



NOMINET

Summary of feedback on the proposed changes to .UK policy arising from GDPR

Comments received between 1st March 2018 and 4th April 2018

Introduction

The EU General Data Protection Regulation (GDPR) was introduced in April 2016, replacing the Data Protection Directive 95/46/EC. The new framework was designed to modernise and harmonise data privacy laws across Europe. The Data Protection Bill currently progressing through Parliament will bring the GDPR into UK law aligning Britain with the rest of Europe in preparation for Brexit.

In preparation for the enforcement date of the 25th May 2018, we conducted a review into how GDPR may affect our business practices. As a result, at the beginning of March we sought stakeholder feedback on a series of proposals regarding changes to the collection and publication of registrant data via the .UK WHOIS service, the operation of our Searchable WHOIS service, and our Privacy Services Framework for .UK domain names.

The proposed changes were guided by a number of key principles:

- The need to ensure both we, and any partners we contract with, are GDPR compliant.
- A wish to monitor, contribute to, and take guidance from broader industry discussions in order to ensure our solutions are aligned with the developing industry consensus.
- The need to make sure any changes deliver clarity for registrants, and are simple for our registrar partners to implement.

On the 1st March 2018 we published the proposed changes together with red-line versions of key contract and policy documentation and invited comments over a 34 day period. A total of 58 responses were received from a range of stakeholders including registrars, law enforcement agencies, intellectual property representatives, civil society and individual registrants. The feedback received from registrars represents a total of 73.3% of the domains under management. We are grateful to all those who took the time to engage in this process.

Feedback Summary

.UK WHOIS

We proposed that all registrant name and physical address details would only be displayed in the .UK WHOIS in instances where the registrant has provided explicit consent. In the absence of consent this data would be automatically redacted from the public WHOIS. All other elements of the current .UK WHOIS output would be retained.

One theme that strongly emerged from the feedback received across all stakeholder groups was an acknowledgement of the valued functionality the public WHOIS has provided over the years. Feedback from Law Enforcement Agencies (LEAs) indicated it had proved an *“invaluable tool”* in the prevention of crime. There was however widespread recognition that the public facing side of the WHOIS would need to adapt to the incoming GDPR requirements. A number of registrars, representing a significant proportion of the register, were supportive of the proposed approach. Elsewhere a handful of registrar respondents raised concerns relating to the timescales they faced in terms of developing and implementing the technical changes required. One registrar also commented that the proposals would add an additional *“layer of complexity to the registration process for .UK domains which may make them less attractive”* to prospective registrants compared to other TLD options which may not implement similar provisions.

Several registrar respondents were of the view that the proposals went too far and called for a “*light [touch] implementation*” of the new GDPR rules. Concerns were raised that the proposed approach would “*threaten revenues*” relating to the privacy services many registrars offer their customers. Others questioned the logic of allowing companies to benefit from the GDPR provisions which are primarily designed to protect identifiable information that would constitute personal data. This view also received support from a civil society representative who suggested there was “*no need for any commercial website to shield its contact address*”.

The feedback from the Intellectual Property (IP) and brand protection community was unanimous in its opposition to the principle of data withdrawal from the WHOIS. Comments suggested the proposals would “*make it harder for trademark holders to protect their rights*” and that it was “*extremely important data is easily accessible*”. Many concluded that the proposed approach would lead to an “*increase in online infringement of IP*” which in turn would result in an increased workload for already under-resourced LEAs.

There appears to have been a degree of confusion amongst some respondents regarding the information displayed by Nominet in the .UK WHOIS and that which ICANN require to be displayed in the gTLD WHOIS. For example, there were a number of comments “*urging Nominet to keep a registrant’s email address displayed in the WHOIS.*” In the interests of clarity, we do not publish a registrant’s email address in the .UK WHOIS and we are not proposing to add this feature at this time.

