



**RESERVE
BANK**

O F N E W Z E A L A N D

13 February 2007

Ms Debbie Monahan
Domain Name Commissioner
PO Box 11-881
WELLINGTON

Dear Ms Monahan

Please find a submission from the Reserve Bank of New Zealand in response to your letter to Dr Don Abel of 13 November 2006, inviting submissions in response to a review of the Registering, Managing and Cancelling Domain Names policy.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nick McBride'.

Nick McBride
Legal Counsel

SUBMISSION BY THE RESERVE BANK OF NEW ZEALAND ON THE REGISTERING, MANANAGING AND CANCELLING DOMAIN NAMES POLICY

Thank you for the opportunity to comment on the second round of your review of the Registering, Managing and Cancelling Domain Names policy.

We support a quick and efficient system for registering domain names. However, it should be recognised that while this has advantages, it also has disadvantages that are unfair to some applicants. The policies need to support the Domain Name Commissioner so she can be more proactive in dealing with issues of unfairness.

As a general proposition, we support a more active role for the Domain Name Commissioner, and believe her office should be more involved in ensuring the system is credible and fair to all participants.

Issue 1: Registration of domain names

One advantage of the first come first served basis for awarding domain names is that it makes the process quick and simple, with minimal evaluation and decision making by registrars or others.

The disadvantage is that is exploited by those who want to on-sell domain names to other applicants for profit, but who otherwise have no genuine interest in the name. For example, some people are able to buy rights to domain names the instant they come available through automated procedures. Where they have genuine interest in the name that is acceptable, and if someone else also feels they have a reasonable interest the matter can be resolved by the disputes resolution process.

However, if the person who obtained the name through the automated procedure intends to sell the name back to other applicants, and has no interest in the name for its own sake, then it is unfair to expect the aggrieved applicant to go through the disputes resolution process. Instead, on the presentation of evidence as to the successful applicant's intentions, the Domain Name Commissioner should cancel the original registration of the name.

To illustrate, the Bank monitored the availability of the reservebank.co.nz domain name with the hope of purchasing it. It never had the opportunity because the instant it became available it was purchased by Essex Wines Ltd (UK), who offered to sell it to the Bank for £5,000. At the time the Essex Wines website listed a large number of .nz domain names and was offering to sell them to interested applicants, presumably for £5,000.

In this case, there is clear evidence that Essex Wine's interest was not genuine. While the Bank would have certainly got a successful outcome from the disputes resolution procedure, why should it have to take part when the evidence was so clear? There was simply no genuine dispute.

In cases like this where the evidence is clear, the Domain Name Commissioner should be more proactive and should be required to cancel the registration of the name with

the registrant who is trying to exploit the system (Essex Wines in the example given). It may be fair to offer the registrant a brief period in which it has a right of reply before the final cancellation is effected. The registrant could also be allowed to invoke the dispute resolution procedure if they feel they really did have a genuine interest in the name.

This would result in an appropriate balance between the first-come-first-served approach and the unfairness that can result. It would, however, require a more active role by the Domain Name Commissioner who would be required to cancel domain names and defend her decisions.

Issue 2: restricted names

We note the suggestions that have been made to ensure the system is better able to prevent legally restricted words being used in domain names. Submissions received by InternetNZ made have noted that the word “bank”, “banker” and “banking” are restricted by the Reserve Bank of New Zealand Act 1989.

Running a website can constitute the “carrying on of an activity” using a restricted word, eg it is our view that running a website called “reservebank.co.nz” and receiving a commission for hosting links or conducting e-commerce on the site, would breach the Reserve Bank Act.

It is therefore appropriate that registrars check with the Reserve Bank before granting domain names with restricted words in it. However, we accept this comes with a cost to the system’s first come/first served philosophy, and there may be a practical difficulty in that merely signing up for a domain name with a restricted word will not in itself breach the Reserve Bank Act. It will depend on how the site is used.

We think that registrars and the Domain Name Commissioner should be much more responsive when it is pointed out to them by responsible authorities that particular domain names are being used to further an unlawful purpose. The Domain Name Commissioner in particular has overall responsibility for the integrity of the system.

Where evidence shows that the use of a domain name containing a restricted word is in breach of a relevant statute, then the Domain Name Commissioner needs to take a less “hands-off” approach and be prepared to cancel the domain name registration. Once the domain name is cancelled, the affected registrant can take the issue up with the regulator. For instance, with the Reserve Bank, the affected registrant will be required to apply for permission to use the restricted word.