

**Comments of the Internet Committee of the International Trademark Association on:
Nominet's Consultation on Second Level Domain Registration in .UK
September 20, 2013**

The Internet Committee of the International Trademark Association (INTA) appreciates this opportunity to provide comments to Nominet on its Consultation on Second Level Domain Registration in .UK.

Summary

To the extent that Nominet concludes it is appropriate to expand the *.uk* namespace to allow for second-level registrations, our overarching concerns are that the expansion is responsible, deliberate and justified, with attention to the overall issues of trademark protection, potential for malicious conduct, Internet security and stability, and economic impact.

In light of the risks of social harm from expanding a namespace in the Domain Name System (DNS), including the potential for end-user and consumer confusion, we believe that additional study and analysis by Nominet is necessary before the Committee can support the proposed expansion of the *co.uk* name space. For example, Nominet should be able to demonstrate a clear demand for second-level registrations in *.uk* from legitimate businesses. If the new *.uk* system is to be decoupled from the enhanced security features as originally proposed, then Nominet should be able to demonstrate that the other benefits derived from its proposal will outweigh the costs that will be imposed on the public. These costs will include the need to acquire additional domain names and costs associated with protecting intellectual property and consumers from abusive second-level domain name registrations.

Currently, for owners of existing *co.uk* domain names - the need for additional domain names in the *.uk* ccTLD has not been established. For Internet users, the expansion of the *.uk* system may lead to end-user confusion if two unrelated businesses were to operate at otherwise identical [name].co.uk and [name].uk domain names. Nominet remains amongst the most well respected domain registries globally. So that the *.uk* ccTLD retains this reputation, Nominet should ensure that the majority of all stakeholders will benefit from the proposal to accept second-level registrations.

4. The proposal for second level domain registration

This proposal seeks to strike a better balance between the differing needs of our stakeholders and respond to the concerns and feedback raised to the initial consultation. We have 'decoupled' the security features from the proposal to address concerns regarding the potential creation of a 'two tier' domain space and compulsion to register in the second level. We have set out a more efficient registration process to enhance trust in the data and put forward an equitable, cost effective release mechanism. Do you agree with the proposal to enable second level domain registration in the way we have outlined?

Comments:

The Internet Committee does not agree. As originally proposed by Nominet, we found the new security features as the most significant advantage for users of the current .UK system.

As previously noted, it has not been established by Nominet that businesses that use existing .co.uk domain names have a need for registrations at the second-level. However, these businesses will be compelled to acquire and maintain new second-level registrations in .uk corresponding to their trademarks and existing co.uk domain names.

Internet users are also familiar with the existing co.uk, .org.uk etc. system. Nominet has not demonstrated that these users support the expansion of the co.uk system. In addition, these users may be confused by the use by two unrelated parties of [identical].co.uk and [identical].uk domain names. To address these issues, Nominet should commission studies of the domain name marketplace - to assess both demand for and the economic impact of accepting second-level registrations in the ccTLD.

5. Registration process for registering second level domains

We believe that validated address information and a UK address for service would promote a higher degree of consumer confidence as well as ensure that we are in a better position to enforce the terms of our Registrant Contract. We propose that registrant contact details of registrations in the second level would be validated and verified and we would also make this an option available in the third levels that we manage.

5.a Please tell us whether you agree or disagree with the proposed registration requirements we have outlined, and your reasons why. In particular, we welcome views on whether the requirements represent a fair, simple, practical, approach that would help achieve our objective of enhancing trust in the registration process and the data on record.

Comments:

As it is possible that a legitimate business trading in the United Kingdom may not have a physical location (address) in the UK, Nominet's proposal that a UK "address for service" (for example the business's UK lawyers, accountants, etc.) can be used is a sensible approach.

6. Release process for the launch of second level domain registration

The release process prioritises existing .uk registrations in the current space by offering a six month window where registrants could exercise a right of first refusal. We believe this approach would be the most equitable way to release registrations at the second level. Where a domain string is not registered at the third level it would be available for registration on a first come, first served basis at the start of the six month period or at the end of this process, if the right of first refusal has not been taken up.

6.a Please tell us your views on the methodology we have proposed for the potential release of second level domains. We would be particularly interested in your suggestions as to whether this could be done in a fairer, more practical or more cost effective way.

Comments:

If Nominet can establish that the benefits of its proposed expansion outweigh the costs, then allowing existing registrants to acquire corresponding .uk domain names appears sensible if appropriate safeguards are included to prevent cyber-squatters from acquiring unlawful domain names.

