

World Trademark Review Daily

Nominet consults on offensive domain names
United Kingdom - Hogan Lovells LLP

Domain names

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The registry responsible for running the '.uk' namespace, [Nominet](#), has announced that it was conducting a review of its registration policy for '.uk' domain names. The review focuses on the extent to which Nominet should be restricting offensive or otherwise inappropriate words or expressions in domain name registrations, as Nominet does not currently restrict domain name registrations, which are accepted on a 'first come, first served' basis without any restrictions.

At the moment, Nominet does not make any value judgements as to the use to which domain names are put, or whether domain names themselves are offensive or in poor taste. This is also the practice adopted by certain other registries, such as those responsible for '.com' or '.org', and many country-code top-level domains (ccTLDs). However, in some ccTLDs there are naming policies which state that domain names must not be offensive or contrary to public policy (eg, it is not possible to register 'porn.ie' under the ccTLD of the Republic of Ireland).

Under Nominet's current system, any problems must be tackled post-registration, for example by the use of Nominet's Dispute Resolution Service (DRS) dealing with domain name registrations that take unfair advantage of third-party rights (most commonly trademark rights). Around 60 DRS complaints are made via an online form each month, and similar alternative dispute resolution procedures exist for almost all other TLDs.

For more serious issues such as criminal use, Nominet has an expedited suspension process that removes the functionality of a domain name whilst maintaining it on the database of registrations, and works with law enforcement agencies such as the [Serious Organised Crime Agency](#), the [Metropolitan Police's e-Crime Unit](#) and [Trading Standards](#). In practice, Nominet deals with a handful of law enforcement suspension requests each month (mostly for counterfeit goods and prescription medicines).

Nominet is also a member of the [Internet Watch Foundation](#) and states that it will act expeditiously to remove access to child sexual abuse images and criminally obscene adult content.

The review is to be independently chaired by former Director of Public Prosecutions Ken Macdonald QC. It stems 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.

Members of the public are able to contribute to the review until November 4 2013. In this regard, Nominet has provided an online form which requests answers to the following questions, amongst other things:

- Do you believe that some terms and expressions should be blocked completely, and if so how do you propose such a list could be drawn up and maintained?
- If you do not believe that any restrictions should be introduced at the point of registration, should a post-registration complaints procedure be introduced, and if so, what should the criteria be for a complaint to be upheld, and what remedies should be available?

Contributions will then be examined by the chairman of the review who will prepare a summary of responses and, if appropriate, recommendations to be considered by the Nominet Board.

In a letter to Ed Vaizey, the UK Minister for Culture, Communications and Creative Industries, before the policy review was announced, the Chief Executive of Nominet, Lesley Cowley, underlined the following:

"The question of having a list of banned strings raises a number of issues relating to freedom of expression, but also raises much more direct questions of practicality.

On the first point, defining whether something is offensive is a subjective judgement and one which we believe is better made by public authorities such as the police, courts or a competent regulatory authority, rather than by Nominet as a private company. There are of course some potential terms that some would consider self-evidently offensive, but even then the question of whether a domain name registration should be permitted is not necessarily clear cut. For example, the domain name

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'childabuse.co.uk' is registered to an individual who has forwarded the domain name to the NSPCC website. Arguably this is a good use of a domain name which some people might argue should not be available to register.

In relation to the questions of practicality, the permutations of offensive words and phrases that can be created in the 63 characters of a domain name are almost limitless, so the creation of some kind of exclusion list would ultimately not prevent offensive phrases being registered as domain names. Were we to have a set of words or phrases that could not be registered, we would likely end up restricting many legitimate registrations. A good example is 'scunthorpe.co.uk', which contains an offensive term within the domain name, or 'therapist.co.uk' which could be read in more than one way.

We could in theory vet all applications for a '.uk' domain name, but this could only be done by adding considerable time and cost for each registrant to the registration process. Even if we took this step, ultimately the offensiveness and indeed legality of a particular website is likely to be heavily dependent on its content and this is something that cannot be judged during the process of registering a domain name."

In view of this, it would seem quite likely that the policy review will result in little, if any, change, in particular given the huge practical impossibility of vetting suggested domain names before registration (many and varied illustrations of the so-called 'scunthorpe problem' may be seen [here](#)). Few would argue that the growth of the Internet has resulted in a whole new set of issues that society as a whole needs to discuss and address. However, banning the registration of certain domain names would not really tackle what are essentially website content issues, as pointed out by Ms Cowley.

Indeed, in this regard it is interesting to note that in July 2011 the French domain name registry, [AFNIC](#), released over 1,500 previously unavailable domain names for registration, further to a change in French law. Previously banned terms that were unavailable because they were unlawful or contrary to public policy (eg, because they were seen as racist, rude or relating to illegal activities) are grouped into categories on the AFNIC website relating, for example, to crimes, values, health and human rights (although the [list](#) is non-exhaustive and may change as new terms are added). However, these domain names are not simply freely available for registration and applicants must explain why they have a legitimate interest in acquiring them and prove that they are acting in good faith.

It is possible that Nominet could introduce a similar system further to the review, but it does seem extremely unlikely given the manpower that would be involved and the minimal effect that this would ultimately have on the type of illegal internet content that needs to be addressed.

The online form that may be used by members of the public to contribute to the review may be accessed [here](#).

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