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## **Domain expiry policy**

Background document for first meeting of the issue group on domain name expiry

28 September 2011

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# 1 Introduction

## 1.1 Background document

This paper aims to assist the first meeting of the issue group. It is not intended to be an exhaustive “backgrounder” but it is hoped it will serve as a helpful starting point for the group’s first meeting. It should be read in conjunction with the outputs of the consumer survey work undertaken on behalf of Nominet and the summary assessment of recent complaints to Nominet concerning expiry policy.

This document includes:

- the current position in the UK and the issues which the issue group might wish to further review to provide its reasoned recommendations to the Nominet Board;
- a brief summary and overview of the submissions received from interested parties to the requests for inputs;
- a high level comparison of the approach of a number of international ccTLDs on domain expiration policy;
- a short summary of the recent work by ICANN in this area; and
- an overview of our research into the contractual terms, which relate to domain expiration, of a number of .uk registrars.


We look forward to working through these issues with you.

Gordon Moir, Chair, and Tania Baumann, Nominet Secretariat.

## 1.2 Issue group

This issue group has been constituted to provide the Nominet Board with principled recommendations on the issue in question. The issue brief you will have seen and which was circulated more widely to stakeholders noted the following remit for the group:

- 1 What should the principles of the expired period be?
- 2 What should Nominet’s and the registrar’s obligations be to the registrant in the renewal of domain names?
- 3 Many registrars will have provisions in their terms and conditions which outline what the registrar will do when a domain name expires. What type of notice and level of transparency should registrants reasonably expect where specific practices are undertaken in the expired period?
- 4 In the context of encouraging innovation within the industry, how should Nominet’s policies support the development of new business models whilst ensuring registrants’ expectations are met?



It is the purpose of the first meeting to ensure that the Group is addressing all of the relevant issues, especially in the light of the various reports and studies which will be presented to the group at the first meeting and the inputs received to date. These further issues might include:

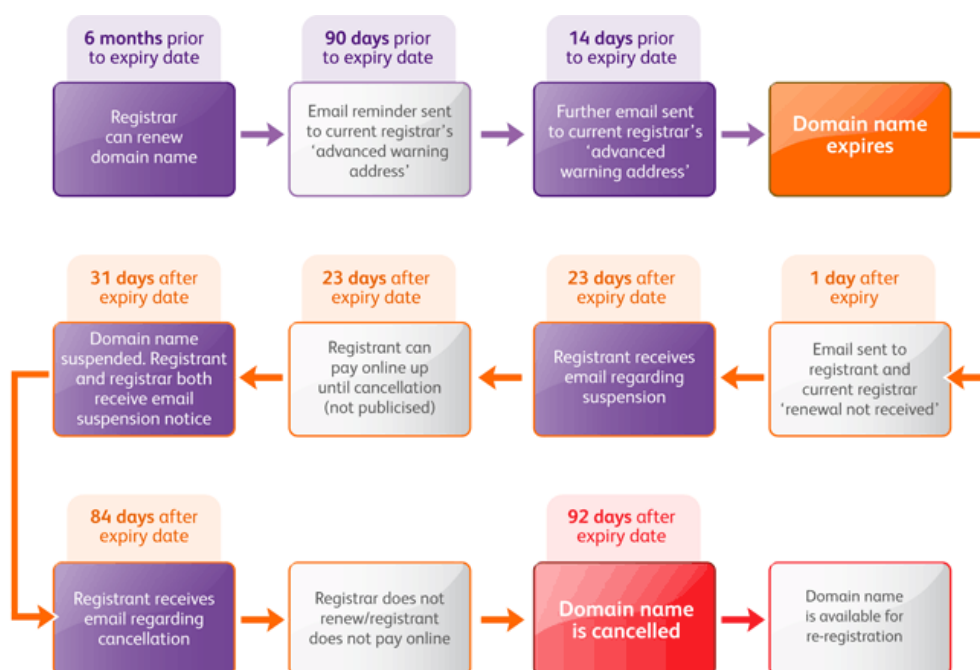
- Nominet's previously stated policy has been that the "expiry period is for the benefit of the registrant". What does this mean in the context of the practices that have been outlined and inputs received to date?
- What does transparency mean for a registrant? Are additional transparency protections justified in the event of particular behaviours, such as changing the registrant's details in WHOIS during the expiry period or charging for transfer or requiring the taking on of additional services to allow for transfer during that period?
- Are further procedural or contractual protections required for registrants?
- In the light of the issues identified, what would a proportionate response from Nominet look like?
- Are there international best practice examples that would help guide the present analysis and be part of any reasoned recommendation?

## 2 Current practice in the UK

### 2.1 The current renewal process

Domain names in the .uk namespace are registered for a fixed term of two years and are subject to renewal every two years. Before the domain name is due for renewal, the registrar will usually contact the registrant (its customer) to check whether the registrant wishes to renew the domain name for a further two years.