Nominet response:

The feedback we received acknowledged that the public .UK WHOIS will need to adapt to the new GDPR framework, however there were mixed views on the approach that should be taken. We acknowledge that the intention behind the legislation was not that companies would benefit from GDPR per se, however there are technical and administrative challenges in the registration systems of registries and registrars that make it difficult to correctly identify the registrant type with total confidence, for example it is common practice for many individuals registering a domain to incorrectly label themselves as a company.

In terms of the ability for a commercial website to take advantage of our proposed approach in order to shield its contact address, we would point to the requirements under the Electronic Commerce (EC Directive) Regulations 2002 which stipulate certain minimum information, including name and address, must be easily accessible on the website. In relation to the concerns raised by the IP and brand protection community regarding the importance of easily accessible data, please refer to the section below on our Data Disclosure policy.

We are conscious of the desire within our registrar channel for any new policies and processes to be as closely aligned with industry standards as possible. As things currently stand, ICANN has yet to confirm the details of how their policies and processes will be modified. With this in mind, we have decided to proceed with our proposal to automatically redact the registrant name and address from the public WHOIS unless the registrant has provided consent to either being published.

Nominet will continue to closely monitor developments in this space to better understand how the domain name industry as a whole adapts to GDPR once it enters into full effect. In the meantime, we will be further investigating the technical constraints and practicalities concerning the publication of data relating to non-natural persons, such as companies, with a view to revisiting the issue at some point in the future.

Registrant Opt-in

We proposed that under the new rules registrants will be able to opt-in to disclosing their data if they provide their explicit consent to do so. In addition to doing this directly with Nominet, via online services, we also proposed that registrars could do this on behalf of their registrants by using disclosure fields within EPP and WDM when registrants have given their registrar explicit consent.

The feedback received from registrars was widely positive of this proposed approach with observations that it “*seems logical*” and “*sounds simple in principle*”. There were a number of comments focused on the technical implications arising from the change, with many registrars keen to ensure the implementation of any new functionality was robust.

Feedback from other stakeholder groups suggested that “*opt-in should be [the] default [setting]*”, and that the proposed approach will require a degree of policing to ensure registrars are being clear and explicit with end-users about their opt-

in rights when registering a domain name. There was also a degree of scepticism amongst LEAs and IP rights holders about the effectiveness of allowing registrants to opt-in to disclosing their data.

Nominet response:

As feedback was largely supportive on this aspect of the proposal, we have decided to proceed with the ability for registrants to be able to opt-in to disclosing their data in the public .UK WHOIS should they wish to do so. This ability will be available to both individuals and businesses on a domain by domain basis.

Searchable WHOIS

In light of the changes we proposed to the .UK WHOIS, we also sought feedback on a proposal to allow users who met certain criteria to have the option for an enhanced output, where on a domain by domain basis they can request registrant data beyond that which will be shown in the remodelled public .UK WHOIS. We proposed providing access to the newly configured Searchable WHOIS service at no charge for an approved list of UK law enforcement agencies

LEAs were widely supportive of the proposed approach, with most substantive comments focusing on how the user experience could be improved from an operational perspective. The service was described as “*vital*” for LEAs, and that provided “*the redaction for non-law enforcement agencies takes place I can't see any issues*” with the proposed approach.

The feedback from those promoting greater IP rights protection emphasised the role they played in crime prevention and suggested that the proposed approach would prove to be a “*severe hinderance*”. It was argued that “*without the redacted information [the searchable WHOIS] is of little value*”. There was a belief amongst a number of these respondents that “*redacting names and addresses from this service..doesn't appear to be a proportional response given that access to the Searchable WHOIS service will only be given to parties with strong legitimate interests in the first place*” and that “*if the legitimate interest for disclosure exists, then this data can and should be disclosed*”. A couple of responses objected to the inability of anyone outside of the European Economic Area taking advantage of the service. Comments were also received relating to the cost for access to the service stating it should be free or at least reasonable.

