trader

Registrant's address:
  Minerva House
  Edmund Halley Road
  Oxford
  OX4 4DQ
  United Kingdom

Data validation:
  Registrant contact details validated by Nominet on 10-
  Dec-2012

Registrar:
  Efficient Registrar Limited [Tag = EFF]
  URL: http://www.efficientregistrar.uk

Relevant dates:
  Registered on: before Aug-1996
  Expiry date: 06-Dec-2015
  Last updated: 25-Nov-2013

Registration status:
  Registered until expiry date.

Name servers:
  nom-ns1.nominet.org.uk    213.248.199.16
  nom-ns2.nominet.org.uk    195.66.240.250
2a01:40:1001:37::2
  nom-ns3.nominet.org.uk    213.248.242.70
```

Fig 1. .uk WHOIS output example

i. An evolving landscape

11. Market behaviour, stakeholder expectations of the WHOIS, and expectations relating to privacy, identity and disclosure have evolved since 2002. Whereas in 2002, the .uk WHOIS was one amongst a very small number of authoritative sources of information about a registrant, internet users are now able, or expect to be able, to find information online about those with an online presence such as domain names through search engines, social media, or other directories.

12. We are conscious of the continued debate relating to privacy, identity and personal data in an online context and note our registrants and users are also raising these concerns. Concurrently, data accuracy has also become an increasingly important focus for many of our stakeholders, particularly those seeking to enforce their intellectual property rights or for the purposes of law enforcement. These wide-ranging interests inevitably create competing priorities and tensions.
13. In developing our proposals for consultation, we have considered how any changes to the availability, nature and quantity of data available in the WHOIS could impact users, registrants, and Nominet. It is important to ensure that the way in which we treat registrant contact data can support Nominet in delivering our commitment to data quality. Our proposed approach is to develop a framework within which such privacy services could operate, enabling collection of registrant data and the protection of the registrant contract, whilst also balancing the competing priorities of different stakeholder groups in line with the public interest. Whilst accurate contact information is a key priority, we are also keen to ensure that .uk registration processes are balanced with respect to the legitimate need of many registrants to manage the disclosure of their contact information.

VII. POLICY ISSUES

14. As evident from our WHOIS User and registrant surveys (Appendix B), and analysis of usage (Appendix D), our WHOIS service generally appears to be meeting our stakeholders' expectations in terms of the nature and quantity of published information.

ii. WHOIS opt-out eligibility

15. As sensitivity around personal data and privacy has become more acute, we have noted that some registrants feel that their privacy needs are not being adequately met due to the publication of their contact data, in particular their address. This has, for the most part, been due to the strict application of eligibility criteria where their domain has been considered to be used in the course of "trade". These stakeholders generally do accept that registration does require an address be disclosed to the registry, and the address be published in the WHOIS. However they would prefer not to publish their own address. It is possible for these registrants to use a third party address, such as an accountant or solicitor, or in the case of third level domains (in .co.uk and .org.uk), a PO Box. These options are more complicated and expensive than a registrar provided privacy service which has resulted in an increase in the use of such privacy services in the registration process.

iii. Should privacy services be recognised as distinct from registrants?

16. Nominet's policies, as articulated in our registrant contract (the Terms and Conditions of Domain Name Registration) and the .uk Registrar Agreement treat the person denoted in the register as the registrant, even if that person is a privacy service.

17. This approach has underpinned the way in which the .uk registry operates – as with many other ccTLDs. The registrant recorded is the person to whom Nominet is contracted to provide services, giving the registrant certain rights, obligations, and protections in that contractual relationship. Where a privacy service or any other person is denoted as the registrant, they are necessarily considered the registrant and receive the incumbent benefits, risks and liabilities associated with the registration. The current arrangements do not prohibit the operation of privacy services and registrars who offer privacy services are not breaching the Registrar Agreement provided they do so in a manner consistent with their obligations under the Agreement (e.g. making clear Key Terms, customer consent, providing complete and accurate data, and so on). There is merely no allowance made or protection given to a third party who may be the intended registrant of a domain name. More recently, some stakeholders have questioned whether this is in the interests of WHOIS users and the registrar’s customers.
18. For some time, some registrars have offered services that could be considered to act as privacy services although the volume of these registrations has been negligible. However, the practice has evolved more recently and it is clear that there is demand amongst some registrants to shield their contact information from public disclosure. Prior to the implementation of the 2014 Registrar Agreement in March 2014, we estimated privacy services to constitute less than 0.09% of all registrations. Since May 2014, the average number of registrations of domains to privacy services has grown to approximately 6,500 domains per month. At the time of writing, we estimate 0.7% of all domains as registered to privacy services.
19. We note that some registrars with Accredited Channel Partner Tags sell privacy services to registrants by transferring the domain into the name of the privacy service following registration. When a domain name is transferred, the transferee becomes the legal registrant of the domain, and all rights and obligations – including any right to register the corresponding second level domain name (.uk) – are transferred with it.
20. We have also noted that when registrant contact details are changed to those of the privacy service, the customer’s email address is also frequently changed to that of the privacy service. Therefore, the customer is also unlikely to be able to access Nominet’s online services to manage their domain. Nominet is unable to contact the intended registrant if required, and unable to provide the customer’s contact details to third parties. Where a customer needs Nominet to carry out any services, for example to transfer the domain to a new registrant or assist with a TAG change, Nominet is unable to do so unless instructed by the registrant on record i.e. the privacy service.
21. The registrant is responsible for the domain and is the respondent in the event of a DRS complaint. In the event that there are three successful DRS complaints against a registrant in a two year period, a “three strikes” rule applies to cases thereafter whereby there is a presumption of abusive registration (Paragraph 3c of the DRS Policy). As a consequence, customers of privacy services could unwittingly be subjected to a higher threshold of proof required to defend a DRS complaint, if the privacy service that they are using has the “three strikes” rule recorded against it. Whilst in practice DRS experts must still on balance find that the domain name is abusive and that the complainant has rights, we consider it in the interests of registrants and third parties to

review the impact of treating the privacy service as the registrant, as the test of abuse is subject to uncertainty dependent on registrant identity.

22. We have considered the possibility of proposing changes to allow a registrant to transfer the registration or sub-contract their obligations to another party to resolve this issue. However, this would lead to unintended complications for the DRS and make it much more difficult for a complainant to prove domain name abuse. We do not believe that allowing a transfer from a registrar or privacy service to another third party – of whom the registry may have no knowledge or record – in the event of a DRS complaint would be an appropriate approach. As such, permitting a registrant to use a privacy service to shield their contact details whilst ensuring that they are afforded the rights and obligations of registration would appear to be an appropriate course of action.
