

Domaining, dropcatching and the secondary market

1. Introduction

Since May 2007, the PAB has been discussing the possible policy issues associated with domaining, dropcatching and the secondary market. We produced a background paper to inform the discussion, which can be found here:

http://www.nominet.org.uk/digitalAssets/21235_Domaining_May_07.pdf .

At the last meeting, the PAB requested that the Executive present a range of policy options for debate and these are presented in this paper.

Our background paper (May 2007) differentiated between dropcatching and domaining. We propose to retain that distinction in this paper.

The purpose of the PAB debate is to determine what policy principles the PAB will advise the Board that Nominet should adopt regarding domaining and/or dropcatching.

2. What are the policy issues?

As discussed in previous PAB meetings, a number of our current policies and processes deal with some of the aspects of domaining and dropcatching:

- The Dispute Resolution Service deals with alleged infringement of third party rights. We estimate that 50 % of our live cases involve domainers.
- Systems abuse resulting from dropcatching is dealt with by access limits policies.
- Our anti-abuse policies allow us to react to any dropcatchers who try to increase their access to our systems through linked tags.

We have identified four areas where gaps exist:

- A general policy principle concerning domaining
- A general policy principle concerning dropcatching
- A general policy principle concerning the equitable distribution of cancelled domain names
- Whether our current policy of not restricting the number of names a registrar can register on their own behalf, at the discounted member rate should remain. Domainer registrars will tend to register all domain names on their own behalf.

3. Domaining

In our May 2007 paper, we defined domaining/domainers as:

Domaining is the business of speculating on domain names. Domainers, Domain Investing and the individuals and corporations that operate in this space are in rapid rise. (www.circleid.com May 09, 06). Domaining is also used to describe the practice of monetizing domain name registrations (for example through pay per click (PPC) or parking pages – sites that make revenue from people clicking through on advertising links. 23% of .com registrations resolve to parking pages (<http://www.verisign.com/static/040767.pdf>).

Domainer is a term used to describe someone who buys and sells domain name registrations, often generating income through domain parking and/or website development, with the main purpose of generating revenue from advertising click through. Income is also generated through sales, advertising and affiliate commissions. (*Computer World*: http://surveys.idgresearch.com/CW/IP_Telephony_April/ip_telephony_april.htm)

There is a range of possible policy positions with regard to domaining:

1. Recognise that the practice has emerged as a result of market forces, and so long as no third party rights are infringed, it is legitimate.
2. View the stockpiling of domain names as abusive practice. This seems to be the view taken by the EU Commission in its drafting of the .eu Alternative Dispute Resolution policy¹.
3. Try to abolish the secondary market prohibiting the sale of domain name registrations. This is the approach taken by .au².

In our view, the first option is most appropriate to .uk, since it reflects the reality of the market, and infringement of third party rights are dealt with by DRS service and/or the courts. We invite the PAB's comments.

4. Dropcatching

In our May 2007 paper, we defined dropcatching as:

Dropcatching is the process of using automated systems to register expired domains within a fraction of a second of their being cancelled by the registry.

4.1. Policy Position Concerning Dropcatching

There is a range of possible policy positions with regard to dropcatching:

1. Recognise that the practice has emerged as a result of market forces, and so long as there is no abuse of our systems or other policies, or of contractual rights, it is legitimate.
2. View it as inappropriate for .uk.
3. View it as fine, so long as the majority of our customers are not disadvantaged by the disproportionate costs (ie technical infrastructure, staff and management time) relating to the dropcatching community as compared with the majority of our members and registrars.

Options 1, or 3 above would, in our view, meet with the general attitude of the .uk community and Nominet's objective of acting in the interests of all relevant stakeholders. We invite the PAB's comments.

¹ Non-use by a registrant is a relevant factor in determining bad faith (query the status of parking pages and pay per click), and a complainant can win if it shows either that the respondent has no legitimate rights or bad faith registration or use (see paragraph 11(d)(1) and 11(f)(2)(ii) at http://www.adreu.eu/adr/en/adr/adr_rules/eu%20adr%20rules.pdf)

² See

4.2. Position of “ordinary” registrants on cancellation

At present, if an ordinary registrant wishes to register a domain name due for cancellation, they are completely unable to compete against dropcatchers, and yet they have the expectation that if they watch the WHOIS a couple of times per hour they may be successful.

There is a range of possible policy positions with regard to ordinary registrants:

1. Develop suitable fail-safes for .uk registrants, to try to ensure that registrants understand the likely risks to them of failure to renew. A similar approach has been advocated by the .org registry in relation to domain tasting.³
2. Create an alternative mechanism to ensure a more equitable distribution of domain names on cancellation. Possibilities include wait list (to be discussed at a forthcoming PAB meeting), auctions, or payments for queries.
3. Publish or give out specific information about the timing of cancellations.
4. Go back to an assumption of renewal by leaving domain names on the register until confirmation of cancellation is received (i.e. a complete reversal of our positive renewals policy).

In our view, the first option is most appropriate to .uk, since it maintains the middle ground. This could also be combined with some of the other options. The PAB may wish to consider this policy area more fully as part of their planned discussions on wait lists, auctions etc.

4.3 Position of registrars acting as “professional” registrants

Some registrars register domain names solely for their own use. Is there a need to differentiate between types of registrars?

There is a range of policy positions with regards to registrars:

1. Registrars should be restricted from registering a high percentage of domain names for their own use.
2. Registrars who register a high percentage of domain names for their own use should be denoted differently and have a different contract with Nominet.
3. There should be no restrictions on the legal business practices of registrars.

³ “PIR is concerned about the potential impact of Domain Tasting on the stability and security of the Internet and is working on some initiatives to better manage issues that arise as a result of such activities. The economic incentives driving this activity are unlikely to change, however it

is in the best interest of the Internet to ensure at least minimal fail safes are in place for the protection of the .ORG Registrant Community.”

See http://www.pir.org/PDFs/SSAC-ICANN_ORG_Tasting_3-26-06.pdf

Conclusion

At the last meeting the PAB noted the existence of a flourishing, unregulated secondary market, while at the same time agreeing that the practice of trying to limit domain buying would be unworkable.

The PAB will take forward the topic of wait lists at the next meeting.

In evaluating possible policy options the PAB is asked to consider whether it will issue position statements on any or all of the following:

- domaining
- dropcatching
- ordinary registrants
- registrars acting as professional registrants