This aspect of the proposals attracted conditional support from several registrars, comments were clear that the “*list of approved users' needs to be tightly controlled and monitored for abuse*” and that compiling the list of approved users required further consultation with the wider community. Whilst only one registrar objected to allowing LEAs access to the service, there were a couple of respondents who questioned the justification for granting non-LEAs access. Elsewhere a small number of respondents proposed Nominet should consider “*an accreditation scheme for full access*” which would be available to non-LEAs.

Data Disclosure Policy

Nominet operates a Data Disclosure Policy alongside the existing .UK WHOIS, which allows interested parties (typically law enforcement agencies or lawyers representing IP rights holders) to seek at no cost disclosure of further contact data and historic information relating to individual .UK domain names. In the proposal we stated the data disclosure policy would remain in operation as now, ensuring that those with a legitimate need for registrant details will have means to access that data.

The continued operation of this policy was an aspect of the proposal which garnered relatively few comments. The theme that strongly emerged from across all stakeholder groups was a desire for greater clarity around definitions and the circumstances in which data will be disclosed. Most respondents who did comment on this section agreed no changes were necessary, however one registrar objected to disclosure except in the circumstances in which a LEA is acting under a court order. A handful of comments also highlighted that the “*speed of process is crucial*”.

Nominet response:

In the interests of keeping the .UK namespace safe and secure Nominet believes that providing our list of approved LEAs with access to the newly configured Searchable WHOIS with enhanced output at no cost as proposed is the right decision to make. Those users of the existing Searchable WHOIS who are not law enforcement will continue to have access to the service on a charged-for basis however the registrant name and address will be redacted. The current data disclosure approach will remain in place, allowing interested parties to seek at no cost disclosure of further contact data relating to individual .UK domain names. In terms of submitted data disclosure requests, we will be operating to a one working day

turnaround. We will continue to closely monitor the volumes of data disclosure requests we receive to ensure the data disclosure process remains fit for purpose and adequately resourced.

As outlined above, Nominet will also be closely monitoring how ICANN's policies and processes adapt to GDPR, particularly in relation to the proposal for an accreditation scheme to grant access to the newly configured Searchable WHOIS for non-LEAs. We will consider how best to align ourselves to the emerging industry best practice in this area.

In response to requests for greater clarity around definitions and the circumstances in which data will be disclosed, illustrative examples will be provided in the coming weeks.

.UK Privacy Services Framework

We proposed to replace the existing privacy services framework that has been in place since March 2016 with a newly formulated proxy service. Under the existing framework, which would be discontinued, the registrant details in the .UK WHOIS are replaced by those of a privacy services provider. Nominet, however, requests and holds the underlying registrant data and is able to disclose it in accordance with our data disclosure policy. We are conscious however that some registrars who opted to provide privacy services to end-users have opted to do so outside this framework. For .UK domain names registered in this way, via non-recognised privacy services, the privacy service provider does so at its own risk and takes on any liabilities associated with being the registrant.

Under the proposed newly formulated proxy service the key change relates to the handling of end-user data. We proposed to allow registrars to retain end-user data themselves. For registrations made under this new proxy service model, Nominet will only hold data for the approved proxy service provider, but new contractual terms within our .UK Registry-Registrar Agreement will ensure that Nominet, or the participating registrar, will disclose the underlying registrant data in appropriate circumstances. Registrars who decided to provide proxy services to end-users without accepting the new terms would be recognised by Nominet as the registrant will all associated registrant liabilities.

There was a mixed response from registrars to this section of the proposal. The majority of registrars expressed neither support or opposition to the new framework, with comments raising doubts over the need for privacy or proxy services due to the impact of GDPR. Of those who were supportive it was largely on the basis that it meant the registrar rather than Nominet would have *"access to the beneficial owner for the purposes of service of process"*. A small number of registrars voiced concerns that the proposed proxy service framework together with the effect of a redacted registrant name and address under the proposed .UK WHOIS changes would threaten their existing privacy services revenue streams, and in a market of low mark-ups on domain names this *"could even put some members under financial difficulty"*. Elsewhere a registrar had misgivings relating to Nominet not possessing the underlying registrant data stating *"where Nominet will no longer have a complete centralised record for law enforcement/security checks puts the current self-regulation checks at risk"*. This was a sentiment echoed by a number of brand protection stakeholders. It was also proposed in the feedback that *"should Nominet decide to allow authorised proxy then disaster recovery conditions must be put in place to ensure that registrants... have the ability to recover their domain name (as they can now) in the event of either an uncooperative registrar or system failure"*.