23. It is clear that privacy services meet a need amongst a set of customers in the .uk namespace. We note that some of this demand is potentially driven by a perception that the volume or type of contact data published in the .uk WHOIS is the same as that published in gTLD spaces, and/or a lack of awareness of the WHOIS opt-out for eligible registrants. This raises questions as to whether the registry or registrars could do more to inform registrants about what information is being published in the .uk WHOIS. Nevertheless, without further evolution of the registration and publication framework, the integrity of contact data on the register will be eroded.

VIII. RESEARCH

24. Nominet has undertaken research to further inform our understanding of .uk WHOIS usage, the potential impact of changes on our stakeholders, and to investigate different stakeholder assumptions. This research has also established a baseline of usage relating to WHOIS queries and of the opt-out, as well as trends regarding the use of privacy services. Our evidence gathering has also sought to contextualise the .uk WHOIS experience with that of gTLDs, using publicly available information.
25. We have sought early feedback from representatives of some key stakeholder groups including business, registrars, consumer organisations, and public bodies. A summary of the key elements of formal research undertaken is outlined below, with further details on methodology and findings provided in the appendices to this consultation document.

iv. Understanding the nature of WHOIS usage

26. ***Analysis of the volume and nature of WHOIS queries*** to determine the composition of user types and the frequency of use. This research developed and investigated assumptions about usage and intent of WHOIS users, and possible impacts on users and Nominet if we were to change the nature or extent of information provided on the WHOIS or the public accessibility of that information. This enables us to better anticipate the consequences of modification to users such as law enforcement agencies and intellectual property rights holders who may rely on WHOIS data to identify registrants or enforce rights. Changes to WHOIS data availability could result in an

increase in queries to our customer service team arising from users who might not be able to find data that was previously available. (Appendix D)

27. ***A survey of a sample of WHOIS users supplemented the above analysis*** to build quantitative and qualitative data about the range of users, the reason for their query, and expectations of the type of contact data published in the WHOIS. This allowed for further assessment of potential impact on users of any change to the WHOIS. (Appendix B)
28. ***Trend analysis to track the level of demand and growth in the use of privacy services within .uk.*** Through profiling of our registry data, we estimated the volume of domain names registered to privacy services prior to and following the implementation of the new domain transfer functionality available to Accredited Channel Partner TAG users. The analysis showed a dramatic increase in the number of domains registered to privacy services. The trend analysis data underpins our estimates of the potential share of the register attributable to privacy services, and therefore the impact on availability of contact data of intended registrants.

v. Understanding registrants

29. ***Analysis of current WHOIS opt-out usage.*** We examined .uk registry data relating to the use of the WHOIS opt-out to ascertain whether this usage could be considered indicative of demand for privacy, whilst noting the constraints of the opt-out eligibility criteria. This provided a usage baseline to establish the likely impact of a change to the eligibility criteria, and whether more or fewer registrants would become eligible or ineligible. A key finding was that currently a high percentage of registrants appear to be opted out incorrectly. The business has implemented a number of system changes to mitigate this going forward. (Appendix E).
30. ***Review and comparison of registration processes for .com and .uk*** using a ‘mystery shopper’ exercise to assess the impact of the registration process on the quality of data submitted to the register, and inform our understanding as to the differing stakeholder concerns in relation to WHOIS, such as spam or data inaccuracy, stemming from experiences of the gTLD or .uk space. This work examined the relationship between collection and publication of registrant data and highlighted that the registration process itself does not materially impact the quality of data supplied by the registrant. The comparison of processes also highlighted the relatively homogenised registration processes of registrars regardless of domain space, and the need for Nominet to be aware of the impact of any “non-standard” processes in this regard. (Appendix G)
31. ***Survey of a sample of .uk registrants*** to build quantitative and qualitative understanding of the type and quantity of contact data that is currently disclosed by a range of .uk registrants, their expectations of what data they would prefer to publish, as well as their views on what they believe ought to be made available in the WHOIS. (Appendix C)

vi. Testing assumptions about WHOIS data and its publication

32. ***Statistical analysis of Nominet data relating to data quality, suspensions arising from notifications of criminality, and usage of the WHOIS opt-out*** was conducted. This

explored the views expressed by some stakeholders that privacy services tend to harbour criminality, as well as the hypothesis that criminality is linked to poor registrant contact information. We examined our registry data to understand the relationship between the use of the WHOIS opt-out, poor data and notifications of criminality received from law enforcement agencies (LEAs). Our analysis found that domains that have been notified to the registry as being used to carry out criminal activity had a high incidence of “bad” contact data. However, analysis showed no correlation between WHOIS opt-out use and incidence of alleged criminality. (Appendix F) A review of notifications of criminal use from law enforcement since May 2014 to February 2015, indicates that criminal use is *not* more likely to be prevalent in privacy services. Of more than 3,000 domains that were notified for criminal use, 3 domains were registered to obvious privacy services.

33. The above analysis also showed that that registrants who have opted out have a higher first time data validation rate, and have attributed this in part to the fact that the data quality solution validates individuals with greater certainty (as compared with e.g. unincorporated businesses). The analysis of registration processes (Appendix G) suggests that the sale of a privacy service has no direct bearing on the quality of data provided as it is offered at the end of the registration process. It would appear that bad actors are more likely to provide poor or false data, than they are to use a privacy service.
34. ***External legal and regulatory research of practices and requirements across comparative sectors*** by Shepherd and Wedderburn, was undertaken to assess legal and regulatory drivers for disclosure and to review Nominet’s compliance with the DPA. These comparative sectors included PO Boxes, the Electoral Roll and telephone directory services, and an examination of the existing legislative provisions covering disclosure and e-commerce as compared to Nominet’s definition of “trading” for the purposes of determining eligibility for the WHOIS opt-out. We also asked for a review of our compliance with current Data Protection legislation and guidance on the forthcoming reform of the EU Data Protection Framework to support a policy that is fit for the future. (Appendix H)
35. ***Comparative review of registries and WHOIS data publication*** to assess our position relative to peer registries, the direction and drivers of industry standards including the broader gTLD environment. This also included a review of international discussions and a review of the final report of the ICANN WHOIS Policy Review Team. This research highlighted the need to balance the broader competitive environment, understand the impact of differences in processes, and has also noted the lack of certainty that industry discussions will lead to finalised policy changes in the near future. [Appendices I and J]

IX. OBJECTIVES

36. In setting our objectives for this consultation, it is clear that views of where the public interest lies is likely to differ amongst our stakeholders. As such, following review of the in-depth research and initial investigation of stakeholder expectations, we have set out the following objectives as core to the development of the .uk WHOIS and publication of contact data:

- 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 competitiveness of .uk
- 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

X. POLICY OPTIONS

37. Informed by the research, Nominet has examined a range of policy options, discounting those we considered to be sub-optimal or unfeasible. The evidence gathering process ultimately highlighted that a proposal that addresses both the eligibility criteria for the WHOIS opt-out, as well as the collection and publication of registrant data, would be central to moving forward. Alongside our recommended options that we set out below at Section XI, the other primary options explored were:

- i. Publish less data for all registrants on the WHOIS
- ii. Removing the individual/trading tests from the opt-out
- iii. Align opt-out eligibility with the E-Commerce Directive
- iv. Do nothing in relation to privacy services / WHOIS opt-out
- v. Prohibit privacy services
- vi. Develop a Nominet privacy service for registrars to sell on to their customers (white-labelled solution)
- vii. Regulate privacy services offered by registrars

We have not recommended these options for the reasons outlined below.

