# NOMINET UK

## COMMENTS ON THE REPORT OF THE WGIG

### Introduction

Nominet, the registry for *.uk* domain names, congratulates the Working Group on Internet Governance (WGIG) on the completion and publication of a major piece of work.   We have followed the process closely, attending many of the open meetings, and providing three written submissions, copies of which are annexed to this document.

We consider that a notable success of the WGIG has been the process itself, which enabled multi-stakeholder participation on an equal footing within a UN framework. As a result of this open process, we believe that stakeholders from different sectors have developed improved relationships and a better understanding of the concerns and interests of others.

We were pleased to give a presentation on 19 July 2005, at the Geneva Workshop on Internet Governance at the National Level.  Speakers from both governmental and private sectors presented a range of successful models from a geographically and politically diverse set of nations, including Saudi Arabia, Kenya, Singapore, Vietnam and India.  Workshops of this kind, whose objective is to inform and promote best practice, exemplify the WSIS objectives and we hope to be able to participate in such initiatives in future, in order to reach a wider audience.

### Multi-stakeholder Forum

If a forum is to be created, the challenges will lie in realizing this objective within a lightweight, flexible structure, and in avoiding mission creep.  We anticipate difficulties in deciding who gets a seat at the table, and sufficient flexibility to allow participants to change according to the issue at hand.  In terms of the scope of the forum, we believe that it ought to be limited to the exchange of best practice and should not make binding recommendations.

We also support the greater involvement of developing nations and other interested parties, and suggest that in conjunction with other initiatives, the power of the Internet itself may assist in this regard.  We note that existing structures such as the IETF currently enjoy effective participation from developing nations, and we should learn from the success of such models.

We also recommend that, given the fast changing nature of the Internet, the forum should have a "sunset provision" for no more than 5 years' time after it begins, to enable formal review of its role, effectiveness and continuing relevance to the Internet and its stakeholders.

That said, and bearing in mind the success of the WGIG process, we can see the benefits of a forum in which all stakeholders may engage on an equal footing to discuss emerging issues.

**The four options**

We note that the Working Group was unable to reach consensus on a single best way forward and therefore chose to present four options for consideration.

In our view, three of the four options namely (1, 3 and 4) seem complex and potentially bureaucratic and therefore may be unworkable. To the extent that private sector and civil society involvement is limited to "an advisory capacity" (options 1, 3 and 4), these models fail to meet the WSIS criteria set out in paragraph 48, which we support and which call for "full involvement of governments, the private sector, civil society and international organizations". As the ICC stated in an earlier comment: "…investment and deployment of resources and capabilities by the private sector and advancing freedom of expression and promoting creativity, privacy, etc. by the civil society *is not an observer role"*.

Therefore, we would broadly support the incremental approach of Option 2, although the scope and effect of the "enhanced role of the GAC" would require clarification. However, we would not support any solution which could impose binding recommendations. In our view, the overriding principles are subsidiarity and local determination, which are endorsed in the revised GAC Principles. The vast majority of issues can and should be resolved at a local level, and in accordance with national, offline laws.

In the short term, however, our very real and continuing concerns are to see improvements in the IANA process that speed operations, not mechanisms that delay them, and improved inclusiveness within the ICANN process and we will continue to actively support and participate in dialogue that seeks to resolve these concerns.

**Appendix: Nominet's submissions to the WGIG**

**Nominet UK response to WGIG Preliminary Report.**

**Introduction**
Nominet is pleased to have the opportunity to make representations to the Working Group on Internet Governance (WGIG) on its Preliminary Report. We express our thanks and congratulations to the WGIG for the way in which it has conducted the process to date which has resulted in participation from all stakeholder groups.

Additionally, we are grateful to have had sight of the Council of European National Top Level Domain Registries' (CENTR) response to this Preliminary Report and concur with the points made and the issues raised.

In our response, we want to highlight the work that Nominet does with the local Internet community and the ways in which we use its input to develop our policies.

**Responding to the Preliminary Report**

In this response, we do not make detailed comments in relation to the Preliminary Report or issues papers. Instead, we believe it would assist the process for us to describe how we meet our responsibilities at the national (ccTLD) level, and how policy issues are developed through proactive consultation with the UK Internet community. We hope that this input will assist participants in the WGIG process in understanding how Domain Name policy works at a national level in .uk.

