Resolving disputes in the .nz domain name space.

A Domain Name Commission consultation paper.
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Foreword

Kia ora,

In 2018 I became the second person ever to be appointed as New Zealand’s Domain Name Commissioner.

For close to forty years, the Internet has been an emerging and evolving medium. Throughout this time, the framework for managing .nz has been under constant development.

As I take on this new challenge I cannot help but wonder, what does the future have in store?

As humans, we’ve come to expect to be able to do most things online, at any time, quickly and seamlessly. Technologies impact the way we live, work, and play. They make new forms of interaction possible.

As we approach the mid-century mark of the information revolution, it’s time to take stock of these rapid changes and anticipate what might come next.

With the advent of machine learning, Blockchain, artificial intelligence, chatbots, industry x and 4.0, and the prediction that we’ll reach technological singularity by 2050¹, today seems as good a time as any to take stock of how far we’ve come with handling domain name disputes, and anticipate what comes next.

In this paper, I’ve captured some of my thinking about what we could be doing to improve how we handle domain name disputes in the .nz space.

My goal is for the Commission to be world leading and innovative, for the service to promote consumer certainty and trust, and for the service to reduce complexity.

I’m keen to hear from you, our stakeholders, on what you think the options are. How will future generations resolve domain name disputes?

Can we provide people with an end to end, automated, or self-service alternative that is innovative, speedy, efficient, fair, reliable, inexpensive and trusted, one that meets people’s needs and is better than what we’re already doing?

Mr. Brent P. Carey, LLB / BA, Grad Cert. Dispute Resolution (Industry)
Domain Name Commissioner .nz.

¹ https://en.wikipedia.org/wiki/Technological_singularity
Overview

This consultation paper outlines current approaches to resolving domain name disputes and encourages responses from stakeholders about different ways to handle domain name disputes.

- Chapter 1 introduces the .nz current model for resolving domain name disputes and service policy.
- Chapter 2 introduces four schools of thought, converging on dispute resolution process design.
- Chapter 3 proposes a framework for assessing the performance of the service to assist you in making your submission.
- Chapter 4 examines some options and issues for your consideration.

The balance of the paper provides existing policy and procedural statements about how we handle domain name disputes today, that you can use for further reference.

Purpose

This paper serves three purposes.

- It invites community feedback about the performance of the New Zealand Internet Domain Name Commission’s dispute resolution service and its future.
- It gathers ideas from the public on how to innovate and improve dispute resolution services within the .nz domain space.
- It fulfils the Commissioner’s role as a leader and practitioner of good governance to occasionally, evaluate, and review services and ensure they are meeting stakeholder needs.

Scope

Comments are welcome on any aspect of dispute handling that people would like the Commission to consider.

Please note: if your feedback canvasses subjects that are ‘out of scope’ for this consultation, with your permission, we’d like to keep your input and provide it to the independent panel conducting an ‘end to end’ review of the overall .nz policy system later this year.

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2 The Commission
How to contribute

Submissions:

Send us your traditional submission in response to our consultation paper. Submissions can be made from 4 pm 19 June until 5 pm 19 July 2019. Submissions can be emailed to consultations@dnc.org.nz or posted to PO Box 11881, Wellington 6142. All submissions will be published below as they are received. Individuals making submissions may request that their personal details be withheld from publication. Submissions should be received by midday Thursday 19 July 2019.

Your submission will be accepted until 5 pm on 19 July 2019.

Please note: our standard practice is to PUBLISH your input, and the name and affiliation of organisations and author/s as well as any contact details of people making submissions.

If you would like to make a confidential submission or have parts of your submission withheld from publication, please let the Commission know this when you send us your input.

We’re looking at how we can use new technologies and business practices to make the process ‘fit for purpose’ for the next fifteen years.

We are also holding two process design workshops in Wellington and Auckland the weeks of 22 July in Wellington and week of 29 July in Auckland facilitated by Creative HQ. You can register your interest in the workshops.

There will also be the opportunity for our interested global stakeholders to participate online through our mural.co online board.

Why this paper?

The internet is like no other infrastructure.

It operates within and across borders and jurisdictions, and the rules and laws that govern more established ways of getting things done aren’t always effective in meeting needs.

One of the hallmarks of any good business is the ability to touch base with users as and when required.

In 2018 the Domain Name Commission restructured, becoming a flatter organisation centred on four activities:

- market regulation
- awareness and education
- policy enforcement
- dispute management.

A new Commissioner and a new Chairperson were also appointed. One of the new Board’s early decisions was to complete a review of the Commission’s dispute handling systems and processes, and their performance. This paper supports that aim.
Introduction

The Domain Name Commission of New Zealand keeps a tally of the total number of registered .nz\(^3\) domain names on its website [www.dnc.org.nz](http://www.dnc.org.nz).

Currently, there are more than 715,000 registered domains in the .nz space\(^4\).

With so many domain names registered, it’s no surprise that disputes occur from time to time.

The Commission has had a process in place for resolving domain name disputes for more than a decade.

Throughout this time, it has aimed to provide “accessible, speedy, low cost and ‘remedy-appropriate’ processes”\(^5\) as an alternative to the Courts.

But what of the future?

InternetNZ tests

Joy Liddicoat, lawyer and former Domain Name Commission Ltd Chair, set out the test for establishing the elements of an excellent domain dispute resolution service.

It includes the service:

- a) is not routinely supported by professional advocates and lawyers
- b) is appropriate and within the service’s jurisdiction
- c) has certainty, quality and rigour
- d) is low cost and timely
- e) is fulfilling its aim of providing “accessible, speedy, low cost and remedy appropriate processes.”\(^6\)

New Zealand Government Centre for Dispute Resolution

The New Zealand Government Centre for Dispute Resolution (GCDR) has also developed a suite of ‘best practice principles’ for dispute resolution services that we draw on here.

According to the GCDR, the five principles of sound alternative dispute resolution practices seen are:

1. user-focused and accessible
2. independent and fair
3. efficient
4. effective
5. accountable.

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\(^3\) pronounced ‘dot En Zed’

\(^4\) Up from 390K in 2003, Liddicoat pg 11


\(^6\) p 13 Liddicoat
This framework is discussed in greater detail later in the paper at the ‘Assessing our Service’ chapter on page 42.

Background

In 2010, former InternetNZ board member, and prominent human rights lawyer, Joy Liddicoat wrote that:

“contests for rights in domain names have become routine in contracts for the sale of businesses, relationship property disputes, and employment disputes.

Domain names are valuable and can be bought and sold, sometimes for significant sums of money.”

Joy’s paper prompted the Commission to establish a dispute resolution service.

In the intervening period, the Commission has developed expertise in handling disputes and ensuring that users and consumers have had an inexpensive, accessible, and timely alternative to the court system.

What we’re now seeking are ideas and prototypes that people trust in the online world.

How can consumers and ‘people on the street’ simply lodge and record their dispute?

How do we disentangle the novel, technological, and legal perspectives framing the problem?

Microsoft CEO Bill Gates claims, “We always overestimate the change that will occur in the next two years, and underestimate the change that will occur in the next ten.” 7

The purpose of this paper is to ask you, our users, what you think about how we should or could be handling domain name disputes in the next ten to twenty years.

The paper draws on international best practice in alternative dispute resolution, but is asking you the question:

Hypothetically: if someone registered www.yourname.co.nz, and you decided to complain about this: how, where and what would you expect to have to do in order to lodge a complaint and have it resolved?

Talking points

The process the Commission currently relies on, as well as some information about it, is in the appendices to this paper, but it shouldn’t be our starting point.

Instead, we want to ask you some leading questions:

1. What does an ideal user experience look and feel like?
2. Who do you trust to hear domain name disputes, and why?

Thinking ahead:

3. Would you rely on a dispute resolution decision if it was machine generated?

How about:

4. What is your experience dealing with us, or with other overseas or online dispute resolution services?
5. What are some ways to make our process more accessible, faster, more comfortable and fairer than it is today?
6. What do you think of the current set up? Are our timeframes, fees, and handling up to scratch?
7. Are there any self-service approaches to handling disputes that you’d recommend?

And lastly:

8. What new technologies should be trialed?
9. Who do you know that’s already using them, what does it look like, and what have they learned?

The question today is whether the existing dispute resolution service is serving the purpose that it was created for, as well as what it could be doing better. What do the next fifteen years look like?

What is a domain name?

Efforts to explain what domain names are, and how they work, tend to be formal and technical. For this reason, we’re going to keep this section as brief and accessible as we can.  

In simple terms: A domain name is a way of labelling and organizing the World Wide Web and directing traffic. 

According to our Australian counterparts auDA, “it’s an address on the internet.”

A bit like a street directory or GPS.

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8 You can always use a search engine to find more complex explanations.
9 The web itself is one of several functions that the Internet supports, the other most well-known one being email, however there are more besides that are less well-known. [https://ecommercebusinesssolutions.ca/what-is-a-domain-name](https://ecommercebusinesssolutions.ca/what-is-a-domain-name)
Another way to think about a domain name\textsuperscript{11} is as a unique name that identifies a website. Each website has a domain name that serves as an address which is used to access the site.