i. Publish less data from all registrants on the WHOIS

38. Our research has sought to assess whether publishing less data and reverting to a “thin” WHOIS would resolve concerns around publication. This could take the form of minimal published data such as registration and expiry dates, name servers, and registrar but exclude any registrant name and address.

39. This policy approach would be straightforward to implement and require only minor technical development by the registry and no process or development changes would be required by registrars. This would effectively remove the need for an opt-out service for eligible registrants and would further significantly reduce demand for paid-for privacy services, but could have other unintended consequences as set out below.

40. Whilst some stakeholders may view this option of non-discriminate privacy as attractive, as evidenced in our surveys on WHOIS user expectations and registrant expectations (Appendix B), there is a high expectation amongst both WHOIS users and registrants that contact data will generally be published in the WHOIS. These results are further supported by the WHOIS usage data analysis that implies there does not appear to be a strong mandate to radically alter the nature and quantity of data published in the WHOIS. Non-publication of data could be perceived as in conflict with our broader principle that it is positive for consumers to have access to information about who is behind a domain name. Our preference therefore is to encourage publication but recognise the desire for choice amongst some registrants.
41. Noting the very high number of queries made by WHOIS users (Appendices B and D), removing public accessibility to registrant data could result in higher costs to the public, such as consumers who are seeking details about the domain name holder for a website with which they are transacting, or rights-holders intending to defend their legal rights.
42. Restricting public access would introduce further complexity into the process by which contact data would be released to a third party by Nominet. We consider the development of criteria for who may “legitimately” access contact data and the subsequent operational burdens in assessing the application of that criteria on users to be disproportionate. Requiring all users to apply for access to data on an ongoing or an ad hoc basis, would lead to significant time or costs for third parties applying for access to data that had hitherto been freely available.
43. The WHOIS User survey (Appendix B) highlighted that proportionally only a small percentage (4%) of overall queries are from consumers seeking details about a domain name prior to or after a transaction, from businesses seeking to defend IP rights (2%), or users simply seeking to contact the domain name holder (12%). However, in terms of absolute volumes, non-access to this anticipated data could potentially result in a higher volume of queries directly to Nominet, increasing the cost of our customer support services.
44. Initial dialogue with key public stakeholders has highlighted the keen public interest in maintaining proportionate access to accurate and meaningful data. Dialogue with public law enforcement agencies has also signaled concern about directly applying the approach currently suggested by ICANN’s Expert Working Group on Registry Directory Services, which may not be appropriate for .uk stakeholders. These proposals as outlined in Appendix J essentially involve a radical reduction in the volume and nature of data published, placing contact information behind gated and authenticated access whilst mandating the collection of a greater volume of data sets. They would seem to be viewed by some in the LEA community as well as European data protection commissioners as unsatisfactory. Early signals from other business stakeholders indicate resistance to a model that would result in increased costs – directly or indirectly – to access contact data.

ii. Removing the individual/trading tests from the opt-out

45. The primary aim of modifying the eligibility criteria for the WHOIS opt-out criteria would be to resolve the concerns that have been raised by a small number of stakeholders about the application of the criteria for the “opt-out”, which currently allows individuals who are not using their domain in the course of “trade” to choose to not have their address shown in the WHOIS. Nominet has historically applied a strict “trade” test. For example, this has meant that domains with ‘pay-per-click’ or other links to commercial sites would be considered to be “trading”, even if the primary purpose is a blog or commentary. In assessing this option, we have also considered whether expansion to address the concern of sole traders and those who work from home regarding home address publication could be mitigated by removing the ‘individual’ and ‘non-trading’ tests from the eligibility criteria thus expanding the WHOIS opt-out to all registrants.
46. Option (ii) would effectively expand the WHOIS opt-out eligibility by offering more registrants the ability to “opt out”, having a broadly similar impact to the option of reducing the data published in the WHOIS (option (i)).
47. This option could potentially impact a registrar’s ability to bundle the offer of a privacy service in the process of registration but would likely require very few changes in terms of other processes and would need to be enforced via registry compliance (as it is currently enforced). This would promote Nominet’s ability to hold contact data for registrants by reducing the incentive to use an alternative privacy service. Allowing more registrants – including businesses – to opt out of displaying contact details in this way may however be confusing or counterintuitive for WHOIS users. An expansion of the eligibility of criteria in this way would not meet stakeholder expectations as outlined in the User Survey at Appendix B, where it is clear that WHOIS users and registrants are generally of the view that all businesses should display contact details.

iii. Aligning the opt-out eligibility with the E-Commerce Directive

48. We have considered aligning the ‘non-trading’ definition of the eligibility criteria with the definitions set out in the E-Commerce Directive, The Companies (Trading Disclosures) Regulations 2008 or the Provision of Services Regulations 2009, as outlined in Appendix H.
49. In respect of option (iii), we sought to assess whether aligning opt-out eligibility criteria to the E-Commerce Directive or other relevant legislation that sets out disclosure requirements would meet expectations. Alignment could be achieved by using existing legislation to underpin our definition of “trading” and requirements for disclosure. As outlined in the advice at Appendix H, companies and businesses operating online are already subject to a number of disclosure requirements.
50. E-Commerce Directive alignment would mean that any domain name with a “remunerative” purpose would be considered “trading”. This would effectively reduce the number of registrants who are eligible to opt out from disclosure of contact details, as the “remunerative” test is comparatively low. Applying a “remunerative” test would

mean for example, that a blog with “pay-per-click” advertising would not be eligible to opt out, which we believe to be out of line with general expectations.

51. Although this approach relies on a pre-existing standard and is not inconsistent with consumer expectations that business data should be published in the WHOIS, having assessed advice and reviewed current internal practice, we note that the registry’s customer service advisors would find a definition that focuses on “remunerative” more difficult to apply objectively than the current criteria. It would therefore not enhance clarity for registrants and could in turn increase the number of complaints about incorrect application of the opt-out (from users and registrants). Close alignment to legislation that does not directly apply to the domain name industry could further have the unintended and undesirable consequence of suggesting the registry is a proxy for enforcement.
