

Introduction

The Internet Services Providers Association is the trade association for the internet industry in the UK. ISPA has over 200 members from across the sector, including access providers, hosting companies and user generated content platforms. Nominet is also a member but has not contributed to this response.

A number of our members have direct relationships with Nominet but we believe that any change to Nominet's domain registration policy will have implications for the whole internet ecosystem in the UK and not just for organisations who are members of Nominet.

In reaching a decision, Nominet should consider how its actions will affect the whole internet value chain; whether action may be better taken at another level within that value chain; and whether its actions will address the problem that has been identified. Nominet should further consider that law, rules and expectations, e.g. with regard to freedom of expression, apply both online and offline.

With this in mind ISPA believes that:

- Nominet is not well placed to tackle many of the problems that it has been asked to address and should approach this issue in the context of the wider online safety debate.
- Nominet primarily faces a reputational challenge but the adoption of a more restrictive registration policy poses reputational risks as well.
- Nominet should focus its efforts on dealing with criminal domain names, refer complaints to a competent third party and be transparent about its decision making.
- Nominet's efforts should not focus on content but solely on criminal domain names
- Nominet may want to consider allowing members of the public to file complaints about domain names but would need to ensure that this process remains manageable.

What is the problem that Nominet aims to address?

Nominet's terms of reference for the domain registration policy review do not explicitly specify the problem or issue that the review is supposed to address. Instead, references are made to newspaper articles and an exchange of correspondence with the Department for Culture, Media and Sport. Overall, the following four issues seem to have been identified:

1. A letter from 2 August 2013, sent by the Minister for Culture, Communications and Creative Industries, states that "[r]ecently there have been several cases where the internet has been

used to propagate abusive behaviour and we need to ensure that maximum effort is taken to tackle such behaviour, and seek ways to prevent it occurring.”

2. An email from 2 August 2013, sent by Nominet’s Head of Policy, suggests that a journalist believes that “the internet industry is not doing enough to stop offensive (legal) content.”
3. The terms of reference state that “concerns were also expressed about the volume of internet pornography hosted in Britain”
4. The terms of reference further state that concerns were raised about the “the lack of restrictions applied by Nominet in accepting domain name registrations.”

Each of these statements identifies a different policy problem and different policy responses would be required to address these individual problems. However, we believe that Nominet is not necessarily best placed to actually address these problems and we would argue that the only areas where Nominet should consider taking action is to consider a more restrictive registration policy.

Problem 1: The internet has been used to propagate abusive behaviour

The Minister’s letter alleges that the “internet has been used to propagate abusive behaviour.” Nominet merely governs the .uk domain space and any policy decisions that it takes will thus only affect this limited part of the Internet. Moreover, it can be argued that any action that will be taken by Nominet will simply displace domains that allegedly propagate abusive behaviour into other domain spaces and further away from responsible registrars. Nominet would thus neither “tackle such [abusive] behaviour” nor “prevent it occurring” thereby failing to meet the expectations of the Minister.

Problem 2: There is a lack of industry effort to stop offensive (legal) content

Nominet’s Head of Policy’s letter refers to concerns about a lack of effort to stop offensive (legal) content. There is a debate to be had about how the internet industry is dealing with offensive and generally legal content. We believe that as a whole, the industry has responded in a responsible manner, e.g. by offering easy to use filtering tools and reporting mechanisms. However, Nominet is not best placed to make granular and effective decisions in this area and it is for the various parts of the Internet value chain that are closer to the content to lead on this debate, with input from wider society.

Problem 3: The volume of internet pornography hosted in Britain

The terms of reference refer to the “volume of internet pornography hosted in Britain”. Nominet would only be able to address the issue of pornography being hosted in the .uk domain space. However, there may be pornographic material that is hosted on British servers or by British business but registered in another domain space (e.g. .com) and it has to be pointed out that it is not, necessarily illegal, to host this material.

Problem 4: A lack of restrictions applied by Nominet in accepting domain name registrations

The terms of reference further refer to a “lack of restrictions applied by Nominet in accepting domain name registrations.” This is the only area where Nominet can take effective action and we set out our thoughts below.

Should Nominet adopt a more restrictive registration policy and why?

