

Second level domain registration in .uk

Nominet Background Document

1 July 2013

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Introduction

The internet landscape is changing and Nominet is committed to the long-term relevance and competitiveness of the .uk namespace. Security and data-quality are becoming increasingly important areas of focus of our services and our activities are underpinned by our public purpose to contribute to making the internet as safe, secure and reliable as possible. Keeping .uk at the forefront of internet development and encouraging UK business and consumers to use .uk domains is therefore a fundamental way in which we fulfil our public purpose.

Nominet is the largest country code Top Level Domain (ccTLD) registry that does not allow registrations directly at the second level (eg example.uk). Whilst the existing third level structure (i.e. example.co.uk) is familiar to many, we recognise that some stakeholders would prefer to register domain names directly at the second level. This desire will grow as the generic Top Level Domain (gTLD) landscape expands to include many more TLDs that allow second level registration. We will continue to support the existing second levels in .uk however against this evolving background we believe that existing TLDs including .uk will need to develop and innovate to remain competitive and relevant in this new environment. Nominet's commitment to working in the public interest, our multi-stakeholder approach and our respected industry credentials as a ccTLD registry ensures that we are best placed to meet the evolving needs of our stakeholders and customers.

In October 2012, Nominet launched a three month consultation seeking stakeholder feedback on a set of proposals that would underpin the release of second level domains in .uk. The feedback we received was mixed and a full summary can be found on our website. Many respondents raised concerns in response to aspects of the proposal including:

- The process for a phased release mechanism and the use of auctions to resolve 'contention' cases;
- The process for validation of registrant details;
- Our proposals to increase security, through the mandatory inclusion of features such as malware scanning and DNSSEC;
- The proposed commercial offering and specifically the price;
- The overall positioning of the space as an "enhanced security" space dedicated to business registrants.

In this document, we provide background on the revised proposals and outline the rationale for the changes that are now proposed in the accompanying consultation document.

Why are we consulting?

Our constitution sets out our commitment to consult with stakeholders when we develop policy. Our multi-stakeholder policy development process encourages stakeholder feedback that the Board will take into account when making policy decisions. We are grateful to stakeholders who took time to give us their views on our proposals for direct.uk. After careful consideration of that feedback, we have revised our approach and have focused on developing alternative proposals which balance the diverse needs of stakeholders and also deliver our strategic objectives.

The registration process for second level domain registration

Background

Accuracy of contact data is important to Nominet and we have equally noted the growing expectations of our stakeholders in this regard. We continue to believe that internet users and consumers have a right to know the validated contact details of who they may be buying goods or services from and that high quality data plays an important role in ensuring trust and dealing with abuse and e-crime.

Stakeholders strongly supported the view that data validation and verification was important but told us that the process should be straightforward and enable registrants to get online without unnecessary delay. There is an obvious challenge in balancing the need for user confidence in the validity of contact details and a non-bureaucratic and customer-friendly registration process.

We have therefore maintained validation and verification of registrant details but streamlined the process for this. We have included a requirement for registrants to provide a UK address for service and we would activate (also known as “delegate”) the domain prior to the completion of the validation process.

Process for validation and verification

Nominet would electronically check the registrant contact data against a third party database to validate the existence and correlation of the registrant’s name and address upon registration; for example, that there is an individual residing or the business is trading at the address provided.

Subject to our existing WHOIS policy, contact data would be shown in the WHOIS as having been validated and the most recent date of validation. The registrant’s email address would be verified ensuring that the registrant can be contacted at the address (Nominet would continue not publishing registrant email addresses). This validation process would have cost implications that would be recouped through the registration fee. In our view this method would result in meaningful contact data that would increase consumer confidence.

UK Address for Service

All registrants of second level domains would be required to supply a UK address for service. Registrants that are not UK-based would be required to provide their non-UK address, together with a ‘UK address for service’ that would be validated as part of the registration process. In this case both addresses would be displayed in the WHOIS. An address for service is an address within the jurisdiction of the UK provided by a registrant for the delivery of legal papers or documentation relating to the provision of a domain name registration service. Proof of delivery of documents to this address creates a presumption in law that they have been received by the addressed party. This puts Nominet in a better position to enforce the terms of our Registrant Contract.

Correcting errors in the contact data provided

Whilst we would aim to validate data electronically wherever possible, we are conscious that back up manual procedures to support registrants who might not pass the validation process first time may be necessary. Applicants of second level domains would be required to provide accurate

contact data as is currently required under the existing contract of registration. In practice we propose to give registrants 30 days to correct any data that is not able to be electronically validated. If we are unable to validate the data within 30 days after notification to the registrant, the domain would be suspended and remain suspended for 30 days after which time it would be deleted from the register. Therefore registrants would have a total of 60 days to remedy any inaccuracies. This relatively long period acknowledges that it might be necessary for both Nominet and the registrant to go through the manual process of validation.

