

The future of *.net.uk* – an alternate view

Author: Alex Bligh
Version: 2.00
Date: 30th September 2002

Introduction

Nominet's Policy Advisory Board (PAB) appointed a Subcommittee to look at the future of the *.net.uk* Second Level Domain (SLD). That Subcommittee met on 13th August 2002, and a report of its findings can be found at:

<http://www.gradwell.com/peter/pab/net.uk/net.uk-report-200802.htm>

This document, written in a personal capacity, is a commentary on the Subcommittee report, and is submitted to Nominet and its PAB as a formal comment on the Subcommittee's proposals.

The document itself refers to an introductory paper, which can be found at:

<http://www.davros.org/temp/nominet/net.uk.html>

The author was not present at the Subcommittee meeting, and thus all information and inferences are drawn from the report as detailed above, and the introductory paper.

The deliberations of the Subcommittee are due to be debated by the PAB at its meeting on 2nd October 2002.

The author thanks the Subcommittee, and particularly its chair, Clive Feather, for the work put into the two documents above.

Version 2.00 of this document has various revisions and additions made in light of comments to the author, and on *nom-steer*.

Outline of Argument

It is argued herein

1. that the magnitude of the problems with *.net.uk* has been significantly overstated;
2. that the laudable aim of fixing a situation which is sub-optimal, has not been sufficiently weighed against the cost and repercussions of implementation of the proposed solution;
3. that the proposed cure is worse than the disease – i.e. not only is the proposed fix costly and time-consuming to perform, but it gets us to a scenario which is worse than the current one;
4. that the proposed benchmark that existing SLDs should 'conform to the current rules for new SLDs' is mistaken in principle, and in any case has been misapplied;
5. that the introductory paper prejudged the outcome of the Subcommittee by not only defining options, but by defining a supposed logical framework for selection of one of those options, that framework itself being flawed;
6. that the Subcommittee took various positions (including a misapplication of RFC1591) as immutable starting points rather than items for discussion and consultation, thus erroneously eliminating a number of options on the basis of conflict with those positions;
7. that fairness to potential registrants was not weighed against fairness to existing registrants;

8. that the Subcommittee do not have appeared (yet) to have gathered or taken account of the views of stakeholders (with the possible exception of existing registrants), and that the paper is thus without the benefit of views from outside the Subcommittee;
9. that the proposed solution risks creating a self-serving closed SLD for existing Nominet members, violating the principle of openness, and being damaging to Nominet and its members in terms of perception;
10. that the argument for ‘doing nothing’ has been dismissed for specious reasons; and
11. that the argument for opening the SLD has been dismissed without cogent argument.

The author recommends that PAB consider two courses of action, either doing nothing, or opening up the SLD. The author presents a proposed mechanism for determining which of these is the better (or rather least bad) option, and concludes that this is opening up *.net.uk*

Defining the Question

The Subcommittee was created with the laudable goal of trying to ‘fix’ *.net.uk*. In doing so, it attempts to analyze what is broken – and comments on this analysis are presented later in this document.

However, one has to first ask how deep a revision of policy of *.net.uk* one is prepared to accept – i.e. what the gamut of the remit of the subcommittee is.

If one sets out with the first principle that *.net.uk* should be a closed SLD meant to serve infrastructure owning ISPs within the UK, and reviews all possible options in that light, then it is inevitable one will end up rejecting proposals which diverge from this principle. It seems to the author that this would be an overly narrow interpretation of the Subcommittee’s remit – however, the author considers that to some extent the Subcommittee have fallen into this trap.

On the other hand, one could also envisage a situation where the Subcommittee could have decided to examine the entire SLD structure, and indeed whether SLDs should exist at all. Though these are interesting questions, the author would consider this too wide a remit.

The author believes the question should be approached from a practical point of view. We have an existing SLD (*.net.uk*). There are various ill-drafted and troublesome rules which currently govern it. Like many SLDs and indeed gTLDs, the original purpose of the domain was based on thoughts of various industry players a long while ago, and the landscape of the market has since changed radically. Therefore, the author suggests that whilst historical context is interesting, the remit of the Subcommittee should be (or should have been) to examine the rules for the *.net.uk* SLD, and determine, in the context of the *current* industry environment, whether change is necessary, and if so, what changes are optimal.

RFC1591 – a much abused document: the original intents of .net.uk put in context

A long while ago, *.net.uk* was created by the naming committee as a UK based alternative to *.net*. The then-current guidelines for *.net* were documented in (rather than defined by) RFC1591. Early in Nominet’s life (the introductory paper has June 1997), which carried a set of rules (including the text ‘*The applicant is an Internet Service Provider*’), and simultaneously required the applicant to affirm their conformance to RFC1591 as follows: ‘*The registrant affirms that they (sic) are a network provider and agrees to use this domain name strictly in accordance with RFC 1591 and the rules for domain names registered in the .net.uk namespace.*’

This section will argue three points:

1. At some point (and we shall probably not know precisely when) the spirit of the much beloved, but even more misapplied RFC1591 has been lost.

2. RFC1591 was not envisaged by its author to apply to *.net.uk*, and was intended to be (in many sections) an information memorandum rather than a proposal for an internet standard, and in any case specifically excludes the definition for *.net* applying to *.net.uk*
3. RFC1591 was written in March 1994 – any previous applicability it had has been lost, or at least should not be taken as read.

Firstly, one should note the much beloved and oft ill-applied RFC1591 is informational in nature. Compare and contrast the first paragraphs of the following two DNS RFCs.

