

File No: POL/1/27/3/1

24 January 2007

Debbie Monahan  
Domain Name Commissioner  
Office of the Domain Name Commissioner  
PO Box 11-881  
WELLINGTON

Dear Debbie

## **REVIEW OF POLICY ON REGISTERING, MANAGING AND CANCELLING DOMAIN NAMES**

I refer to your letter dated 13 November 2006 and the review by your Office of the policy for Registering, Managing and Cancelling Domain Names. You have welcomed the Ministry's views on the issues raised in your consultation paper.

The Ministry's interest is in the promotion of confidence in information and communication technologies through appropriate security and safety practices. To assist it in this work it produced, in 2006, a Discussion Paper entitled "*A Strategic Consideration of ICT Security and Confidence in New Zealand*". Part of the paper considered issues relating to Internet Governance and Domain Name registration. A copy of feedback on these issues is attached for your information.

Your consultation paper includes suggestions to address one area of concern with domain name registration policy, namely the ability of persons to register domain names similar to the domain names for banks for the purpose of operating "phishing" scams. Such a situation occurred last year but, I understand, the relevant domain name registrar had to operate, in the absence of a court order, outside their normally accepted powers to cancel the domain name even after publicity that the domain name was being used for the purpose of operating a "phishing" scam.

The Ministry does not, as a rule, make public submissions on industry papers or reviews, such as that which you are conducting on the policy for Registering, Managing and Cancelling Domain Names, but rather encourages good process to ensure the views and interests of all interested persons are taken into account. In the present case the Ministry would, however, like to make some brief comments which may be of assistance to you in your review. These comments should not be viewed as indicating any particular policy position being taken by the Government on Internet Domain policy.

I note from the “Roles and Responsibilities” document issued by the Office of the Domain Name Commissioner that:

- Registrars are to:
  - “Maintain the integrity of the register”; and
  - “Behave ethically and honestly and operate in good faith according to established standards”;
- and that registrants are to:
  - “Comply with all of the obligations as listed in the Registrant Agreement”;
  - “Ensure all information given to the registrar is accurate and complete”; and
  - “Ensure the registrar’s services, and the domain name, are not used for an unlawful purpose”.

I note from the “Registering, Managing, and Cancelling Domain Names” policy document that:

- “Registering a domain name is akin to obtaining a licence”;
- “Any new name must conform to the relevant Internet standards (in particular RFC’s 1034 and 2181) as well as specific InternetNZ policy requirements”; and
- “Registration of a domain name has to be actively cancelled by the registrar and can only be cancelled upon request or where the registrant has not complied with their agreement with the registrar and cancellation is specified as a possible result”.

In the case of email addresses provided by Internet Service Providers and 0900 numbers provided by telecommunications service providers there is usually clear provision in the terms and conditions for the use of such addresses and numbers that misuse, such as spamming or breaches of specified standards, can lead to cancellation. In principle there would seem to be little difference between these services and that relating to the provision of domain names.

If part of the responsibility of registrars is to maintain the integrity of the register then we would expect that, given a domain name is akin to a licence, the relevant registrar would have the power to cancel a domain name in the event of misuse such as that which occurred in the case mentioned above. Surely it is appropriate that part of the terms and conditions of any registrant agreement should include standard terms and conditions enabling the cancellation by the registrar of a domain name in the event of misuse (such as use for an unlawful purpose) where the registrar is satisfied that this has occurred. If the registrar does not have such a power of cancellation then there seems no logic in having a policy which states that a registrant will not use a domain name for an unlawful purpose.

In relation to InternetNZ policy requirements for new names there would also seem to be merit in including requirements that new names should not cause confusion with the name of any registered bank. Such a requirement would also help in addressing the concern over the use of domain names as part of a “phishing” scam. The degree of

“judgment” involved in implementing such a requirement could be minimised by taking a prescriptive approach relating to “ineligible” names.

If you would like to discuss any of the issues raised in this letter then please do not hesitate to contact me (phone: 462 4267).

Yours sincerely

A handwritten signature in black ink, appearing to read 'P. Toye', written over the printed name and title.

Phillip Toye  
Senior Advisor  
Information Technology & Telecommunications Policy  
Energy and Communications Branch

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<p>Q.15 Should the Government establish a more formal relationship with InternetNZ around the issue of the administration of the Domain Name System?</p>	<p>A semi-formal consultation process could be useful.</p> <p>No.</p> <p>Yes.</p> <p>InternetNZ would welcome discussions with Government on a more formal recognition of its role.</p>	<p>Andrew Mason</p> <p>NZ Computer Society Judge David Harvey NZ Law Society TelstraClear</p> <p>Telecom NZ NZ Bankers Assn Christchurch City Council Arron Scott National Library</p> <p>InternetNZ</p>
<p>Q.16 Should the Domain Name Commissioner be required to check applications for domain names against criteria similar to those applied to the registration of company names?</p>	<p>No.</p> <p>There would be merit in a scheme that required applicants for the registration of a domain name to verify certain information with the Commissioner if requested. In addition, there would be merit in the Commissioner having a power to initiate deregistration if evidence of a fraud or deception as part of the initial registration process.</p> <p>This should be explored.</p>	<p>Andrew Mason NZ Computer Society Gary Hinson Judge David Harvey NZ Law Society TelstraClear</p> <p>Microsoft NZ</p> <p>Telecom NZ</p>

	<p>Yes.</p> <p>It would be more useful to ensure appropriate processes are in place to manage conflicts of naming rights and misuse of naming.</p> <p>No. The provision of a domain name does not have anything like the legal responsibilities relating to company registration. A requirement for similar checking processes would be costly and not very effective.</p> <p>Domain name registration is different from company registration in that only the latter has legal implications and domain names are both commercial and non-commercial in nature. Vetting of domain names would impede the current fast, responsive registration service and there is now a Dispute Resolution Service to deal effectively with any disputes.</p>	<p>NZ Bankers Assn Christchurch City Council</p> <p>Arron Scott</p> <p>InternetNZ</p> <p>.nz Oversight Committee</p>
<p>Q.17 Should domain name registrars be required to verify applicants' details?</p>	<p>Yes.</p> <p>This should be explored.</p> <p>Yes but through codes of conduct.</p> <p>No.</p>	<p>Andrew Mason NZ Computer Society NZ Bankers Assn Christchurch City Council Arron Scott</p> <p>Telecom NZ</p> <p>Gary Hinson</p> <p>Judge David Harvey</p>

	<p>Any verification should be minimal and technologically based and based on the needs of a robust DNS system.</p> <p>A regime based on applicants having the burden of providing correct information and registrars correcting any inaccuracies in the database is more effective and in line with international practice.</p>	<p>TelstraClear</p> <p>InternetNZ</p> <p>.nz Oversight Committee</p> <p>NZ Law Society</p>
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