We will also provide case studies of two policy issues which have been developed through stakeholder involvement, and which we believe have successfully addressed the conflicting needs of those involved.

**A brief overview of Nominet UK**

- Nominet was established in 1996 and is a private not-for-profit company which has members instead of shareholders.
- Nominet's purpose is to control, manage and operate the *.uk* country code top level domain (ccTLD) and to provide complementary registry services, in the interest of relevant stakeholder communities.
- Nominet is not a governing or regulatory body, but provides a service for the *.uk* name space on behalf of the UK Internet community.
- Nominet has no formal relationship with the UK government, but works closely with the DTI and other government departments.
- Any organisation with an interest in the Internet can become a member of Nominet by paying a subscription fee. We currently have 2,700 members and potential registrants can make *.uk* registrations through over 3,700 tag holders
- Nominet currently has over 4,000,000 *.uk* domain name registrations with an average of 95,000 new registrations and 75,000 renewals per month.

**Risk management and contingency planning**

There is always a concern about business risk, and in the case of Nominet this is possibly more pronounced because of the key importance of our service to the UK Internet community, and the impact that partial or total technical or business failure on our part may have.

We seek to mitigate risk through a number of technical, management and organizational controls. In order to ensure business and technical continuity where possible, Nominet has a clear system in place including a healthy retained surplus; insurance and risk management; and a robust and redundant technical infrastructure. We constantly monitor loads on our technical systems, and take appropriate action to optimize availability of our services.

However, we are not complacent, and continually review our risk registers, and are further developing our business continuity plans.

**Regulation and sector regulation**

The UK Government supports the policy of self-regulation in the private sector. Therefore, Nominet is not subject to any formal sector-regulation. We do, however, have an excellent day-to-day working relationship with our responsible Department (Department of Trade and Industry), and ensure that we proactively communicate with relevant government departments and agencies on policy issues, for example the Cabinet Office and the Information Commissioner.

Moreover, Nominet (like any company) is subject to the off-line laws e.g. Data protection, contract and intellectual property laws. The Nominet model enables decisions to be made following input by those who have an interest in the outcome – including government, our members, and the wider stakeholder community.

**Why accountability makes good business sense**

Our legitimacy stems from recognition by the *.uk* Internet community that we are managing the namespace fairly and responsibly. If we failed to be accountable, or stopped managing our business properly, we would expect a loss of legitimacy leading to a rapid call for change from our community.

With 2,700 members, Nominet has built accountability into its corporate structure. Although membership is open to all, the majority of our members are professionally involved in the Internet, and would have most to lose by our business failure. We are subject to English company law, and anticipate that our membership would act swiftly to replace the board in the event of poor performance.

Members are not our only stakeholders, and our mission is to act in the interests of the *.uk* Internet community as a whole. Other key stakeholders include our customers (registrants), Internet users, the business and intellectual property communities and UK government. The value of e-commerce in the UK is increasing rapidly (Internet sales grew from £19bn in 2002 to £39.5bn in 2003 (source: office of National Statistics)). Although our turnover (£10m) is low in comparison, the service we offer is depended on by an increasing number of businesses: if we were getting it wrong they would demand changes, whether through government intervention or, more likely, through a change in management at Nominet.

**Meeting our responsibilities: working with the Internet community**

One way that stakeholders give input into policy making is through our Policy Advisory Board. This is made up of 8 representatives elected from Nominet's membership, 8 appointed people from key stakeholders, including the Department of Trade and Industry, the Cabinet Office, the Information Commissioner (our data protection authority), the Institute of Trade Mark Attorneys, and the Confederation of British Industry.

Nominet consults the Policy Advisory Board on all policy issues, and in addition, we regularly run open, public consultations in line with best practice. This involves publication of consultation documents on our web site, publication of consultation responses, formal outreach, and invitations to comment targeted at relevant stakeholders.

In the UK this model has worked well and enables the business to develop without the constraints of complicated regulation. We are keen to ensure that the Government plays an active part in our business, but we are clear that the current relationship is a benefit to all our stakeholders. Since 2002 the website as a whole has had over 24 million page views, and over 550,000 visitors have visited more than once.