RFC 1591 states:

Status of this Memo

This memo provides information for the Internet community. **This memo does not specify an Internet standard of any kind.** Distribution of this memo is unlimited.

RFC 1123 states:

Status of This Memo

This RFC is an official specification for the Internet community. It incorporates by reference, amends, corrects, and supplements the primary protocol standards documents relating to hosts. Distribution of this document is unlimited.

Further, the RFC uses the word “intended” rather than the well known RFC terms when a mandatory standard is to be established (“must” etc.). Firstly, one should note the much beloved and oft ill-applied RFC1591 refers to a “network provider” and not to an “internet Service Provider”. The relevant section states:

Each of the generic TLDs was created for a general category of organizations. The country code domains (for example, FR, NL, KR, US) are each organized by an administrator for that country. These administrators may further delegate the management of portions of the naming tree. These administrators are performing a public service on behalf of the Internet community. Descriptions of the generic domains and the US country domain follow.

Of these generic domains, five are international in nature, and two are restricted to use by entities in the United States.

World Wide Generic Domains:

...

NET - This domain is **intended** to hold only the computers of **network providers**, that is the NIC and NOC computers, the administrative computers, and the network node computers. The customers of the network provider would have domain names of their own (not in the NET TLD).

The concept of a domain name ‘intended’ for a certain purpose seems to align well with the concept of an open SLD, with a clearly defined charter, which after all describes what an SLD is intended to be used for. The RFC does not seek to prescribe how Internic (as was) should issue registrations within the ‘World Wide Generic Domains’, and whether or not it should pre-vet applications. It is as silent on whether *.com* should be pre-vetted, as it is on *.net*. Had the author of the RFCs wished for the RFC to be mandatory in nature, and prescribe these elements, no doubt Mr Postel, as a prolific author of such documents, would have written the document so.

On a slightly separate point, RFC1591 itself claims that the definition for *.net* is not relevant to subdomains of UK.

There are no requirements on subdomains of top-level domains beyond the requirements on higher-level domains themselves. That is, the requirements in this memo are applied recursively.

This is making the point that the requirements for *.uk* apply to *.net.uk*, and not the requirements for *.net*. It clearly makes the point that RFC1591 never intended to impose additional restrictions on subdomains of top level domains.

So the only reason RFC1591 applies is because the naming committee thought it ought to many years ago. This is not an immutable invariant. Opinions can change, and indeed, in the author's opinion, the Subcommittee exists as a *consequence* of changes in opinions. Much has changed since 1994, not least the number of registrations of domain names being made each year. The structure of the industry has change substantially too – the distinction between network providers, infrastructure operators, and their customers has become very much more complex than it once was.

To argue that opening up *.net.uk* is bad because it is in breach of RFC1591 is clearly wrong. To argue that opening up *.net.uk* is bad because it breaks the principle that *.net.uk* should be administered as if the *.net* section RFC1591 applies begs the question; in the opinion of the author, it is the purpose of the Subcommittee to determine questions exactly of the sort 'should the principle of applying RFC1591 to registrations apply?', and, if so, 'should the principles of RFC1591 be applied as a charter, or as a test for registration?'

The Subcommittee Report provides no cogent argument why RFC1591 is applicable to *.net.uk* now, nor why there is a cogent & current reason why RFC1591's *.net* section should be applied as a condition of registration in *.net.uk*, nor why *.net.uk* would fail as an SLD were it not applied in this manner.

Review of Introductory Paper and Subcommittee Report

The author believes that the Subcommittee Report is in essence an endorsement of the Introductory Paper, and adds few new points. The Subcommittee Report states:

We accepted that there is dissatisfaction with the net.uk SLD (Second Level Domain), both from the points of view of applicants and of Nominet. Reasons for dissatisfaction cited to us include [the list provided in the Introductory Paper] ... Following from [the Introductory Paper] we agreed that there were 5 possible things that could be done: [options as per the Introductory Paper] ... We also agreed that we should evaluate any change we were going to propose in line with the (currently suspended) policy ... for the creation of new SLDs as, if this were a new application, that would be the procedure the PAB would apply.

The author has thus taken the position that the Subcommittee endorses the Introductory Paper in toto, which, though the Subcommittee does not explicitly make this point, appears to be implicit within their own paper. As on several issues the Introductory Paper is a little better drafted, the author has commented on that paper where the information is not present in the Subcommittee Report. The author has, on the basis of this implicit endorsement, also taken the view that the views expressed in the Introductory Report, short of any express dissent in the Subcommittee Report, are those of the Subcommittee.

A. The Introductory Paper notes that:

The current guidelines came into effect on 1998-03-07. Pre-Nominet, the practice seems to have been that the Naming Committee "knew an ISP when they saw it". Nominet initially required the applicant to appear to be an ISP, usually with "Net" or "Internet" in their name, and from 1997-06-27 required them to include the following text in the application:

The Naming Committee did not "know an ISP when they (sic) saw it" – this was a subject of frequent, lengthy, and often tedious debate. Nominet's rules did not make the situation worse, but rather improved it, substituting the value judgments of various members of an ill-constituted committee against undocumented or non-existent criteria, with a combination of objective and subjective judgment of a single entity with reference to published criteria. Whilst it is accepted that subjective judgments are less than ideal, the introductory paper suggests that they have become more problematic over time as the nature of an ISP has

evolved. In fact, in the authors opinion, the problem has not increased in extent, and was mitigated by the publication of objective criteria and the judgment being made by a single body.