For the Commission’s purposes, a domain name defines a realm of administrative autonomy, authority or control within the Internet, in our case, names ending in ‘dot nz’.\textsuperscript{12}

Domain names appear in a hierarchy of subordinate levels (subdomains).

Domain names are made up of one or more parts, or labels that are both joined and kept separate by dots\textsuperscript{13}, for example, www.example.co.nz\textsuperscript{14}

In the case above:

- dot co is what’s called a ‘second level domain’.
- dot nz is an example of what’s known as a top level domain.
- example is your name.

Each label in a domain name can have 63 letters/numbers (characters). As a result, a domain name has a 253 character upper limit.\textsuperscript{15}

Importantly, domain names must be unique, even if the difference between one name and another is a subdomain or a single character. Imagine how the network would respond to two people sharing the same phone number. The same principle applies to domain names.

A domain name is more than just the sum of its parts. Like real estate, a domain name tells you something about what to expect to find at this location. For example, who the content belongs to; and what the services, products, and information will probably focus on, as well as what the traffic, security, and appeal of the environment might be.

One of the benefits arguably of domain names is that they’re “human readable.” The other is that they can be precious assets for driving users and consumers to a business or brand.

For the Domain Name System (DNS) to function, it’s vital that no two domain names are identical.\textsuperscript{16} A domain name can direct traffic and connect physical devices: the servers and equipment that make up the global, networked internet system, in a way that someone who can read and type would find easy and familiar, (if not much more memorable).

### What is a domain name dispute?

A domain name dispute is any dispute about a domain name involving two or more parties where:

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\textsuperscript{12} https://en.m.wikipedia.org/wiki/Domain_name

\textsuperscript{13} Full stops or periods.

\textsuperscript{14} https://simple.wikipedia.org/wiki/Domain_Name_System

\textsuperscript{15} When a device, for example, a cell phone, connects users to the internet, it does so via a unique string of numbers. A bit like using the numbers on smart phone keypad to spell out words, domain names map words and letters to the long strings of numbers that make up the backbone of the domain name system (the DNS).

\textsuperscript{16} Back in the day, people described the DNS as the ‘telephone book’ of the Internet. Nowadays, that description seems a little bit dated. The DNS is a directory.
• At least one of whom has registered a domain name on the .nz country code top-level domain on a ‘first come, first served’ basis.
• Another can also show that the domain name registration has been unfair.

Although a domain name must be registered ‘in good faith,’ in practice, the registration process is an honesty-based system that relies on users to do their due diligence.

Often, but not always, domain names may incorporate a unique identifier that associates it with a product, service, individual, brand, or unique mark. But unlike a trade mark dispute, a domain name is global and not restricted to a particular jurisdiction which can result in different parties having claims in a domain name.

Types of disputes

“...contests for rights in domain names have become routine in contracts for the sale of businesses, relationship property disputes, and employment disputes.”

“Domain names are valuable and can be bought and sold, sometimes for significant sums of money.”

Disputed domain names tend to fall into categories including that the domain name is a:

• doderated domain
• conflicted domain name
• similar name
• malicious registration
• trade mark protected by intellectual property law
• unfair registration.

A foundation principle of domain name governance is ‘first come, first served.’ As a result, there are no automated tests or barriers in place to prevent the mistaken registration of a trade marked name. If the domain name is available, then it can be legitimately registered even if it refers to a well-known brand.

Traditional legal disputes

Early legal cases relating to domain names rested on arguments centred on:

• common law rights (such as passing off)
• statutory rights (such as trade marks or copyright.

17 InternetNZ
18 Pg 13 Liddicoat
19 There are six Moderated Second Level Domains - .cri.nz, .govt.nz, .health.nz, .iwi.nz, .mil.nz and .parliament.nz Moderated Second Level Domains are scrutinised by a moderator for suitability and cancelled with notice to the Registrant.
20 Taking the example of example.nz: the first registrant may hold example.co.nz while others may hold example.org.nz and example.school.nz. All may have equally fair rights to example.nz.
21 Within the .nz domain name space no preference is given to people who have rights in a name (such as a company or trade mark owner). https://www.dnc.org.nz/faqs
22 Within reason, Accurate WhoIs information is central to the operation of the DNS and the Commission’s agreements with InternetNZ and ICANN. Policies that override the principle of ‘first come, first serve’ and that result in the cancellation of an otherwise completed registration, include situations where the requirement to provide working contact details has not been met.
• statutory consumer law (such as fair trading).

The courts continue to be an option for people wanting to enter into a dispute about a domain name. Nothing in the policy prevents complainants from accessing the legal system.

Trade marks and domain names

The relationship between domain names and trade marks and the view that domain names align neatly with intellectual property schemes is problematic.

A court can compel the Commission to make amendments to a domain name registration, and it can and will transfer ownership of a domain name or names, and/or suspend domain/s as required.

Domain names and trade marks are treated differently in the .nz domain name space. Whereas only one person throughout the world may use a particular domain name, a trade mark can be registered by several persons in the same country, provided the mark is for different classes of goods or services.

The same trade mark might also be registered in multiple countries.

This makes a trade mark much less exclusive than a domain name, and disputes are never automatically settled on the fact of a trade mark existing. Respondents must show that the domain name registration is unfair. They must supply our experts with a valid dispute and evidence in the required form.

What is Cybersquatting?

According to Liddicoat, cybersquatting takes two forms.

• Typosquatting is where incidental typographical errors of an existing domain name are registered.
• Domain name hijacking is where a person, in bad faith, attempts to deprive a registered domain name holder of a domain name or relate to a criminal motive, for example, fraud or phishing attack.

The motivation for cybersquatting “is usually either monetary or punitive.”

Importantly, domain names are not “owned” by any party.

A domain name registration is a licence granted to a Registrant, subject to certain conditions.

23 P 12 ibid

24 The only exception to this would be marks recognised as ‘well-known’ marks where enforcement of these marks may transcend jurisdiction of use and product and service classes.

25 Liddicoat

26 Domain Name Commission – Advising Clients New Zealand Law Society, webinar, November 2018, Brent Carey and Dylan Connolly p 9

27 In the case of moderated sub-domains such as dot edu and dot govt, registrants have to furnish additional evidence of their eligibility to access these platforms.
Provided the domain name registration is kept current, via the payment of fees and the regular upkeep of current contact information and overall compliance with InternetNZ policy, the Registrant can continue to use that domain name.

What is the difference between a valid and invalid dispute?

A valid dispute is any dispute which has been submitted in the correct form and meets both criteria needed to trigger the resolution process.

Although the Commission’s website describes the service as being ‘online,’ in its current guise, the better way to explain the service would be to call it ‘remote.’

Correspondence, submissions, and evidence are submitted on paper, and expert decisions and appeals are communicated via email and the web.

Mediation is a free service handled by a professional mediator via phone call and emails.

To be acted on, complaints that have been initiated electronically using the Commission’s web form must:

- be mailed in triplicate hard copy
- be written in English
- meet all deadlines required by the Commission
- be supported by sufficient evidence
- not exceed the allowable word count.

Complaints versus disputes

As confusing as it may seem, a complaint and a dispute are not the same under .nz policy.

Reflecting their development at different times and meeting different needs, the Commission has a complaint handling process that it uses to investigate allegations of .nz policy breaches and resolve “conflicted domain names.”

It has some features that don’t apply to domain name dispute resolution but could do if our constituents thought this would be useful or advisable.

In contrast to a complaint handled under .nz Operations and Procedures Policy, a dispute is determined under the Dispute Resolution Services Policy. A domain name dispute arises where a complainant asserts they have rights in the domain name, and that the name in the hands of the respondent is an unfair registration.

Who can determine .nz domain name disputes

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28 An outcome of this review is to consider what place, if any, the role of hardcopies has in domain name dispute management against the option for filing of electronic copies and supporting evidence.

29 Information about the conflicted name problem and its associated complaint process is also available online.
Currently, disputes can be made to the courts, an intellectual property office in New Zealand, or the Commission; alternatively, they can be negotiated privately between the parties using WhoIs contact information.