52. It is useful to note that in practical terms, the application of the .uk opt-out rules have more recently been relaxed to reduce the incidence of incorrect opt-out breaches. Alignment with the E-Commerce Directive would therefore ultimately push registrants who were previously eligible to opt out into breach of the rules.

iv. Do nothing in relation to privacy services and the WHOIS opt-out

53. We estimate the average number of new domains registered to privacy services as 6.5k per month, comprising approximately 4.6% of all new registrations. This growth from some 300 domains per month prior to allowing transfer functionality to Accredited Channel Partners Tag users, suggests that unchecked, the number of registrations to privacy services will continue to increase and the contact data of intended registrants visible to the registry will reduce.
54. The option to do nothing would be straightforward to implement, requiring no changes in terms of processes. It is likely that the number of Dispute Resolution Service (DRS) cases against the same privacy services respondents would grow, potentially impacting the ability for the domain name user to defend their case. As more registrant data is replaced by that of privacy services, WHOIS users will seek to find other ways to find the information that they require, potentially shifting queries to our customer service staff.
55. Whilst users can potentially find this information elsewhere, it could place unreasonable impact and costs on users, such as rights holders and law enforcement agencies who may rely on Nominet to provide this information where required. Moreover, as the availability and meaningfulness of data in the registry reduces, confidence in the registry as the authoritative source of contact data for the registrant data would be undermined.
56. Continued registration through privacy services result in intended registrants not having any contractual rights or obligations to Nominet. Customers using privacy services do not have the benefit of the contractual protections that exist for registrants – such as the registry carrying out a domain name transfer or a change of registrar for the customer. In the event that a privacy service becomes defunct, Nominet would not be able to contact the service’s customers to enable continuity of service, and the process of those customers being recognised as the registrant could be further complicated. In

our view, these potential outcomes are not in the interests of the intended registrants and the registry.

57. In respect of the WHOIS opt-out, our view is that changes to the opt-out eligibility criteria are necessary and in the public interest. To do nothing would not adequately meet the needs of stakeholders, in particular those of registrants who have expressed concerns about the publication of their data as referenced above at paragraph 15.

v. Prohibition of Privacy Services

58. Prohibition of privacy services whether operated by registrars or by third parties could, in contractual terms, be theoretically introduced by removing the section in paragraph B.1.8 of the Registrar Agreement that allows registrars to register a domain name in a name that is not the name of their customer (subject to the customer's explicit consent to do so). Alternatively, a provision to require a registration contract with a third party could be mandated, in a similar way to gTLDs. However this would be inconsistent with the current position that it is permissible for the registrar to be its own customer for .uk domains and in practice would be difficult to enforce. Whilst the research carried out by Shepherd and Wedderburn suggests this prohibition would be relatively straightforward, we are inclined to view this as more complex. It is possible to envisage situations where a privacy service is declared to be a "customer" of the registrar in order to circumvent the prohibition.
59. Further, the provision that allows for a domain name to be registered in a name other than that of the Customer has existed for some time, and reflects the wish of some customers to have the domain name registered in a different name. This could be for a range of reasons. In some cases, the customer may prefer for the registrar to act on their behalf as the registrant and receive all contact related to that domain, for example where a domain name is managed by a brand protection registrar. Corporate domain name holders may hold domains centrally, or a customer may prefer to register a domain name in that of a related company or subsidiary. Other (albeit infrequent) reasons cited include sensitivity related to new product launches or mergers and acquisitions of businesses.
60. A key challenge here is the monitoring and enforcement of any such prohibition: it would require us to establish precisely what constitutes a privacy service. Too broad a definition would potentially place onerous restrictions on practices that many would not regard as being "true" privacy services (such as domain name leasing schemes), while too narrow a definition would not meet our policy objectives and be open to abuse. This would, in our view, be a disproportionate prohibition and contrary to the way in which we have accepted that registrars and registrants may wish to contract with one another. It could also have the unintended consequence of incentivising registrants who might otherwise have preferred not to disclose their own data, to alternatively provide false or unvalidatable data, running counter to our data quality objectives.
61. We have previously noted the standardised process of domain registrations across both gTLD spaces and .uk as outlined in the comparative review of .com and .uk (Appendix G). We recognise that privacy services provide an additional revenue stream for

registrars: a prohibition could discourage registrars from selling .uk domain names and therefore place .uk at a competitive disadvantage versus other gTLDs, reducing our reach to prospective registrants.

62. We note that prohibiting privacy services may help to maintain a higher volume of publicly available contact data in the WHOIS. However in view of the potential for increased levels of poor data from registrants who wish to shield contact details and the potentially disproportionate challenges associated with enforcement, we believe this option to be less attractive.

vi. Develop a Nominet Privacy Service for all Registrants

63. We have examined the possibility of Nominet developing our own privacy service as a product (sometimes referred to as a 'white label' where a product is produced by one company for others to re-brand and take to market) made available to registrars and other third parties. This would work in tandem with a prohibition on other privacy services and/or continuing to recognise privacy services as the registrants of record.
64. A Nominet white label service could be sold under contract to registrars and would need to be compatible with their existing product offering. As it results in Nominet acting as the privacy service, Nominet would take on the risks and obligations of operating as such. As with Option (i) above, consideration would need to be given to how third party requests for release of contact data would be treated, which fall outside the usual carve-outs for investigative purposes. Whilst this proposal would meet our objectives of ensuring that the registry has registrant contact data, at this time we do not consider it in line with the public interest or stakeholder expectations highlighted in the WHOIS User and registrant surveys.
65. Pursuing this option would involve extensive registry and registrar development, and hence high costs. We note that registrars that are already selling privacy services may have invested in their own processes and may be reluctant to pay for a Nominet service that they already provide. We would also be concerned that this approach might be perceived as tying our own mandated privacy service to .uk registrations and may inhibit competition. In our view, the business case for such a white label service is limited to a smaller group of registrars, and similar to options (ii) and (vi) above would reduce our competitiveness compared with other TLDs, and is therefore not a feasible option.

vii. Regulate privacy services via contract

66. We also considered the regulation of privacy services via contract, requiring privacy services to operate within certain conditions, similar to the approach adopted in the gTLD space. The current requirements regarding gTLDs vary depending on whether the ICANN accredited registrar is subject to the 2013 Registrar Accreditation Agreement or not, but it is generally accepted that Privacy and Proxy Services are subject to light touch contractual provisions with respect to gTLDs. The 2013 RAA requires that those providers:
- disclose and abide by their terms which should be published on their website;
 - publish an abuse point of contact;

- disclose contact information for the privacy service on its website; and,
- publish and abide by its own terms of service and procedures relating to handling of abuse of trademark infringement reports, communications handling and WHOIS data publication conditions ¹

67. LEAs have pointed out that the self-regulated and cross-jurisdictional nature of these privacy services make it very difficult to obtain registrant contact data, especially from those outside of an LEA's jurisdiction. Indeed for the reasons outlined with Option (v) above in relation to prohibition, this option would be very challenging to monitor and enforce, and require a separate compliance and access regime. We also envisage disproportionate negative impacts on other policies and the operation of other services such as the DRS.