By and large the caveats that we outlined previously also apply to the adoption of a more restrictive registration policy, i.e. banning certain expressions, words or activities etc. from the .uk domain space does not remove them from the internet nor make them inaccessible to UK internet users.

However, it could be argued that this is also a reputational issue for Nominet who may be concerned about the existence of .uk domains names that:

1. Are criminal
2. suggest criminal behaviour
3. are offensive but legal

Domain names that are criminal

As outlined by Lesley Cowley OBE in her letter to the Minister for Culture, Communications and Creative Industries from 29 July 2013, Nominet already has an established way of dealing with criminal domain names. It has established a relationship with various branches of the law enforcement community and regulatory authorities, provides a dedicated support team and offers a rapid suspension process if necessary. We do not believe that further action is necessary although Nominet could consider accepting complaints from members of the public if it is not doing this already.

Domain names that suggest criminal behaviour

Some domain names may not be criminal as such but suggest that the content that is being hosted on that domain is of a criminal nature. Nominet could apply a similar policy approach to this type of domain as it does to criminal domains. However, making a judgment call on these domains would essentially involve an assessment of the content that is being hosted. It may be better to approach hosting providers and those organisations that have uploaded the content and who can often make a more reasoned judgement call. Establishing a dedicated procedure for this type of domain would effectively make Nominet the arbiter of what can and cannot be hosted on .uk domains and would thus change the nature of the organisation and its role within the internet

eco system. Nominet should not take action itself but may want to consider directing complaints about this type of domains to the appropriate organisation.

Domain names that are offensive but legal

Independent of the content that is being hosted on a domain, a domain name may be considered offensive. However, offensiveness does not equate to illegality and it is questionable whether Nominet would be a good arbiter of taste and decency and indeed whether Nominet should act as such an arbiter in the first place. Public debate both offline and online profits from people being able to exchange frank views and ideas and any intervention into this public debate needs to be governed by proper processes and high thresholds. It is for this reason that we believe that the issue of offensive domain names should be tackled in a similar way to offensive online comments that are made elsewhere. The Crown Prosecution Service (CPS) recently published guidelines for the prosecution of cases involving communications sent via social media.¹ These guidelines set a high threshold for the prosecution of those who post comments online and any policy for dealing with allegedly offensive domain names should be based on these guidelines. We believe that Nominet should refer any complaints that it receives to a third party organisation like the CPS.

Conclusion

Online safety, the access to potentially improper or illegal online content and the presence of threatening, abusive or offending online comments have been the subject of a wide-ranging and detailed public debate. ISPA and its members have taken part in this debate and many companies have changed business processes in response to it, e.g. by making available filtering tools or rolling out easy to use reporting tools.

We are not surprised that Nominet has been asked to consider how it can take action in this context. However, as we have outlined previously, Nominet is not well placed to tackle many of the problems that it has been asked to address. The only area where Nominet can take effective action is by adopting a new registration policy to ensure that the domain names are not criminal, offensive or suggest the availability of criminal content. As such Nominet faces a reputational challenge and any change in its policy would merely help to address a perceived reputation deficit.

A more restrictive domain registration policy would move Nominet away from the approaches that have been adopted for the .com, .eu and .org and bring it closer to the approach that has been adopted in China and other countries. We believe that this poses a reputational issue for Nominet in itself but we also believe that Nominet cannot simply ignore the current debate. For this reason

¹ http://www.cps.gov.uk/legal/a_to_c/communications_sent_via_social_media/

we believe that Nominet should consider opening its complaints procedure to members of the public, although it would need to ensure that such a procedure would remain manageable.

Any decisions about the deregistration of domains should, however, be taken by referring the assessment of a domain name to a qualified third party and action should only be taken if domain names are illegal. Nominet's current approach to criminal domains provides a blueprint for this but Nominet needs to ensure that it publishes a draft of its policy in detail, consults widely on this policy and ensures that any decision is made in a transparent manner. Nominet's efforts should also be focused on exclusively dealing with criminal domain names and not with the content that is hosted on these domains.

Adopting a more restrictive registration policy that would apply to legal as well as illegal content would open Nominet to demands to also restrict access to domains which some members of the public or organisations find controversial, e.g. religious content and thus lead to fundamental change of the .uk domain space.