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<tr>
<th>Service</th>
<th>Jurisdiction</th>
<th>Features</th>
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<tr>
<td><strong>Domain Name Commission NZ</strong></td>
<td>• ICANN and InternetNZ affiliated.</td>
<td>• Alternative dispute resolution forum.</td>
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<tr>
<td><strong>Domain Name Dispute Resolution Service</strong></td>
<td>• Court order can compel the Commission.</td>
<td>• The policy prescribes process:</td>
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<tr>
<td></td>
<td>• .nz exclusive.</td>
<td>• time capped</td>
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<td></td>
<td></td>
<td>• fees payable</td>
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<td></td>
<td></td>
<td>• five step process.</td>
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<td></td>
<td></td>
<td>• Maintains a register of experts.</td>
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<td></td>
<td>• Appoints experts to oversee determinations and appeals.</td>
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<td></td>
<td></td>
<td>• The Commission administers the mediation service.</td>
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<td></td>
<td></td>
<td>• Publishes experts decisions.</td>
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<tr>
<td></td>
<td></td>
<td>• Valid registrations, complaints and evidence driven.</td>
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<tr>
<td></td>
<td></td>
<td>• The scheme uses tests of unfair registration and bad faith.</td>
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<tr>
<td></td>
<td></td>
<td>• Timeframe limited. Timeframes are strictly procribed.</td>
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<tr>
<td></td>
<td></td>
<td>• Paper-based; Wordcount limited; Language limited.</td>
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<tr>
<td></td>
<td></td>
<td>• The format is strictly prescribed. Free Mediation.</td>
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<tr>
<td></td>
<td></td>
<td>• Inexpensive expert and panel decisions.</td>
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<td></td>
<td></td>
<td>• Legal representation not required.</td>
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<td></td>
<td></td>
<td>• Fees:</td>
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<td></td>
<td></td>
<td>• Expert decision NZ$2,000 +GST</td>
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<td></td>
<td></td>
<td>• Appeal NZ$7,200 + GST</td>
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| **New Zealand Intellectual Property Office NZIPO** | • NZ statutory rights (such as trade marks or copyright).                     | • Alternative Dispute Resolution forum.                                                                                               |
|                                               | • NZ Customs Service, Commerce Commission, Police and Ministry of Business Innovation and Enterprise (MBIE) enforce. | • Evidence based.                                                                                                                |
|                                               |                                                                               | • Fees payable.                                                                                                                |
|                                               |                                                                               | • Legal representation / consultation required.                                                                                 |
|                                               |                                                                               | • Public interest test for criminal prosecution through MBIE.                                                                   |
|                                               |                                                                               | • Gravity of misconduct and past patterns of conduct taken into account.                                                      |
|                                               |                                                                               | • Prosecutions published.                                                                                                      |
|                                               |                                                                               | • Expert representation.                                                                                                      |

| **Disputes Tribunal**                         | • Contract, agency and ownership disputes.                                    | • Justice system.                                                                                                                |
| [https://www.disputetribunal.govt.nz/forms-and-fees/](https://www.disputetribunal.govt.nz/forms-and-fees/) | • Statutory consumer law (such as fair trading).                             | • Lawyers, Legal Aid, Community                                                                                                  |
|                                               |                                                                               | • Not time capped.                                                                                                              |
|                                               |                                                                               | • Fees:                                                                                                                      |
|                                               |                                                                               | • Claims under $2,000 = NZ$45                                                                                                  |
|                                               |                                                                               | • Claims $2k-$5k = NZ$90                                                                                                       |
International comparisons

The Commission’s dispute resolution service enables people to settle .NZ domain disputes without having to go to court or pay for legal advice.

Nominet assisted the Commission to set up its service.

As part of this exercise, we’ve made comparisons with our international counterparts who manage other ccTLDs and have collated the following sites and services along with a brief overview of how they handle disputes.

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<thead>
<tr>
<th>Institution</th>
<th>Services</th>
<th>Features</th>
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<tbody>
<tr>
<td>Nominet UK</td>
<td>• ccTLD specific (.uk and .Cymru).</td>
<td>• ICANN compliant.</td>
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<td></td>
<td>• Complainant can opt for the expert to make a summary decision on the case. This costs £200 plus VAT.</td>
<td>• GDPR compliant.</td>
</tr>
<tr>
<td></td>
<td>• An expert determination costs £750 plus VAT.</td>
<td>• Test of “abusive registration”.</td>
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<tr>
<td></td>
<td>• Sample complaint, response forms and FAQs.</td>
<td>• Five stage process:</td>
</tr>
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<td></td>
<td>• Appeal is heard by a panel of three Experts and costs £3,000 plus VAT.</td>
<td>• complaint and response</td>
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<td></td>
<td>• Cybersecurity.</td>
<td>• mediation</td>
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<td></td>
<td>• Spectrum management.</td>
<td>• expert decision</td>
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<td></td>
<td>• Membership based.</td>
<td>• appeal</td>
</tr>
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<td></td>
<td>• Partnership with Microsoft.</td>
<td>• closure</td>
</tr>
<tr>
<td></td>
<td>• Public statements on regional broadband and Internet of Things with particular emphasis on health care.</td>
<td>• Summary decision is available where no response has been submitted before the response deadline.</td>
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<tr>
<td></td>
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<td>• Parties encouraged to resolve disputes using WHOIS information.</td>
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<tr>
<td></td>
<td></td>
<td>• Online Services tool offered.</td>
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<td></td>
<td></td>
<td>• Complainants must create an account to lodge a dispute.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Communications-enabled via a messaging form.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Evidence of a trade mark taken into account.</td>
</tr>
</tbody>
</table>

Table 1 Organisations who can hear .nz disputes
| **Cira Canada**<br>https://cira.ca/sites/default/files/attachment/policies/cdrppolicy_en.pdf | **CcTLD specific (.ca)**<br>Membership based.<br>Has a dedicated Cira Lab, CTO and Git Hub.<br>Makes public statements about internet quality and speed; future of the DNS and internet and offers internet performance tests.<br>Current projects in machine learning and malicious domain name registration; cyber-security in the era of the internet of things and advises the public on DNS performance and cybersecurity.<br>WhoIs linked message delivery form (ODR feature). | **Disputes governed by policy and rules.**<br>Test under policy is:<br>“the registrant’s domain name is (found to be) confusingly similar to the mark in which the complainant has rights (Policy 3.1(a)), second, that the registrant has no legitimate interest in the domain name (Policy 3.1(b)), and third, that the registrant registered the domain name in bad faith (Policy 3.1(c)).”<sup>30</sup><br>Registrants must meet Canadian presence requirements.<br>Dispute hearings outsourced to two agencies:<br>• Resolution Canada<br>• British Columbia International Commercial Arbitration Centre (BCICAC) | **Recently completed a major review of governance.**<br>Formally endorsed by the Australian Government.<br>Government has reserve powers under the Telecommunications Act 1997.<br>Dispute resolution outsourced to two providers.<br>Resolution Institute(formerly LEADR & IAMA).<br>World Intellectual Property Organisation (WIPO). |
| **AuDa Australia**<br>https://www.auda.org.au | **CcTLD specific (.au).**<br>oversees and deploys new technologies and initiatives in the .au User-focussed, which includes:<br>• Domain Name System Security Extensions (DNSSEC)<br>• auDA Information Security Standard (ISS) (auDA is ISS compliant)<br>• AuDa functions include the facilitation of .au Dispute Resolution Policy. |  |  |

---

30 [https://patentable.com/domain-name-disputes-an-important-policy-update/](https://patentable.com/domain-name-disputes-an-important-policy-update/)
### .ZA ADR

- Accredited Dispute Resolution Providers hear disputes. The SAIIPL (South African Institute of Intellectual Property Law) is one such provider. The Arbitration Foundation of South Africa is another.
- Applicable to specific .ZA SLDs. It is proclaimed by regulation. Currently co.za, org.za, net.za and web.za.
- [https://www.zadna.org.za/content/page/za-adr-process/](https://www.zadna.org.za/content/page/za-adr-process/)
- [https://domaindisputes.co.za/](https://domaindisputes.co.za/)
- Dispute Fee is R10,000 for a single Adjudicator and R22,000 for a 3-panel adjudicator or appeal panel. That approximately NZ$1,000 for a single member panel.
- The ZADRR permits complainants to file a Dispute with a dispute resolution service provider, specifying, mainly: the domain name in question; the respondent or holder of the domain name; the registrar or registry with whom the domain name was registered and the grounds for the dispute. These include reasons why the domain name registration constitutes an abusive or offensive registration.
- The respondent is offered the opportunity to defend itself against the allegations. The provider (eg: the SAIIPL) appoints an adjudicator who decides whether or not the domain(s) should be transferred.

### .iedr

- The IE Domain Registry is introducing a new alternative dispute resolution process on 1 July.
- An alternative to the WIPO, the new process accommodates a broader variety of dispute types. These include:
  - Online impersonation
  - Disputes between competing businesses
  - Website content scraping,
  - Rights-based complaints
  - Defamation
- Optional Mediation service. A qualified mediator will try and resolve their dispute or give an opinion on the dispute to uphold or dismiss the dispute.
- The three services and outcomes available are mediation, a decision, or specialist opinion.
- Net Neutrals, an outsourced company, administers mediation and online dispute resolution services. [https://www.netneutrals.eu/How-It-Works](https://www.netneutrals.eu/How-It-Works)
- It does not appear that there is a fee charged for the new adr process to the consumer although fees appear to be payable by traders.
- [https://www.iedr.ie/adrp/](https://www.iedr.ie/adrp/)

Table 2: International Comparisons
### Other domain name dispute resolution models