Registrants of existing .uk domain names

We would validate and verify registrant data in the third level for a nominal fee. At this stage we intend to make this available on an optional basis. The validated and verified status would be shown in the WHOIS.

Where a third level registrant has validated and verified their contact data as part of a second level registration, we would consider their data automatically validated and verified and they would not need to go through the process again. Therefore the contact details for the third level and second level domain would be shown as validated in the WHOIS.

Revalidation and re-verification

We propose to check, revalidate and re-verify the contact data for registrants on an annual basis as well as following procedures such as a registrant transfer or address change.

Release process for second level domain registration

Background

We had originally proposed a phased release process that would have prioritised owners of intellectual property rights in registering second level domains. Whilst stakeholders expressed strong support for an orderly release of second level domains there was not a clear consensus as to how this should be organised. The principal objection was that such an approach did not sufficiently recognise the impact on third level registrants, and therefore the process was deemed unfair by not giving them a pre-emptive right to register the corresponding second level domain name.

We also noted that many stakeholders objected to our suggestion that the second level be positioned as a space designed for business registrants and that this would conflict with .co.uk and discriminate against those who wished to take up a shorter domain. We agree that the original method proposed did not adequately acknowledge the importance of existing spaces and was possibly better suited to the launch of a gTLD rather than an extension to the .uk space co-existing with the other second level spaces. Whilst we remain strongly committed to allowing IP rights owners to protect their rights, we believe this can be achieved without the need to create a specific IP rights window. We note that in the UK many firms do not hold trademarks on their company names or brands, but rely on other sources of protection such as the common law right against 'passing off'. The highly respected Nominet Dispute Resolution Service (DRS) has been available since 2001 to resolve disputes and address abusive registrations. This should mean that

the volume of abusive registrations that could be carried forward into a new second level structure is very low as well as providing an effective mechanism to address abuses where they arise.

In developing a release process that balances the desire of the majority of respondents to prioritise the rights of third level registrants and ensures that the second level is open to all types of registrants, we have considered how we could manage competing rights.

The feedback highlighted a range of perspectives amongst stakeholders of what type of release process would be considered fair by stakeholders – which was frequently dependent on the experience of the individual respondent. Many registrants advocated that they should have first priority to register the second level domain whilst others felt .org.uk, typically registered by charities be first so as to remove the need to compete in an auction. Others suggested that in the event of completing claims to a second level, registrations could be allocated through a more complex hierarchy using a combination of the earliest date of registration of a domain, registered trademark, or unregistered right.

We recognise that there are stakeholders that consider they have a more legitimate right to secure a second level domain than others. Through the proposed release process we recognise the loyalty of existing registrants in the .uk space by offering them the opportunity to register a second level domain. In some cases there may be more than one person who would like to register the same domain string and this release process is one way of determining who should register first. We acknowledge that some existing registrants will not want to take this opportunity and will prefer to maintain their existing domain. Nominet is committed to supporting the existing .uk spaces and will continue to do so. We also want to be able to offer new registrants an opportunity to register in a new .uk space.

With a view to balancing our stakeholder priorities, we have sought to put forward a revised process that provides certainty, minimises costs, and balances what can often be a subjective issue of fairness. In summary:

- The registrants of third level domains would be offered the option to exercise a right of first refusal to register the corresponding domain at the second level. They would have 6 months to exercise this right. In the event that there are identical third level strings in two or more Nominet-managed spaces, the domain that has been continuously registered for the longest period would have the first right of refusal before it can be passed to another registrant with a matching domain string that was registered at a later date.
- Registrants of domains at the third level that are not the earliest continuous registration would have the opportunity to indicate their interest in securing the corresponding domain name during the 6 month window and would be able to register it if the right of first refusal is not exercised.
- Provided a right of first refusal does not exist, any domain names could be registered at the second level from the start of the window. All registrations would need to meet any other registration rules including the validation and verification checks.

Right of first refusal

As set out in the summary above we now consider that the most equitable process would be to grant registrants of existing third level domain names under Nominet's management (.co.uk, .org.uk, .me.uk, .ltd.uk, .plc.uk, .net.uk and .sch.uk) a six month window to exercise a right of first

refusal to register the second level equivalent. The right would be granted to the earliest continuously registered domain name string.

For example, this would mean that a domain name that has been continuously registered since 2005 would be granted the right of first refusal over a domain name that was registered in 2000, deleted from the register for non-renewal in 2008 and then re-registered in 2009. Where the domain has been transferred between registrants but has remained registered at all times the date of first registration, and not the date of the last transfer of legal registrant is relevant. In instances where there is an ongoing active DRS complaint about a third level registration the second level domain would not be delegated until the dispute is resolved.

