



6 November 2007

Domain Name Commissioner  
PO Box 11-881  
Wellington

Dear Ms. Monahan

### **Policy review**

Thank you for the opportunity to provide further input to your review of the existing Registering, Managing and Cancelling Domain Names Policy. The comments set out below are based on consultation within the SSC, and build on our previous comments and the discussion contained in your Policy Review Consultation Paper.

Our views reflect our concern to ensure that people are confident that accessing New Zealand government online is secure and trust that government-held information is protected from security threats. This confidence and trust is affected by perceptions and experience of the Internet as a whole, hence our interest in the mechanisms affecting all domains, including unmoderated domains, and in particular the Policy currently under review.

In our previous submission, we suggested possible procedures for addressing concerns that arise in relation to registrations made for malicious purposes, such as phishing, and in particular where there might be existing legislative requirements in relation to the use of particular words.

In your Policy Review Consultation paper, you noted that the proposed notification and grace period would contravene the Zone Transfer Policy. Our understanding of the Zone Transfer Policy is that it sets out the circumstances under which the .nz zone file may be released to third parties not directly involved in the management of the .nz registry. The primary concern in considering applications for registration is to ensure that there is no chance of any adverse effect on any registrant's privacy, although the DNC may also consider any other factors that they consider appropriate in their sole discretion. In this context, Zone files may be released where it can be demonstrated that an exceptional reason exists and there is a "public good" aspect to the release of the information that outweighs the privacy concerns. "Public good", for this policy, refers to the benefit of the information obtained by the release of the zone file not being primarily to the benefit of any one person or a limited group of persons. It could be argued that the publication of proposed registrations in order to identify potentially illegal or malicious registrations would meet the requirements for this exception.

However, we also recognise that implementation of greater safeguards against illegal or malicious registrations will have significant operational implications for the registrars and the DNC, and could also have liability implications.

For these reasons, and based on the discussion under point c. in the Policy Review Consultation paper, we consider that in order to meet the concerns raised, the Policy could include a mechanism for addressing issues after registration and following the receipt of a complaint. This could be achieved through amendment to the Policy relating to Cancelling a Domain Name, coupled with a requirement that the agreement with the registrar (as referred to in clause 12.2 of the Policy), could include an undertaking that the application complies with New Zealand law and that failure to so comply may result in cancellation.


On this basis, a process could include the following:

- If a complaint is received that a domain name is being used in clear breach of New Zealand law (other than passing off or other intellectual property offences), the DNC may initiate an investigation.
- Where, in the opinion of the DNC, it appears, prima facie, that the domain name is being used contrary to law, the DNC may order the removal of the domain name from the DNS until such time as more detailed inquiries are undertaken.
- During the period of suspension (which may need to be fixed), the DNC would seek to contact the registrant in respect of the domain name and resolve the issue. Where contact cannot be made on the basis of the contact details or name of the registrant as provided, this can be part of the consideration of the DNC in respect of the final determination.
- If, after contact with the registrant and seeking appropriate advice, the DNC considers that the domain name is being used contrary to New Zealand law, the DNC may cancel the domain name.
- The DNC may also refer the matter to other appropriate organisations.

In suggesting the above, we do note that it would not address the situation where malicious sites can achieve their purpose in a very short time frame, and post facto complaint and investigation will not prevent specific instances of criminal activity. The growing rate of professionalism in organised cyber-criminal activity, rapid technology developments and growing public pressure strongly indicate a need for improved Internet governance. We also note the growing demands for improved Internet governance in other economies and from international bodies. We consider these aspects will need urgent consideration albeit outside the scope of the current consultation.

If you have any queries or require more detail, we are happy to further discuss any aspect of our response.

Yours sincerely



Hugh McPhail  
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State Services Commission