<table>
<thead>
<tr>
<th>Service</th>
<th>Services</th>
<th>Features</th>
</tr>
</thead>
</table>
| **Council of County Code Administrators (CoCCA)** | • The CoCCA Complaint Resolution Service (CRS) supports registry-level suspensions and consists of three parts: 1. initial review, 2. referral to Ombudsman for amicable complaint resolution, 3. binding arbitration. | • Consortium.  
• Software as a service.  
• Alternative Dispute Resolution.  
• Acceptable use policy based.  
• A dozen ccTLDs using CoCCA software to maintain their DNS registers have adopted this approach.  
• “Registrants’ licence to use a domain requires that they comply with the applicable AUP, a failure to comply with the AUP or to remedy a breach of the AUP may result in a suspension of a domain and it’s removal from the zone.”  
• Paper-based.  
• Decisions are not publicly available.  
• Experts are externally sourced. |
|  | [Overview](https://cocca.org.nz/) |  |
|  | [Form](https://cocca.org.nz/pdf/complaintform.pdf) |  |
| **Namecoin** | Experimental technology. | BlockChain / Bitcoin-based.  
• Token-based.  
• Namecoin proposes to govern domain name trading in a decentralised way.  
• Kleros is a dispute resolution layer that relies on crowdsourced jurors.  
• Neither is associated with a ccTLD. |
|  |  |  |
| **Kleros** | Domain names infringing global trade marks. | Alternative Dispute Resolution  
• ICANN affiliated.  
• Fee-based.  
• Delegated to hear domain name disputes on behalf of other ccTLDs.  
• Global trade marks.  
• Legal/expert representation required. |
|  |  |  |
| **World Intellectual Property Office WiPO** |  |  |
|  |  |  |
| **Resolution Canada** | One of two organisations authorised by CIRA.  
CIRA process allows each party to nominate up to five panelists from the roster. | Time capped less than three weeks.  
• Legal representation is optional.  
• Discretion to extend timeframes on request.  
• Decisions published online in PDF.  
• Flat filing fee CA$1,000. |
| **https://www.resolutioncanada.ca/rescms/** | **A non-response results in a reduction in cost to the Complainant, as part of their Expert determination.**  
Sample wording supplied for Complaints and responses. Not ODR or PDF supported. | **Scaled fees.**  
**Single domain CA$1,750**  
- 2-5 domains  
- 6-10 domains  
- More than 10 POA |
|---|---|---|
| **British Columbia International Commercial Arbitration Centre (BCICAC)**  
http://bcicac.com/ | **• One of two organisations authorised by CIRA.**  
**• Non-Government organisation**  
**• Established in 1986.**  
**• Broader jurisdiction - hears other types of dispute.**  
**• Arbitration and mediation services.**  
**• Complainants can select their expert panelist/s.**  
**• ADR.** | **• Commencement fee is CA$1,050.**  
**• Scaled fees.**  
**• Single panelist:**  
- Single domain CA$1837.50 GST inc.  
- 2-5 domains CA$2,362.50 GST inc  
- 6-10 domains CA$2625.00 GST included.  
**• Three-person panel:**  
- Single domain CA$3,150 GST inc.  
- 2-5 domains CA$4,725.00 GST inc  
- 6-10 domains CA$5,512.50 GST included.  
**• Fees and expenses are additional.**  
**• BCICAC Domestic Commercial Arbitration Rules of Procedures.**  
**• 117 experts listed and photographs displayed in an online list.**  
**• Includes international QCs.**  
**• Case notes showcased online.**  
**• https://www.domaintimes.info/** |
| **Resolution Institute**  
https://www.resolution.institute/dispute-resolution/domain-name-disputes  
https://www.resolution.institute/dispute-resolution/nz-domain-name-disputes  
https://www.resolution.institute/membership-information/odr- | **.au domains**  
**• Partnership with Modron ODR technology.**  
**• Features: instant message host private and group video and audio calls and securely share files and manage cases.**  
**• Professional mediation and arbitration services with broader offering including training and education in mediation.**  
- Family dispute resolution in NZ  
- Elder and retirement village mediation in NZ.  
- Student mediation.  
- Special.  
- Negotiation.  
- Assisted negotiation.  
- Mini trials / case presentation. | **• Time capped.**  
**• Prescribed.**  
**• Fees payable.**  
**• Process and links:**  
- Application >>  
- Response >>  
- Decision archive >>  
- Domain name dispute panelists >>  
- Fees >>  
- auDA policy >>  
- Resolution Institute Supplemental Rules >> |
| online-dispute-resolution | • Early neutral evaluation.  
• “Resolution Institute is an approved independent provider of dispute resolution services under the auDRP.” |
|---|---|
| ADR EU  
https://eu.adr.eu/adr/fees/index.php | • Governs .eu domain  
• European Parliament affiliated.  
• Managed by Czech Arbitration Court  
• The goal is to contest speculative and abusive registrations of .eu domain names where a complaint is filed per the applicable rules (see the Rules section).  
• One of two providers. The other being WIPO  
• Scaled fees based on the number of domains in dispute.  
• Single Panellist 300 Euro.  
• Three-person panel 2100 Euro  
• Decisions published online. |

Table 3: Other models of domain name dispute resolution
The .nz model

Facts and figures

Historically, the number of domain name disputes lodged with the Commission each year has been quite low.

In 2017/18, for example, just 22 complaints were validly31 lodged with the Commission, out of the more than two thousand interactions with the public that we recorded.

The Commission’s annual report provides a snapshot of the Dispute resolution process and its outcomes for 2017/18.

Dispute Resolution Service Overview 2017-2018

31 The process of making a valid complaint is outlined below. An invalid complaint is any complaint not made in writing in triplicate, in hard copy and in English to the Commission; and/or that doesn’t provide proof that the registration is unfair to the complainant and that they have an enforceable right to the name. On average, the Commission receives three invalid complaints for every valid complaint.
Based on these relatively low numbers, one could conclude that the domain name registration process for .nz is running smoothly and efficiently and that there’s no need for improvement.

However, closer inspection reveals that four of the disputes validly lodged last year did not progress any further, because of unpaid fees. The reason for this lack of progression is unknown.

Is our process putting stakeholders off?

Six further complaints, (more than a quarter) were never responded to by the registrant, voiding the Complainant’s access to cost-free mediation and making a fee payable for an Expert Determination. In the context of the overall total number of disputes made each year, these numbers are significant.

In each case, the determination resulted in the disputed domain name being transferred to the Complainant.

Arguably, that is unfair to the Complainant. Other jurisdictions faced with the same circumstances either grant a discount (Canada) or give the option of a summary judgment (UK).

Similar to the .uk model, ZA makes use of a process called a ‘Summary Decision.’ If a registrant does not submit a response, the adjudicator must decide the matter based on the dispute contemplated in regulation and issue a summary decision. A summary decision is granted, where:

- The registrant is notified of the dispute,
- The complainant has to the reasonable satisfaction of the adjudicator shown that he or she has rights in the name or mark, which is identical or similar to the domain name and, in the hands of the registrant the domain name is an abusive registration and
- There are no other factors or circumstances present in the dispute would unfairly deprive the registrant of the domain name.
- A summary decision is regarded as a decision.

Would this type of flexibility suit .nz users?

The number of invalid attempts made for lodging a dispute is not publicly reported but runs to around three invalid attempts for every valid lodgement, and the number of disputes never initiated, or not pursued, for various reasons, can never be known.

If our systems are intimidating people or putting them off in any way, we’d like to know.

Role of the Commission

One of the main aims of the Domain Name Commission is to ensure that the .nz domain name space is a safe and trustworthy place to do business, for everyone.

Research undertaken by the European Union Trade Commission shows that there’s a strong correlation between dispute resolution services that work and are trusted, consumer behavior, and optimal markets. It shows that for existing thriving businesses to move and thrive online and overcome any fear they have about the change panning out for them, it’s vital for organisations
like the Commission and InternetNZ to play their part as stewards of .nz policy and exemplars of good online behavior\(^{33}\).

The rapid development of off-the-shelf case management tools and electronic tools for uploading, storing and sharing evidence at a distance make it challenging for the Commission to sustain its current approach and ‘walk the talk’ on internet safety and online trust at the same time.

The Commission has an ethical duty to nudge actors in the digital environment and uphold the values of procedural fairness, natural justice and choice for the user.

We need your help to reappraise our approach, develop our service standards and move to a new medium that allows us to walk the talk on the infrastructure we encourage others to trust.

\[^{33}\text{https://www.odrcontactpoint.uk/content/what-adr-and-odr}\]
Current Policy

- Appendix 3 provides an overview of the .NZ domain ecosystem and context.
- Appendix 4 provides the current service policy developed in consultation with Nominet, our UK equivalent.
- Appendix 5 provides the current dispute lodgement form.

Whilst InternetNZ has “ultimate responsibility” within New Zealand for the way the .nz domain name space is handled, the business has delegated day to day management and administration of the .nz domain name space to the Commission.

The Commission’s tasks include helping to resolve domain name disputes, by facilitating a process, without itself becoming a party to them.
Current process

The Domain Name Commission assists members of the public with their .nz domain name related enquiries. We have a contact centre that deals with around 180 enquiries per month by both phone and email.

Our contact centre runs Monday to Friday and offers assistance by email (info@dnc.org.nz) and phone 0800 101 151.

nz Dispute Resolution Service policy (DRS policy) requires that people lodging a dispute show that on the balance of probabilities:

- that they have rights to a name which is identical or similar to the domain name in dispute
- that the current registration is unfair.