It is important for the business to evolve continually and since the Internet itself is such a fast moving communication tool it is necessary for us to keep improving the services we offer to meet the needs of our customers, at a speed which is acceptable given our changing environment. We believe that our current structure, and our proactive dialogue with all relevant stakeholder including government, enables us to do so.

This model of stakeholder involvement has worked very well for the local Internet community and we have successfully developed a number of policies in this way, such as naming policies, WHOIS policy, data release, and Domain Name Dispute Resolution. Current topics of consultation and discussion include Internationalised Domain Names (IDN), lock states, variable registration periods and domain names connected with child pornography.

We conclude with case studies on two policy issues on which we consulted, and which we believe demonstrate the ability to achieve solutions which address the conflicting interests of our different stakeholder groups.

WHOIS

Information on Nominet's registrants is available to all members of the public through the WHOIS facility which allows searches to be made of all *.uk* domain names, whether registered or not. The service shows whether a domain name has been registered, and if so, provides some basic information about the registration including registrant details, and technical data relating to the domain name. The service is free, and subject to terms of use which prohibit copying of the data or its use for any advertising or similar purpose.

Prior to October 2002, Nominet only published the name of the registrant (and not the address or any other personal details) in response to a WHOIS query.

We were aware that many Internet users wished to have some basic contact information about registrants: in order to contact a registrant in the event of technical difficulties. We also had

representations from law enforcement agencies and trade mark holders, who wished to have a great deal more information about registrants published on the WHOIS.

At the same time, we were conscious of data protection laws, and many individuals and other Internet users raised concerns about the publication of individuals' data on the web. We were also aware that other laws demanded that those trading on the Internet should publish a physical address and contact details.

Working with the Information Commissioner and the PAB, we developed an "opt-out" for non-trading individuals. This means that they will not have their address shown, but that we may still reveal it to law enforcement authorities in response to specific requests. In addition, balancing the requirements of different stakeholders, it was decided that Nominet would publish the physical contact address only as part of the WHOIS, and not the registrant's telephone, fax and e-mail details. The PAB has subsequently refined the policy, and our policy for information release to balance the needs of the various communities.

We are aware that our WHOIS service differs from that adopted in many other TLDs. This reflects the diversity of TLDs around the world. We are confident that our solution meets the needs of the UK community. Nominet UK was held out by the OECD in their 2003 paper on WHOIS policy as an example of a registry which was improving WHOIS services.

Currently we handle around 150,000,000 queries on the WHOIS database every month. The WHOIS addresses have been subject to sporadic misuse – in those cases we have gone to court around the world to obtain injunctions and damages against those involved. The cost of these legal actions is borne by Nominet alone. In contrast, concurrent criminal investigations by the authorities have (so far) led to no action being taken against those involved.

Dispute Resolution Service (DRS)

Although disputes account for a small proportion, less than 0.05%, of all registrations in the *.uk* TLD, Nominet has developed a service which aims to clear up any disagreements quickly and efficiently. In 2004, Nominet's Dispute Resolution Service (DRS) won an industry award for Excellence in Alternative Dispute Resolution.

Again, the service was developed through consultation with our local Internet community, including small businesses, our membership, and trade mark holders. We have undertaken two open, public consultations in the past 5 years on the DRS, and have made substantial changes to the service as a result of stakeholder input.

We believe that our service more successfully balances the rights and interests of both parties to a dispute than the comparative service for gTLDs.

Mediation is one of the cornerstones of the Nominet DRS. Nominet encourages mediation in all its DRS cases and our professionally qualified staff assist parties in settling on average 55% of all cases that enter mediation.

Unusually for a registry, Nominet provides the administration and mediation aspects of its DRS. Our services are provided free of charge to the parties, although a fee is payable later in the process if an independent expert decision is required.

Our service is heavily used by small business (who account for over 70% of business users). Most parties are not legally represented (85%). In a customer survey, over 90% of users who responded said the DRS was their first experience of mediation. 63% of those found mediation to be helpful to their case. Over 85% of those who responded said they would use the DRS again and would recommend the service to others.

Since September 2001, we have handled over 2,200 cases, with an average of 66 new cases per month in 2004.