68. A 'light touch' self-regulatory model is similar to that with which gTLD registrars are familiar and would be low-cost to initially develop and implement. However the key reason that makes this proposal less attractive is the loss of visibility of contact data visible to the registry. This is necessary given our continued commitment to acting as an important customer service safety net for registrants and the clear lack of mandate to change the nature and quantity of contact data published in the WHOIS, thereby reducing trust in the register. Encouraging privacy services to operate in this way would be perceived as contrary to the public interest, and a step backward in relation to our view that consumers benefit from knowing who is behind a domain name.

Question related to this section

- *Do you agree with our assessment of these options? If not, please explain why, providing evidence to support your view if possible.*

XI. RECOMMENDED PROPOSALS

69. It is clear that we need to address the way in which data is published on the .uk WHOIS in order to maintain the integrity of the centralised registry and balance the expectations of our WHOIS users, registrants and registrars. This must also be done with a view to minimising costs on stakeholders and managing the impact of any changes on Nominet.
70. In view of our objectives and the constraints of the discounted options outlined above, we recommend the following modifications that enable the recognition of registrar-run privacy services in addition to updating eligibility for the opt-out criteria for .uk registrants. We therefore put forward the following two, non-mutually exclusive policy modifications for stakeholder feedback. We are committed to continuing to provide a free WHOIS opt-out service for eligible registrants whether our proposal to enable privacy services moves forward or not.

¹ <https://www.icann.org/resources/pages/privacy-proxy-registration-2013-03-22-en>

a) Refine WHOIS opt-out criteria to meet stakeholder expectations

71. As highlighted by the high satisfaction results of the WHOIS User and Registrant Surveys (Appendix B), and the public expectation of contact data being published in the WHOIS, there is not a clear mandate to radically modify the quantity or nature of contact data published. However, we note that there is a need to increase clarity of eligibility and balance stakeholder expectations and to address, in particular, concerns raised about the interpretation of the “non-trading” rule.
72. As previously noted, the WHOIS opt-out is currently available to those who satisfy a two-part test:
 - 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)
73. We propose to maintain the first part of the test, but to clarify the second part to provide greater certainty, as informed by the findings of our surveys. The test to qualify to use the WHOIS opt-out would be:
 - 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.

It is important to note that eligibility to opt out means that the domain name and registrant must meet both parts of the test.

74. Refining eligibility in this way would meet the expectations of WHOIS users, as domains used to carry out commercial transactions or promote goods and services would remain ineligible to opt out. We have added an additional category that we believe would meet the reasonable stakeholder expectation that the registrant of a domain name being used to collect personal data, should not be eligible for the opt-out.
75. Our view is that these minor refinements would broaden the range and number of individuals who could decline publication of their details, such as journalists, authors, and those who register domains for community groups where the primary purpose is not commercial. This approach would also mean 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. Domains with pay-per-click advertisements that would otherwise not be breaching our Terms and Conditions form a significant proportion of incorrect opt-out complaints received.
76. With respect to domain names that collect personal data from users, the intention is to exclude domain names used to carry out competitions or surveys, collecting sensitive information from being eligible to opt out. However, we note that there may be registrants such as individuals running small community groups or those with political interests who might wish to collect personal data for the purposes of making contact or

sending newsletters, who would not be eligible in this case to opt out. We ask for stakeholder views on this issue (question 7c).

77. In the event of a complaint, the current process whereby registry staff examine the domain and assess whether it meets the tests would continue. But in our view this more coherent approach to the criteria will enable more consistent application. These categories would be more straightforward to explain to customers and stakeholders, and better meet their expectations. We are not recommending any expansion of the opt-out to include other classes of registrants (such as businesses or charities) to be eligible as they will be permitted to register using a registrar's privacy service. We outline this as the second part of this proposal below.
78. It is important to note that those with a legitimate need, such as LEAs in the course of enforcement actions or solicitors representing a party making a complaint under the DRS, to see the name and address of an opted-out registrant will still be able to request that information from Nominet, under the terms of our registrant contract, and the exemptions set out in the Data Protection Act (primarily under ss29 and ss35 of the DPA). We would anticipate that we would treat the disclosure of contact data relating to domain names that are registered with a privacy service in the same way as those that contain personal data, whether or not the domain is registered to an individual or other legal entity. This would require a minor change to our Terms and Conditions at paragraph 11 and 11.3 to include privacy services to make this clear.
79. We are also asking stakeholders for their views on whether the registrants who have opted-out under the criteria should also have their name excluded from publication (question 9). The current opt-out excludes the registrant address from publication in the WHOIS, but registrant names are always published. We note that there is increasing sensitivity amongst some groups of stakeholders such as those with interests in freedom of expression, who would prefer to be identifiable using a pen-name or pseudonym, or who may be vulnerable to trolling or persecution. As a legal name is required for registration, we would be interested in comments on whether it would therefore be more straightforward for both the registrant name and address of individuals who have opted-out to not be published.

Questions related to this section

- *Are the proposed criteria for eligibility of the opt-out clear and logical enough for WHOIS users and registrants?*
- *Do they meet your expectations as a WHOIS user or registrant?*
- *Do you agree that domains used to collect personal data should be excluded from eligibility to opt out? If you do not agree, we would like your thoughts on whether your concerns could be mitigated by being able to use a privacy service.*
- *Are there any process or technical consequences of the proposed changes to WHOIS opt-out eligibility that Nominet should take into account or would discourage implementation of this proposal? Please explain with details about whether this would affect registrants, registrars, WHOIS users, or other stakeholders.*

- *Do you think we should change the WHOIS query output so that the name of registrants who are opted-out are withheld from publication, as well as their address?*
- *What obligations, if any, should registrars be subject to in relation to drawing the attention of registrants to the availability of the WHOIS opt-out?*

b) To enable registrar-run privacy services to operate within a contractual framework

80. Our review of registrations via privacy services signals demand amongst some .uk customers. We note that some of this demand will be driven by the nature of the registration process amongst many registrars who frequently bundle additional domain-related services available in gTLD markets. Regardless of the drivers, we expect the number of privacy services and domains registered to them to increase.
81. Unregulated privacy services that operate outside of the registry's framework are not ideal for the reasons outlined elsewhere in this document. We would prefer to provide a viable and effective structure for registrars to meet registrant demand for privacy so that we can meet our objectives as a registry, and to achieve the best possible outcome for our stakeholders, including registrants and WHOIS users.