B. The Introductory Paper notes that:

Based on recent applications, it would appear that:

- *about 70% are clearly not eligible for a net.uk name;*
- *about 5% apply correctly and are allocated a net.uk name;*
- *about 5% fail to include all the required details, but are eventually successful;*
- *about 20% meet some of the criteria, believe they are entitled to use the SLD, but have their application rejected, often because they fail the LIR or ASN test.*

This last category take the most time to deal with - often well over a man-hour - because they will not accept the initial decision and believe the rules are "wrong".

Earlier, the introductory noted that 192 domain names have been registered since the current guidelines. If this represents 10% of applications (the 5% applying correctly, and the 5% who are eventually successful), one may conclude that since those guidelines were introduced in March 1998, 1920 applications have been made. The last category, taking the most time to deal with, thus number approximately 384, taking approximately 384 man hours over about four and a half years, and thus have taken approximately 100 man-minutes a week of Nominet's time. The author does not consider this to be a significant expenditure.

The author thus suggests that any arguments to change the SLD rules be based on severe policy problems, rather than perceived costs of administration.

C. The Introductory Paper states that:

The obvious question to ask at this point is why it is necessary to change the rules. There are a number of reasons that have been proposed.

1. *The corresponding gTLD (.net) doesn't restrict applicants.*
2. *The rules are not well specified (e.g. what is an ISP?).*
3. *The rules are unfair (e.g. the requirement to be an LIR or ASN discriminates against lower-tier network operators).*
4. *The rules take a lot of effort to enforce (applications have to be vetted by hand).*
5. *The rules are not being enforced anyway (allegedly some net.uk names are being used in ways not permitted by RFC 1591).*
6. *The SLD is under-utilised and more use should be made of it.*

Numbering in the above has been provided by the author. The author argues that most of these arguments, both individually and taken together are specious.

As to point 1, gTLDs have their own set of rules, and policies determined, in essence, by ICANN and/or Verisign. Nominet is not, at least for the time being, subject to policy made by ICANN or Verisign. It may be that ICANN or Verisign make good policy, and it may be that they make bad policy. However, Nominet makes policy in consultation with its own stakeholders, and, at least as far as this decision is concerned without reference to those bodies. There is no requirement (or even benefit) for consistency of policy with ICANN or Verisign. Else we should rename *co.uk* to *com.uk*, *me.uk* to *name.uk* and introduce all sorts of unusual SLDs such as *aero.uk*. Indeed, the fact that ccTLDs do *not* necessarily duplicate the policy of gTLDs is a distinguishing which adds value by differentiation. The author notes that this complaint is not satisfied by the Subcommittees own proposals, as an SLD closed to new registrations would be even more out of step with *.net*.

The author has no argument with point 2, except that the problem is perhaps more accurately stated as "The rules are not well drafted".

As to point 3, this argument both begs the question, and contrasts amusingly with the conclusions the Subcommittee reaches. The proponents of this point presumably believe that the rules should be fair (a point with which the author agrees), and that discrimination is inherently unfair. As *net.uk* is a closed SLD, it must **necessarily** discriminate against those who do not fulfil the criteria which permit registration. The question is whether those criteria are logical, and whether the discrimination is fair. The point presumably being made is that there are some entities the Subcommittee consider ISPs, who are not LIRs or have an ASN, (and up to this point the author is in agreement), and exclusion of those entities is unfair. However, by the nature of any closed SLD entities have to be excluded, else the SLD would be open. This point thus begs the question, as it relies on the conclusion that there should not be a closed SLD at all. Secondly, at least this rule is an objective test, and both LIR status and ASNs are available to any entity subject to equally objective criteria. It may not be an *efficient* test of whether or not an entity is an internet service provider, but as the Subcommittee do not purport to give a definition of an internet service provider in any case, it is hardly fair to criticize the rule on that basis. Yet the main problem with this point is that if applied to the Subcommittee's proposals, a far worse result ensues: whilst there may be a certain arbitrariness inherent in drawing a line (LIR or ASN) around a concept (ISP) which appears to be somewhat nebulous, this is not nearly as arbitrary or as unfair as allowing existing registrants to keep their *.net.uk* domain names, and preventing future applicants from registering. What could be more arbitrary or unfair than creating a domain only for those who satisfy a set of criteria which the Subcommittee itself contends are at the least poorly drafted *and* who applied prior to an arbitrary date for change of the rules? What the Subcommittee appears to have missed it is that it is rather more important to be consistent over time (and thus be fair to potential registrants as well as existing registrants) than to avoid perceived arbitrariness in applied criteria.

As to point 4, the author believes this is covered under B above.

