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18 June 2002

Ms Debbie Monahan  
Domains Name Commissioner  
InternetNZ  
Email: [debbie@internetcz.co.nz](mailto:debbie@internetcz.co.nz)

Dear Debbie

**INTERNETNZ – TRANSITION TO SHARED REGISTRY SYSTEM – DOMAIN NAME ALLOCATION**

1. I am writing to follow up a meeting with you and Rick Shera on 10 June 2002 and also various discussions with Ross Johnston of KPMG Legal.
2. I have been asked to provide advice on the domain name allocation procedures which Domainz should adopt in implementing the new Shared Registry System (“SRS”).

**(1) How domain names are presently registered**

3. The starting point is a brief description of the current system of domain name registration. This is summarised in the initial email instructions from Derek Locke to Ross Johnston. Both you and Rick Shera have also clarified a number of factual matters at our meeting. It appears that there are three different factual situations:

**(a) Where the domain name is registered through an accredited .nz provider**

4. As I understand it, there are a number of accredited .nz providers who register domain names with Domainz on behalf of Name Holders. In these cases:
  - o Domainz bills the accredited .nz provider.
  - o Domainz provides the Name Holder ID and password to the .nz provider.
  - o All renewal notices are sent to the .nz provider.

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**(b) Where the domain name is registered through an agent**

5. There are a number of unaccredited agents who assist in arranging domain names for Name Holders. An example of such an unaccredited agent is Xtra. Although the agent facilitates the registration, with this particular category:
- Domainz bills the Name Holder direct.
  - Domainz sends all renewal notices to the Name Holder.
  - Domainz supplies the Name Holder ID and password to the Name Holder not to the agent.

**(c) Where the Name Holder contracts direct with Domainz without any involvement of an accredited .nz provider or an agent**

6. This category is self-explanatory. The Name Holder details direct with Domainz.

**(2) The SRS procedure; the Transition**

7. The key issues concerning Domainz are the steps to be taken as part of the transition to the new SRS. While Domainz will have an interim role as a Stabilizing Registrar, the intent under the SRS is to have a series of new registrars. Once the transition period has passed, Domainz will cease to fulfill this role. The intent and expectation is that many (if not all) of the .nz accredited providers and possibly some of the agents will seek to become registrars under the new regime.
8. Domainz recognises that, as part of the transition to the SRS and the bringing to an end of its current (and transitional role as Registrar), it will need to take steps to allocate domain name registration. The concern is to ensure that in taking appropriate steps during this transition, it properly meets all its legal obligations to both accredited .nz providers, agents and Name Holders.
9. The change in regime is important. At present, as registrar, Domainz fulfills a very important role in safeguarding the rights of Name Holders and in particular, in ensuring that there are no dealings with domain names either by transfer or amendment except where the proper Name Holder ID and password is supplied. It is therefore very important that in any transition to a new registrar, Domainz carefully ensures that it does not pass control of the domain name

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(including the new UDAI) to a registrar in circumstances where the Name Holder has **not** authorised this to occur. It goes without saying that many domain names are very valuable. Liability issues could well arise for Domainz if, as a result of the transfer of domain names without proper authority, some unauthorised party was able to transfer or otherwise modify the domain name records. Obviously this will be likely to be discovered reasonably quickly, but the cost of rectifying the situation could be laid at the door of Domainz.

10. I return now to consider the three different situations in which domain names have been registered and how Domainz might properly allocate these domain names to a new registrar as part of the transition to the new SRS.