There are around 500,000 domains names, constituting 5 % of the .uk registry that have identical third level strings – across more than one second level domain space. In some cases the registrants may be one and the same, however in most cases they will not be identical. We have considered ways to address this contention, recognising that entities frequently register in a particular second level to reflect their organisation type (.org.uk for a charity and .co.uk for a commercial organisation). As referenced above we have considered the possibility of prioritising the rights of .co.uk registrants, but on further reflection of the modified nature of the space designed to accommodate wider users and stakeholders rather than a space dedicated for business we feel such an approach would not be appropriate. Therefore, we believe it is simpler and fairer to grant the right to the currently registered domain name string that has the earliest registration date.

We have also examined the possibility of a single phase for registered and unregistered rights. Whilst this might allow a process of ‘weighting’ of rights to determine which applicant has the “strongest” claim on a second level domain name, we do not believe that it would be possible to devise a simple and cost-effective process. A release process that is relatively simple for end-users and registrars, and eliminates the need for a detailed factual assessment of the merits of competing claims, would be significantly less expensive.

Third level sub-domains

Our original proposal restricted second level registrants from selling sub-domains at the third level, in order to minimise potential abuse and end user confusion. However, we would not want to impose a restriction that may have unintended consequences resulting in businesses unintentionally breaching our registration policy or inhibiting them from an online presence that reflects their business. Some businesses might have a geographically distributed model or franchise for their operations or licence and wish to demonstrate this through their domain e.g. car dealerships or ISPs creating customer specific domains for their services.

We agree that a restriction on this type of use would be potentially unfair therefore we do not intend to prohibit the creation of third level domains by a provider of goods or services for distribution of their products.

We recognise the concerns raised regarding monitoring and enforcement of such a restriction however many of our stakeholders felt it necessary in the interest of minimising confusion. We agree that it is in the public interest to contractually prevent the sale of third level sub-domains to the public at large in order to minimise the potential creation of a number of compliance and consumer protection issues such as:

- Registrants of a sub-domain would not be protected by a direct contractual relationship with the registry.
- Registrants of sub-domains would have no obligation to provide transparent, accurate WHOIS details. The requirement to validate and verify registrant contact data would in practice be difficult to enforce on sub-domain registrants.
- The DRS policy and procedure would not apply to the registrant of the third level sub-domain therefore the DRS would not be available to rights holders seeking to enforce their IP rights.
- In the event of a breach by or insolvency of the second level domain registrant, suspension of the domain by Nominet could have severe consequences for the sub-domain registrants.

Reserved and protected names

Some stakeholders responding to our previous consultation told us that they would prefer a more restrictive second level space than is reflected in the current rules in the second level registries administered by Nominet (.co.uk, .org.uk etc). Organisations including those representing consumer interests considered that reserving names for official purposes could play an important role in protecting consumer interests. There was a view that consumers might reasonably expect that domains registered at the second level – particularly in the early stages of establishing the new space – to be registered to official organisations or public authorities and therefore likely to be perceived as official in nature. Some indicated that they would expect public authorities to be afforded higher reservation rights in order to reduce the likelihood of this type of confusion. In addition there was not insignificant support for restricting sensitive names as designated by Companies House.

The list of sensitive names or expressions¹ outlined by Companies House includes words which could be considered generic such as ‘board’, ‘British’, ‘group’, ‘international’ and so on. Introducing a more restrictive policy along these lines would prohibit the registration of a domain name such as ‘ilovebritishfood.uk’ which in our view would be overly restrictive and not in keeping with .uk domain name policy to date. Stakeholders indicated that implementing a stricter reserved names policy could penalise legitimate .co.uk registrants. As we intend to prioritise existing third level registrants in the proposed release, it would seem unfair to implement restrictions that would prevent a registrant from otherwise exercising their right to register a matching second level domain.

We acknowledge that there were concerns expressed that confusion may arise as a result of different registrants potentially registering identical domain strings in different suffixes. However feedback also suggested that in general, internet users are familiar with, and able to differentiate and navigate between, the various suffixes that exist including between .com, .co.uk and .org.uk and so on.

In parallel, it has been brought to our attention that the Government is currently undertaking a transformation of government digital services. One impact of this programme will be to remove public bodies that currently occupy the .gov.uk space but are not Government departments from the .gov.uk space. At the time of publication of this consultation, we understand that by April 2014, the websites of approximately 150 of these bodies will be exempt from migrating to the

¹ <http://www.companieshouse.gov.uk/about/gbhtml/gp1.shtml#appA>

gov.uk space in line with the Government's criteria and exemptions [process](#). Given their previous reliance on a .gov.uk domain, some of these bodies may be left without a meaningful .uk domain name that reflects their status and visibly communicates what they do.