82. We are therefore proposing to modify our current approach to the publication of registration data. We recommend separating the concept of **collection** of contact data from the **publication** of contact data in order to give registrants more control over the latter. This approach would enable all types of registrants to use a privacy service operated by registrars. Data would be released by Nominet to third parties under existing exemptions and processes, relieving the volume of requests on registrars.

How this could work in practice

83. To qualify, registrars would need to register their privacy service with us and apply for the functionality to be enabled. Registrars would be asked to provide details of the service that they are offering, would require an address for service, and the contact details that they would wish to have published in the register for the privacy service. These contact details would then be auto-populated by our systems at the point of the WHOIS query being returned, if the registration were flagged as being subject to privacy. Registrars would also need to give undertakings in relation to the commitments made to their registrants in using the privacy service – so that registrants are aware of the data that is being published, but that they are still the registrant and responsible for the domain name. Users of the privacy service would still be the registrant and subject to our Terms and Conditions of Domain Name Registration. Registrant contact data would remain subject to the data quality policy and validated in the usual way, even if not disclosed. It is important to note that in the case of .uk domain names that require a UK address for service, registrar privacy services would also be required to provide such an address for their customers (which would not be published in the WHOIS).
84. If the registry were to proceed with this option, the privacy service functionality would be made available to registrars at no cost. We anticipate that relatively minor systems changes would be necessary for registrars who would wish to use the functionality. We

anticipate this to require the use of the standard EPP field, <contact:disclose> as defined in RFC5733. This field would be set against the contact name and address fields. Both disclose fields would need to be set in order to flag privacy, which would result in both name and address being withheld from publication. Similar functionality would also be made available in Web Domain Manager (WDM). Where the preference has been set in these fields, Nominet would also not publish the data in the Registrant Type field (such as Company). This is because data may result in re-identification of the registrant, such as through the publication of a company registration number.

85. Nominet's .uk WHOIS would effectively publish only the registrar's privacy service address, whilst Nominet would also hold the registrant's actual contact details. This would reduce the incidence of registrars unnecessarily transferring domains to themselves and mitigate the potential for post-expiry issues where a registrant has not received a deletion notification email. As Nominet will continue to have contact data for the registrant we can ensure continuity of service in the event the privacy service stops operating. Using the previous example of shinycleanhouse.co.uk below, the WHOIS could publish data as follows if Andrew Other were to use privacy service, and where data is auto-populated via the registry systems:

Result of WHOIS query:

Domain name:
shinycleanhouse.co.uk

Registrant:
Name withheld. This registrant is using a privacy service.

Registrant type:
Withheld.

Registrant's address:
Registrant's address is withheld. This registrant is using a privacy service.

Data validation:
Registrant contact details validated by Nominet on 10-Dec-2012

Registrar:
Efficient Registrar Limited [Tag = EFF]
URL: http://www.efficientregistrar.uk

Relevant dates:
Registered on: before Aug-1996
Expiry date: 06-Dec-2015
Last updated: 25-Nov-2013

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Registration status:
  Registered until expiry date.

Name servers:
  nom-ns1.nominet.org.uk    213.248.199.16
  nom-ns2.nominet.org.uk    195.66.240.250
2a01:40:1001:37::2
  nom-ns3.nominet.org.uk    213.248.242.70

Privacy Service:
  Privacy Services Limited

Privacy Service's address:
  81 Rivington Street, London, EC2A 3AY
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Fig 2. .uk WHOIS output example using proposed privacy service

86. The returned result would make clear that the registration is being held by a registrant who is using a privacy service, rather than a privacy service acting as the registrant. We would not propose to charge registrars for the provision of functionality to enable sale of privacy services, although registrars would be free to charge if wished.
87. Privacy services that continue to register as the registrant would be free to do so within the existing terms of the Registrar Agreement. They would however do so at their own risk, taking on any liabilities associated with being the registrant and being contracted as a registrant with Nominet.

XII. ANALYSIS OF RECOMMENDED PROPOSALS

88. We believe that these proposals strike a pragmatic and competitive approach to increased concerns relating to privacy and seek to accommodate the differing business models of our registrars, whilst having regard for the public interest and our stakeholders' expectations. Our continued commitment to Nominet's role as the central register of data will enable us to properly protect registrants' rights, release contact data where necessary under the existing exemptions, and maintain public confidence in the register. It acknowledges that some registrants may desire privacy, whilst prioritising the core function of the registry in holding accurate records. We believe this proposal takes into account the direction of travel of data protection legislation, providing for future flexibility in relation to collection and publication. It continues to meet legal requirements to only process data within the bounds of acceptability established with the Data Protection Act.
89. We continue to believe that consumers do have the right to know who is behind a domain that they may be transacting with or using to get information about their goods and services. For the most part, websites operating in the EU will be required to make this information available via their website. However, for the purposes of the registry, we also accept that some types of registrants have a legitimate need to prevent

disclosure of their personal details, and use of a privacy service may address their needs.

90. The WHOIS opt-out has, by and large, worked very well for the past twelve years and there is a strong degree of awareness and acceptance of the policy and criteria amongst our stakeholder community. Therefore, our recommendations relating to refinement of the opt-out eligibility criteria are relatively minor and intended to bring the policy up to date with usage and stakeholder expectations, whilst balancing the registry's core need to have accurate registrant contact data. We anticipate no cost or process impact on registrars should this proposal be implemented.
91. Internal assessment of our proposed refinements to the WHOIS opt-out criteria indicates that they could be applied by the registry customer service advisors in a clearer and more consistent manner than it is currently. We also believe that it can be more easily understood by registrants and third parties.
92. In developing our proposal on a privacy service framework, we have been conscious of the varying stakeholder expectations and legal obligations, as well as the need to minimise costs on the registry and our customers, both registrars and registrants. We believe that these changes would be relatively straightforward to introduce via minor amendments to the Registrar Agreement. These changes would be simpler and more pragmatic to enforce than a prohibition, and easier to bring to market than a "white label" product. Nominet would be able to publicly identify "Privacy Services", promote compliance and standards, and enable registrants to choose whether to use an identified registrar privacy service if wished.
93. Allowing our registrars to offer a recognised privacy service avoids restricting their ability to offer bundled services, and also reduces their potential liabilities as compared with continuing to register domains as the registrant. We have considered whether only registrars who are Accredited Channel Partners Tag users should be eligible to have their privacy service recognised in this framework, as they have committed to higher standards under the .uk Registrar Agreement. On balance however, we consider this framework best served if all customer facing registrars are eligible as it is in the interests of registrants and the public for Nominet to hold registrant contact data. Disallowing Channel Partner Tag users from this functionality would potentially have the unintended consequence of either driving up the incidence of poor quality data from registrants seeking to obfuscate, or simply having a large number of registrants of whom the registry does not have visibility.