The parties in a dispute are called Complainants and Respondents.
Process phases

1. Lodging a complaint

The Commission encourages parties to resolve their dispute between themselves at every stage of the process.

Parties using the Dispute Resolution Service can represent themselves and are encouraged to do so. Parties do not need a lawyer or to consult a lawyer to use the service.

In the opening stages of a complaint, ‘WhoIs’ information is supplied to a would-be dispute maker. The contact details and registration information allow the first party (the Complainant) to know who the other party (the Registrant) is, and the email address where they can be reached to be able to resolve the complaint. 34

Overseas, our international counterparts occasionally provide sample documents for both the Complainant and the Respondent to use in the lodgement of their arguments.

Our policy is quite prescriptive but stops short of guiding you on what to say. Would a move to provide standard form templates and sample correspondence be useful? Or would a case management system on which communication between the parties can be facilitated and saved be a better option? Or would both be useful?

If writing an email isn’t successful, the next step is for the dispute to be lodged in writing.

If the written complaint, providing evidence and stating the Complainant’s case, is validly lodged, the Commission checks that the WhoIs information of the registrant is current, and if it is, the dispute escalates.

Once a dispute has been validly made, in the right form and timeframe, the next step is for a registrant to respond to the claims made, again in the right way and timeframe.

2. Mediation

The Commission attempts to mediate between the parties where a valid response is received from a registrant.

Mediation is an accessible process. Parties using the dispute resolution service can elect to use advocates, and consult lawyers, but are also able to represent themselves.

The best way to describe this ‘free to users’ process is to note that the Commission absorbs the cost of mediation. Mediation happens via a telephone link.

Mediation is a neutral process, and the result is ‘not–determinative’. In other words, the parties either agree between themselves that the Commission then recognises, or else they don’t, and the process ends or escalates once more.

34 It’s worth noting that changes to privacy regulations internationally (specifically, the GDPR), have prompted our counterparts overseas to adjust their policy on displaying WhoIs information. Whilst it’s out of scope for this review, submissions addressing privacy concerns are welcome and will be passed on to InternetNZ
If no response is received from the registrant, (or else the response in writing is invalid\(^\text{35}\)) mediation isn’t possible, and the process skips this step. A fee becomes payable by the Complainant for an expert determination. It’s worth noting that other jurisdictions provide for a summary judgment, either at a discounted rate or for free. Other jurisdictions provide for extensions of time to be given with agreement of the parties. Neither option is currently available in the .nz system. Should it be?

Would it pay to amend our processes to be more consistent with our overseas counterparts?

What if we moved to introduce a determinative process, similar to the facilitated process that we use to decide conflicted domains and breaches of .nz policy?

### 3. Expert determination

If mediation is unsuccessful, or the Respondent declined to participate; and the dispute escalates, a fee of NZ$2,000 plus GST becomes payable to refer the dispute to an expert for a determination.

Experts are selected randomly from a panel by a member of staff. Experts must state any known conflict of interest. An expert does not hear a case if a conflict exists.

Experts operate at arm’s length from the Commission; all are lawyers and hold current practicing certificates. Many are Queen’s Counsel.

The full fee is paid to the expert.

### 4. Appeal

If either party is dissatisfied with the outcome of the expert determination an appeal to a three-person expert panel is possible, subject to the payment of a fee of NZ$7,200 plus GST.

The panel convenes in person or by telephone and reaches a determination in writing based on the evidence submitted.

### 5. Outcomes

All dispute resolution decisions are made available on the Commission’s website.

The decisions indicate what the experts consider when they’re deliberating their decision and the type of disputes that are upheld. People planning on lodging a dispute are urged to review them to gain a better idea of what the upshot of their claim is likely to be. [https://dnc.org.nz/drs](https://dnc.org.nz/drs)

Outcomes of a dispute include the transfer of the domain name from the respondent to the complainant, suspension, or dismissal (in favor of the respondent).

The Commission can be compelled by court order to make amendments to a domain name registration and can and will transfer ownership or else suspend the domain as required. This includes orders stemming from trade mark disputes.

\(^\text{35}\) For example, it exceeds the word count or isn’t submitted in English; in hard copy; in quadruplicate or by and before the timeframe set for a response.
Chapter 2: Dispute resolution the next generation

Four schools of thought

Innovation happens when two or more otherwise unrelated and historically separate activities converge and disrupt old ways of doing things: be they business models, services, or industries.

Research shows there are at least four schools of thought that people are drawing on to improve and disrupt services and products globally. Two of these alternative dispute resolution (ADR) and online dispute resolution (ODR) centre on dispute resolution in the legal and commercial world. The others take divergent approaches to the same idea: creating systems centred on user experience (convenience, enjoyment, intuition) in the first instance (known as UX or human to reduce further design), and automated compliance with business rules and cross border regulations and laws in the second (known as RegTech).

Figure 3: Four schools of service design

The Commission has completed an environmental scan and concluded that four major trends are influencing the design and delivery of next-generation services globally.

Of course, there may be others, and you’re welcome to raise these with us in your submission.

We’re looking to explore whether it would be appropriate to re-engineer our service and incorporate elements of these approaches into the Commission’s dispute resolution process.
1. Alternative dispute resolution

For want of a catchier name, alternative dispute resolution (ADR) has been evolving side by side with the Commission and the Internet.

At the same time as email, apps, smartphones, WiFi, and ‘clicks and mortar’ have taken the world by storm, changing how we work and interact with one another; on a parallel plane, in the legal community, alternative dispute resolution tools and methods have been trialled and developed as faster, less expensive options to court cases, both here and overseas.

ADR is the justice system’s response to claims that traditional court-based approaches to settling small claims and contractual disputes have become intimidating, disproportionately tricky, expensive, and time-consuming – at least to the average person, faced with a routine conflict.

In broad terms, there are three types of ADR, including:

- Mutual agreements reached between the parties.
- Consensual processes in which the parties are supported to come to a decision themselves about how the matter will be addressed.
- Determinative methods, where a third party decides the outcome.

In the justice system, ADR refers to an alternative to going to court that’s aimed at minimising the time and cost of people bringing legal action over simple matters, such as small claims and contractual misunderstandings.

These types of proceedings have coincided with moves to implement electronic records, information systems, and, more recently, apps that support or eliminate paperwork and processing time, and to some extent the expert knowledge, that’s been a hallmark of the legal system, public sector administration and legislative process and people’s experience of red tape and bureaucracy.

In Canada, the Small Claims Tribunal successful pilot of an online case management system for lodging complaints and documents and communicating between the parties has been so successful that the upper range of disputes allowed to be addressed this way has increased from a cap of CA$5,000 to CA$35,000.

In that case, the system had the full support of the judiciary and provincial government; and designers used Agile, regular small experiments, and quick corrections to respond to user needs.

https://justice.gov.bc.ca/cso/index.do

“A dispute resolution process may... be a necessary step before action can be taken to the relevant court or tribunal.”

An adjudicator may consider an individual’s willingness to participate in dispute resolution processes when evaluating whether the parties have shown “good faith despite participation not always being mandatory.”

ADR has aimed to make justice more accessible, to free up the court system and legal profession to deal with complex problems that aren’t clear cut, and test the law and its application.

Benefits of ADR

Ideally:

- Justice initiatives should reduce the complexity of the justice system.
- The justice system should be structured to create incentives that encourage people to resolve disputes at the most appropriate level.
- The justice system should be fair and accessible to all.
- The justice system should deliver outcomes in the most efficient way possible, including through preventing disputes.
- The interaction of the various elements of the justice system should be designed to deliver the best outcomes for users.\(^{37}\)

Examples of ADR include court delegated, voluntary or mandatory:

- Peer-To-Peer dispute resolution on a par with the Commission’s expectation that parties will resolve the dispute themselves.
- Mediation.
- Facilitated discussion that is non-lawyerly and less adversarial than the traditional legal system.

The Commission’s domain name dispute resolution service is an early example of alternative dispute resolution in New Zealand. Its purpose is to keep domain name disputes out of the courts, keep costs low and keep the time taken to resolve the dispute proportionate to the matters in dispute. It has been established to develop a body of knowledge and practice specific to domain names, rather than judicial extensions of:

- Common law rights (such as passing off).
- Statutory rights (such as trade marks or copyright).
- Statutory consumer law (such as fair trading).\(^{38}\)

Hallmarks of ADR are listed below. The existing process only has a few of them. The comments section notes where and how the process applies to domain name disputes.

<table>
<thead>
<tr>
<th>Stages- guidance only</th>
<th>What it is</th>
<th>Comment</th>
</tr>
</thead>
</table>
| Facilitation           | Determinative.  
A third party brokers an agreement that can include payment of money to end the dispute. | Facilitation is a feature of the complaints handling process, but not the Dispute Resolution Service. |
| Negotiation            | Non-determinative.  
Has two forms: Facilitated and independent.  
The parties aim to reach an agreement on their terms or on terms that are a negotiation. | Independent negotiation is encouraged between the parties; however, it is not directed or facilitated by templates, forms, or staff. |

\(^{37}\) NADRAC | Interim Report to the Attorney-General on the Key National Principles for the Resolution of Disputes | Page 33

\(^{38}\) P 12 ibid
Conciliation
Determinative.
A third party is appointed, and the parties can appoint representatives to represent them.
An individual's behaviour and willingness to participate may be considered.

