

**Submitter: Metaname**  
**Arrival: Tuesday 9 April**

## **Submission on the draft domain name commission regulatory review, April 2019**

Despite the sometimes prickly interactions between a regulator and an organisation under commercial pressure, DNCL has built a relationship of trust with Metaname. Its staff are professional, courteous, patient and have the best interests of .nz at heart. We are especially grateful for the open mind with which they have considered our views when they conflict with their own.

### **Position**

Barring peripheral observations on the report, this submission centers on the belief that the police and the law courts should retain their influence over decisions regarding criminal matters but that changes might be appropriate to allow them to act more swiftly. We also submit that both the registry and registrars should be indemnified against action ordered by the court.

### **The voice of registrants**

We concur that domain names are an undervalued yet critical part of Internet infrastructure but would like to offer our experience that many registrants "just want a domain name so they can have branded e-mail for their small business" and have little time to engage with their *voice*, no matter how beneficial it would be to increase their involvement. There is a danger that focus groups will not be representative of this demographic, which does not have time to participate.

Within the industry it's sometimes difficult to remember that domain names are something you do when you start your

company and then wonder what it's for only when it's time to pay each year.

### **.nz policies and their enforcement**

We feel that the status quo of policy-based standards is appropriate for the .nz market and appreciate the "gentle help and guidance" approach taken by DNCL in the past in relation to compliance issues.

### **DNCL enforcement, Resellers**

DNCL has made it clear that registrars are responsible for the conduct of their resellers and we suggest that this position in conjunction with the desire to maintain good relations with DNCL is sufficient to resolve non-compliance issues in a timely manner. Further we feel that the current, reactive approach to non-compliance makes efficient use of necessarily limited resources and that any move to a more proactive approach would increase costs in a market where customers already choose other TLDs "because they're cheaper" (though usually because they're unaware of the many additional protections for registrants under the .nz policy). We therefore feel that no change is required in this area and that existing collaboration regarding reseller compliance is working well.

### **Domain name abuse**

We support DNCL's position that abuse should be handled by the courts, quoting:

The judiciary is a vital part of this process, and could not be replicated by the DNCL.

In some circumstances, there is a need for prompt action in order to minimise harm and insisting upon a court order in such cases is not appropriate.

Yet neither registries nor registrars have the experience to conduct investigations competently nor the authority to make decisions on the basis of evidence no matter how seemingly clear-cut.

We agree that the police and the courts should retain their sovereignty in the realms of their respective expertise but that they should have the power to make decisions quickly in particular circumstances† and to direct the registry to make changes without requiring that the registry accept responsibility for those changes.

† We offer no comment on potential rules for when such an emergency power might be used but merely observe that any emergency power is ripe for abuse, so oversight is essential

### **The burden of decisions**

The report talks about:

the burden of proof required before making that approach so that there is a high level of confidence that the decision is the right one

..and:

who should have responsibility and bear the legal risk for any additional enforcement functions, in particular taking responsibility for making the call to remove a domain name from the register

This is critical. I will argue that neither the registry nor registrars are able to establish proof, nor should accept responsibility for decisions.

The Police have spent the last 5,000 years investigating alleged criminal conduct and submitting evidence for consideration to the courts. Any suggestion that registries or registrars be able to conduct investigations competently is misguided.

New Zealand already has a body responsible for making and handing down decisions in the courts of law. No other body has the power of the law courts nor has the authority to grant such power. Self-appointment of such power would be unjust, and open to abuse.

With reference to the opinion that:

The DNCL simply needed to “harden up”

The DNCL simply does not have the authority to self-appoint the power of the courts. Further, to do so would be to expose itself to liability for mistakes made with the self-appointed power.

Metaname collaborates with CERT NZ concerning potentially suspicious domain name registrations and are grateful of CERT's role as a coordinator with links to to diverse agencies but note that CERT has neither the investigative experience of the Police nor the authority of the law courts required of alleged criminal conduct.

In summary, the registry and registrars can act promptly in matters of abuse but it is inappropriate for them to make decisions or to be held liable for those decisions. The combination of the police and the courts already have the experience and authority to make such decisions and need only to make them promptly in appropriately limited situations and then to direct the registry.

#### **Some interesting citations from the report**

adopting “trusted notifiers” upon who’s recommendations the DNCL would act to remove an address

We agree that the DNCL should not make decisions but such a body must *direct* DNCL, not merely recommend a course of action.

a police officer writing an affidavit with a statement of facts relating to suspected illegal use of the domain name

We agree that the police should bring their experience to the table but that DNCL should *not* make decisions even when based on better evidence.

establishing a dedicated and specialist judicial body to rule quickly on activity suspected to be illegal

We agree. Parties with existing authority should be included rather than sidelined, though existing process does not meet timeliness criteria.

## **Footnotes**

### **The .nz space**

Metaname considers that the .nz space is a safer place for customers to have their domain names, predominantly due to the rights afforded registrants under the .nz policy but also due to the technical excellence of the register. As a result we pro-actively encourage customers to choose .nz names over international alternatives in particular the nTLDs.

We reject the notion in the report that customers are free to move between TLDs and thus the choice of TLD is important before a customer's business is even registered with Companies Office.

### **Accuracy of the register**

The report includes a suggestion of:

Temporarily quarantining suspect addresses while basic checks are made

This is impractical due to the automated nature of modern systems. Metaname will never work with "asynchronous

registries" specifically because of the problems introduced by such processes.

requiring registrars take greater care to ensure the accuracy of registrant data

Similarly, this argument suggests unfamiliarity with what is practical at an operational level.

The draft report includes a recurring theme that better quality WHOIS information would be a useful tool against abuse. We disagree with statements such as:

better quality information controls would ensure recourse was available against offending parties where illegal activities were detected

..first on the grounds that illegal activity was *detected* when it was only *suspected* since stake-holders are not qualified to establish conclusively whether activities are illegal or not and second that serious criminal adversaries register domain names with contact details that look perfectly genuine but are not.

### **The registry as point of contact**

If the registry is satisfied that action against a domain name is required then it should take such action itself rather than involving the registrar both because the process will be more consistent for the prosecuting agency than processes at 90 different registrars and because registrants are free to transfer their domain names to another registrar in a matter of minutes whereas only the registry has the ability to "lock" domain names.

As mentioned previously, the *responsibility* for the decision should remain with the courts.

### **Conflation of web hosting with DNS**

If future changes *are* to be made such that entities other than the courts are authorised to order enforcement action without the assent of the registrant then such entities should understand the difference and interplay between the DNS, e-mail hosting and web hosting so as to prevent registrars or registries receiving requests to take down e-mail hosting, which is akin to asking The Post Office to deal with building code violations. Requests to take down e-mail services must be directed at e-mail hosting providers and not registrars.

### **The race to the bottom**

Domain name registrants as a group have unwittingly been the driving force behind a "race to the bottom" with regard to domain name pricing.

While a select group of registrants are prepared to pay more for a better quality service, the mode consider that domain names are a commodity and that only price is of importance. It is therefore impossible to both compete on price *and* to ensure that adequate resources are available for issues requiring expert attention.

Any changes considered for the future should avoid any additional burden being placed on registrars that do not have resources available as a result of market forces. While domain names may be considered a commodity, experts are not.

### **Thanks**

Metaname would like to thank DNCL for the opportunity to comment on the recent draft report on regulatory review, along with InternetNZ and its technical staff who make `.nz` such a great place to work.