The expiration process for domains in the .uk namespace is summarised in the following diagram:



At any point in the above timeline the domain name may be renewed (and, if the domain has expired the suspension will be lifted). Nominet actively encourages all registrants to renew through their registrar, although registrants may renew directly with Nominet. We understand that few registrants contract directly with Nominet, given the substantially different charges for direct registration with Nominet versus registration via a registrar.

Alternatively, if a registrant is certain that they no longer require the domain name, they can instruct their registrar to mark it as 'renewal not required'. In these circumstances, Nominet will send one notice to the registrant by email informing them that the renewal fee is outstanding, but no further renewal reminders will be sent. If the renewal fee is not paid, the domain name will be suspended and deleted in the normal way.

To help clarify the background, set out below is a snapshot of the underpinning obligations and relationships as they apply to the expiry process.

## 2.2 Nominet's Registrar Agreement

Obligations on the registrar are set out in the Registrar Agreement between Nominet and the registrar. The key terms of the Registrar Agreement as they impact on the issue group are the following:

- 2.7. *You promise us that in respect of every Transaction request you make:*
  - 2.7.1. *you have the authority of the Registrant to make that request and (if applicable) enough authority from the registrant to fully commit them to all the terms of the contract or obligations connected with that request;*
  - 2.7.2 *[the request for the Transaction is not prohibited by clause 3.2]; and*
  - 2.7.3 *you have complied with the Good Practice Terms in relation to the transaction.*

## 2.3 Nominet's Registrar Good Practice Terms

Registrars offering domain names in the .uk namespace are also required to adhere to Nominet's Good Practice Terms. These mandate, amongst other things, that:

*"...it is essential that your customers (that is, Your Registrants) are well informed and understand the service that they are buying.*

Specifically, a registrar offering .uk domain names is obliged under the Good Practice Terms to:

- ensure its customers are aware of the charges associated with the registration, renewal and maintenance of a domain name;
- provide details of the domain name related services they provide, which are relevant to the particular customer, information on how to invoke the service, any charges payable and how long they take to carry out the service;
- make its customers aware of any changes to its charges;
- detail the method, availability and cost of the customer service provided;
- act quickly after getting a request from a registrant to take some action for them; and
- update the registrant's details as soon as possible if the registrar becomes aware that the existing information is out of date or incorrect.

In addition, the Good Practice Terms note specifically in clause 2 that, with respect to the initial registration of a domain by a registrar, rather than any renewal:

*“A small number of Registrars routinely register domain names in their own name without the knowledge or permission of their customer. This breaks the terms of the contract, because it can cause major problems for the intended Registrant. If you receive a request to register a .uk domain name for a customer you must register the domain name in your customer's name. You may only register the domain name in your or your organisation's name with the explicit prior consent of your customer. We might ask you to prove it, so you will probably want the customer's consent in writing to help if there is a query”*

## 2.4 The “Three Way Contract” arrangement

A domain registration entails a “three way” relationship, where each party (the registry, registrar and registrant) contract with one another:



Nominet’s terms and conditions (referred to as the contract of registration in the above chart) which apply to every registrant who secures a domain name, are silent on Nominet’s expiry processes. However, the Nominet Frequently Answered Questions section of the Nominet website is explicit in reflecting the process set out above at 2.1 above. Specifically, it states:

### ***What will happen if my registrar does not renew my domain name?***

*If a renewal request is not received from your registrar, we will send you a renewal reminder by email. You will have 30 days to arrange for your registrar to renew the domain name. If we do not receive a renewal request for your domain name within 30 days of the expiry date, the domain name will be suspended. It will then be cancelled 60 days after suspension if we have still not received a renewal instruction for your domain name from your registrar.*

### ***Can I tell when my domain name will expire?***

*All domain name registrations ending in .uk last for two years from the date of registration and you can check when your domain name is due for renewal*

*by using the WHOIS facility. Your registrar will normally contact you before your domain name expires to ask if you wish to renew it for another two-year period. If for any reason they do not contact you, we will contact you by email to check whether you would like to renew.”*

## 2.5 Recovering an expired domain name: the dispute resolution process

Nominet provides a dispute resolution service (DRS) which has been used by registrants to recover domains that have lapsed and were subsequently registered by a third party. In the cases we reviewed where domains were returned to the original registrant, the DRS Expert found that:

- the Complainant had “rights” in respect of a name or mark which were identical or similar to the domain name; and
- the domain name, in the hands of the Respondent, was an abusive registration.

This test permits, by way of example, a party which has “lost” a domain through expiry, where that domain is similar to a name in which it has rights (including non-registered rights, such as “goodwill” sufficient to support a claim of passing off) to recover a domain, if the subsequent registrant does not have a bona fide reason for using the domain.

## 3 International review

Nominet and Webb Henderson have undertaken a high level review of the domain expiry and related policies of six foreign ccTLDs: Australia, France, Germany, New Zealand, Netherlands and Norway.

An overview of that research is provided in the following table, with a more comprehensive discussion of each registry surveyed set out below.