As to point 5, the author notes the fact rules are not being enforced (by which the Subcommittee presumably means 'proactively enforced') does not necessarily require that the rules be changed. Firstly, rules elsewhere in the SLD system are not continuously enforced. For instance, Nominet does not proactively seek out *ltd.uk* registrants who have changed their name and who are thus no longer entitled under the rules to their registration, nor does Nominet proactively hunt down registrants of *co.uk* domain names (for example) who have not maintained the contact details accurately, and terminate their domain registration contract. Instead, Nominet reserves the right to do so, and acts proportionately, and on a complaints or event driven basis. There is no reason why the same should not apply here. Secondly, this point is much abused later in the document, where the lack of any substitute enforceable rules is taken as a reason to discount options requiring different rules. However, the Subcommittee overlooks a crucial point, which is that there are plenty of sub domains with *charters* which are not enforced on each individual domain name registrant, for the most part because, like *.net.uk*, the terms in them are somewhat nebulous. For example, *co.uk* is intended for commercial organizations, *org.uk* for non-commercial organizations and *me.uk* for individuals. However Nominet does not enforce these intents. In the case of *me.uk*, Nominet gives some form of advantage within the dispute procedure to those who fulfil the charter's aspirations. The existing rules of *net.uk*, to the extent that they are problematic as rules of registration, are unproblematic if the rules formed part of a charter. Thirdly, the author notes that if *.net.uk* were closed to new applicants, the problem of enforcement of the rules with respect to existing applicants is not solved. If, as the Subcommittee implies, there is a requirement that the rules be proactively enforced, surely that requirement will be all the greater if *.net.uk* becomes closed, therefore making the existing registrations rather more valuable. Fourthly, the Subcommittee presents no evidence of the scale of such purported abuses, and which parts of RFC 1591 are in fact being broken. The author considers other widespread breaches of registration rules (for instance failure to update contact information) to be far more serious than (say) putting a web site on an address within *.net.uk*, which, according to some readings, might be in breach of RFC 1591.

As to point 6, this bears further investigation. The author notes, however, that the Subcommittee's own proposals achieve the opposite effect.

In summary, the author agrees in principle with point 2 and possibly point 6, but none of the other reasons presented. The author believes that in any case, the Subcommittees own proposals achieve the opposite of the intended effect with respect to points 1, 3, 5 and 6. The best that therefore be said of the Subcommittee's proposal with regard to the problems presented, is that it is easy to imagine how they might be accurately drafted.

D. The introductory paper notes:

Here are some things that could be done with the net.uk SLD:

1. *Do nothing.*
2. *Close the SLD to new registrations:*
 - a) *canceling all existing registrations immediately;*
 - b) *canceling all existing registrations at renewal or at some specific future date;*
 - c) *allowing existing registrations to continue indefinitely.*
3. *Change it to an "open SLD" like co.uk or .net.*
4. *Amend the rules to counter some of the present problems while maintaining their spirit.*
5. *Amend the rules to give it a new purpose.*

The author agrees that this is an accurate representation of the options.

Of these, I believe that 2a can be dismissed out of hand as being unfair to the existing registrants. The rest should be considered, though I would suggest that, at the least, the rules should be tidied up (meaning that option 1 is effectively eliminated as well).

The author does not believe it is useful to eliminate options at this stage – indeed it could instead be argued that the 2(b) was also unfair on the same basis, and 2(c) would be unfair on potential registrants compared to existing registrants, thus eliminating 2 in its entirety (and thus the Subcommittees own proposals). The Subcommittee has chosen to select an option by a process of elimination, seemingly in the hope of being left with an option to proceed with. However, the problems with the proposed option have hardly been examined, nor have the problems inherent with any change been weighed against the supposed problems which are presented as forcing that change.

E. The introductory paper states:

At this point, I believe that the right approach for the sub-committee to follow is to look at Nominet's rules for new SLDs. If we were inventing net.uk anew, how would these rules apply. Summarising the most important policy principles:

This point is the largest error of logic within the proposal.

Firstly, the new SLD procedure has been suspended, in consultation with the PAB, because it is problematic. There is little use in judging an issue by a benchmark that the PAB itself has agreed is problematic.

Secondly, the concept of application of a procedure originally designed to create new SLDs to rule changes within a current SLD is flawed. For instance, the Subcommittee suggests application of this procedure to various of its 'possible actions', but not all, and eliminates options on that basis. However, the new SLD procedure (pre-suspension) would equally not have created an SLD which has existing registrants, but allows no further registrants, and for which the rules with respect to existing registrants are (in the Subcommittees own opinion) either not enforced, or not enforceable; and this is exactly the option that the Subcommittee proposes. The Subcommittee takes the view, in its conclusions, that registrations which already exist, should be allowed to continue, as this is a matter of historical legacy. However, it does not apply the same logic to SLD rules, to which, in the Subcommittees opinion, it is apparently valid to continuously apply the criteria for creation of new SLDs. This was not the intent of those criteria – indeed during their original drafting it was the intent that the hurdle

for creation be set sufficiently high *precisely because* the criteria would only be applied at creation, and once created it was not envisaged that such SLDs would be deleted or orphaned (as proposed by the Subcommittee).

Thirdly, the purported application of the new SLD rules claims that a creation of *.net.uk* anew would fail, on the basis that (for instance) ‘*No significant community of interest that needs an open SLD has been identified*’. Note the passive tense. The Subcommittee appears to have made no effort to identify such a community of interest. As a ‘straw man’ proposal, I would suggest the community of interest be ‘those who wish to identify themselves as operating, or offering service upon, network infrastructure in the UK’. This could not only include ISPs, but also community network projects (for instance ‘neighborhood networks’), as well as the infrastructure of commercial organizations. The Subcommittee bizarrely asserts ‘*In either case, it would be unlikely that net was mnemonic for the purpose unless a name was specifically contrived*’ – what is contrived about ‘*.net.uk*’ with regard to the proposed community of interest identified above, which is remarkably close to the spirit of RFC1591. Indeed a proposed community of interest being simply ‘those operating or offering service within the UK which would satisfy the requirements under RFC1591 for a registration under *.net*’ would seem to be an equally appropriate community of interest that most tightly retains the spirit of *.net.uk*, but would be for an open SLD.