**Conclusion**

As the managers of a Country Code Domain Name Registry we are pleased that the process is looking carefully at key issues underpinning the continued successful development and growth of the Internet. It is essential for the development of a safe, secure and enlarging Internet that all those concerned with management and co-ordination continue to build constructive relationships.

Nominet strongly believes that management and policy procedures for individual ccTLDs should be done as locally as possible – thus ensuring that local requirements are met through national stakeholder involvement. It is only where issues cannot be resolved locally that a global solution is required. In our view, it is only a small minority of technical issues which need to be considered on a global scale, for example technical standards which affect interoperability.

In this respect, we are happy to share our experiences from a UK perspective, in order to help develop the potential of international Internet governance.

**Nominet UK response to WGIG papers published April 2005**

**Introduction**

Nominet welcomes the opportunity to make representations to the Working Group on Internet Governance (WGIG) on papers published during the course of April 2005. We have had the benefit of reviewing a number of the published responses, including those of the ICC, the Internet Society, the OECD, APTLD, CENTR's WGIG working group, and NIC-Mexico. We also request that the WGIG refer to our earlier comments submitted in this process.

In this document, our comments focus on the following two papers:

1. "Towards a Common Understanding of the Roles and Responsibilities of all Stakeholders in Internet Governance"; and
2. Cluster One B2 Assessment Report: Domain Names Management.

**General Comments**

1. We are mindful that "Building a people-centred Information society is a joint effort which requires cooperation and partnership among all stakeholders"[1]. In our view, one of the key strengths of the Internet to date is its distributed, decentralized nature. In this context, we believe that a "hierarchical top-down governance model"[2] would be inappropriate, and in all probability, ineffective.

2. We welcome the comment that "the overwhelming majority of the private sector actors have demonstrated their capability to fulfill their tasks and to make their contribution to the functioning of the Internet. With regard to the practical management there is no specific weakness in the system"[3]. In our view, the Internet's fast pace of change requires flexible structures which can react to changes in the environment quickly and at low cost, thus enabling growth and development. We urge the WGIG to keep in mind the phenomenal success and growth of the Internet to date (41% per year[4]), and support the view that "the first principle should be to do no harm"[5].

3. We welcome the comments of Mr Desai that "when people say governments must be involved, nobody has argued it is governments to the exclusion of everybody else."[6] It is stated that "Internet governance is being 'privatized'"[7]. However, in our view, Internet governance has never been exclusively in the public sector, but has been created in large part through the participation of the private sector, often in the absence of top-down regulation. The current multi-stakeholder participative models of governance seen at national levels, for example within the *.uk* framework, have proven successful in that they provide for direct participation from all

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[1] WSIS Declaration of Principles, article 20
[2] "ISOC Commentary on the status of the work of the Working Group on Internet Governance, April 2005"
[3] Cluster One B2 Assessment Report, section 5.2
[4] OECD Input to the United nations Working Group on Internet Governance, April 2005
[5] ICC comments, para 2(c).
[6] Comments of Mr Nitin Desai, Chairman WGIG, Open Consultations Of The Third Meeting Of The Working Group on Internet Governance, 18 April 2005, morning session.
[7] Towards a Common Understanding of the Roles and Responsibilities of all Stakeholders in Internet Governance

stakeholders, in a way that is not fully seen in traditional intergovernmental organization models.   We strongly endorse the comments of the ICC in this regard:  "…investment and deployment of resources and capabilities by the private sector and advancing freedom of expression and promoting creativity, privacy, etc. by the civil society *is not an observer role"*.

4.   In our view, and in the view of other commentators such as the ICC, ISOC and the CENTR WGIG working group, existing governance models, which are open, distributed and consensus-based, have served the global Internet community well to date, and "avoid the bottlenecks inherent to centralized network architectures"[8] as well as avoiding single points of failure, including organizational failure, or the development of "institutionalized" thinking that can arise when a single organization has a dominant function.  We endorse the OECD's comment: "the Internet has flourished essentially because most countries have recognized the need to avoid introducing unnecessary regulatory burdens".