	UK	Australia	France	Germany	Netherlands	NZ	Norway
Do registrants enter into a contract with the registry?	✓	✗	✗	✓	✓	✗	✓
Is there a fixed term for domain registrations?	✓	✓	✗	✗	✗	✗	✓
Is there a defined notification process?	✓	✓	✓	✗	✗	✓	✓
Is there a defined “expiry/holding/grace” process?	✓	✓	✓	✗	✓	✓	✓
Is a registrar permitted to register or hold domains in its own name?	✓	✗	✓	✓	✓	✗ (except where registered for “own use”)	✗ (a single entity may not hold >20 domains)
Registry “grace period” for expired domains.	90 days	30 days	30 days	n/a (but pre-deletion process applies)	40 days	90 days	60 days



## 3.1 Australia

### (a) Contract between the registrant and registry

Registrants of domains in the .au namespace do not enter into a contract with auDA (the registry for .au). However the agreement between auDA and a registrar requires that the registrar-registrant agreement includes certain auDA terms. These terms require the registrant to comply with auDA's policies.

### (b) Term of registration

Domain names under .au are offered by the registry for a fixed term of 2 years. However, where a registrant has multiple .au domain names, a registrar may offer a shorter expiry period to allow the registrant to synchronise the expiry date of all of its domain names (which is referred to as the "domain sync" service).

### (c) Expiry process and grace period

Registrars are required to make "reasonable commercial efforts" to contact registrants regarding the expiry of a domain between 90 and 30 days prior to the expiry of the domain.

A domain name may be renewed a maximum of 90 days before its expiry date and 30 days after its expiry date. Upon the expiry date, the domain will no longer resolve and cannot be updated, but it may be transferred to another registrar or renewed.

After the 30 day period following expiry has elapsed the domain name will transition from an "Expired Hold" state to an "Expired Pending Purge" state. At this point, the domain name cannot be updated, renewed or transferred and it will be published in the Official Domain Drop List. The domain will be purged from the register one day later, becoming available for registration by any party.

### (d) Registrars registering domains on own account

Registrars are permitted only to register domains on their own behalf which are connected to the provision of registrar services. Specifically, registrars are prohibited from any activity which involves:

*the acquisition or accumulation of Domain Names which are not connected to the provision of Registrar Services under [the Registrar Agreement], for the purposes of removing them from the availability of others, transferring them for a direct or indirect, immediate or deferred gain or profit or for any other reason which can be considered to be done in bad faith.*

However, auDA may exercise its discretion and permit a registrar or its related entities to register a domain for other services offered by the registrar or its related entities, such as webhosting services.

### **(e) Other interesting terms**

Registrars may only register a .au domain that is “closely and substantially connected” to the registrant.

A “monetised” website, which is a website that is retained for the purpose of earning revenue (including monetised domain parking pages), must contain content that is “related specifically and predominantly” to the domain name. In addition, the domain name must not be, or incorporate, an entity name, personal name, or brand name in existence at the time the domain was registered.

## **3.2 France**

### **(a) Contract between the registrant and registry**

Domain names registered under .fr are subject to the registry’s Naming Policy.

The Registration Contract between AFNIC (the registry) and registrars requires registrars to adhere to the terms of the Naming Policy. In addition, registrars must ensure that their customers (registrants) agree to adhere to the Naming Policy and must monitor their compliance with all legal and regulatory requirements, as well as with the Naming Policy.

### **(b) Term of registration**

Domain names under .fr are offered by the registry for a fixed term of 12 months. This term is automatically renewed upon expiry, unless a deletion request is received by the registry from the registrar. In practice, we understand that most registrars offer domains for a 12 month period to registrants and will send a delete message to the registry if the registrant does not renew its registration agreement (or pay the fees stipulated in its initial registration agreement) with the registrar.

### **(c) Expiry process and grace period**

Deletion is irreversible, except in cases where the domain has been deleted at the request of a registrar. In those cases, it becomes irreversible after a 30 day redemption period has elapsed.

During the redemption period, the domain name may be reactivated with the same configuration, but only by the pre-deletion registrar. As such, a registrant must facilitate any “post-expiration” renewal with its existing registrar. During this period, the only authorised action is the reactivation of the domain name with the same configuration.

As such, a transfer of the domain name between the registrant and the registrar may only occur before the commencement of the grace period.

### **(d) Registrars registering domains on own account**

The registry’s terms and conditions do not prevent a registrar from holding domain names. Registrars may register the domain name for a customer in their own name and be

represented on the WHOIS as the owner. In such cases, it is for a registrant to challenge that if they are unhappy, before the courts, based on their contract with the registrar.

**(e) Other interesting terms**

Only corporate entities residing in France, trademark holders with a trademark registered in France or individuals residing in France or of French citizenship living overseas may register domains in the .fr namespace. However, we observed that a number of international registrars offer a trusteeship service to meet this requirement.

