

World Trademark Review Daily

**Nominet agrees to minimum ban
United Kingdom - Hogan Lovells LLP**

Domain names

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The registry responsible for running the '.uk' namespace, [Nominet](#), has concluded the review of its registration policy for '.uk' domain names, chaired by former Director of Public Prosecutions Ken Macdonald QC. Traditionally, Nominet has always been an open registry, accepting domain names on a 'first-come, first-served' basis without any restrictions, other than a limited number of technical requirements (eg, domain names may contain hyphens, but cannot start or end with them). No terms or phrases were forbidden, even if they were offensive or even criminal in nature.

The review stemmed from Nominet's discussions with the [Department for Culture, Media & Sport](#) in relation to '.uk' registration policy. Interest from the Department for Culture, Media & Sport appears to have been brought about by a number of reports in the British media highlighting the issue of pornography on the Internet and, in particular, child pornography, after a number of high-profile crimes. Concerns were expressed about the volume of internet pornography hosted in Britain, and the lack of restrictions applied by Nominet in accepting domain name registrations.

The review therefore focused on the extent to which Nominet should be restricting offensive or otherwise inappropriate words or expressions in domain name registrations, and members of the public were asked to contribute their views, in particular on whether any terms should be blocked completely, or whether a post-registration complaints procedure should be introduced. Lord Macdonald reviewed all such feedback and met various stakeholders before producing a very clear and comprehensive [39-page report](#) setting out his recommendations and the reasoning behind them.

Nominet subsequently announced that it was intending to make all of the changes to its registration policy recommended by Lord Macdonald. Specifically, Nominet announced that it would:

1. institute a system of post-registration domain name screening, within 48 hours of registration, for domain names that appear to signal or encourage serious sexual offences. Such domain names will be suspended or de-registered. No other screening will take place.
2. amend its terms and conditions to make it clear that registration of a domain name that appears to be a serious sexual offence will constitute a breach. In addition, Nominet will also make it clear that use of a domain name for criminal purposes is not permitted and that such domain names may be suspended or de-registered.
3. refer domain names otherwise signalling criminal content to the police for further action if they are brought to Nominet's attention, in keeping with Nominet's current policy. However, Nominet will play no role in policing website content.

The changes will be applied retroactively to existing registrations, although they affect only a handful of domain names. Nominet has already notified registrants of affected domains.

The above would seem like a very pragmatic way of dealing with a rather difficult situation. On the one hand, it would have been very difficult for Nominet not to do anything at all, given the media pressure and the current climate in the United Kingdom, but on the other hand too much intervention would no doubt have led to criticism from freedom of speech advocates and resulted in a heavy and disproportionate policing burden for Nominet. The scope of the proposed solution is clearly delineated and is mainly intended to tackle a very small number of domain name registrations that signal or encourage serious sexual offences, something that the majority of registrants would presumably not take issue with.

Lord MacDonald's analysis of the public feedback underlines that the vast majority of the 170 respondents were in favour of continuing open registration (only nine supported pre-registration checks and 23 post-registration checks). A number of themes were frequently highlighted by such respondents, namely:

- the importance of free speech;
- the subjective nature of many terms and thus the inherent difficulties in producing an agreed list of terms to be banned;
- technical difficulties in implementing checks based on any list of banned terms (the so-called 'Scunthorpe problem');
- a belief that it is not Nominet's role to be an arbiter in this area;
- a belief that it will always be the website content rather than domain names themselves where any problems lie;

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- a belief that Nominet's existing procedures, particularly its work with the [Internet Watch Foundation](#) (IWF) and law enforcement agencies, already deal with these issues adequately; and
- concerns that any move away from a model of completely open registration would prove to be the thin end of the wedge and other perhaps more restrictive measures would inevitably follow.

In his report, Lord Macdonald broadly agreed that Nominet should remain an open registry for two main reasons. First, pre-registration checks would slow down the registration process, which must be speedy and efficient; secondly, the current screening technology is unable to judge context and would throw up unmanageable numbers of false positives, which would slow down registrations to a point that may become commercially unviable. In short, pre-registration checks would tie up time and resources to no great effect and would force Nominet into a decision-making role that it would be ill-equipped to fulfil.

However, Lord Macdonald did not think that limited post-registration scrutiny, designed to detect grave criminality, was inconsistent with an open registration policy. Such a screening would be limited to domain names likely to signal sexual crime content or likely to amount to sexual crime in themselves by way of incitement, and thus would be very rare (ie, domain names essentially relating to paedophilia, rape, bestiality, incest, zoophilia and necrophilia). This was borne out by a test performed by Nominet in 2013 on all new registrations using a defined list of serious sex crimes, which revealed that there were only around 20 to 25 positives each week, the vast majority of which were false, for example 'barbaraperkins.co.uk' (containing 'rape') or 'vincestephens.co.uk' (containing 'incest').

In Lord Macdonald's opinion, expanding such screening to cover other criminal activity, such as racial hatred, would throw up too many false positives since it would be necessary to pick up on unacceptable combinations of inoffensive words, such as 'kill'. In any case, if such domain names were identified and brought to Nominet's notice, as usual Nominet would refer them to the police who would be correctly equipped to consider the question of criminal prosecution.

Any such post-registration screening would relate only to the domain name itself, not to any content attached to it, since typically there would not be any such content immediately after registration. However, Lord Macdonald did not find this problematic for two reasons. First, Nominet was unlikely to be equipped to make legal judgments about content, except in the most obvious cases (eg, child abuse, which Nominet would refer to the IWF in any event). Secondly, the fact that no content would be available to contextualise the domain name in any way would result in only the most clear-cut cases being caught. In this regard, Lord Macdonald consistently made it clear that Nominet should have no role in policing questions of taste or offensiveness on the Internet, whether in relation to domain names themselves or their corresponding content.

Finally, Lord Macdonald's report considered the question of whether Nominet should make its zone file information more widely available, namely the full list of domain names registered under '.uk'. In Lord Macdonald's opinion, whilst this may increase public confidence in that it would empower individuals and organisations to raise concerns about the appropriateness of particular domain names, the counter arguments were stronger, in particular the abuse of such information by criminals.

As a result of the review, the main change for Nominet will be the new post-registration screening of domain names for certain defined terms relating to serious sexual offences. Existing domain names containing such terms have already been suspended, as shown in the Whois. Given that such screening is intended to capture only the most unambiguous examples, there would appear to be no appeal process in the event of wrongful suspension, but presumably Nominet may act if it became clear that a domain name containing a banned term was intended to be entirely innocent. However, given that the list of banned terms presumably has little scope for ambiguity, this would seem quite unlikely.

Clearly, the narrow parameters of such screening will mean that domain names making reference to serious sexual offences may nevertheless slip through the net (the possibilities for slang terms or misspellings are endless), but presumably, if notified of potential criminality, Nominet will act expeditiously to refer this to the police or to the IWF.

It is not clear yet whether the list of banned terms will be made publically available by Nominet.

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