**Towards a Common Understanding…**

5.   In section 4(a), as it applies the WSIS criteria, it is stated that "multilateralism….should not be taken to exclude multistakeholderism."  Whilst we welcome this assurance, we recall Mr Allen Miller's analysis that on a strict interpretation "multilateral" and "multistakeholder" are mutually exclusive[9].  We understand that in the context of an intergovernmental organization a "multilateral agreement" means an agreement by governments.  However, in the WSIS declaration, we take "multilateral… management" of the Internet[10] to mean "participated in by three or more parties". We understand the WSIS wording to be wide enough to encompass models such as ICANN or the IETF.

6.   It is stated that the GAC's advisory function within the ICANN framework "is not truly…multilateral"[11].  This comment seems to imply that the current set-up requires improvement.  However, if we focus instead on "what works"[12], it can be seen that the revised GAC Principles, published in April 2005, represent a major advance as a non-binding framework for the three-way relationship between governments, ccTLDs and ICANN. Moreover, if the GAC could bind the ICANN board, that power would also bring responsibility (and potential liability) for the GAC member states. Exposure to liability has been a useful check to avoid the system being used to limit innovation or to restrict competition, for example by not allowing connection to machines that might harm the network.

7.   We take issue with the assumption at section 7, para 1, that private sector actors will serve only the "interests of specific industry sectors".  We ask the WGIG to bear in mind that many of the private sector actors are non-profit organizations (eg ICANN, ISOC, IETF, IAB and several ccTLD registries), whose corporate structures are designed to protect against capture by a particular sector.  We refer to our previous submission in this regard, which sets out the ways in which we seek the input of all sections of the *.uk* Internet community.

8.   On page 8 (3rd paragraph) the paper questions the legitimacy of industry self-regulation. However, it does acknowledge that industry self-regulation "can work quickly and flexibly",

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[8] OECD, para 6.
[9] expressed during the Open Consultation Session on 18 April 2005
[10] WSIS Declaration of Principles, article 48.
[11] Towards a Common Understanding…, section 5(c)
[12] OECD, p 28, Box 7

and we believe that this is essential in the fast-changing environment of the Internet. In the context of industry self-regulation, authority derives from the effective involvement of multi-stakeholders (including, of course, governments) working within a transparent framework, rather than whether the body coordinating the process is from the public or private sector or is an IGO.

**Cluster One B2 Assessment Report**

9.  In general, the points for improvement do not flow from the body of the text, and we question the priority of some of the factors (eg clarification of the status of *.int*, or updating the UDRP to reflect non-commercial users' interest). We would ask that the issues be more fully identified and explored in the preceding text, and justifications given for the points for improvement.

10. The text from the GAC Principles in the Annex and in the body of the paper has of course been superseded by the April 2005 version. The text quoted does not in our view accurately represent the tone of the revised document, which is supportive of subsidiarity, local determination, and emphasizes the benefits of dialogue between governments and ccTLD managers. Above all, the GAC Principles state that "delegation and re-delegation is a national issue and should be resolved nationally".

11. Like APTLD, we note that the lack of contractual relationships between ICANN and a majority of ccTLDs is classified as "one problem of concern". However, the paper does not explain why this is a problem. We would emphasize that, whilst the IANA could be improved through operational efficiencies (which ICANN is currently seeking to address), like APTLD, we believe that existing

IANA and ccTLD arrangements have been by and large stable and satisfactory.  Moreover, we continue to work with ICANN/IANA to develop our mutual relationship, for example through pressing for greater automation of the IANA function to facilitate authentication of requests.

**Nominet UK**
**13 May 2005**

WGIG Questionnaire

Responses from Nominet UK

**Process/Function 1: "Forum function"**

1. Is there a need for an additional arrangement or body?

No. We do not believe that such a body is necessary. The Internet is distributed and decentralized in nature, and is not amenable to centralized control. Moreover, we believe that the existing institutions which variously carry out Internet governance functions are sufficient, albeit that no institution is perfect, and all could benefit from improvement.

We note, however, that the questionnaire seems to assume that such a body will be formed. We have therefore answered the remaining questions.

2. What functions should it exercise?

(a) create a space for a multi-stakeholder discussion forum?

If an additional body or arrangement were created, it should be a very loosely structured discussion forum, with an open and inclusive membership, in which multi-stakeholders can participate on an equal footing.

It should be a forum for exchange of best practice advice, and make non-binding recommendations.

