30 September 2020

InternetNZ

By email: registrylock@internetnz.net.nz

Dear InternetNZ,

The Domain Name Commission (DNCL) welcomes the opportunity to provide a submission on the .nz registry lock service.

We appreciate the opportunity to comment early as part of a first principles contemplation of whether such a service should exist. We also understand there will be further rounds of consultation where more information and details will be shared from the outcome of the end to end .nz policy review.

The comments below are prepared by the staff at the Commission and include:

- the separation of relationships in the market,
- Resellers
- termination of services
- model of service, pricing
- lost credentials
- education and
- trusted contacts.

Background

The Domain Name Commission Ltd (**DNCL**) is a subsidiary of InternetNZ appointed by InternetNZ to manage and administer the .nz domain name space, which is the country code top level domain (**ccTLD**).

It is the mission of the DNCL to promote public trust in our service and develop and monitor a competitive registrar market, enforce .nz policy and administer an alternative dispute resolution scheme for consumers to resolve domain name disputes. From our inception, the DNCL has administered our contractual and policy framework in the best interests of the local internet community.

The Product

InternetNZ is currently considering implementation of a Registry Lock product into the .nz domain namespace. This will give Registrars the ability to lock a registration record, with a multi-step process for verification to unlock the domain name for changes to be made. There are a number of .nz policy implications, as well as processes that will be affected by this.

We have summarised our main discussion points below under each of the questions posed in the consultation about a registry lock product.

Do you consider the policy wording accurately and adequately reflects the proposed Registry Lock service?

Contradictions

Section 25 of the proposed rewrite of .nz policy, is created in contradiction to the existing terms of the Operations and Procedures Policy, which prohibits direct communication between the registry and registrants and non-registrants from making changes to the domain name registration.

Section 25.7 created in the draft version proposes a carve out of .nz policy to permit registry and registrant contact regarding the registry lock service and the policy paper outlines the expected extent of the direct communication between the registry and registrants.

The .nz Independent panel has previously been briefed and is considering the separation of relationships between Registrar, registry and registrant as part of the review of .nz policy.[1]

DNCL would like to understand the impact of the panel's final report and InternetNZ's reply to the findings on the proposed drafting of s 25 and whether it changes anything.

Resellers

The current draft proposal doesn't clearly state what InternetNZ's position is on resellers in the supply of a registry lock service.

The model is unclear as to whether the relationship to the registry is:

- registrant->reseller->registrar->registry->registrant or
- registrant->reseller->registry->registrant

What happens if the resellers->registrar communication makes a mistake and the details passed to the registry have errors? Does the registry go directly to the reseller or back to the registrar to fix the mistake?

While resellers supply domain names and there is a specific reseller policy clause in .nz policy, the DNCL believes that InternetNZ should consider the risks of .nz Registrars' resellers supplying a registry lock service.

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[1] InternetNZ 2019, *An Initial Briefing for .nz Panel from InternetNZ (Part Two)*, InternetNZ, viewed 18 September 2020, <https://internetnz.nz/assets/Archives/Briefing_for_the_.nz_panel_part_2.pdf> at page 7-10.

Despite entrusting the Registrars with responsibility for the actions of their resellers from an end user of the service perspective, it can be difficult to navigate the chain of relationships to fix any issues.

In a reseller arrangement, we can foresee occasions where registrant requests to lock and unlock domain names are passed between .nz authorised registrars and their resellers. This can raise customer service concerns over the timeliness of replies, additional charges and termination and release from contracts.

The DNCL frequently receives a large number of enquiries from end users about resellers and difficulties obtaining a UDAI to transfer away from one Registrar to another Registrar. Based on these types of enquiries, we anticipate that there will be similar enquiries in relation to frustrations from end users about a registry lock service offered by a reseller.

There is no existing contractual relationship between the registry or DNCL with resellers. There is also more uncertainty on whether resellers can provide a security service, including how their infrastructure is set up to provide such a service.

Termination of services

The consultation paper states that the service will be provided as long as the domain name registration is active.

Additional work is needed to understand what happens if the lock service subscription is not paid, but the registration is valid otherwise.

The .za registry reserves the right to cancel the service for the breach of the terms and conditions (which undoubtedly includes non-payment).[2] Will .nz consider having the same condition in the policy?

Do you have any other comments about the proposed Registry Lock service?

Model of service

The proposal has chosen to use the registry-based out-of-band model of registry lock service.

Yet it makes almost no reference to other registry lock products or Registrar lock services favouring this particular model over others and going further by drafting the policy clauses to enable such a service.

This is a change in approach from previous .nz consultations (involving a first principles review of a particular issue - for example WHOIS privacy and changes to Port43) where the consultation process stopped short of soliciting feedback on preferred models and draft policy clauses at the initial consultation stage. Usually the model and policy response is to be refined through the policy

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[2] ZA Central Registry 2020, _Registry Lock Service Terms and Conditions_, version 2, ZA Central Registry, viewed 19 September 2020, <https://portal.registry.net.za/viewPdf.php?mediaid=2Gfm1YPOUfh0ZAV8OWotOp-bGTdjtZMWwjUVqRSR8sE&filename=Registry%20Lock%20Service%20Terms%20and%20Conditions.pdf

development process after the community has first had an opportunity to consider the problem and the pros and cons of different approaches to solve the problem.