In addition, there are businesses who do not have an existing *co.uk* domain name but who trade in the United Kingdom under an established (registered) trademark and who may seek to register second-level domains under the .uk system. Nominet's original proposal for the enhanced .uk system allowed owners of trademark rights priority over those who do not possess existing domain names or trademark rights. These trademark protections should be a mandatory element of any proposed expansion of the .UK ccTLD.

In seeking to build consumer and business confidence in the new .uk system, trademark owners must be given the opportunity to acquire corresponding .uk domain names before these domain names become available for general registration on a first come, first served basis. We propose that owners of existing *co.uk* domain names may have the first opportunity to acquire corresponding new .uk domain names if appropriate safeguards are included to prevent cyber-squatters acquiring additional unlawful domain names. Following the allocation of these domains, trademark owners must be given the opportunity to acquire corresponding .uk domain

names before the domain names become available for general registration on a first come, first served basis.

6.b Are there any categories of domain names already currently registered which should be released differently, e.g. domains registered on the same day, pre-Nominet domains (where the first registration date may not be identified with certainty) and domains released in the 2011 short domains project?

Comments:

We have no specific comment on this aspect of the proposal. However, we appreciate the possibility to make additional comments if and when Nominet develops specific and detailed proposals for the above-mentioned types of domains.

6.c We recognise that some businesses and consumers will want to consider carefully whether to take on any potential additional costs in relation to registering a second level domain. Therefore we are seeking views on:

- *Whether the registrant of a third level domain who registers the equivalent second level should receive a discount on the second level registration fee;*
- *Developing a discount structure for registrants of multiple second-level .uk domains;*
- *Offering registrants with a right of first refusal the option to reserve (for a reduced fee) the equivalent second level name for a period of time, during which the name would be registered but not delegated.*

Please tell us your views on these options, or whether there are any other steps we could take to minimise the financial impact on existing registrants who would wish to exercise their right of first refusal and register at the second level.

Comments:

As explained above, demand for second-level registrations in .uk from existing registrants and/or other businesses that trade legitimately online in the United Kingdom (other than from domain registrars) has not been established. To encourage these businesses to adopt and support the .uk system, the fees should be kept to a minimum and discounts to existing registrants and trademark owners would therefore be a mandatory element of the expansion.

For general registrations of new domain names under the .uk system, fees should be set appropriately to reflect the enhanced security features and to discourage, as far as possible, bulk

acquisitions of domain names by those who have no intention of using the domain names for legitimate purposes.

7. Reserved and protected names

We propose to restrict the registration of <.uk.uk> and <.com.uk> in the second level to reflect the very limited restrictions currently in force in the second level registries administered by Nominet. In addition, we would propose to reserve for those bodies granted an exemption through the Government's Digital Transformation programme, the matching domain string of their .gov.uk domain in the second level.

7.a Please give us your views on whether our proposed approach strikes an appropriate balance between protecting internet users in the UK and the expectations of our stakeholders regarding domain name registration. Can you foresee any unintended complications arising from the policy we have proposed?

Comments:

The policy appears sensible.

8. General views

8.a Are there any other points you would like to raise in relation to the proposal to allow second level domain registration?

Comments:

The advanced security features would make the .uk system potentially more attractive to legitimate businesses and Internet users in the United Kingdom. However, as stated above, we believe that Nominet should commission studies on the potential benefits and costs of its proposal to accept second-level registrations, and provide stakeholders to the opportunity to comment on the results. Once that work is completed, Nominet should modify its proposal, and engage in further public consultations as necessary to ensure all stakeholder views are incorporated.

As a leading global IP organization, INTA is well situated to assist Nominet in the development of these studies, and consult on the impact of changes to the .uk ccTLD.

Thank you for considering our views on these important issues.

Should you have any questions regarding our submission, please contact INTA's External Relations Manager, Claudio DiGangi at: cdigangi@inta.org

About INTA & The Internet Committee

The International Trademark Association (INTA) is a more than 135-year-old global organization with members in over 190 countries. One of INTA's key goals is the promotion and protection of trademarks as a primary means for consumers to make informed choices regarding the products and services they purchase. During the last decade, INTA has served as a leading voice for trademark owners in the development of cyberspace, including as a founding member of ICANN's Intellectual Property Constituency (IPC).

INTA's Internet Committee is a group of nearly two hundred trademark owners and professionals from around the world charged with evaluating treaties, laws, regulations and procedures relating to domain name assignment, use of trademarks on the Internet, and unfair competition on the Internet, whose mission is to advance the balanced protection of trademarks on the Internet.