Mediation
Not-determinative.
Mediation is the fastest growing dispute resolution method.\(^{39}\)

Determination
Determinative.
An expert oversees the case.

Appeal
Determinative.
A decision previously reached can be relitigated by a group of experts.

Triage
Not-determinative.
An officer or the organisation performs administration and assessment tasks of the case as to what interventions might be appropriate before a case is placed into a process.
Arguably this includes early indications of what process might best suit resolving the dispute.

Not a feature of the existing process.
It is provided in house.
Costs absorbed.
A contractor at the Commission uses telephone or video chat to mediate in a non-determinative way.
Void if Respondent does not respond or responds invalidly.
Expert Decision process meets this benchmark.
Expert Appeal Panel process meets this benchmark.
A three-person process.
The current process does not have this feature.
Would provide for flexibility and possibly automation.
Would provide a step as part of the filing process which may guard against complaint withdrawals or complaints referred back for incorrect filing.

Table 4 The hallmarks of ADR and how the Commission stacks up.

Further Development
The service is an early example of ‘Alternative Dispute Resolution’ in New Zealand.

For a decade, the Commission has pioneered a means for keeping disputes away from the courts and within the capacity of the parties to settle without expert help.

The Commission’s Dispute Resolution Service is an alternative to the courts. In its current state, it is not all-encompassing of the dispute resolution services on offer at the Commission. Facilitation, for example, is a more active role than simple mediation. What you may not know is that it’s a

\(^{39}\) https://pdfs.semanticscholar.org/14f8/a7d1993977c485cc3e32fa690c99ac96606d.pdf
service we currently offer and perhaps should consider extending to dispute resolution, given that we have this expertise.

Three years ago, when the Commission moved to introduce second tier domains, more than fifty thousand already registered dot org dot nz, dot co dot nz, dot govt dot nz, dot health dot nz, dot edu dot nz, and other domain names came into conflict with one another overnight.

A domain name conflict occurs when two or more registrants of an existing name variation, for example, the licensee of example.co.nz and example.edu.nz both would like to register the second-tier version of ‘their’ name. In this case: example.nz.

Having adopted an approach to managing the conflicts, including giving priority access to existing registrants, and the right to claim the shorter version of an existing domain, the number is now approaching four thousand. Work to reduce further that number continues.

An in-house facilitator, who is a qualified lawyer, facilitates complaints and both the process and the outcomes of the approach depart from what’s available under the Dispute resolution scheme, as money can be exchanged between the parties to resolve their differences. [28]

This paper seeks to explore whether it is necessary to include facilitation, as well as other hallmarks of what is known as alternative dispute resolution (ADR) including triage, negotiation, end to end case management, and electronic evidence submission into the Commission’s services. Besides, whether there may be an option of collapsing the Dispute Resolution Service and Complaint handling procedures into a single case management system, supported by consistent tools, resources, and opportunities for resolving peoples’ problems40.

**Strawperson proposal**

Accompanying this paper is a strawperson process document which proposes an example of an end to end dispute resolution process for .nz domain name disputes. The draft process contemplates treating all incoming complaints as an enquiry referral in the first instance where the parties to a conflict have five working days to attempt to resolve their concerns. Next, the parties may come to a triage or escalation process where Domain Name Commission staff can then assist the parties to navigate one of three alternative methods. The first is a fast track conflict resolution process taking ten working days. The second is the use of the existing mediation service with a 20-day timeframe, and the final process is the current expert opinion process.

**2. Online dispute resolution**

ODR, or online dispute resolution is an alternative to resolving commercial disputes remotely, with or without expert assistance, that’s been enhanced in some way by technology. This is in contrast to ADR, which is an alternative to the formal legal system and the courts, that tends to be limited to a type of dispute, an amount of money, or a geographical jurisdiction (such as the European Union).

ODR sprang from the need for global eCommerce businesses, and their customers, to have ready access to transnational B2B and B2C dispute resolution options that were consistent with the speed and agility of the internet, and just as electronically responsive and trusted as the platform being transacted on. For example, TradeMe or PayPal.

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40 One example of where a system’s approach has been used to process settlement outcomes is through a domain name escrow service see https://www.escrow.com/domains
The driver for ODR has been the global need for a new way to handle common, contractual problems that occur when people conduct business, that factors for the added complication that parties could be based anywhere in the world. The parties may also not know each other or speak each other’s language, and have no apparent jurisdiction to turn to that can hear their dispute.

(It’s one thing to buy a pair of shoes off the internet, quite another to get the size right and get your money back if they don’t fit.)

Definitions are broad and include processes that are conducted and mediated in real time and asymmetrically online; through to hybrid methods supported by technology and, in the future, wholly automated processes in which artificial intelligence such as chat bots might provide an indicative decision.

PayPal, eBay, TradeMe all have dispute resolution processes that fit the ODR category.

ODR systems tend to support asymmetrical communication between the parties, and their hallmarks are that they allow users to submit, correspond, respond, monitor progress, upload and store evidence and inputs, escalate problems, and have disputes decided in ways that promote timeliness and compliance.

<table>
<thead>
<tr>
<th>Platform</th>
<th>Features</th>
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<tbody>
<tr>
<td>TradeMe</td>
<td>Secure account. Parties encouraged to resolve the dispute privately and between themselves. Feedback made public, keeping traders accountable. Appeals/escalation process possible.</td>
</tr>
<tr>
<td><a href="http://www.Trademe.co.nz">www.Trademe.co.nz</a></td>
<td></td>
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<tr>
<td><a href="https://www.paypal.com/au/smarthelp/article/faq2045">https://www.paypal.com/au/smarthelp/article/faq2045</a></td>
<td></td>
</tr>
<tr>
<td>AliBaba</td>
<td>Secure account. Parties encouraged to resolve the dispute privately and between themselves.</td>
</tr>
<tr>
<td><a href="https://service.alibaba.com/ensupplier/faq_detail/20435717.htm">https://service.alibaba.com/ensupplier/faq_detail/20435717.htm</a></td>
<td></td>
</tr>
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</table>
AliPay reimbursement is possible. Honest and trust based.

<table>
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<tr>
<th>eBay</th>
<th>Secure account. Parties encouraged to resolve the dispute privately and between themselves. Buyer protection. Procedures for buyers and sellers. Secure login. Asymmetrical ODR.</th>
</tr>
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</table>

"UNCITRAL regard(s) the development of tailored procedures which do not create costs, delays, and burdens disproportionate to the economic value at stake as critical."\(^41\)

They further note that "Efforts are being made to usher in "...a global ODR system for cross-border e-commerce disputes since traditional judicial mechanisms may not offer an adequate solution for resolving these disputes, the number of which is increasing and where the amount in controversy is often quite small..."

In the UK traders who fail to resolve a dispute with a consumer have been required for at least three years to appoint an approved ADR body capable of dealing with consumer complaints, instead of the courts, as a matter of law. At present, the trader is NOT required actually to use the ADR body, but, according to the research, many do.

Since February 2016 traders who sell online have been required to provide a link to the Online Dispute Resolution (ODR) Platform. This platform is NOT an ADR body in itself but a tool to help the trader and consumer identify and access an appropriate agency to deal with their dispute. Once both parties have agreed to ADR and chosen a relevant ADR body, the platform can assist in the supplying of documents and in communicating between all the parties involved. In accepting to use an approved ADR body through the ODR platform, the trader and the ADR body are agreeing to limit formality, to complete case handling in reasonable time frames, and to do so at relatively low cost. Many of the approved ADR schemes are free to use to the consumer.\(^42\)

**ADR and ODR intersection**

Increasingly, ADR is morphing into ODR, and the two categories are converging.

As outlined above, online dispute resolution has been successfully trialled in Canada in the Civil courts, and also in China, which boasts a 24 hour a day online service for handling the increase in disputes caused by the move to online transactions.

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\(^{41}\) (UN Doc A/CN.9/706, para. 50).

\(^{42}\) https://www.odrcontactpoint.uk/content/what-adr-and-odr
Can we adapt or adopt some or all the features of the more advanced civil dispute resolution processes globally? CoCAA

Is a software company who supply a domain name management tool to many ccTLDs and offer an alternative dispute process to their customers as part of the service level agreement?

The dispute process is manual rather than platform based but is driven by customer need. Services are fee-based; however, charges are in US dollars, making them prone to currency fluctuations. Additionally, decisions could not be found on their website.

3. Design

Design thinking goes by many names: Ideo, Lean, UX, Agile, MVP, co-design, and Content Design, to name a few.

Its premise and promise are human-centredness, and its drivers are a digital capability, simplification, as well as primary school age language, literacy, and accessibility standards.

As a movement, its origins lie in market research, (for its data collection and evidence basis). It also features in new product design; agile software development and process innovation approaches such as lean and just in time. When developing website ‘wire framing’ and mobile, chat and conversational interfaces and customer journey mapping it is used to prototype products and services.