94. We would also note that websites that are used in the course of selling goods and services to consumers are required under the Consumer Rights Directive in the UK and the EU to provide key information to visitors including a geographical address and telephone number. Sellers who choose to use a privacy service for their WHOIS details would not be released from their duty to make this information available to buyers. Moreover, data about business and organisations is now available from a multiplicity of sources including online databases and via searches, not only the WHOIS.
95. From an implementation perspective, we believe that only minor technological development by Nominet and registrars would be required and would minimise changes to existing registration processes for registrars.

Questions related to this section

- *Are there any specific standards that registrars should be asked to meet in order to provide a privacy service? For example (tick any that apply):*
 - a. acting as an address for service for the registrant*
 - b. being required to respond to or transmit abuse complaints from third parties to the registrant*
 - c. being required to reveal contact details on receipt of a Dispute Resolution Service complaint from a third party*
 - d. provide their own contact details to be published in the WHOIS*
 - e. highlight the availability of the opt-out to registrants*
 - f. Other?*
- *Are there process or technical issues in separating collection from publication of contact data in the way we have suggested that Nominet should be aware of? Please explain with details about whether this would affect registrants, registrars, WHOIS users, or other stakeholders.*
- *Whilst noting that the proposed privacy services framework would not apply to Self-Managed Tag users where domains must be connected to the registrant, should the framework be restricted only to Nominet Channel Partner and Accredited Channel Partner Tag holders?*
- *If you believe the framework should not be restricted, and that other parties should be permitted to operate privacy services, please explain why and provide comments on how Nominet could identify, monitor, and enforce the framework for third parties.*

XIII. YOUR VIEWS

We would particularly like to hear your feedback to the questions we have outlined in this consultation and welcome your feedback at nominet.org.uk/WhoisConsultation where you will be able to submit your feedback, and save it to complete at a later time if you wish. We would appreciate respondents taking into account any public interest and technical issues in the process of domain registration, together with the effectiveness and proportionality of any restrictions on access to contact data in the WHOIS service for .uk. If you wish to provide any supporting evidence in your submission, you will be able to do so via our online consultation tool at the end of the process.

General Questions

Questions 1 – 5 are general questions on which we welcome stakeholder views. We would also welcome feedback to more detailed questions (Q6 - Q13) on the WHOIS opt-out and privacy services proposals. Please also complete the section entitled About You.

1. Do you agree that the proposals to refine the WHOIS opt-out eligibility and to provide a framework for registrar privacy services meets the policy objectives set out in this document?

Yes No Don't know No opinion

Comments:

2. Do you wish to highlight any potential stakeholder impacts or concerns should the proposal to refine the WHOIS opt-out eligibility criteria be implemented? Please explain, providing examples and evidence to support your view, where possible.

3. Do you wish to highlight any potential stakeholder impacts or concerns should privacy services be permitted to operate in the way in which we have proposed? Please explain, providing examples and evidence to support your view, where possible.

4. Please provide any other views on the direct impact these proposals may have on you or your organisation. It would be helpful if you could advise your interest in the WHOIS, and the stakeholder group(s) you represent.

5. Do you have a commercial interest in the domain name industry, including but not limited to acting on behalf of registrants in the registration of domain names or holding domain names in your own name?

Yes (please provide details):

No

Additional Questions

We would welcome your feedback to the following specific questions.

6. Do you agree with our assessment of the options that we have chosen to not recommend?

“Yes” indicates you agree with the assessment, “No” indicates you disagree. If you do not agree with our assessment, please explain why, providing evidence to support your view if possible.

Option	Yes	No	Don't know	No opinion	Comments
<i>i. Publish less data on the WHOIS</i>					
<i>ii. Removing the individual/trading tests from the opt-out</i>					
<i>iii. Align opt-out eligibility with the E-Commerce Directive</i>					
<i>iv. Do nothing in relation to privacy services / WHOIS opt-out</i>					
<i>v. Prohibit privacy services</i>					
<i>vi. Develop a Nominet privacy service for registrars to sell on to their customers (white-labelled solution)</i>					
<i>vii. Regulate privacy services offered by registrars</i>					

WHOIS opt-out proposal

7a. To qualify to use the opt-out we are proposing that:

- 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.*

Are the proposed criteria for eligibility of the opt-out clear and logical enough for WHOIS users and registrants?

Yes No Don't know No opinion

Comments:

7b. Do the criteria meet your expectations as a WHOIS user or registrant?

Yes No Don't know No opinion

Comments:

7c. Do you agree that domains used to collect personal data should be excluded from eligibility to opt out? If you do not agree, we would like your thoughts on whether your concerns could be mitigated by being able to use a privacy service.

Yes No Don't know No opinion

Comments:

8. Are there any process or technical consequences of the proposed changes to WHOIS opt-out eligibility that Nominet should take into account or would discourage implementation of this proposal? Please explain with details about whether this would affect registrants, registrars, WHOIS users, or other stakeholders.

9. Do you think we should change the WHOIS query output so that the name of registrants who are opted-out are withheld from publication, as well as their address?

Yes No Don't know No opinion

Comments:

10. What obligations, if any, should registrars be subject to in relation to drawing the attention of registrants to the availability of the WHOIS opt-out?

Privacy Services proposal

11. Which, if any of these standards do you think registrars should be asked to meet in order to provide a privacy service? Tick all that apply:

- Acting as an address for service for the registrant
- 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 Dispute Resolution Service complaint from a third party
- Provide their own contact details to be published in the WHOIS
- Highlight the availability of the opt-out to registrants
- Other? [free text]

Comments:

12. Are there process or technical issues in separating collection from publication of contact data in the way we have suggested that Nominet should be aware of? For example,

- updating registration data of domains currently held using a privacy service to the registry
- moving domains with privacy from a registrar to another (TAG change), where the new registrar does not offer privacy
- transfer of a domain(s) to a privacy service
- transfer of a domain(s) to a new registrant
- minimising the incidence of abuse
- use of the RFC5733 contact disclose field for both name and address

Please explain with details about whether this would affect registrants, registrars, WHOIS users, or other stakeholders.

Comments:

13. Whilst noting that the proposed privacy services framework would not apply to Self-Managed Tag users where domains must be connected to the registrant, should the framework be restricted only to Nominet Channel Partner and Accredited Channel Partner Tag holders?

- Yes No Don't know No opinion

Comments:

If you answered "No" to question 13, please also answer 13b.

13b. If you believe the framework should not be restricted, and that other parties should be permitted to operate privacy services, please explain why and provide comments on how Nominet could identify, monitor, and enforce the framework for third parties.