AFNIC maintains a number of terms which mean certain domains are subject to “prior review” before registration is permitted. These include terms which might offend certain members of the public, as well as names which are subject to certain naming conventions (e.g. *agglo-name.fr* or *cf-name.fr*, *cf* and *agglo* being the prefixes for urban authority and general council respectively).

### **3.3 Germany**

**(a) Contract between the registrant and registry**

A registrant may submit its application for a domain name to DENIC directly or through a DENIC member (registrar). In either case, the DENIC Domain Terms and Conditions will bind DENIC and the registrant.

**(b) Term of registration**

The period of a .de registration is indefinite and may be terminated by the registrant without prior notice or by the registry on substantial grounds, such as where:

- the domain name includes a “manifestly illegal statement” or “manifestly infringes the rights of others or is otherwise illegal”;
- the domain holder is not permitted to use the domain name (e.g. because of a Court order); or
- the registrant has persistently breached substantial contractual duties (including in relation to payment and the policies for .de registrations).

In practice, we understand that some registrars offer contracts for a fixed period of time (i.e. 12 months) which automatically renew unless terminated by the registrant.

**(c) Expiry process and grace period**

Domain names under .de are offered by the registry for an indefinite term. Accordingly, the registry does not specify an expiry process or grace period for domain names.

A registrar may only delete a domain name if the registrant has explicitly requested it. This is because the contract for the registration of the domain is directly between the registry and the registrant. As such, it may only be terminated by either of those two parties.

However, a registrar may give up the administration of a domain name (i.e. in situations where a registrant fails to pay the fees set down by the registrar). Where this occurs, DENIC will contact the registrant to arrange for the deletion of the domain name or for the domain to be transferred to another registrar. If neither occurs, DENIC will assume the administration of the domain name and will invoice the registrant directly.

**(d) Registrars registering domains on own account**

The registry for .de has no rule prohibiting a registrar from registering a domain in its own name.

### **3.4 Netherlands**

**(a) Contract between the registrant and registry**

Registrants of domains in the .nl namespace contract directly with SIDN, the registry, as well as their registrar.

Before submitting a registration application on behalf of an applicant, the registrar must ensure that the applicant closes a registration contract with SIDN. The “content and means” of that closure must satisfy the requirements made by SIDN. These are made available on SIDN’s website and are governed by the General Terms and Conditions for .nl registrants in force at the time, which take effect as soon as SIDN has processed the application.

**(b) Term of registration**

SIDN offers domains in the .nl namespace for an indefinite period, however in practice domains are generally offered by registrars for 1 year terms.

We understand that where registrars offer .nl domain names for a set period, those domains may be “deleted” by the registrar at the conclusion of the term of the registrar-registrant agreement.

**(c) Expiry process and grace period**

If a domain name is deleted its record is changed to reflect that it has entered “quarantine status”. A domain name remains in quarantine status for a period for 40 days, during which it is not available for re-registration by anyone except the original registrant. From the information available publically, it does not appear that SIDN provides a notification to a registrant that a domain has entered into quarantine status. SIDN’s “frequently asked questions” page on its website informs registrants that they may determine if their domain is in quarantine by querying the WHOIS.

SIDN identifies the purpose of the quarantine period as to protect registrants against the disproportionate consequences of a mistaken cancellation. Specifically, SIDN describes the quarantine period as a “sort of after-care, which is of benefit mainly to the registrant, but also to the registrar” and it is given because it is “generally felt to give registrants enough time to act in the event of an abusive or unintended cancellation”.

Registrants may only renew a quarantined domain through a registrar, although this need not be conducted through the registrant's existing registrar.

**(d) Registrars registering domains on own account**

SIDN's registrar agreement provides that a registrar shall register .nl domain names in the name of and using the details of the applicant. A registrar is only entitled to update registered data when asked to do so by a registrant.

However, a registrar is permitted register a domain name under .nl in its own name or in the name of another party where it has the applicant's explicit consent. In such circumstances, the registrar must inform the applicant of the implications of registering a .nl domain name in another party's name before it proceeds with the registration.

The registrar must always give the registrant the opportunity to act as administrative contact for any registration made in the registrant's name. The registrar may act as administrative contact person for a registration only with the registrant's explicit consent and may not make the agreement to act for a registrant conditional upon such consent.

### **3.5 New Zealand**

**(a) Contract between the registrant and registry**

Registrants of domains in the .nz namespace do not enter into a contract with the New Zealand registry. However the .nz registry-registrar agreement sets out a number of terms which must be included in the agreement between the registrar and the registrant. These require that the registrant adhere to the policies of the .nz registry.

**(b) Term of registration**

Domains may be registered on a term of 1 – 120 months (10 years). In practice, most registrars offer domains in annual blocks.

**(c) Expiry process and grace period**

The registrar must send a renewal notice to the registrant at least 30 days prior to expiry of the relevant domain name. The notice may be sent to the email or postal address specified in the WHOIS for the relevant domain. The registry does not send renewal or expiry notices to registrants.