Increasingly it’s diverging from the purely online experience, and into the real, helping to restructure transactions and interactions to eliminate waste and produce data sets that can support planning, future resourcing, and decision making.

Citizen-centred government and UX refer to services that literally revolve around people and their demands and user profiles.

By putting users, customers or citizens at the centre, information is formulated and presented to the public in such a way that what’s needed is easily and quickly found and readily understood by anyone with a primary school age level of education.

Examples:

UK Government
https://www.gov.uk/guidance/content-design/what-is-content-design

Google Labs
https://designsprintkit.withgoogle.com/introduction/overview

International Co-design efforts

Government examples of RegTech abound
In the legal sector, apps are being trialled that help people follow the legal process in civil cases by guiding them through the evidence and recordkeeping burden of the courts, and the times, dates and places that they’re required to be – a bit like a digital assistant.

4. RegTech

RegTech stands for regulatory technology.

In contrast to human centred design, it takes a technology-centric approach to design services, in which the goal is automation, compliance with complex legal and regulatory demands, as well as the avoidance and elimination of human input and margins for error.

RegTech is still in its infancy, and its development has been a by-product of the FinTech industry and the myriad compliance requirements that banks and the financial sector, as well as multinational businesses in mining, construction, and hospitality and eCommerce traders, are subjected to by Governments globally.

RegTech helps organisations to comply with complex rules and requirements across multiple jurisdictions by in-building and applying rules automatically and electronically in the handling of financial transactions and data, in taxation and currency transfer obligations.

To thrive, the technology needs to be responsive to rapid changes and Agile development is arguably a response to that demand; just as cryptocurrency is arguably both a reaction and an avoidance of these rules, developed as a tax shelter and sophisticated money laundering tool.

Taken to its logical conclusion, in simple cases involving formulaic patterns and burdens of evidence, RegTech could be used to issue licenses, administer examinations, or provide an indicative judgment in a court case.

Indeed, there are examples already being trialled in which decision support is being adopted in the med-tech industry to help avoid medical incidents.

In the legal community, apps are being piloted and trialled to help people navigate the court system; to compile, store and submit their evidence; make records of important details and arguments, and view maps of where their hearing will be.

Examples: BlockChain

In principle, BlockChain smart contracts have the potential to be used to ‘register’ and trade domain names and resolve disputes.

This is because a domain name and the license to use and hold a domain name is a wholly digital process with a specified timeframe.

In practice, the work to make this a reality is new and experimental. Mining also has its environmental drawbacks making BlockChain unsuitable and not cost effective for high volume low-value transactions, at least in its public form. Nevertheless, the technology is in development and is worth looking at, for example, NameCoin.

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43 See https://kleros.io/
Ncdns

Ncdns is software for accessing .bit domain names. If you want to access .bit domain names, ncdns is what you want to install. (Technically speaking, ncdns is a Namecoin to DNS bridge. It allows software that speaks the DNS protocol to use Namecoin.)

“Namecoins are a token-like currency used to register and update Namecoin names. If you want to register a Namecoin name, you’ll need to obtain some namecoins.”[37]

In their own words, “The Namecoin software is used to register names and store associated values in the blockchain, a shared database distributed by a P2P network securely. The software can then be used to query the database and retrieve data.”

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<tr>
<th>Approaches</th>
<th>Examples</th>
<th>Comments</th>
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<tr>
<td>Portals</td>
<td>Muralo.com</td>
<td>Available 24 hours a day.</td>
</tr>
<tr>
<td></td>
<td>Internet court China</td>
<td>Asymmetrical participation.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Communication, correspondence and evidence repository.</td>
</tr>
<tr>
<td>Online rooms</td>
<td><a href="http://Www.ODR.bowl">Www.ODR.bowl</a></td>
<td>Crowdsourced umpires trained and evaluated on their performance.</td>
</tr>
<tr>
<td>Facilitators</td>
<td>Used to manage policy breaches and conflicted domains</td>
<td>Could be enhanced by Facetime and Videoconferencing; Case management and asymmetrical communication.</td>
</tr>
<tr>
<td>Mediators</td>
<td>It is used in the existing Domain name dispute process.</td>
<td>As above.</td>
</tr>
<tr>
<td>Interactive Feedback/Chat Bots</td>
<td>Google Assistant Alexa Siri Cortana</td>
<td>FAQ the next generation. Use natural language technology.</td>
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<td></td>
<td></td>
<td>API.</td>
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<td></td>
<td></td>
<td>Automated bot resolutions using AI.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Solve commonly asked questions and frequent tasks.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Can be text or voice activated.</td>
</tr>
<tr>
<td>Algorithms (short cuts and tricks)</td>
<td>SmartSettle</td>
<td>Algorithmic dispute resolution. This process is where two-party negotiations such as small claims occur that can be reduced to a single numerical issue. One accesses six of eight key algorithms.</td>
</tr>
<tr>
<td>Mobile responsive design</td>
<td></td>
<td>The online look and feel changes according to the device the user is on.</td>
</tr>
<tr>
<td>Decision support systems</td>
<td>A form of RegTech</td>
<td>Used to provide indicative results, for example, contraindications in medication prescribing modules of eHealth record systems.</td>
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</tr>
<tr>
<td>Kleros</td>
<td>Crowdsourced dispute resolution</td>
<td>Discussed above.</td>
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Assessing our Service

Feedback is welcome about any aspect of the Commission’s performance. To help you to frame some of your thinking about the Dispute Resolution Service, we thought it might be helpful to provide a few touchstones from various experts in the field discussing how dispute resolution is typically assessed, and of course our leading questions.

Tests and talking points

To support you in making your submission, we’ve provided a series of questions and principles that experts have been using to test and assess dispute resolution services.

They include whether the scheme has been co-designed with you⁴⁴, and a set of questions that you may wish to respond to as part of your response to this paper.

First principles

When the Domain Name dispute service was first developed, lawyer Joy Liddicoat identified a series of tests of a reputable service.

They include that the service:

a) Is not routinely supported by professional advocates and lawyers.
b) Is appropriate for the nature of disputes falling within its scope.
c) Has certainty, quality, and rigour.
d) Is low cost and timely.
e) Fulfils its aims of providing an “accessible, speedy, low cost and remedy appropriate processes.”

The New Zealand Government Centre for Dispute Resolution (GCDR) has since developed a suite of best practice principles for dispute resolution services that we draw on here.

According to the GCDR, the five principles of excellent alternative dispute resolution services are services that are:

1. User-focused and accessible.
2. Independent and fair.
3. Efficient.
4. Effective.

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⁴⁴ Co-design is a movement that has been pioneered in New Zealand by the Auckland Co-Design Lab. [https://www.aucklandco-lab.nz/resources/]
5. Accountable.

We would also add a 6th principle ‘Affordable’.

1. Efficient

In the context of an ADR, the concept of ‘efficiency’ means that the process:

1. “… provides value for money through appropriate, proportionate, and timely responses to issues; and
2. … evolves and improves over time (to meet needs).
3. makes good use of information to identify systemic issues.”

Based on this:

- Do you think that our fees and services are reasonable and fair, either in their own right or else compared to other like services?

For context: we appoint Queens Counsel as Experts. Compared to the usual fees paid to QC’s for legal services, our costs represent quite good value for money. However, the purpose of the process is to be an alternative to the courts and do not require legal expertise to be accessible and understandable; as a result, do you think:

- The fees we charge are too much, too little, or just right?
- Would you respect a decision reached by a less qualified expert?
- You would like an indicative decision provided to you by an app, or a form, based on the pattern established by past choices?
- You would be prepared to support an in-house facilitation process if this process was modelled on the method we use to resolve conflicted domains?
- Would it be a step forward or a step back to enable parties to pay each other compensation in exchange for giving up rights to the registration?
- To reduce further, it’s “efficient” to time cap the process? The current process strictly dictates when and how different stages must be reached. Do you think it’s better to be strict, or like other overseas organisations, do you think we should display discretion when or if required.

2. Effective

An ‘effective’ ADR system is one that fulfils its mission and purpose.

To that end, we would urge you to consider the principles underpinning the Commission’s role in .nz and domain name handling. The principles are available on the web, and further information is provided in the appendices below.

Top Level Domain principles

The principles underpinning the Commission’s management and handling of .nz domain names and disputes also has some basis in how InternetNZ and the Commission operates in the .nz domain name space.

The relationship between the Commission and InternetNZ is discussed in greater detail at the back of the paper. However, the top level domain principles, underpinning what we do, why we do it, and how we govern .nz are:

1. Domain name markets should be competitive.
2. Choice for registrants should be maintained and expanded.
3. Domain registrations should be first come, first served.
4. Parties to domain registrations should be on a level playing field.
5. Registrant data should be public.
6. Registry / registrar operations within a TLD should be split.
7. Open multi-stakeholder processes should determine TLD policy.

The above principles can only be changed after extensive public consultation and discussion within the local Internet community.

3. Accountable

An ‘accountable’ system is one that people have confidence in.

It’s a system that treats people equitably and fairly that operates transparently, and that responds to transgressions with sanctions that uphold the public benefit.

