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Domain Name Commission Ltd

By email: policies@dnc.org.nz

Dear Sir / Madam

Thank you for the opportunity to comment upon the proposal to open the .nz domain name space for registration at the second level ("the proposal").

ASB recognises that there is tension between community demand, the influence of new gTLDs and an international trend towards registrations being permitted at the second level on the one hand; and the potential for confusion between second and third level registrations and the costs that will inevitably be imposed on some existing .nz registrants on the other. We appreciate that there may be many conflicting views on the proposal, depending on how you choose to approach the questions.

ASB has approached the questions posed primarily from our customers' and online users' point of view. We believe that the current three level structure is well understood by the public and that it provides value and meaning to their online interactions. At the same time, we appreciate the desire to expand the second level domain name space for .nz in light of the factors mentioned above. We believe that this expansion should be well managed and controlled and we therefore support the Domain Name Commission Limited's ("DNCL") current approach of allowing second level domain registrations through the established "2LD" process. We are concerned that the opening of the .nz domain name space to registrations at the second level will result in confusion and uncertainty for the users and increase the risk of users becoming victims of internet fraud.

However, if the local Internet community, through this consultation, strongly supports the proposal, then ASB submits that DNCL will need to ensure sufficiently strong governance and oversight. Effective dispute resolution will become more relevant and important, meaning the .nz DRS will similarly need to be broadened.

Our views on this and on the other questions you have raised, assuming the proposal is adopted, are addressed in the attached appendix to this letter.

Please contact me if you have any questions or require additional information.

Yours sincerely

Anna Curzon

General Manager Brand Experience and Digital Channel Marketing

Copy: Simon O'Brien, General Manager Regulatory Affairs

APPENDIX

Question 1: Should the New Zealand domain name space be extended to allow registration at the second level, for example youname.nz?

No. Users currently have a sound understanding of and trust the existing second level domains. The proposed extension will introduce confusion to users; will increase the risk of users becoming victims of security fraud; will increase costs for businesses with little commensurate benefit, will encourage cyber squatting and increase the incidences of disputes over domain names. We believe second level registration should be controlled and managed progressively as is currently the case.

Question 2: Are there any other undertakings that the Domain Name Commission should make while developing /implementing the policy?

Yes. DNCL should undertake that registrations at the third level made during the consultation period will not entitle the registrant to compete for registration at the second level during the sunrise period of the policy implementation.

Question 3: Should new second level domains be created to cater for particular interest groups, such as .wine.nz or .sport.nz?

Yes. Since it is likely to be difficult to create new second level domains after the initial rush of registrations at the second level, communities of interest should have a final opportunity to create relevant second level domains provided they can satisfy criteria that capture the essence of the current 2LD policy.

Question 4: Should new moderated second level domains be created to cater for domain names that require special protection, such as .bank.nz?

Ideally yes. We are concerned about the security implications of .bank.nz being registered by someone other than a bank prudentially supervised by the Reserve Bank of New Zealand. For example, someone engaged in phishing scams would be able to more closely impersonate a bank if they were able to direct users to a website that purported to be a bank through the second level of its domain name.

Question 5: Should the registration of some names such as .com.nz or gov.nz be prohibited at the second level to minimise confusion? What names, if any, should be prohibited?

Yes – particularly if it was decided not to create new moderated second level domains to cater for domain names that require special protection as discussed in question 4. Strings that have the potential to be confused with existing .nz 2LDs should not be permitted to be registered at the second level. Strings that are legally protected, such as “bank”, should be reserved or prohibited at the second level if they are not established as moderated 2LDs.

Question 6: Do you agree with the rationale for the sunrise period that would enable existing .nz domain name holders first chance to register names at the second level? Why?

Yes. Existing registrants are likely to have substantial brand equity associated with the strings that they have registered at the third level. These registrants should have first opportunity to register the same string at the second level to preserve their established identity and reputation.

Question 7: Who should be allowed to register a domain name at the second level when there are competing registrations at the third level?

During the sunrise period, only the competing third level registrants should be eligible to register a name at the second level. After the sunrise period, anyone should be able to register a name at the second level unless it is the subject of an unresolved dispute between third level registrants.

Question 8: Assuming only persons with a conflicting third level domain name may apply, how should that conflict be resolved? By consent? Or some other mechanism?

Ideally, by consent. However, we are concerned that the mechanism outlined by DNCL in the consultation paper does not give sufficient weight to factors such as a registrant's trademark or other rights in a name that is the subject of competition.

In our view, it would be unfair if one registrant of a third level domain (in .geek.nz, for example) was in a position to block registration of that string at the second level by another registrant who had established a significant Internet presence (in .co.nz, for example), especially if the former registrant does not have a genuine and significant need for the name at the second level and the latter has trademark or other rights associated with the string. This could afford some lucky registrants a windfall opportunity to extract payment from the operators of large commercial websites.

We suggest that DNCL provides for the DRS to consider and resolve disputes of this nature. This might be done, on a balance of facts such as the date of first registration of each third level domain name, rights (such as trademarks that the registrants have that are relevant to the domain in question) and the nature of each registrant's use of their third level domain.

Question 9: Should the Domain Name Commission consider extending its Dispute Resolution Service for a limited period to cover particular sub-domains when considering whether a name registered at the second level infringes a complainant's rights?

Yes. However, we think there may be merit in further broadening the range of circumstances that the DRS can consider. For example, should (hypothetically) the registrant of direct.nz promote a website at www.bank.direct.nz, we would be concerned about the brand and security implications of this site passing off our site, which may be addressable at www.bankdirect.nz. We would prefer to be able to resort to the DRS rather than have to go to court to take action over the matter.

Question 10: Is the approach as outlined in the proposed amended policy in Appendix C appropriate? Why?

We support the general approach. The DRS should be available as an alternative to the courts to resolve disputes of this nature. However, we do not follow the rationale for limiting the application of the DRS to this problem to only the first two years. We suggest the DNCL consider indefinitely expanding the scope of the DRS in this way.

Question 11: Are there any other comments you would like to make relating to this consultation?

No.