Following the expiry date, a domain name enters into a "Pending Release" status for 90 days. During this period, the domain name will not resolve, but the details available pre-expiry will be accessible in WHOIS (and the domain name's status will be changed to "Pending Release"). Only the registrant may renew the domain name in this period.

After the 90 day period has elapsed, the domain name is purged from the register and is available for registration by any party.

#### **(d) Registrars registering domains on own account**

A registrar may only register a domain name at the request of a domain name registrant. That is, a registrar may not register domain names on their own behalf unless they are or will be using that domain name themselves. The 2011 .nz Roles and Responsibility policy provides that, in this context, use of a domain name does not include leasing it to a third party.

In 2005, the Domain Name Commissioner sanctioned a registrar for the conduct of its reseller which had breached the above rule. The reseller had registered domain names in its own name for both speculating on the value of domain names and with respect to domain names requested by registrant customers.

### **3.6 Norway**

#### **(a) Contract between the registrant and registry**

The registrant enters into an agreement with the .no registry upon registering a domain name. The relationship between the registry and the registrant is defined by the registry's domain name policy and the registrant must physically sign an "applicant's declaration" before registering a name. As such, the registrar is not required to incorporate any of the registry's terms in the registrant-registrar agreement.

The registrar must collect the declaration prior to registering the domain name, and it is the registrar's responsibility to verify the declaration. The registrar must also retain a copy of the document and make it available at the registry's request.

Upon termination of the registrar contract, the declaration archive must be sent to the registry for verification and permanent archiving.

#### **(b) Term of registration**

Domain names may be registered for a minimum period of 1 month and a maximum period of 12 months and must be actively renewed each year by the registrar. While domain names must be renewed through a registrar, the registrant is responsible for ensuring renewal occurs.

#### **(c) Expiry process and grace period**

If a domain name is not renewed the registry sends a notice of deletion on the expiry date, as well as 14 and 30 days after that date.

The expired domain name continues to function for 60 days after expiry, after which point it is "quarantined". A quarantined domain name does not function, but may be renewed by the registrant (via a registrar). After the 60 day period has elapsed, the quarantined domain name is deleted from the register and is made available (subject to the registry's standard eligibility requirements) to other parties.

#### (d) Registrars registering domains on own account

Registrars may register domain names on the same terms as any other party. No specific terms are applicable to those arrangements, however the registry's standard restrictions on registrations within the .no domain apply. This imposes a general limit on how many domain names any one entity may have possess at any one time. At present, the limit for any one entity is 20 domain names.

The purpose of this limit is apparently to restrict the "warehousing" of domain names.

#### (e) Other interesting terms

To register a .no domain, the registrant must be an organisation with a local presence in Norway. Individuals may not register domains directly with the .no domain, but may register within .priv.no.

## 4 Summary of ICANN findings on post-expiration policy

### 4.1 Background

The ICANN Meeting in Cairo in November 2008 resolved that an Issues Report considering the subject of registrants being able to recover domain names after their formal expiration date should be prepared.

The Post-Expiration Domain Name Recovery Working Group (**Working Group**) commenced deliberations in July 2009, issuing an Initial Report on 31 May 2010, a proposed Final Report on 21 February 2011 and a Final Report for submission to the GNSO Council on 14 June 2011. The Working Group undertook public consultation at each step of this process.

On 11 July 2011, the GNSO Council resolved to recommend the Working Group's recommendations to the ICANN Board of Directors. Those recommendations, and the key drivers behind them, are summarised below. These were being consulted upon for a final time, with a close for submissions of 15 September. They will now go to the Board.

### 4.2 Recommendations

#### (a) Defining the Registered Name Holder at Expiration

**Driver:** The Working Group identified some "confusion over who is eligible to renew if WHOIS is changed after expiration". This flowed in part from the language used in a number of registration agreements.

**Recommendation:** The Registered Name Holder at Expiration (**RNHaE**) should be defined as the entity or individual eligible to renew the domain immediately prior to expiration. If registration information is modified pursuant to a term of the registration agreement (and for the purpose of facilitating renewal) the RNHaE should be the entity or individual identified as the registrant immediately prior to that change.

## **(b) Minimum interruption period**

**Driver:** The failure of a website (or functions associated with a domain) may be one of the more effective methods of getting a registrant's attention regarding the expiry of a domain.

**Recommendation:** For at least 8 consecutive days following the expiration of a domain (and to the extent the relevant registry permits such interruptions) the original DNS resolution path specified by the RNHaE at the time of expiration must be interrupted. The 8 day period may occur at any time following expiration, but the domain name must be renewable by the RNHaE during that period.

## **(c) Expired page landing/parking pages must point to renewal instructions**

**Driver:** In most cases, an expired domain will at some point resolve to a new page.

**Recommendation:** In cases where the domain is still eligible for renewal the replacement web page must make it clear that the domain has expired and provide the registrant with information on how to renew the domain. This may be as simple as linking through to a separate webpage which provides information on renewing the domain.

## **(d) Ensuring the RNHaE can renew expired domains**

**Driver:** A change to WHOIS may, depending on the relevant registrar's systems, prevent the RNHaE from renewing the domain.

