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Tuesday, 18 February 2014

RESPONSE TO THE POLICY CONSULTATION - .NZ REGISTRATIONS AT SECOND LEVEL

To Whom It May Concern,

We write in regards to the Policy Consultation – .nz registrations at the second level. Our feedback is provided below.

In response to:

> *Those with a unique third level domain name that was registered between 9am 30 May 2012 and 12.30pm on 11 October 2013 (and which has been continuously registered).*

We reject the above on the grounds that this allows "carpet-bagging", namely granting certain individuals with early knowledge of the proposed second-level change to register domain names in order to block earlier registrants and/or secure preferential registration with full knowledge of the pending change in the second-level space.

It should be self-evident that any entitlement threshold should be set prior to whatever date the change to the second-level domain structure was first proposed. As such we support dates no later than those specified in clause 7.1 and 7.2 of the DNCL proposal – consultation 2 (http://dnc.org.nz/content/Second_Level_Consultation_Paper_2.pdf, page 14)

In response to:

> *That if names were registered in more than one second level domain (e.g. anyname.co.nz and anyname.org.nz) and were registered before 9am on 30 May 2012, DNCL will consider them conflicted names. Conflicted names will be processed via a nominated DNCL website*

We reject the above on the grounds that it fails to recognise tenure of registration and prefer the proposal in the original consultation paper (http://dnc.org.nz/content/Second_Level_Consultation_Paper.html#Competing), that:

> *Preference be given to the oldest registration during the sunrise period.*

This has precedent in trademark law where original users of a term, phrase or word have de-facto rights of use on the basis of first-come, first-served (the fundamental principle of domain name registration in New Zealand) and that the oldest registrants have invested the most time/tenure of ownership in the name.

Should the oldest registrant have no interest, then the option should move through the remaining registrants in order of tenure until they are exhausted or the threshold registration date is hit.

We also note no policy in regard to a registration that may have been held on behalf of, or as agent for, a related third-party and transferred outside the threshold date but with no change in beneficial owner.

In response to:

> *That the DRS now consider disputes over sub-domains where the domain name at the second level is a generic term. An example of this would be anyname.shop.nz.*

We reject the above proposal on the grounds that existing registrants have already invested considerable money and resources in the third-level equivalent of the name and will be punished by a subjective ruling by a third party (what is "generic"? what is acceptable?), potentially creating a considerable amount of confusion and commensurate legal conflict.

One of the purposes of the DNC was created to minimise such events, and it is incongruous with the purpose of the commissioner's office that any proposal may increase this risk.

The registrant of any domain name at any level should own the rights to all sub-domains above it, this is an internationally recognised standard, otherwise it is not clear to us why the DNC has not applied these to sub-domains at any level where a "generic" term is included below (or indeed above) it.

Further, there is also well establish law in place to protect trademark holders and the arbitrary assignment of oversight for third-level sub-domains simply creates an additional layer of bureaucracy which serves no purpose except to enrich the legal profession through increased litigation.

Regards,

David Ward
Managing Director
The Domain Name Company Limited