Fourthly, the Subcommittee has misunderstood the overlap rules in relation to the (now suspended) new SLD procedure. Even the existing *.net.uk* rules state:

The applicant is either:

- *a company listed on the Register of Companies at Companies House under the Companies Act 1985 in the Great Britain or on the Register of Companies at the Northern Ireland Companies Registry under the Companies (Northern Ireland) Order 1986;*
- *a United Kingdom government department, local government body, or associated government funded organisation;*
- *a recognised academic institution geographically located in the United Kingdom; or*
- *a Charity on the Register of Charities at the Charity Commission in the United Kingdom.*

And the relevant (suspended) SLD rule states:

6. *No SLD shall be created if its uses and functions are wholly or substantially encompassed by the charter of any single existing SLD.*

It is clear that even the charter of the existing SLD is not encompassed by the charter of any **single** existing SLD. Indeed registrants would be expected otherwise to register in *co.uk*, *org.uk*, *gov.uk*, *ac.uk*, or *sch.uk*. Certainly it is true that there is *overlap* with existing SLDs, however there is not encompassment. If one applied this criteria in its true form to existing SLDs, both *ltd.uk* and *plc.uk* should be deleted, because they merely describe commercial enterprises and thus are wholly encompassed by the charter of *co.uk*. If this criteria were misapplied as it has been by the Subcommittee, we would also end up removing (say) *org.uk* as some organizations are commercial entities, or academic institutions, or could register under *gov.uk*.

The paper states:

Any such communities of interest should be identified first and their own application crafted separately from this situation.

In effect, the Subcommittee suggests making a substantial change to an SLD, and then allowing it to be reverted should someone else identify a community of interest. The author suggests that it is the Subcommittee which is proposing a change, and thus the burden of proof should be on those advancing the argument for change to demonstrate that there is no such community of interest.

The paper goes on to note:

I recommend that the sub-committee draft a Charter, and a description of the Community of Interest, for net.uk as part of its work. If they find this is not practical, that would be a strong indication that the SLD is no longer necessary and that option 2 is the right one to take. On the contrary, if these documents can be produced then the the (sic) SLD has a clear purpose and option 4 is correct. The sub-committee can then look at the spirit behind the rules and see what changes to wording are desirable.

This logic is flawed in three ways. Firstly, the criteria for creating new SLDs are not, for the reasons described above, suitable for applying to existing SLDs. Indeed on the basis that they have been suspended, following the Subcommittee's own logic, this would suggest that as no existing SLDs would be created (were they not to exist now), no new registrations should be allowed in any SLD. Secondly, again, it is for those proposing change to demonstrate that the "SLD is no longer necessary". Even were the criteria applicable, the failure to demonstrate that the SLD would meet them is not sufficient to demonstrate it should be closed. Thirdly, the effect of not creating a new SLD has far fewer problems associated with it than the closure to new registrations of an existing SLD.

The author believes the principle of retrospective application to existing SLDs of criteria which have been found to be faulty, and were any case only ever intended for the creation of new SLDs, to be deeply flawed.

F. The Subcommittee Report states:

We considered whether the distinction of a "physical ISP" (from a "virtual ISP") is useful

It comes to the conclusion that it is not.

We felt that consumers did not generally make a distinction between their physical and virtual suppliers and therefore net.uk was not helpful to consumers.

The author notes that this rather misses the point that the distinction envisaged in RFC1591 was not meant to be useful to consumers, but to other network operators, for instance in reporting instances of network abuse.

The report goes on to state:

We also considered whether "net" (either .net or net.uk) domains are useful in identifying ISPs:

- *"Net" domain names have been used to permit the separate identification of customers from their ISPs. However, we now have customers of ISPs who are, recursively, ISPs themselves.*
- *Previously, one ISP might have "trusted" a communication if it came from a person with a "net" email address (i.e. they might also be an ISP). This can be useful in abuse & network negotiations.*
- *However, there are now many ISPs who do not use a "net" domain and there are many non-ISPs who do use them. We believe that IP address databases (RIPE, ARIN, APNIC, etc.) are (a) more useful and (b) more widely used for identifying connectivity providers.*

There are approximately 540 net.uk domains. We presume there are a great many more ISPs in the UK; thus, the SLD is not a useful means of determining whether an organisation is an ISP.

The author agrees that .net.uk is useful in definitively identifying whether a company is, or is not, an ISP, not least because definitions of ISPs vary. The author notes that the absence of a .net.uk was never presumed to indicate that an entity was not an ISP, and thus the last paragraph of this quoted section is logically flawed. The author however notes that only a fool

would use DNS (especially reverse DNS) as a cast iron guarantee of the nature of an organization, not least as reverse DNS can be forged. No such inference can be drawn that a *co.uk* registrant will be a bona-fide commercial organization, or that an *org.uk* registrant will be non-commercial, or even that a *.me.uk* registrant is individual. The point of DNS is that it is a mnemonic system, and the issue here is that the registrant using *.net.uk* wishes to hold themselves out as an ISP (or, perhaps better, a provider or operator of network infrastructure).

The Subcommittee then considers third party lists of ISPs.

The author feels the Subcommittee has ‘gone down a rat-hole’. It has correctly determined that ISPs are difficult to define. Also, that rules prior to registration are difficult to enforce (the amount of difficulty being approximately 1 man-hour). However, the Subcommittee appears not to have considered making the rules into a charter (as per other domains), or merely charging per application for the extra time taken on a cost recovery basis.