**Recommendation:** The RNHaE should not be prevented from renewing a domain as a result of WHOIS changes made by the registrar (and not at the RNHaE's request). The Working Group does not specify the manner in which this should be implemented, although the consultation documents observe support for the principle. One solution identified is that the WHOIS contact data after expiry must be the same as before expiry.

## **(e) Transparency on post-expiration renewal fees**

**Driver:** Registrants should be able to forecast the cost of renewal if it is not obtained prior to expiry. At present, few registrars are clear about the relevant fees.

**Recommendation:** The registration agreement must include, or point to, any relevant fees. If the registrar operates a website, the fees charged for post-expiration renewal should be made available in a clear place on that website.

## **(f) Notice of method of communication**

**Driver:** Registrants need to know ahead of time how to expect their registrar will contact them.

**Recommendation:** The registration agreement and the registrar's website (if applicable) must clearly indicate what methods will be used for pre- and post-expiration notices. The destination address or number to be used must, if applicable, also be specified.



### **(g) Notification of impending expiration**

**Driver:** The existing notification regime is too vague (requiring “at least two notifications” but with nothing more specific) and there is nothing to prevent such notifications from being sent too early or too late.

**Recommendation:** The registrar must notify the registrant of impending expiry no less than twice prior to expiry. One notice must be sent 30 days ( $\pm 4$  days) prior to expiration and another one week ( $\pm 3$  days) prior to expiration.

### **(h) At least one notice must be sent after expiration**

**Driver:** Not directly specified.

**Recommendation:** Following expiration (except where the domain is renewed or deleted by the registrar) at least one notification must be sent to the RNHaE. This notice must include instructions describing the renewal process for the domain.

### **(i) Ensuring post-expiration notices reach the RNHaE**

**Driver:** Post expiration notification messages are not always received by the RNHaE.

**Recommendation:** Notification of impending expiration must include a method that does not require explicit registrant action (other than standard email receipt in order to receive the message). This reflects a concern that some registrars require registrants to log on to their domain management system to receive notifications and that this reduces the opportunity for registrants to effectively receive renewal notices.

**Recommendation:** As part of best practice, where post-expiration notices are sent to a contact using an expired domain, and delivery is known to have been interrupted by post-expiration actions, those notifications should be sent to some other contact point associated with the registrant (should one exist).

**Recommendation:** As part of best practice, explanation of the notification method should include the email address from which notifications are sent and should advise registrants to add the email address to their “safe senders” list.

**Recommendation:** As part of best practice, registrars should advise registrants to provide a secondary point of contact that is not associated with the domain.

### **(j) Redemption Grace Period**

**Driver:** There is currently no obligation on gTLDs to offer a redemption grace period (RGP).<sup>1</sup>

**Recommendation:** With the exception of sponsored gTLDs, all gTLD registries should offer an RGP. A transition period should be allowed for existing gTLDs, although all new gTLDs should be immediately subject to the requirement to offer an RGP.

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<sup>1</sup> Though implementation across registries may differ slightly, the RGP generally means that an expired domain will no longer be included in the root-TLD zone file (and so the domain will not resolve). However, the RGP status will be identified in WHOIS queries. RGP lasts for 30 days, during which time restoration of the domain may and may only be requested by the RNHaE.

**Recommendation:** If a registrar offers registration in a gTLD that supports the RGP, the registrar must allow the RNHaE to redeem the domain after it has entered the RGP.

**Recommendation:** The transfer of a domain during the RGP should not be allowed.

#### **(k) Registrant education and awareness**

**Driver:** The Working Group identified insufficient understanding and education amongst registrants as a significant driver of the problems experienced by registrants.

**Recommendation:** ICANN, in consultation with registrars, ICANN At-Large, and other interested parties, will develop educational materials about how to properly steward a domain name and how to prevent unintended loss.

**Recommendation:** Registrars should be required to link to certain ICANN material on their websites.

#### **(l) Monitoring and follow-up**

**Driver:** Not directly identified.

**Recommendation:** ICANN Compliance should be requested to provide updates to the GNSO Council on a regular basis in relation to the implementation and effectiveness of the proposed recommendations.

## **5 Summary of submissions from interested parties to the issue brief**

### **5.1 Overview of submissions**

Nominet received around 40 submissions and would like to thank all submitters for their valuable contribution so far. We look forward to the continued, valuable inputs from the Nominet community as this discussion moves forward.

Broadly, the submissions demonstrated a spectrum of inputs on the effectiveness of the status quo. Some submitters favoured minor tweaks, while some others called for various procedural changes, enhanced transparency for registrants, or in a limited number of instances, some more widespread changes, particularly to the ability of certain registrars to engage in various practices without the explicit consent of the registrant.

Some parties submitted that Nominet's existing policies were generally adequate, although exploited by a small number of registrars. However, the submissions overall suggested a general feeling that there is some room to improve and enhance Nominet's domain expiry policy. The number of complaints received by Nominet about issues regarding expiration policy appears however to be low, from the research carried out in parallel with this analysis.

