

**NEW ZEALAND LAW SOCIETY –
DISPUTE RESOLUTION COMMITTEE –
ELECTRONIC COMMERCE SUB-COMMITTEE**

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.nz Domain Name Dispute Resolution Policy – Submissions

Introduction

We refer to your letter dated 9 November 2005 inviting submissions on the proposed .nz Domain Name Dispute Resolution Policy (“the Proposed Policy”). We are grateful to have this opportunity to make submissions on the Proposed Policy.

These submissions are made on behalf of the New Zealand Law Society Dispute Resolution Committee and the Electronic Commerce Subcommittee (“the Subcommittee”). The Subcommittee previously made submissions on this topic in relation to three options proposed by the InternetNZ Domain Name Dispute Resolution Working Group as possible dispute resolution models.

Arbitration Act 1996

You invited comments on the interaction of the Arbitration Act 1996, the Courts and the policy. The Arbitration Act 1996 will only be relevant if an arbitration process is included in the dispute resolution procedure. Under the Proposed Policy the expert is defined to be an arbitrator.

We submit that it would be appropriate to state in the Proposed Policy that the expert is bound to comply with the Arbitration Act 1996.

Mediators

The Proposed Policy does not address the appointment of mediators or required attributes of mediators. The Subcommittee expects that public confidence in the Informal Mediation process will largely depend upon the quality of the mediators available through this process.

We submit that the Proposed Policy should require mediators to act impartially and to be independent of the parties and InternetNZ. We submit that the standards of impartiality and independence set in paragraph B8.1 of the Procedure should also apply to mediators. Mediators should also be appropriately qualified and trained.

Under the policy, InternetNZ appoints the mediator. We submit that consideration should be given to enabling the parties to select their own mediator, if they are also to agree on one. In default of that, InternetNZ or a third party would have to appoint one.¹

Publication of list of experts and mediators

The Proposed Policy does not provide for publication of either the list of mediators or the list of experts.

We submit that the Proposed Policy should require the list of experts and mediators to be published on the Internet so that the list can be reviewed by members of the public who may wish to use the Domain Name Dispute Resolution service.

Orders for costs

Paragraph 13.1 of the Proposed Policy prevents experts from making orders relating to costs.

We submit that InternetNZ should consider whether the Proposed Policy should be amended to give experts a discretionary power to award costs against the unsuccessful party.² The possibility of an award of costs could be a useful way of regulating how parties run their disputes.

Limitation period

We submit that the three year limitation period set out in clauses 5.4 and B2.2 of the Proposed Policy should not commence until the Complainant is aware, or reasonably should be aware, of the relevant events that give rise to the Complaint.

Transitional issues

We are concerned that there could be transitional difficulties where disputes have existed for a number of years, but are not pursued by a Complainant until the Proposed Policy comes into effect. There may be a need to consider whether the proposed transitional arrangements enable Complainants to sleep on their rights to the detriment of registrants who have held domain names for several years. This issue could be addressed by providing a single limitation period (for example, three years from awareness on the part of the Complainant of the events giving rise to the Complaint, as proposed above).

¹ The normal position under LEADR mediations is that if the parties could not agree on a mediator then the President of LEADR would appoint one.

² If the Arbitration Act applied the experts would have the discretion to award costs.