

6 November 2015
HAMILTON OFFICE

By email
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Domain Name Commission
PO Box 11 881
Wellington 6142
New Zealand

SUBMISSION

Review of .nz WHOIS Service
Submission on behalf of James & Wells
Our ref: GEN/80

Dear Commissioner

The Commission has invited submissions from interested parties by today on the following:

- (a) Why .nz registrant data should /should not be collected
- (b) Why .nz registrant data should /should not be publicly available
- (c) Why the display and availability of .nz registrant data should / should not be the same for all parties
- (d) Why the current approach does / does not raise concerns for some.

Our responses are below. We ask the Commission to note that our responses are guided by our practice of assisting commercial clients with resolving disputes involving .nz domain names; our responses are not guided by the concerns of private individuals (for example in relation to receiving spam email).

(a) Why .nz registrant data should /should not be collected

It is our submission that .nz registrant data **should** be collected. Without it, it is impossible to properly advise clients seeking to recover domain names which have been unfairly registered.

The collection of such information is also consistent with the collection of information for other forms of registered intellectual property rights such as trade mark registrations (accepting the domain name registrations are a licensed property right, not a granted full property right like a trade mark registration).

(b) Why .nz registrant data should /should not be publicly available

It is our submission that .nz registrant data **should** be publicly available. Again, without being able to see the WHOIS detail for .nz domain names it is impossible for to properly advise clients seeking to recover domain names which have been unfairly registered. It would also significantly complicate the complaint process as complainants would be forced to plead every possible ground as to why a registration is unfair rather than selecting the most appropriate ground(s).

Again, the publication of .nz registrant data is consistent with the publication by IPONZ (and every intellectual property office around the world) of 'registrant'/proprietor data for other forms of registered intellectual property rights such as trade mark registrations, design registrations, granted patents and Plant Variety Rights.

(c) Why the display and availability of .nz registrant data should / should not be the same for all parties

It is our view that the display and availability of .nz registrant data should be the same for all *commercial* parties.

The display and availability of .nz registrant data should be restricted in the case of, for example:

- Government departments, where issues of security prevail;
- The armed forces, again for reasons of security;
- Academic institutions, including universities and schools, where registrant details may be used for unlawful purposes such as targeted abuse;
- Private individuals, who register domain names for the purposes of personal, not commercial, websites or email.

We recommend a simple declaration process be implemented during registration stage whereby a potential registrant ticks a box to confirm the purpose of registering the domain name. Ticking the incorrect box may result in the domain name registration being cancelled, depending on the circumstances of each case, and should result in cancellation where the incorrect box has evidently been ticked deliberately (for example, where a business registers a domain name in the name of its owner and declares it is for personal use when in fact it is to divert traffic from a competing business owner's website operating under a similar domain name).

(d) Why the current approach does / does not raise concerns for some

We are aware that the current, blanket approach raises concerns for some, in particular registrars and private individuals who do not want their personal information published for all to see. A suitable approach therefore needs to be adopted in this review to distinguish between and accommodate commercial registrants, and their needs, and private registrants, and their needs.

Yours sincerely

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