



Department for
Science, Innovation
& Technology

Powers in Relation to UK- related Domain Name Registries

Summary of responses to consultation



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Contact details

This document sets out the government's response to the public consultation 'Powers in Relation to UK-Related Domain Name Registries'.

Comments on the government's response can be sent to:

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Consultation reference: Powers in Relation to UK-Related Domain Name Registries

Executive summary

On 20 July 2023, the Department for Science, Innovation and Technology (DSIT) published a consultation titled 'Powers in Relation to UK-related Domain Name Registries' and announced it intends to commence the Secretary of State's powers set out in sections 19-21 in the Digital Economy Act (DEA) 2010. The consultation asked for views on DSIT's proposals for Regulations defining prescribed practices and requirements, which are to be introduced following sections 19-21 of the DEA 2010 coming into force.

The consultation closed on 31 August 2023 and it received 39 responses. These were received from a range of stakeholders, including registries, registrars, trade and business associations, charities and not for profit organisations, consultancies, commercial owners of domain names, devolved administrations, and individuals.

Section three of the consultation document set out DSIT's proposals for the types and definitions of misuses and unfair uses that registries would be responsible for ensuring they have the appropriate policies and procedures in place to deal with. It asked for views on whether the list and definitions are accurate and what additional types, if any, stakeholders would like to propose to be included in the list. The list of misuses included malware, botnets, pharming, phishing, spam emails, and domain names which are registered to promote or display Child Sexual Abuse Material. The proposals for types of unfair use were cybersquatting, including typosquatting.

Section four of the consultation document set out proposals for a list of principles which would underpin the design of a dispute resolution procedure (DRP) that registries in scope would be required to have in place for dealing with complaints in relation to their domains. It asked for views on the list of principles, how some of the key principles would be interpreted in practice and any further comments. This list included the following principles:

- ensuring flexibility so that the rules established in existing relevant registries' dispute resolution procedures can be met;
- ensuring that it is not overly burdensome for the domains in scope of the powers to meet;
- ensuring it is fair and equitable in its design;
- ensuring that it does not preclude resort to judicial proceedings;
- ensuring that disputes are resolved expeditiously and at low cost; and
- ensuring that the procedure is clearly set out in an open and transparent way.

The remaining sections asked for views on DSIT's assessment of business impacts of the proposals at the consultation stage, examples of potential positive and negative business impacts, as well as views on potential positive or negative impacts of the proposals on individuals with protected characteristics under the Equality Act 2010.

DSIT is publishing this summary of responses to update respondents and other interested stakeholders on the key points of feedback received. We will consider this feedback and revise

our proposals appropriately before drafting the Regulations and will continue to engage with stakeholders throughout this process.

Methodology

The consultation asked respondents 17 open questions. For each of these questions, every response was reviewed, and while not every point that was made by each respondent can be reflected, responses were assessed to identify common themes.

Individuals and organisations were invited to participate via email, or post. All 39 responses were received via email. None were received via post. Respondents did not have to complete each question. Some respondents answered all questions, whereas others only answered one or a few questions.

For inclusion in the consultation analysis, participants had to have answered at least one of the 17 questions. These questions are listed on pages 16 -17 of this document. Responses were excluded from the consultation analysis if they did not meet this criteria.

Summary of responses

As well as responses to the individual questions that we asked in the consultation document and which we summarise below, respondents also offered some overarching comments and reflections on domain name abuse.

This feedback included concerns with GDPR implementation which heavily reduced transparency, namely the public availability of WHOIS data which helped combat Domain Name System (DNS) abuse. Some respondents raised questions about the relevance of the DEA 2010 powers in 2023, considering they were created over ten years ago and the DNS has evolved significantly since. There was a mention of including user redress to avoid 'censorship', and other comments suggested inclusion of additional requirements into the legislation to help combat DNS abuse.

Questions on domain name misuse

The first three questions in the consultation related to the proposed list of misuses, their definitions and whether any additional types of domain name misuses should be included.

In response to question one, 59% (22 respondents) agreed that we should include all of the types of misuses of domain names that we set out, with no omissions, while 14% (5 respondents) proposed that changes or additions to this list were necessary. A further 27% (10 respondents) did not answer this question.

Two of the respondents who agreed with the list also noted it was not comprehensive and cautioned against being too prescriptive in order to future proof against the evolution of types of threats. Six respondents noted the importance of the list's alignment to established norms (including the Budapest Convention).

In response to question two and the proposed definitions in the list, 49% (18 respondents) agreed with the existing definitions, while 19% (7 respondents) proposed changes or definitions for additional misuses and 32% (12 respondents) did not provide a view. The lack of consensus on the definition of domain name abuse was highlighted by four respondents. Three respondents highlighted the definition of 'spam' as being too narrow in the existing proposal. Two respondents proposed amending the definition of malware to include a reference to 'executing' malicious software.