The Subcommittee then proceeds to evaluate each of the options. As stated above, the author believes the logic here to be flawed.

G. The Subcommittee Report states:

Doing Nothing

We firstly considered whether we should “do nothing” with the SLD and concluded that at the very least we believed that some of the existing rules were broken (e.g. the “legal entity rule” does not permit sole traders) and, if we wanted to maintain the existing rules but improve them, they should be fixed. We also believed that there might be scope for significant change. Thus, we concluded that the PAB should “do something” and we rejected this option.

There is always a great temptation to “do something” when it is perceived that a situation is problematic. Sadly this temptation is often translated into “do anything”, and to some extent this appears to be the case with this report.

The virtues of “doing nothing” are severely underrated in this report. This is for three reasons. Firstly because the perceived disadvantages stated above, are relatively trivial. What is the magnitude of the problem, for instance, that ‘sole trader’ ISPs are not allowed to register within *.net.uk*? Secondly because the cost of performing any change (in terms of management time) in the author’s view are large compared with the supposed benefit. Thirdly because what has been identified here are in essence ‘minor problems’, and it is often better to continue with ‘minor problems’ present, than go for a wholesale change, both with identified larger problems, and which is inherently risky.

The author advocates “doing nothing” as a policy worthy of serious attention.

H. The Subcommittee Report states:

Changing net.uk to be completely open

One option would be to completely open up the net.uk SLD, such that it becomes the same as the co.uk SLD. We noted the Policy for the Creation of new SLDs, which states, “No SLD shall be created if its uses and functions are wholly or substantially encompassed by the charter of any single existing SLD”.

As stated above, the charter of *.net.uk* would not be encompassed within any single SLD, and the application of these criteria is bogus.

The Subcommittee Report continues:

We also felt that making the domain completely open would expose Nominet to further Intellectual Property issues, similar to those experienced in the two-letter

domain problem. We also felt that stakeholders would effectively be obliged to make protective registrations in net.uk, a scenario that we did not favour.

The author does not understand the nature of the problem which the Subcommittee seeks to identify in the first sentence above. The gradual charging decrease in *.me.uk* was successful in preventing land-grab. The author does not consider the problem of protective registrations to be any worse than in *me.uk*, or *org.uk*.

We were unable to see how an open net.uk would be different to co.uk or org.uk and we felt that it would directly contravene the no overlap principle. We therefore rejected this option.

As noted above, the Subcommittee has clearly misunderstood or misread the overlap principle, which in any case is derived from criteria which should not be applied, from a procedure the PAB has agreed is flawed.

The Subcommittee appears to have overlooked the possibility of an open SLD with a detailed charter, similar to the current rules, but not enforced per registration.

The author believes that opening up *.net.uk* should be given serious consideration by the PAB.

I. The Subcommittee Report continues:

Tidying the rules of net.uk

We felt that if we wanted to keep the SLD open then it would be sensible to make minor “tidying” changes to the rules:

- *The restriction of permitting only specific types of entities would appear to be redundant as the main terms and conditions now provide for the identification and type of the registrant.*
- *It is now practically impossible to define what an “Internet Service Provider” is.*
- *It might be possible to slightly broaden the entry criteria (e.g. membership of ISPA-UK might be a sensible alternative to the LIR/ASN requirement.)*

However, we did not think that we could make sufficient minor changes to the net.uk rules that would solve the stated problems (this would require changes of scope and definition). Thus, we rejected this option.

The author agrees with the conclusion here, if not the logic. It seems to the author that making any changes which are material is going to be just as much effort as opening the SLD with a ‘tidied’ charter, but would be less beneficial. If it is worth the effort to make changes, then one should attempt to solve the problems as identified, and this option is not useful in that respect.

J. The Subcommittee Report continues:

Changing the scope and definition of net.uk

Whilst we felt that net.uk is perhaps not a useful SLD, there is demand for it. The SLD is considered to have a certain cachet associated with it. We believe that this cachet arises because of the difficult application requirements and because it is only many of the “established” ISPs who have net.uk SLDs. Thus, aspiring applicants would like to “join the club”, but find they cannot do so, which thus increases the perceived value of the domain. However, we believe that the constituency of aspiring applicants is very small. Certainly, they would probably not be sufficient to justify a new SLD.

The author considers the contention that *.net.uk* is not useful unproven. One suspects that even the Subcommittee believes it to be of use to current registrants, else it would have surely proposed simply deleting it. The author is unable to see why it should be of use to current

registrants, but not future registrants. Perhaps the Subcommittee is trying to say that it is not of use to those looking up domain names, as it is not mnemonic to them. However, in that case why is there such demand for domain names which can never be found by the public? The author believes that given there is demand, the market has demonstrated that there is some use to the domain name. Whilst it is difficult to disprove the ‘cachet’ argument, the author considers it far more likely that the somewhat ‘high hurdle’ criteria actually *suppress* demand (and thus utility). This is evidenced by the Subcommittee’s own numbers which show that relatively few potential registrants (who satisfy the criteria) have actually registered, presumably because of the hassle in doing so, despite any apparent ‘cachet’. The author believes there is existing demand for, and utility in *.net.uk* as it stands, and considerable latent demand and utility should the domain be opened up.

The Subcommittee notes:

We considered the issue of why ISPs should have their own special SLD. We do not, for instance, provide an SLD for any other industry group (fish mongers, butchers, bakers, lawyers) and nor have we felt there to be a need from any of these, arguably much larger, constituencies.