Given the fact that this is the first public consultation on this matter, it might be useful for the community to be given an outline of other versions of the service so the public can gain a deeper understanding and can voice their preferences as well. For example, did InternetNZ consider offering the service directly to the market? If so, why was this not preferred as a model? Why is a registry lock favoured over a Registrar lock?

Pricing, fee setting

Clause 5.2 of the the .nz Principles and Responsibilities policy permits the registry to charge registrars for any optional .nz services that may be developed as agreed with DNCL.

DNCL is interested in whether InternetNZ has considered the impacts on the retail market and whether any affordability and fairness concerns exist in relation to the pricing for the lock service.

For example, has InternetNZ considered a retail price cap or price comparison process to ensure consumers pay a fair retail price for the lock, or will registrars be free to determine the retail price charged to consumers?

When it comes to levying fees against registrants for unlocking domains, what transparency will there be around the fee setting? For example, will it purely be derived based on basic cost recovery?

The Pickens report (pages 70-75) contains a discussion on pricing and fees in the .nz market.

Some of this commentary may be useful to consider, especially in relation to:

- what amount to charge,
- who should pay for them,
- how they should be set
- what information disclosure about them and
- what monitoring will occur as to the right level of them.

As with the commentary above on the model of service, the DNCL notes that the independent panel is also considering fees for domain names.[3] Given the registry lock proposal involves fees and charges to registrants and registrars, there is merit in seeing what the independent panel has to say in this area.

Education

Despite the usefulness and effectiveness of registry lock, the service itself is not widely distributed by other registries. The reason for this is unknown.

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[3] InternetNZ 2019, *An Initial Briefing for .nz Panel from InternetNZ (Part Two)*, InternetNZ, viewed 18 September 2020, <https://internetnz.nz/assets/Archives/Briefing_for_the_.nz_panel_part_2.pdf> at page 10-11.

This leads to an inadequate amount of information shared online on this topic, making it difficult for the layperson to understand.

The users of the product will benefit from explanatory notes. For example, explanation as to the difference between a registry lock and registrar lock might be beneficial (since a lot of materials available online often confuse between the two), or how the out-of-band approach will work in ways that an in-band service cannot.

Lost credentials

In the unfortunate event that the trusted contact lost their credentials, how will they recover access to control their locks? The South African registry of .za provides an explicit provision on how to handle that undoubtedly common problem.

> "In the event that any pass phrase is lost, stolen or forgotten at the point of the Registrar, then the Registrar is required to send a formal notification to the Registry's Legal Department of this status, including a request to set new passphrases, which will then be done through a manual telephonic process between the Registry and the Registrar's Primary Contact."

The DNCL suggests safeproofing credentials in the proposal.

Trusted Contacts

There are currently no provisions in .nz policy that deal with identity verification or authorisation of trusted third party contacts.

The process for the first time has introduced the concept of third party trusted contacts who can represent registrants.

Our assumption is that the registry will first need to authenticate the registrant and then the registrant provides details of their trusted contract, the registry then verifies the trusted contract to ensure they consent as well.

It is unclear from the proposal how the identity verification of this class of persons and authorisation and consent to appoint a trusted contact. Consent must be informed, voluntary, specific and timely. Consent can be revoked at any time.

While the registry lock seems to be marketed at corporate brands, the DNCL understands that the lock will be available to any .nz authorised Registrars and to any registrant including natural registrants not engaged in business or significant trade. In summary there is to be a level playing field between Registrars and registrants who are the end users of the service.

Typically a number of New Zealand small businesses outsource the management of their websites and domain name portofolio to web developers.

It is therefore likely necessary to design an authorised representative process that caters for individuals and sole traders, and a process for businesses to authorise their representatives. There is not sufficient detail in the proposal about how such a global third party verification service will work.

In such a system, disagreements between a registrant and their trusted contact may arise over the removal of an agency relationship. How might such disagreements be resolved? Will the registrants be given the power to contact the registry to remove the trusted contact status to prevent unwanted unlocking of the registration with or without notice to the trusted contact?

As this concept of third party authorised representatives is developed, it may be necessary for further consultation with the community about third party identity verification, authorisation and removal of authorisation.

Authorising documents for the lock

There is mention of terms and conditions which would be useful to see to assess any impact on the proposal.

For example, knowing what is to be in the terms and conditions would help gauge whether the policy wording is too detailed or too simple in in terms of the service.

It would also be helpful to have details on how the changes will be enacted; whether it will be through updates to agreements or amendments to registrant core terms and conditions? The proposal may come with another set of legal contracts and terms and conditions to manage or notification processes to the existing contractual framework.

Ongoing consultation

DNCL trusts that you find the above submission helpful as you undertake a first principles consultation on whether there should be a registry lock service.

We are mindful that this Office has a role to play in aspects of the delivery of the service when there are disagreements and there will be a further opportunity to comment publicly when the rewrite of .nz policies are put out for public consultation.

We appreciate the opportunity for further engagement with the team as part of the decision-making process.

Yours sincerely,

B. Carey

Brent Carey
Domain Name Commissioner

Appendix 1 - Summary of issues InternetNZ may wish to consider

- What is the Registry's position on resellers? Should they have the ability to offer registry lock services?

- What would not paying the subscription fee do to an on-going registry lock, if the registration remains valid?

- What is the price structure that InternetNZ intends to implement?

- What happens if the trusted contact loses their credentials? Has the Registry designed a recovery process?

- What are the procedures designed to accommodate a trusted contact system, since it will be a brand-new inclusion into the policy?