We would also recommend that, given the fast changing nature of the Internet, any solution created as a result of the WGIG process ought to have a "sunset" provision for no more than 5 years' time, to enable review and/or replacement in the light of changes in the external environment.

(b) Give policy direction?

Given the distributed and decentralized nature of the Internet, and the wide variety of regimes in different countries, we believe that the overriding policy principle should be of subsidiarity.

If an additional body or arrangement were created, it should not give policy direction.

(c) Any other function?

If an additional body or arrangement were created, it should give non-directive advice on best practice.

3. What kind of public policy issues should it address?

(a) All issues related to the Internet?
(b) Only issues outside the scope of existing organizations and institutions?

We do not believe that the creation of an additional body or arrangement is necessary.

If an additional body or arrangement were created in the form we have described above, it should deal with policy, and not operational issues, but should not otherwise be restricted in what it could discuss.

We agree with the points made by the ICC, that it should be flexible enough to encourage greater information exchange across organisations and stakeholders.

4. Where should it be anchored?

We agree with the comments of the ICC: it should be within the United Nations structure, but not positioned within a subordinate existing body.

5. How should it be financed?

We believe if an additional body or arrangement were created, it should have a "lean", "low-cost model". We suggest that it be funded through voluntary donations.

We fundamentally disagree with the suggestion of the Internet Mark 2 project that it should be funded through a domain name tax. Proposals of a similar nature have been widely criticised by the industry in the past. We would be concerned if the outcome of the WGIG/WSIS process led to an additional layer of administration or oversight, whose costs would ultimately be borne by the end user.

In particular, a domain name tax would most adversely affect the poorest, both in developing and developed nations. We have no wish to see a solution which in practice raises barriers to participation in the Internet, and reverses the current trends of reducing costs, and increasing accessibility. Moreoever, raising costs in this way is likely to restrict competition, and inhibit innovation to the detriment of end users.

6. How should it be structured?

A one layer, multi-stakeholder structure, with a small secretariat.

7. What would be its relationship with existing organisations and institutions?

If an additional body or arrangement were created, it should be advisory, and complementary to existing institutions. Its overriding purpose should be to exchange information.

**Process/Function 2: "Oversight function"**

1. When talking about oversight, what functions do you envisage (simple audit function, arbitration, policy direction or any other function) and over what areas of activities?

Like the ICC, we question the need for any new oversight function. Rather, we believe it would be more valuable to have a forum for discussion, information exchange and the development of non-binding best practice.

For example, if the IANA function becomes properly automated and responsibility for changes rests with the incumbent registry, a possible function of an additional body could be to ensure that processes

are working fairly, and to provide a dispute resolution mechanism (such as mediation) to assist in the event of contentious redelegation requests.

2.  Should the GAC be transformed and take on some oversight functions?

In our view, this is not necessary.  In fact, the GAC as an advisory body exerts great influence (eg the revised GAC Principles 2005) without the responsibility or liability that a formal oversight function would involve.

3.  Should the GAC be replaced by another body and what functions should such a body take on?

No.  However, like the ICC, we would encourage participation in the GAC by more governments, and with higher-level participation.

4.  Should any post 2006 governmental oversight be exercised within the UN framework?

No.

## Process/Function 3: Functioning/coordination of existing institutions

1.  What improvements in their functioning should existing institutions make to bring them more in line with the WSIS principles?

We would encourage the use of technologies to assist lower cost participation by all stakeholders, including those from developing countries.

2.  How can their activities be better coordinated?

A multistakeholder forum could be an effective means for better coordination.

3.  Are there existing models of inter-agency cooperation that could be followed?

4.  Should any existing institution be given the role of lead agency?
We do not believe it appropriate for any existing institution to be given the role of lead agency.

In our view, rather than seeking to control and manage existing bodies, any additional body or arrangement should work in partnership in an enabling, coordinating capacity.  We would recommend the latter.

## Process Function 4: Functioning/ coordination at the national level

1.  How should Governments bring their national decision-making process in line with international Internet governance arrangements?
2.  What successful multi-stakeholder models could be recommended as an approach to be followed?

We would encourage the WGIG to look closely at successful models of multi-stakeholder participation at the national level, for example .uk's Policy Advisory Board model.