Whilst it is unarguably true that there is no *fishmongers.uk* et al, no application has been received in respect of these. Indeed *law.uk* has often been suggested as a good SLD, encompassing as it does entities of many different organizational forms. However, the fact is that *.net.uk* already exists, and these do not, and thus the decision about what to do with it is different. The author is no great fan of *police.uk* (for instance) – and it is difficult to determine the outcome if that SLD had been applied for under the new SLD rules before their suspension. However, that does not mean *police.uk* should be closed to new applicants.

The author believes in any case that ideally, any *.net.uk* SLD should be for network operators in the UK, and not merely for ISPs.

The Subcommittee, continuing with its (invalid) assessment against the suspended SLD criteria states:

We note rule 7 of the [suspended] Policy for new SLDs: “A new SLD shall not normally be permitted where a new SLD with a wider charter would better serve the interests of the Internet Community.”

The Subcommittee fails to demonstrate a new SLD with a wider charter, but then claims *.net.uk* would fail under this rule.

K. The Subcommittee Report continues:

Closing the net.uk SLD

Having evaluated a number of possible routes for the expansion of the net.uk SLD we concluded that closing the net.uk SLD to new registrations was the best option.

We reached this conclusion because:

- *We see no value in the net.uk SLD as a means of identifying ISPs on the Internet.*
- *We are unable to define a suitable community for the net.uk SLD.*
- *We are not confident that it is appropriate for the “ISP” constituency to have its own SLD (nor whether we would call it “net.uk”).*

We are unable to make recommendations for changes to the rules that would provide solutions to the stated problems.

We felt that it would be contractually dangerous to cease the net.uk SLD “instantly”.

We also noted that Nominet does not have a policy of “cleaning” the name space and therefore we declined to consider whether domain names within the net.uk SLD should be deleted before they otherwise would have been.

The author refers readers to comments made earlier in this report.

The author notes with surprise that the Subcommittee did not consider the disadvantages of this option:

- the time, effort, and expense involved; applying the Subcommittee’s own (flawed) logic, if the (suspended) SLD procedure were to be followed, a ballot of the membership should be held. If the logic of following the SLD procedure is accepted, then this must be accepted too – this will be expensive, and be for little gain;
- the unfairness to potential applicants when compared to existing registrants;
- the fact it would create a ‘protected enclave’ of existing registrants bearing a remarkable similarity to current Nominet members; and
- the fact it does not solve any of the problems the Subcommittee itself identifies, other than being easy to draft.

.net.uk – A quality mark, or an esoteric self-serving irrelevance?

Some have argued that *.net.uk* represents some form of quality mark for ISPs, in that if one can succeed in passing the test of registering a *.net.uk*, this ‘says something’ about the body concerned. Others have argued that this is elitist, or esoteric.

The author argues that ‘elitist’ in connection to the current rules is the wrong word – this implies it’s only available to the best, itself a difficult concept to determine without any criteria by which the best might be judged. If the current rules actually had some function as a quality mark, they would serve a purpose. However, the rules can be met by any applicant with enough time on their hands in any case. Anyway. It is not the elite that the current rules favour, it’s the devious and the lucky.

Closing *.net.uk* to new entrants on the other hand benefits the old and the current, as opposed to the new potential registrants (& competition). This is probably even more self-serving.

Mechanism for Opening up .net.uk

For the avoidance of doubt, by ‘opening up *.net.uk*’, the authors means opening it up ‘fully’, i.e. making it an open SLD, but with a strong charter. Just as in *co.uk*, *org.uk*, and *me.uk*, any applicant willing to enter into a registration contract with Nominet on its normal terms, could register on a first come first served basis. However, there would be a strong charter for the SLD, like with *me.uk*.

A great advantage of this approach is that problem of creating a 'binary' definition of ISP, or a network provider, or whatever entity is intended to register within the SLD, disappears if one simply has the term included in a charter. Then establishing the definition for the term is a problem for the applicant alone – applicants may well wish to consider ‘should I have a *.net.uk* – am I in fact a network provider, or do I want to hold myself out as one?’, but this sort of argument will be internal to the applicant, and not rest upon a definition to be judged by Nominet.

The mechanism of opening *.net.uk* should be simple. Assuming the proposals within this document are accepted by Nominet, including adoption of a charter similar to one described below, then registrations in *.net.uk* would be opened up in a similar manner to the opening of *me.uk*, with a gradually diminishing price to discourage levels of speculative registration which might damage Nominet’s infrastructure. There seems to the author to be little practical difficulty beyond this, though the author notes that practical problems are a matter for the executive, and have little to do with policy.

Is the demand for .net.uk a not 'true demand'?

It has been suggested by detractors from the first version of this paper that there is not really demand for *.net.uk* – by this, so their argument runs, they mean that whilst they accept that there would be many registrations within *.net.uk* should it be opened, in some sense these do not constitute ‘demand’.

Firstly, one needs to distinguish between demand and supply. Obviously increasing the number of SLDs increases supply. There is equally obviously existing unsatisfied demand (from the number of people who get rejected, and the number who get put off). The point being made is, it seems, that the change proposed by the author will also generate an additional amount of demand (for defensive or duplicative registrations, presumably because people feel no need to make a defensive registration in an SLD which is so hard for others to register in), which is in some sense undesirable.