In response to question three, 51% (19 respondents) proposed additional types of domain name misuse. 19% (7 respondents) answered no and did not provide any additional types of domain name misuse. 30% (11 respondents) did not provide an answer.

In response to question three, three of the responses for additional misuses were proposed in order to align with the definitions of cybercrimes as set out by the Budapest Convention on

Cybercrime. The 2022 EU's DNS Abuse Study was also noted once as a useful reference point.

In particular, the following additional misuses were proposed by multiple respondents, some of which are covered by the Budapest Convention (including the use of domains to carry out fraudulent activity and intellectual property infringements):

- the use of illegal domain generation algorithms (6 responses);
- the use of domains created for fraudulent activity (not covered by phishing) (1 response);
- the sale of fake pharmaceuticals and other prohibited goods (6 responses); and
- intellectual property infringement (8 responses)

Three respondents also proposed the inclusion of abuses which relate to internet content such as: disinformation, including that which leads to hate crime, money laundering, child exploitation (beyond child sexual exploitation and abuse), human trafficking, and incitements to violence.

Questions on domain name unfair use

Questions four, five and six related to the proposed list of unfair uses, their definitions and whether any additional types of domain name unfair uses should be included.

In response to question four, 51% (19 respondents) agreed with our proposal to include cybersquatting, including typosquatting, under the list of unfair uses of domain names. 5% (2 respondents) disagreed with our proposal and for 43% (16 respondents) this question was not applicable. The two respondents who disagreed said that we should not include cybersquatting or typosquatting in the regulations as registries cannot be expected to determine whether the registration of a domain name is in bad faith or not. One respondent wanted to see the UK create anti-cybersquatting legislation. One respondent noted that not all bad faith/cybersquatting related registrations were unfair.

In response to question five, 35% (13 respondents) agreed with our description of 'cybersquatting' as fair and appropriate for the purposes of including it in our 'prescribed practices'. 22% (8 respondents) disagreed with our description, while for 43% (16 respondents) this question was not applicable.

Two of the respondents who disagreed on question five wanted to see the Internet Corporation for Assigned Names and Numbers (ICANN)/Nominet's definitions used instead. Four respondents wanted us to use the definition of IP infringements contained in Article 10 of the Budapest Convention on Cybercrime. Those who disagreed also wanted to see us widen the definition to capture other types of cybersquatting. One respondent was concerned about trying to replace registries' existing dispute procedures.

In response to question six, 41% (15 respondents) proposed additional types of unfair domain name use. 16% (6 respondents) did not think additions were needed, while 43% (16 respondents) did not answer this question. Four respondents linked their answers to this

question to their answers to question three on other misuses that should be added to the prescribed requirements. One respondent opined that some uses of domain names are outside of registrars' and registries' technical expertise and in many cases beyond ICANN's remit.

Questions on proposed principles for the prescribed dispute resolution procedure

Questions seven to eleven related to the proposed principles which will underpin the prescribed dispute resolution procedure (DRP). Respondents were invited to comment on key principles and overall feedback on the best practice for designing the DRP.

On question seven, 38% (14 respondents) commented on what they consider to be 'too burdensome' in the context of resolving disputes about DNS abuse. The remaining 62% (23 respondents) did not answer the question. Of those who responded, four respondents said that the principles appear to be fair and balanced. One respondent noted that what is 'burdensome' will be relative to the size and capital available to the parties, while two others pointed to ICANN's Uniform Domain-Name Dispute-Resolution Policy (UDRP) as an efficient and cost-effective dispute resolution policy and one said that the regulations should ensure the UDRP will meet the prescribed dispute resolution procedure. Two respondents recognised and recommended Nominet's Dispute Resolution Service (DRS). Two respondents wanted to see the draft procedure before commenting further. One respondent said it would be burdensome to have additional mandatory dispute resolution mechanisms and another recommended speaking to Nominet and ICANN on the reform of the DRS and UDRP rather than building a new one. One respondent said it would be too burdensome if the costs outweigh the benefits and when the process is too long and another didn't want the process to drain public services resources.

On question eight, 35% (13 respondents) provided comments on what they consider 'expeditiously' to mean in the context of resolving disputes about DNS abuse. The remaining 65% (24 respondents) did not answer the question. Responses to this question varied significantly and ranged from reaching resolution immediately (within 48 hours) to reaching it within two to three months. In addition, two responses specified that time for dispute resolutions should be flexible and relative to the harm in question. Four respondents said that resolution should be immediate, with three of those respondents saying this meant within 48 hours. One respondent recognised the distinction between individual and collective disputes and noted that decisions should be published in 14 days for individual disputes and 21 days where collective disputes are involved. One respondent felt that 'expeditiously' was not an accessible word, but their understanding was that it should be quick and efficient. Another respondent said that the legislation should not interfere with the existing mechanisms that already deal with immediate threats.