The feedback from LEAs indicated that the *"use of proxy services... is making enforcement efforts more difficult"* however there was an acknowledgment that *"with proxy services providers taking on registrant liability the proposals are reasonable"*. The feedback emphasised the importance of data accessibility and prescribed process timings should the proposals go ahead.

Nominet response:

The feedback received to this aspect of the proposal not only provided us with useful insights but also raised a series of meaningful questions requiring further thought as to the design of the proposed proxy services framework. In response to this feedback we have decided to proceed with formally discontinuing the current privacy services framework. However, we will reconsider the design of the proxy service framework and it is our intention to engage with stakeholders on it in the near future to ensure it is robust and suitable for purpose prior to implementation.

Second level .UK registrations – Registrant data requirements

When Nominet introduced the ability to register .UK domains at the second level in June 2014 additional specific requirements were included. These rules specified that for any second level .UK registrations:

- Non-UK registrants must provide a UK address for service; and
- A PO Box cannot be used as the registrant address

We proposed that these additional requirements be discontinued so that the approach to registering a domain is standardised across second and third level .UK domains.

There was feedback from some LEAs which suggested the use of PO boxes “*does not provide anything meaningful*” and “*aids criminality*”, these stakeholders called for the restrictions to remain in place. In contrast feedback was also received from LEAs which indicated that “*criminals were obtaining innocent details of UK citizens and registering them into the WHOIS registry data*”. This suggests that the restriction on PO Boxes as well as the requirement for a UK address for service were not fulfilling the purpose envisaged.

The feedback from registrars was overwhelmingly supportive of removing these additional rules for second level registrations on the basis it was “*logical*” and “*no longer necessary*”. The small number who were opposed did so on the grounds “*it makes sense to have a UK base or recognisable affiliation*” and that the “*requirements deter criminality*”.

Stakeholders representing IP rights holders were largely opposed to the proposal of removing the additional rules. The feedback received cautioned that “*these restrictions help discourage those involved with illegal online activity from making use of the .UK TLD*” and advised “*non-UK registrants need to go through a tougher approval process*”. Elsewhere stakeholders stated the “*existing requirements are entirely reasonable*” and that “*address for service is very simple but effective for reducing fraud*”.

Nominet response:

We continue to believe that the restriction on PO Boxes as well as the requirement for a UK address for service has not fulfilled the purpose envisaged when they were introduced in 2014. In the interests of standardising our registration processes across the second and third levels we have decided to proceed with the proposal to remove these requirements.

Registrar Agreement Updates

The .UK Registrar Agreement (RA) is the contract that governs Nominet’s relationship with our registrar partners. The Agreement covers how we expect registrars to behave in respect of our registration systems, commitments to registrants, the maintenance and processing of data, and our payment terms. In addition to the changes relating to the proposed new proxy services model, we proposed the agreement would be renamed the .UK Registry-Registrar Agreement (RRA) and included a new Data Processing Annex. This sets out how we propose to work with our registrars with respect to the processing of registrant’s personal data during the registration, renewal, transfer or management of .UK domain names in order to ensure GDPR compliance.

Only a handful of comments were received in relation to this section of the comment period. The comments received called for greater clarity in places and mainly focused on minor drafting points.

Nominet response:

The new RRA and Data Processing Annex will come into effect on the 22nd May 2018.

Conclusion

We would like to thank the respondents for their time and effort in providing responses to this comment period. Formal notice of the changes will be given at least 30 days prior to implementation.