

2LD Policy Review - Proposed New Policy Submission

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Given the makeup of the WG, reaching consensus on a draft policy must have been "interesting" and they are to be commended for their output.

I have only two comments:

1. Acknowledging that the possible process definition is to be consulted on again once the policy has been finalised, can I foreshadow that whilst the idea of "pre-registration" as an alternative to the current straw vote has appeal, care would need to be taken in making sure that prospective potential registrants were not confused/mislead. I expect that it would be necessary to take potential registration fees from such potential registrants as a means of making sure that the pre-registration was legitimate. This then raises the question of what happens to those funds pending the 2ld being accepted for activation and, more particularly, how they are refunded if interest is so low that the 2ld is rejected. Personally, given that removal of the direct contact between the registry and registrants was one of the drivers for creation of the SRS, I would prefer this to remain a function of .nz registrars with the potential fees perhaps channelled to a DNC trust account. Upon the 2ld being rejected the potential fee would be returned to the registrar for refund to the potential registrant. To somehow interpose the registry or the DNC's office in this process in taking funds directly from potential registrants would be wrong in my view. Otherwise, I think that the pre-registration seems a good solution although I would prefer that it be named something else to avoid the confusion element.

2. I am pleased to see paragraph 5.6.5, which states:

"Represent a new group of potential registrants in such a manner that existing registrants are not forced into defensive registrations."

However, I do not think that this goes far enough. For a start no registrant will be "forced" into a defensive registration. That may well be advisable but there is no element of compulsion. Secondly, given that we do not have an alternative dispute resolution procedure for .nz (despite efforts to move in that direction) and no sunrise or other similar process is suggested (thank goodness!), avoiding imposing *any* need for defensive registration must, in my view, be a fundamental consideration. Despite predictions to the contrary, cybersquatting is not disappearing and we need to be alert to creating any situation which might create a new opportunity for this. Therefore, in my view, the policy should say something along the lines of:

"Represent a new group of potential registrants in such a manner that [a] opportunities for cybersquatting (in any of its forms) or general trademark infringement/passing off are not increased; and [b] there is no prospect of existing registrants needing to obtain defensive registrations."