The author does not dispute that a number of defensive registrations will be made. However, the argument with regard to defensive registrations applies most strongly where there is no strong charter – the number of defensive registrations within *me.uk* has been small; *.net.uk* would have a similarly strong charter. Secondly, one has to question the point about presumed undesirability. The logic of avoiding creating a situation where a large amount of defensive registrations are made is presumably that IPR holders will be forced into expending a large amount of money on defensive registrations which, had the SLD not been opened, they would otherwise not have had to spend. This argument is more normally applied to the creation of new SLDs – for instance it is argued that if *com.uk* opened up with a parallel charter to *co.uk*, then many registrants valuing their brand within *co.uk* would apply for a registration in *com.uk*. However, one has to wonder whether this argument is actually applicable to *net.uk*. If Kelloggs (for example) believed there is risk to their brand should an unassociated KelloggsNet Ltd, run by a Mr Kelloggs, register *kelloggs.net.uk*, then given the relative ease of subverting the current *.net.uk* rules compared to the cost of fighting an IPR battle, one would have expected Kelloggs to have already made the registration within *.net.uk*. As it is, Kelloggs have not registered a *net.uk*, and indeed few not network-related IPR holders have. Besides, if an IPR holder *did* see value in protecting their brand, why not make it *easier* for them to make a defensive registration, rather than force them to jump through hoops?

Were the defensive registrations argument taken at face value, and not weighed against other factors, there would be no new SLDs or gTLDs, and indeed it would make sense to close many down. However, there are advantages to offering a number of well run SLDs:

Firstly it allows coexistence of similarly named entities. For instance, if the author wished to set up a community wireless LAN in the street of the house in which this paper was prepared, he might well want to register *nightingale.net.uk* – the domains *nightingale.org.uk* and *nightingale.co.uk* have already been registered, to different registrants, proving that coexistence can work.

Secondly, it allows different sites for different applications – see for instance <http://www.ultradns.net> vs <http://www.ultradns.com> for an example of two domains being used by the same company for a different purpose, in a manner which seems in the spirit of the RFC). Note also that MCI, BBNPlanet, and Sprint have used the distinction between *.net* and *.com* for similar purposes historically.

There is a separate but similar argument w.r.t. duplicative registrations, which are in ICANN-esque terminology a slightly different thing from defensive registrations, which might not be used at all. However, most of the duplicative registrations in *.net* came because Verisign in its infinite wisdom, well after the opening of *.net*, did a ‘buy one get one free (or very cheap)’ offer, so if one registered *bloggs.com*, one would receive get *bloggs.net* and/or *laurie.org* for free too. This parallel does not exist with *.net.uk* as Nominet has no intention of performing the same activity. Granted, it’s tag-holders might, but if so, why has the same thing not been seen in *org.uk*, given that this apparently has fewer speculative registrations?

Even if one accepted the point that there would be a large number of defensive registrations and that this situation would be undesirable, then this needs to be weighed against the advantages of opening the SLD, and the disadvantages of the alternative courses of action – no solution is perfect, and the fact that there are potentially problems with one course of action does not mean one can eliminate it on that basis alone.

The Verisign Experience

Some detractors from version 1.0 of this paper, particularly the subcommittee chair have argued that *.net.uk* should not be opened up as they perceived the Verisign experience of opening *.net* to be a failure.

Verisign opened *.net* without a charter, essentially to duplicate *.com*. That was Verisign's intent. It has 3 million registrations, and is second only to *.com* in size of the gTLDs. It is difficult to categorize this as a failure – it certainly satisfied Verisign's objectives. Further, the author argues that it probably satisfied the objectives of the community too. Perhaps those making this point believed it to be a failure as new *.net* registrants no longer necessarily conform to RFC1591. However, the reason for opening *.net* was surely precisely that those opening it thought that RFC 1591 out not to apply, presumably for reasons similar to those discussed herein. An argument along those lines is parallel to arguing that legalising cannabis would be bad, as lots of people would end up taking an illegal drug.

One substantial problem with the opening of *.net* was that it appeared to have taken place without meaningful consultation with the internet community. This failure should not be duplicated by Nominet.

However, this entire argument is peculiar for the reasons given under Section C above – Nominet is not, at least for the time being, subject to policy made by ICANN or Verisign. The argument herein is not based on how well or how badly Verisign's opening of *.net* went, as despite the fact the author believes it went relatively well, it is not relevant to the issue at hand.

Summary

The author believes that the Subcommittee has set out with the laudable aim of fixing a problem. Sadly, it has not found an acceptable solution. However, the default position should thus be to 'leave well alone'. The author suggests this be Nominet's position, unless a solution offering benefits substantially exceeding disadvantages be found.

The author suggests that opening the *.net.uk* SLD, as a domain 'for network infrastructure in the UK, and those operating, or providing services over it', is the only way forward which has the possibility of being such a solution. The author believes the executive should determine the difficulty and expense of performing this operation. The author believes, for the reasons stated above, that this solution has the potential to solve all the identified problems *at least to the degree they are solved with other existing SLDs*.

Should this not prove practical, the author suggests *.net.uk* is left well alone, and no further effort is applied to tweaking the rules. However, the author suggests that Nominet may wish to charge an extra amount for each registration, on a cost recovery basis, in the light of the apparent extra effort involved with each registration.

The author invites comments on this paper to be submitted to the PAB, to pab-suggest@nominet.org.uk as soon as possible, and in any event prior to the PAB meeting on 2nd October 2002.

Alex Bligh