On question nine, 38% (14 respondents) provided comments on what they consider to be 'low cost' in the context of resolving disputes about DNS abuse. The remaining 62% (23 respondents) did not answer the question. Quantified responses to the question ranged from DRP costs of £50 for the most straightforward case to up to £3,000 (where the case reaches appeal stage and requires three independent adjudicators). Two respondents said it should be as cost effective as possible, with another saying it should be a cost that can usually be absorbed within the everyday costs of an organisation. Another two respondents said that it must be cheaper than taking it to the courts. Two respondents noted the price should depend

on the type of dispute that needs to be resolved, while three other respondents said it should be set at a minimum level to cover actual costs and not any additional fees. One respondent noted that generic top-level domains (gTLDs) tend to be SMEs, and the need to be mindful of this. One respondent pointed to the existing dispute resolution procedure fees (Nominet's and ICANN's) as being affordable for most users of these services. These existing fees vary depending on provider, indicative costs are £750-£1,185.¹ Three respondents wanted further details/to see the proposed dispute resolution procedure before commenting.

On question ten, 43% (16 respondents) commented on what they consider a 'fair' and 'equitable' DRP design to be. The remaining 57% (21 respondents) did not provide an answer. Four respondents pointed to ICANN's UDRP as a fair and equitable example, while others shared what they thought a fair and equitable DRP should include. There was no overwhelming agreement on any of the recommendations, but they covered easy accessibility, publishing decisions for transparency reasons, due diligence obligations on registries at the point of registration and requiring a clear burden of proof. Three respondents recommended that if a registry or registrar is certain that a crime or active abuse is under way, they should take action upon such evidence instead of demanding procedural hurdles.

On question eleven, 46% (17 respondents) provided further comments on the design of the prescribed DRP. The remaining 54% (20 respondents) did not provide an answer. Three respondents agreed that the DRP should be clear, transparent, easy to understand and accessible, while others gave practical suggestions on additional requirements and rules that should be included in the prescribed DRP. For example, two respondents noted that the DRP should include an appeals mechanism and not having one may detrimentally affect freedom of speech. Another three suggested that suspension of domain names isn't always an effective deterrent and that including award of damages should be considered. Three respondents highlighted that the resolution procedure should be proportionate and aligned with current mechanisms and the regulations should strive not to place conflicting obligations on gTLDs in relation to ICANN's procedure which they already follow. Three other respondents said that the resolution procedure should be conducted by an independent third party. Three respondents requested greater availability of WHOIS data to investigators and not just law enforcement.

Nominet's DRS (2 respondents), the DNS Abuse Study from the EU Commission (2 respondents) and the World Intellectual Property Office model and Supplemental Rules for domain name disputes (1 respondent) were noted as useful examples for best practice.

¹ The Canadian International Internet Resolution Centre, an ICANN-mandated UDRP provider, adjudicates domain disputes concerning 1-3 domains for \$1,445 for a single panel member. Nominet's DRS for .uk domains only charges £750 for a single panellist

Questions on business impacts of the proposals at the consultation stage

Questions 12 - 15 related to the potential impact that the proposals outlined in this consultation may have on businesses, consumers or the public sector.

Question 12 asked respondents to what extent they agree or disagree with the government's assessment in the 'Summary of Business Impact' section. This assessment found that the preferred approach focuses on continuing existing practices and is unlikely to materially affect the actions/steps businesses currently take. A total of 65% (24 respondents) did not answer this question. Of the 13 respondents (35%) who did, 22% (8 respondents) of total respondents) agreed with the assessment, with three respondents specifically noting that the costs seemed bearable. One respondent said that there could be a material impact on registries if gTLDs had to build a parallel dispute resolution procedure. Three respondents felt that the commencement of the DEA 2010 provisions relating to internet registries could make the UK internet domain name industry unattractive, whilst one felt there could be a significant business impact.

In response to question 13 on the potential positive impacts of the consultation's proposals on businesses, consumers or the public sector, 27% (10 respondents) answered that there were positive impacts, 8% (3 respondents) stated that there were not any positive impacts, and the remaining 65% (24 respondents) did not answer the question. Of those who indicated there were positive impacts, seven respondents felt they could lead to a reduction in domain name abuse and/or fraud. Three respondents noted that these proposals would ensure that domains with UK top level domains are more likely to be seen as trusted with clear processes in place. Four respondents said that this would lead to a cost-effective and efficient means for combating DNS harms and for resolving disputes.