**(a) Where domain names have been registered by accredited .nz providers**

11. As noted earlier, this category covers the situation where the accredited .nz provider is the billing address for the domain name, is responsible for renewal notices and holds the current Name Holder ID and password. Domainz does not have any communications with the Name Holder and, indeed, you have advised that in a number of cases the Name Holder may not even know who Domainz is.
12. The tentative transition proposal of Domainz for this category of domain names is that, once the accredited .nz provider becomes a registrar, the domain names for which that provider is the billing contact will be transferred across.
13. In my view, this intended procedure would properly protect the position of both Domainz and the Name Holders **provided** that certain additional safeguards are adopted i.e.:
- InternetNZ will obviously be ensuring that any party which wishes to become a registrar properly meets certain minimum standards – including as to the security of new allocated UDAI.
  - InternetNZ should seek assurances from the registrars that they will not transfer or alter domain names without the written or proper authority of the Name Holder.
  - InternetNZ should require an indemnity from the new registrar that, in the event of the Name Holder making any claim on Domainz as a result of or in any way arising out of the assignment of a domain name to the new registrar, the new registrar will indemnify Domainz. (Obviously, as part of this process will involve ensuring that the indemnity has sufficient backing.)

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14. If the accredited .nz provider opts not to become a registrar then, of course, Domainz would then have to write to all Name Holders for whom that .nz provider acts and ask them to nominate a different registrar.

**(b) Where the domain name has been registered through an agent**

15. It appears likely that some agents will also seek to become registrars under the SRS. As I understand it, regardless of whether the agent becomes a registrar, Domainz intends to write to all the Name Holders who fall into this category and to seek their nomination as to who they want as their Registrar.
16. I believe that this intended step is the prudent and proper approach. Although Domainz may well know that the Name Holder registration came through a particular agent, the fact is that the domain name contract is between Domainz and the Name Holder. Domainz has provided the ID and password direct to the Name Holder.
17. For whatever reason the Name Holder may not want the new UDAI to be provided to its former agent. New Zealand domain names with the .nz suffix have been around for a number of years. It cannot be safely assumed that a Name Holder who effected a registration in say 1996 through a particular agent actually wishes to have that agent as its registrar and to receive the new UDAI. The Name Holder may well strongly object or seek to take action against Domainz if it does not give the Name Holder a choice.
18. Plainly, if Domainz has to write/email to all this category of Name Holders, it does introduce an administrative burden. However, by obtaining **verifiable** consent from the Name Holder, this obviously safeguards Domainz's position and liability.
19. A further concern in having to contact Name Holders is that it can be predicted that a percentage will not bother replying. This is a difficulty that needs to be properly managed as part of the planning and implementation process.
20. As an alternative to the notification process, I had considered a possible approach whereby Domainz might decide to take a chance on there being few complaints. Under this alternative it could, for example, take the risk and assign to those agents who become registrars, the domain names for which the agent could **verifiably** be shown to be responsible. At the same time, Domainz could seek to institute the same sort of safeguards – including the indemnity – outlined in paragraph 13.

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21. Overall, however, I do not think that this alternative would work. For a start there would be a problem in demonstrating which domain names the agent was truly responsible for. Further, as outlined earlier, during the lapse of time between registration and now, the Name Holder could have become disenchanted with the agent and no longer want that person as registrar. Finally, this alternative process would involve providing the Name Holder ID and password to the agent in circumstances where the agent had never previously held these. Obviously this step involves a serious risk of liability for Domainz such that this alternative course of action could not realistically be contemplated.

**(c) Where there is no agent**

22. In these circumstances, Domainz has no choice but to contact the Name Holder to have that person nominate a new registrar.

23. As a final comment, I very much agree with Ross Johnston's observation that where Name Holders elect to select as the new registrar a different person from their previous agent, Name Holders should be advised that they are responsible for fulfilling the terms of any existing contract with their previous agent. This seems a sensible precaution and safeguards against the possibility of a suggestion that Domainz is engaging in unlawful interference with contractual relations ie the agency contract between Name Holder and agent. In the normal course, Domainz will not know the terms of any of these contracts anyway, but it would be prudent to take up Ross's suggestion so that there can be no suggestion that Domainz is counselling or procuring a breach.

24. I trust that this covers all the relevant considerations. If you would like me to amplify any particular aspect, please do not hesitate to contact me.

Kind regards

Yours sincerely



Andrew Brown