Comments:

XIV. ABOUT YOU

<p>Please tell us about you. Please note that only your name and organisation will be published with your response.</p> <p>* indicates a mandatory field</p>	
<p>First Name*</p>	<p>Surname*</p>
<p>Position</p>	
<p>Name of Organisation</p>	
<p>Email*</p>	
<p>Telephone</p>	
<p>Postal Address</p>	
<p>The feedback we receive will inform our decision on changes to our WHOIS policy. Please tell us if you agree to the publication of your response by selecting one of the options below. Anonymous responses will not be published although they will be taken into account.*</p> <p><input type="checkbox"/> Yes I am happy for Nominet to publish my response, along with my name and organisation</p> <p><input type="checkbox"/> No I do not want Nominet to publish my response.</p>	
<p><i>The following questions are for demographic and statistical purposes and will not be published with your consultation response.</i></p>	
<p>2. I would like you to keep me informed of this consultation: *</p> <p><input type="checkbox"/> YES</p> <p><input type="checkbox"/> NO</p>	<p>3. I would like you to keep me informed of future .uk policy and .uk policy events: *</p> <p><input type="checkbox"/> YES</p> <p><input type="checkbox"/> NO</p>

<p>4a. Are you a Registrant of a .uk. domain name? *</p> <p><input type="checkbox"/> YES</p> <p><input type="checkbox"/> NO</p> <p>4b. Have you used or ever used a privacy service to keep your details private?</p> <p><input type="checkbox"/> YES</p> <p><input type="checkbox"/> NO</p>	<p>5. Are you a Nominet Registrar? *</p> <p><input type="checkbox"/> YES</p> <p><input type="checkbox"/> NO</p> <p>If yes, please provide your TAG(S):</p>	<p>6a. Do you currently offer customers registrations using a privacy service? *</p> <p><input type="checkbox"/> YES</p> <p><input type="checkbox"/> NO</p> <p>6b. If you do not currently offer a privacy service, are you likely to offer one in the future? *</p> <p><input type="checkbox"/> YES</p> <p><input type="checkbox"/> NO</p>
<p>7. Please select organisation type: *</p> <p><input type="checkbox"/> Academia <input type="checkbox"/> Business < 250 employees <input type="checkbox"/> Business >250 employees</p> <p><input type="checkbox"/> Individual <input type="checkbox"/> Public Body <input type="checkbox"/> Representative Body (eg trade association)</p>		
<p>Other (please specify):</p>		
<p>8. Please select the box which best describes your sector: *</p> <p><input type="checkbox"/> Civil Society <input type="checkbox"/> Consumer Interests <input type="checkbox"/> Financial Services <input type="checkbox"/> Government</p> <p><input type="checkbox"/> ICT <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Law Enforcement <input type="checkbox"/> Legal</p>		
<p>Other (please specify):</p>		

XV. GLOSSARY

Accredited Channel Partner Tag - one of the three types of tag classification. Accredited Channel Partner Tags are designed for those Registrars wishing to register and manage domains on behalf of third parties, and who wish to be recognised and receive benefits such as additional functionality, for meeting higher standards than registrars with a Channel Partner tag.

Channel Partner Tag - one of the three types of tag classification. This type of tag is intended for those Registrars wishing to register and manage domains on behalf of third parties. Expectations placed on those using this type of tag are lower than for Accredited Channel Partner tags, and they do not get access to additional functionality.

Country Code Top Level Domain Registry (ccTLD) - A country code top-level domain (ccTLD) is an internet top-level domain generally used or reserved for a country e.g. .uk for the United Kingdom or .fr for France.

Dispute Resolution Service (DRS) – A service provided by Nominet to help resolve .uk domain name disputes. The DRS is used where complainants wish to assert rights in a name or mark which is similar to a .uk domain name, where the registration or use of the domain name takes unfair advantage of the complainant’s rights.

Domain Name System (DNS) – the naming system for computers within a network which is intended to be more easily used and remembered by human users than the underlying, numeric, IP Address used by computers themselves. Whenever you type in the address for a website, or send an email, the DNS is being used to ensure that the right information gets to the right place.

DPA – the Data Protection Act 1998, which regulates how personal information is used by organisations, business, or the government.

Generic Top Level Domain Registry (gTLD) - A generic top-level domain (gTLD) is an internet domain name extension in the category of [top-level domains](#) (TLDs) maintained by IANA – e.g. .com and .org.

IANA – the Internet Assigned Numbers Authority, the part of ICANN responsible for the allocation of IP addresses and the management of the central technical apparatus of the DNS.

ICANN – Internet Corporation for Assigned Names and Numbers, the organisation responsible for providing technical operations of vital DNS resources, and defining policies for the operation of the DNS.

Internet Protocol (IP) Address – a numerical identifier which is unique to each computer (or collection of computers) attached to a network, such as the internet.

LEA – law enforcement agency such as the police, trading standards, or another enforcement body.

Privacy service - A service offered by a registrar which shields the contact details of the registrant from publication in a WHOIS database by using the contact details of the privacy service.

Register – The database of domain names in and under the .uk top level domain operated by Nominet, and the associated details relevant to the registered domain names.

Registrant - the person who is recorded on the register as being the one that the registration of a .uk domain name is 'for' and the person with whom Nominet has a contract to provide services to in relation to the domain name.

Registrar - someone who we have allowed to access our automated systems and register, renew and manage domain names on behalf of their customers. The registrar is appointed by the registrant to deal with Nominet on their behalf.

Self Managed Tag Classification – one of the three types of tag classification. This type of tag is intended for Registrants wishing to act as their own Registrar to manage their own domain names.

Tag Classification – the three types of registry identifier that a registrar can use, namely Accredited Channel Partner, Channel Partner and Self Managed. Different obligations and privileges apply to each, depending on their intended purpose.

Top Level Domain Registry (TLD) - A **top-level domain** is one of the domains at the highest level in the hierarchical domain name system of the internet eg .uk or .com

Transfer – The act of handing over control of a domain name from one registrant to a new registrant. For .uk domain names, this can be done by the registrant themselves, or on the registrant's behalf if the registrar acting for the registrant is using an Accredited Channel Partner Tag.

Web Domain Manager (WDM) – Nominet's web-based system that allows registrars to register and manage domain names in a web browser (rather than through a direct connection to our registry systems).

WHOIS – the database we publish online, through which third parties can find information about domain names ending in .uk and in particular about the registrant of any such domain name. The .uk WHOIS displays the name of the registrant, and an address, in addition to other technical information such as nameservers, registrar, date of registration and expiry of the domain, status and validation status of the domain. The WHOIS for other TLDs may publish more information about the registrant.

WHOIS opt-out - The .uk WHOIS opt-out is a facility to enable a registrant who is an individual and does not use, or intend to use, their domain for “trading” purposes to opt out of displaying their contact address in the WHOIS.