In response to question 14, on the potential negative impacts of the consultation's proposals on businesses, consumers or the public sector, 32% (12 respondents) answered, with all respondents indicating there were potential negative impacts. The remaining 68% (25 respondents) did not respond. Of the 12 that did respond, four respondents felt that they may result in registrars and registries raising consumer domain name costs. A total of four respondents suggested it could have a negative effect on the perception/appeal of the UK market. Three respondents raised the unexpected costs, including compliance costs of regulation and the extra staff that may be needed.

Question 15 gave respondents the opportunity to add any further comments or evidence on the summary of the business impact section of the consultation. Only one respondent provided additional comments. This respondent recommended that the government wait until the ICANN community has updated the contractual frameworks that registries and registrars are subject to.

Questions on impact on individuals with protected characteristics of the proposals at the consultation stage

Questions 16 and 17 related to the potential impact that the proposals outlined in this consultation may have on individuals with protected characteristics. Responses to these questions were only received from one stakeholder and their responses focused on the availability of our DRP in Welsh and in alternative forms of communication to help those with disabilities and other relevant protected characteristics to access it.

Next Steps

DSIT will reflect on the outcome of this consultation, but remains committed to bringing sections 19-21 of the DEA 2010 into force in the coming months. It is essential that there continue to be procedures in place to deal with the misuse and unfair use of these domains for the users of UK-related domain names that are in scope of the powers. Commencing these powers will provide further certainty that these procedures exist and are upheld to the highest standards.

The feedback showed a necessity to review our lists and definitions of misuse and unfair uses of domain names to ensure they are workable, proportionate and fit for purpose. In light of this, DSIT will consider how the prescribed practices and requirements can be designed to address the concerns raised in the consultation feedback. DSIT will publish a government response, outlining our policy position as a result of the consultation feedback over the next few months.

DSIT will continue to engage with law enforcement and other government agencies, with the registries in scope and with key domain name bodies, such as ICANN to ensure that the design of the Regulations and the prescribed practices and requirements are workable, proportionate and fit for purpose.

Consultation Questions

1. Do you agree we should include all of the types of misuses of domain names set out under the 'Domain Name Misuse' heading, in our 'prescribed practices' ? If not, which ones should be omitted and why?
2. Are the descriptions of the types of domain name misuses set out under the 'Domain Name Misuse' heading fair and appropriate for the purposes of including them in our 'prescribed practices'? If not, please explain why not and propose alternative descriptions.
3. Are there any other types of domain name misuse that should be included in the 'prescribed practices'? If so, please describe them and provide reasons as to why you think they should be included.
4. Do you agree with the proposal to include 'cybersquatting' (including 'typosquatting') in the list of unfair uses of domain names in our 'prescribed practices'? If not, why?
5. Is the description of 'cybersquatting' fair and appropriate for the purposes of including it in our 'prescribed practices'? If not, please explain why not and propose an alternative description.
6. Are there any other examples of unfair use of domain names that should be included in the 'prescribed practices'? If so, please describe them and provide reasons as to why you think they should be included.
7. What would you consider to be too burdensome in the context of resolving disputes under our prescribed dispute resolution procedure?
8. What does 'expeditiously' mean to you in the context of resolving disputes under our prescribed dispute resolution procedure?
9. What do you consider to be 'low cost' in the context of resolving disputes under our prescribed dispute resolution procedure?
10. What would you consider a 'fair' and 'equitable' dispute resolution procedure design to be?
11. Do you have any further comments on best practice or about the overall design of our dispute resolution procedure?
12. To what extent do you agree or disagree with our assessment under the 'Summary of Business Impact' section? Please provide details for your answer.

13. Are there potential positive impacts (including costs or financial implications) that the proposals outlined in this consultation may have on businesses, consumers or the public sector? Please provide any evidence or comments on what you think these positive impacts would be.

14. Are there potential negative impacts (including costs or financial implications) that the proposals outlined in this consultation may have on businesses, consumers or the public sector? Please provide any evidence or comments on what you think these negative impacts would be.

15. Please provide any other comments or evidence that relates to or is about the analysis under the 'Summary of Business Impact' section.

16. Do you have any comments about the potential positive and/or negative impacts that the options on the broad purposes of the commencement of the DEA 2010 powers outlined in this consultation may have on individuals with a protected characteristic under the Equality Act 2010? If so, please explain what you think these impacts (both positive and/or negative) would be.

17. If you believe there may be negative impacts, what do you think could be done to mitigate them?

This consultation is available from: www.gov.uk/government/organisations/department-for-science-innovation-and-technology

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