## 5.2 Key enhancements

The most common area for improvement identified in submissions involved increasing transparency and communication between all parties in the domain registration, renewal and expiry process. Put another way, many submitters advocated a model which would better ensure that Nominet's and registrars' customers knew what they were committing to and that they were effectively informed of the timelines and the impact of a domain name lapsing.

In particular, a number of submissions suggested that refinement of the Registrar Agreement (between Nominet and the relevant registrar), as well as the Good Practice Terms, could be sufficient to provide better clarity to both registrars and registrants about what is expected in the area of domain renewal and expiration. A range of views were presented on the scope of the contractual relationship between a registrant and a registrar, as well as the extent to which Nominet should impose further requirements on registrars generally.

## 5.3 The expiry period is intended “for the benefit” of the registrant

A number of submitters identified the need to discuss and clarify the “ownership” of domains during and after the expiration date. In our view, a discussion on who holds the rights to the domain name and the principles underpinning the expiry period is useful to understanding the present position and potential improvements to it.

Those submitters who commented on this provided a range of views on this question and in most cases their perspective on “ownership” heavily influenced the substance of their submissions:

- A number of parties submitted that domains are the “property” of the registrant or Nominet, but never the registrar.
- One party submitted that Nominet has a contract with the registrant and is obliged to uphold it. Nominet permitting domain tasting and parking is, it was implied by the respondent, inconsistent with this.

While Nominet's policy is firmly that a domain name is not an item of property and has no “owner”, we observed that a submitter's positions on who “controls” a domain during a particular period, and for whose benefit, was strongly linked to their position on the best post-domain expiration policy. Those that believed the registrant had an inalienable right to the domain name for all time tended to take a more extreme view on the ability of a registrar to undertake any activity over that domain and also on the level of transparency required before any action could be taken by the registrar.

## 5.4 Expiration notification

A number of submissions identified potential areas of improvement in relation to the pre- and post-expiration notification process. More broadly, some submissions suggested that there is room for improvement in clarifying the responsibility of registrars in the notification

process, the timing and extent of the notifications provided and the mechanisms by which those would be delivered (e.g. to a “back up” email address, or by post).

## **5.5 Post-expiration timeline**

A number of submissions reflected a desire to ensure that the post-expiration period gave registrants who wish to renew a domain name a reasonable opportunity to do so, without unduly delaying the release of genuinely unwanted domain names for normal re-registration.

Some submitters identified the “gap” between expiry and release as important to provide an adequate disconnection between the reputation of the original registrant and any subsequent registrant.

One submitter was concerned that, because domain tasting or parking necessitates a change to the domain name’s DNS records, the benefit of the grace period may not accrue to the registrant (because services connected to that domain name will be rendered inoperable by the redirection to a parking or tasting page).

Another submitter pointed to clause 2.7.1 of the Registrar Agreement, submitting that it prohibited a registrar from making requests to the registry without the authority of the registrant. This, it was submitted, barred changes to a domain name’s DNS records upon expiry, unless the registrar had the explicit permission of the registrant (see the commentary below on the analysis of contractual terms in the UK market place at present).

Some parties submitted that the lack of “synchronisation” between WHOIS information and who controls the content on a site may cause problems, including where the content is in breach of consumer or other regulations. In such circumstances, there could be confusion as to the liable party and also problems for enforcement authorities. Issues also arose if content was uploaded to the site without the registrar’s awareness. Another party submitted that the change may amount to “traffic interception” and that a third party accessing a website should be entitled to their reasonable expectation that the site belongs to who it has always belonged to.

However, a number of parties submitted that the registrar should be free to engage in parking during the expiration party where the registrant has agreed to it. One submitter also suggested that registrars need to be free to change nameserver details because it “can be needed for the operational integrity of the domain”. One submitter noted that where a registrar’s terms are at variance with the Nominet expiry process, then this should be explicitly noted both on entering the contract but also before the expiry period commences.

## **5.6 Drop-catching**

A number of submitters provided specific thoughts on the drop-catching process in the UK: some called for small refinements, while others sought fundamental reform of the practice and processes.

In particular, an “inequality of arms” in the drop-catching market was identified by one submitter, who suggested that a small group now capture the majority of expired domains.

One submitter suggested Nominet's Anti-avoidance and Connected Persons policy was no longer effective.

In addition, a number of submitters raised concerns around the interface between the expiry process, drop-catching and intellectual property rights. Specifically, some submitters contended that the "value" caught in drop-catching reflects the intellectual property or goodwill of the domain, which belongs to the original registrant. One party submitted that registrars should not be entitled to profit from the "good name" of an expired domain. However other submitters did note that there were other remedies available to those parties via their intellectual property rights. No submitter mentioned the use of the dispute resolution process to restore expired domains and this might be worthy of exploration given the analysis above on the use of this process to recover domain names "lost" through their expiry.