Taking this transformation programme into account, we believe that it would be in the public interest to maintain our existing open registration policy subject to a minor modification. We propose to reserve for those bodies that have been granted an exemption through the Government's Digital Transformation programme, the matching domain string of their .gov.uk domain in the second level. Any such domain would need to be in existence as at 1 July 2013. Therefore, in practice, a body that is being moved off the .gov.uk domain space would be granted a pre-emptive right to register in the .uk space, even where an identical string in another third level (eg .co.uk) might pre-date the registration in the .gov.uk space.

At this time, we understand that the number of exemptions is limited but that it continues to evolve, in which case our proposal is to consult with Government to ensure that we, and our stakeholders, have certainty as regards the list of exemptions if we move forward. We have published on our [website](#) a list of third level .gov.uk domains that we understand, as at 1 July 2013, will not be moved to gov.uk and which we would therefore reserve under this exception. We would also propose that the restriction could be lifted with the authority from the .gov.uk registrant.

We believe this exception would present a reasonable and proportionate approach, and would have minimal impact on the balance of the register and existing registrants. Other third level domains in gov.uk would not fall under this exception, as they would continue to exist in the gov.uk space. A broad-brush approach to restricting identical strings of all third level .gov.uk domains would be potentially disproportionate and may impact many other registrants who might otherwise have a right of first refusal, or wish to register a new domain. We would welcome views from stakeholders on the impact of this approach.

In light of the Government's current programme referenced above, if we do not proceed with enabling second level domain registrations it would be our intention to allow those organisations that are no longer able to use a .gov.uk to register directly within the second level. We would welcome your views on this approach.

Reflecting the limited restrictions currently in force in the .uk space the only further restrictions we propose would be on the registration of <uk.uk> and <com.uk>.

Commercial aspects of the proposal

Many registrants told us that the existing domain name options available in .uk sufficiently meet their needs and that they would not wish to take on significant additional costs to register a domain at the second level. We are committed to supporting the existing second levels in .uk and recognise that some businesses and consumers will want to consider carefully whether to take on any potential additional costs in relation to registering a new second level domain.

Many stakeholders strongly objected to the use of an auction to resolve 'tie-break' situations in the release process. Whilst auctions may be the most efficient means to allocate resources in the event of competing rights we acknowledge that many felt it would be unfair to lose a domain to

which they considered they had a legitimate right as a result of financial constraints. The use of auctions has now been eliminated from the proposed release process.

The original proposal suggested a registration fee of £20 which many stakeholders strongly objected to. Taking account of the feedback and reflecting the modified proposal we are proposing a wholesale price competitive with gTLDs such as com, reflecting the desirability of the shorter domain of £4.50 per year for multiple year registrations (i.e. £9.00 for a two year registration) and £5.50 for single year registrations.

We would welcome views on whether there are any other steps we could take to support existing registrants who wish to exercise their right of first refusal. We are seeking views on:

- Discounting the second level registration fee for existing registrants who exercise the right of first refusal;
- Giving existing registrants with multiple domains that qualify for the right of first refusal a bulk discount;
- Allowing registrants with right of first refusal to block beyond the window for a reduced fee after which they could register and delegate the domain

Our commitment to increasing security across the .uk namespace

We received a wide range of views on our original proposals to include mandatory DNSSEC malware monitoring and a trustmark. Virtually all respondents agreed that it was desirable in principle to improve the security of the .uk namespace. However there was a lack of support for the mandatory bundling of security features within a single new product. There were also concerns raised about impact on the perceived security of third level domains. In relation to the trustmark, many respondents felt there was insufficient evidence that a Nominet-specific trustmark would provide additional benefit over and above other trustmarks and certification products already available.

Taking this into account, we have revised our approach and are not mandating that any specific security features be included as part of second level domain registration. We intend to take an overarching approach to increasing security across the namespace as a whole. We will develop additional security products and services that are intended to complement those already available from other sources and will be available for all registrants within .uk. We envisage a range of services being made available to registrants on an optional basis as time goes on. Nominet will continue to work with public and private sector partners to develop our shared understanding of the threat landscape, and the specific ways in which the domain name system can adapt to address specific threats.

We were pleased that the principle of encouraging DNSSEC adoption was positively received by stakeholders across all groups. We generally agree with those respondents who argued that the best way to achieve systemic improvements in security is for end-users themselves to recognise the risks they face and thus create a market for solutions. This tends to support making DNSSEC available throughout the .uk namespace as an optional rather than mandatory feature whilst continuing to promote the benefits of DNSSEC as part of a range of measures which can mitigate various types of cyber-threat. However, we also note that the industry is subject to increasing expectations from Government and civil society to do more. We note that policy makers may wish

to see wider take up of DNSSEC, especially in industries that may be vulnerable to attacks (such as financial services). We will therefore continue to work with stakeholders to keep the rate of DNSSEC adoption under review.