## 6 Summary of survey of registrar terms

Webb Henderson and Nominet have conducted a preliminary survey of the terms and conditions of a sample of registrars offering .uk registrations. This is intended to provide the issue group with some background on current practice, however it is not intended to be an exhaustive survey.

We undertook this study by way of a "mystery shopper" approach, attempting to follow the ordinary path of a normal registrant seeking to register a domain with a particular registrar and noting the terms and conditions, and level of detail, given to the registrant as to the expiry process, charges and other practices of the registrar.

In some cases, we could not proceed through a standard "check out" process to determine the process of an ordinary registrant because of the particular business model of the registrar identified (e.g. the registrar was a reseller without a retail front-end, or the registrar only offered domains as a bundled part of other offers which were impracticable to attempt to purchase). For those providers, we sought to locate the terms and conditions, which we found were generally made available on the registrars' respective websites.

Given the nature of this research, we have not been able to verify the actual conduct of registrars in relation to pre- and post-expiry processes, hence the use of customer research data as a proxy for this and which is set out in a separate paper.

Our research canvassed the terms and conditions of the 25 largest registrars (where practicably accessible), as well as a small number of registrars selected at random from Nominet's database. We note that a number of the largest registrars act largely as wholesalers so, where applicable, we reviewed the terms which governed the relationship between the registrar (wholesaler) and the reseller (retailer).

The total number of domain names managed by the registrars whose terms were reviewed in this study amount to almost 80% of the .uk domain names currently registered. As such, our research, through preliminary, provides a useful snapshot of the experience of most .uk registrants.

## 6.1 Registrar terms

### (a) Auto-renewal

The majority of registrars surveyed automatically renewed domains by default, on an opt-out basis. However, these renewal programmes were generally contingent on the registrant having up-to-date billing information, allowing the registrar to charge the customer ahead of the renewal.

A smaller number of providers offered an opt-in automatic renewal process, with the balance leaving the responsibility to registrants.

### (b) Notification process

Approximately two thirds of the registrar-registrant agreements reviewed contemplated the registrar sending renewal notices to the registrant. These ranged from a comprehensive schedule (e.g. notifications sent 60, 30, 14, and 7 days prior to expiry) to a “best efforts” commitment to email the registrant prior to expiry.

However, approximately one third of the agreements reviewed did not commit the registrar to deliver renewal notices. In one case it was observed that, while the terms and conditions did not stipulate the registrar deliver renewal notices, a relatively comprehensive process was described in the registrar’s “frequently asked questions” section of their website.

In many cases the notification procedures set down in the agreement between the registrar and registrant were less robust than the notification process which Nominet provides to the registrant (a series of post-expiration, but pre-deletion notifications, as described above at 2.1, and provided for on Nominet’s website).

As discussed above, the nature of this review has not permitted us to verify the actual expiry process of registrars in operation. We have based this analysis on what is specified in the terms and conditions agreed between the registrar and the registrant, of the limited registrar terms we have reviewed.

### (c) Holding or grace periods

Fewer than 40% of the registrar terms reviewed set out a specified post-expiration holding or grace period for domain names. Of those which did, a significant number required the registrant to consent to the registrar “taking control” of the domain following expiration.

A number of agreements contained some or all of the following provisions allowing the registrar to do certain things including:

- renew the domain on its own account;
- auction the domain to third parties;
- add content to a site that no content has been uploaded to;
- change the nameserver records and point the domain to its own servers, including to pages containing third party advertising;

- alter the WHOIS record for the domain, including transferring the domain into its own name;
- waive any registry based grace period; and
- apply the above in advance of any grace period or on expiry

Those registrars with such provisions in their contracts, account for around 10% of the present market, by market share, as at September 2011.

A small minority of agreements explicitly stipulated that additional fees may be payable for renewals requested following expiration, however none of the agreements reviewed described the scale of the additional fees which might be payable. For example, one agreement reviewed provided that renewal after expiry may be subject to “additional fees” which may be determined by the registrar or its reseller (through which the registrant may have registered the domain name).

**(d) Reference to Nominet’s terms**

The overwhelming majority of agreements surveyed referred directly to Nominet’s terms and provided that the customer, in accepting the registrar-registrant agreement, agreed to be bound by Nominet’s terms.

In a smaller number of cases, customers were referred to Nominet’s terms and the agreement stipulated that the customer agrees that it has entered into a contract with Nominet with respect to the relevant domain.

A very small number of agreements (including payment and “check out” processes) did not appear to obviously bind a customer to Nominet’s terms.

**(e) Other terms of interest**

A number of registrants reviewed appeared to “bundle” the domain registration with other services, such as web-hosting. In a small number of cases this made the renewal process for the domain name in particular somewhat opaque.

**(f) Other services offered by providers**

Approximately one quarter of the registrars reviewed in this survey offered other domain name services, such as domain auctioning or domain back-ordering.

However, this review did not consider whether registrars may be offering such services through other connected business units, or if the other services were offered on a reseller or affiliate basis from an arms-length secondary market provider.