Do you have confidence in the Dispute Resolution Service, and if so, is that confidence complete, or is it qualified in some way?

4. Affordable

The Domain Name Commission provides trusted oversight over the domain name industry and as an industry based scheme deals with disputes between registrants.

The services of the Commission and its mediator’s panel are free to consumers up until the point of expert determination.

Members of the public do not have to engage a lawyer. Our services are offered to individuals as well as to small businesses. Because small businesses have limited resources necessary to pursue a dispute through a formal legal process, having ADR processes for them to use is vital for resolving their differences.

Funding for part of the dispute resolution scheme indirectly comes from the .nz domain name industry where a proportion of the wholesale fee for domain names funds the administration of the Commission and its dispute resolution scheme. In terms of the expert’s panel, the funding for that panel is covered through the fee charged for expert determination.

What should an end user, therefore, pay to have their domain name dispute resolved? Is the current funding approach where the user pays nothing except for a determination the right funding approach? Should there be any refund of any fees or charges in a dispute?

The Commission is also aware that some Registrars are undercutting the $2000 expert determination fee by as much as $1500 and initiating commercial negotiations between registrants to secure a domain name. Should such private contractual arrangements happen where there is a free mediation service for parties?

5. Additional measures

Tests for efficiency, effectiveness, and accountability that you may wish to think about when you’re framing your ideas are listed below.

- How cost-effective is the process (given the number, size, nature, and complexity of issues, the parties, and other contextual factors)?
- Does the scheme have the resources it needs to operate effectively, and are they allocated appropriately?
6. **Our Self-Assessment**

Points at which we would say we are currently not meeting the tests set out by the GCDR include the below items.

- Users cannot currently track their progress in the process, except through telephone call and email.\(^{45}\)
- Translators are not available, and the process is ‘English only’ consistent with its development by Nominet UK.
- There is no referral procedure for matters that are outside the scheme’s jurisdiction.
- Disputes are not assessed and triaged. Assistance to navigate the process is limited to providing guideline materials and answering process related questions.
- The scheme does not have formal, documented systems in place to support staff well-being and protect their identity and other personal information where required.
- The scheme does not formally report against external quality standards. However, this review and this list is a starting point for moving to a new outline, application, and monitoring of our adherence to external quality standards.
- The scheme does not report or formally assess user satisfaction, of both the process and outcomes, but could do.
- The process has the capacity for adapting and scaling based on needs, in as much as fees are higher for disputing multiple domains but it arguably doesn’t have enough flexibility to treat simple and complex disputes on their merit.
- The process is prescriptive and unsupported by technology. In other words, it doesn’t cater to multiple ways to connect.
- It also has accessibility problems, including language barriers and particular needs.
- It doesn’t have formal or reported feedback and listening mechanisms.

7. **Additional frameworks**

In Australia, the principles of judicial ADR include that:

1. People have a responsibility to take genuine steps to resolve or clarify disputes and should be supported to meet that responsibility.
2. Steps should be made as early as possible and both before and throughout any court or tribunal proceedings.
3. People who attend should show their commitment to that process by listening to other views and by putting forward and considering options for resolution.
4. People in dispute should have access to, and seek out, information that enables them to choose suitable dispute resolution processes and informs them about what to expect from different methods and service providers.
5. People in dispute should aim to reach an agreement (but) they should not be required or pressured to do so if they believe it would be unfair or unjust.\(^{46}\)
6. ADR should achieve outcomes that are broadly consistent with public and party interests.\(^{47}\)
7. Some types of ADR aim to promote understanding and enhance relationships between the parties or contribute to their empowerment and recognition.

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\(^{45}\) An improvement may be to define new user interfaces to facilitate interactions between the parties (Complainant, Respondent and neutral third party). A web interface with simple workflows for the filing of a complaint, a response, reply and appeal processes may help parties understand where they are in the process. It can also help monitor the timeliness of the dispute process.

\(^{46}\) NADRAC, Interim Report to the Attorney-General on the Key National Principles for the Resolution of Disputes.

\(^{47}\) Ibid pg 6
In South Africa their ADR scheme caters for lodging a dispute where there has been an offensive domain name registration.

The new Irish ADR process caters for:

- Instances of defamation about the registration or use of a .ie domain name.
- Fraudulent activity, instances where a domain holder is dissolved,
- Circulation of racist or defamatory material about the registration or use of a domain name and
- Misleading or confusing internet users into thinking a .ie domain is operated by a complainant. 48

The Greater Christchurch Claims Resolution Service established to resolve disputes that haven’t been sorted by direct negotiations between a broker and insurer includes a combined facilitation and determination model. This process is voluntary and allows an independent third party to perform the role of facilitator, before making a binding decision if an agreement cannot be reached between the parties. 49 Is there a role in the .nz domain name space for a combined facilitative and determinative process?

Hopefully some, if not all of these themes will prove useful to you in providing your feedback to us.

48 See https://www.iedr.ie/adrp/#types_of_disputes
Issues

Expansion

For the time being, the Commission handles .nz disputes exclusively; however in principle, the Service has expertise in hearing domain name disputes that would be transferable.

As it happens, many of the mediators and experts who work for the service, hold practicing certifications or suitable accreditations to be able to hear disputes in different Pacific island jurisdictions.

If the Commission and InternetNZ were to expand its offering to support additional ccTLDs, this would provide an important new avenue by which to engender trust and certainty in the ANZPAC region and assist smaller, less well-resourced international peers in going about their business.

The rationale for considering expansion includes that we have a body of knowledge to draw on.

- The proliferation of new tier one and two domains requiring this type of support is likely to result in higher demand for assistance.
- That certainty and support for registrants with multiple ccTLD registrations would be enhanced.
- Our offering is competitive and, in most cases, less expensive and more transparent than some alternatives. Lastly, consumer choice would be increased, which is never a bad thing.

Outsourcing / reciprocal arrangements

In the alternative, the option of outsourcing the service to a commercial or not for profit organisation, an ADR or ODR either here or overseas, is worth considering.

With some effort, it would be possible and perhaps desirable to negotiate reciprocal arrangements with the Commission’s overseas counterparts. Many CCTLDs in the Pacific region are using the CoCAA and the WIPO service.

Our counterparts in Canada and Australia have both made arrangements with external organisations to appoint experts and hear disputes.

Outsourcing and reaching reciprocal arrangements with our international counterparts or accrediting providers are all worth considering, assuming they meet the aims of the service better in engendering trust and providing more certainty, for free or for a less expensive fee and the test of user choice.

Other factors to take into consideration include:

- Registrants of .NZ domains do not need to be resident in New Zealand. The proliferation of new tier one and two domains requiring this type of support is likely to increase disputes.
- Users should have the right to make arrangements for an independent dispute resolution service that meet their needs.

Ways and means: walking the talk online

Currently, .nz disputes are prevented from being validly lodged electronically, and supporting evidence must be posted in triplicate in hard copy. On its face, this approach is anything but
consistent with our role as stewards and promotors of trust in online transactions, and that’s something we’d like to have the option of moving to.

Accessibility

In addition, the .nz domain space is one of the few country codes in the world to permit non-residents to register domain names. This has implications for the service and is a factor in favour of making reciprocal arrangements. Could the service be diversified? Could it be outsourced?

Despite our cultural plurality as a nation, the Commission currently doesn’t trade in languages other than English, including that it does not trade in Te Reo Māori.

In an environment where freely available web and app-based translation services ‘on the fly’ are popular, it may be that the process is disenfranchising registrants and doing a disservice to them in more than 27 percent of cases.

Concerning .nz, complaints can also only be validly lodged in English. This is inconsistent with the languages spoken by our international constituents, who do not have to be New Zealand residents, and so may not have English as their first language; nor is it consistent with New Zealand’s official language policy which identifies Te Reo Māori and English as the country’s two equal first national languages.

With the advent of on-the-fly online translation services like Google Translate, it’s arguable that the Commission could expand what it does and improve consumer trust in by changing its language policy, and adopt translation technology and case management tools to improve how it goes about resolving disputes.

There’s also the issue of assistive technologies and whether we’re meeting accessibility standards, or could be doing better.

Lastly, the issue of age: are our processes easy for our youngest domain name registrants?

What is a valid complaint?

A valid complaint is any complaint that successfully meets both the criteria needed to trigger the complaints process in the correct form successfully.

The number of invalid complaints that are made each year isn’t publicly reported. However, complaints that are received electronically, but not followed up on in hard copy; that are not in English; that exceed a specified word count; or that are posted to the Commission with less than the requisite number of copies for distribution to Experts and staff, are all examples of invalid complaints.

Question

Is it fair that the form dictates validity rather than the substance? Should our wordcount act as a guideline, rather than a strict parameter?

Fairness, fees, and access to justice

Currently, the Domain Name Commission bears the costs of mediation. The applicant for an expert determination bears the costs of filing.

50 Who are eighteen years old.
Fees are paid exclusively by the person complaining and these are non-refundable regardless of the outcome of the dispute.

The service operates on a principle of cost recovery, but is that fair?

$2,300 is quite a lot to fork out on a domain name that was registered illegitimately for less than $20.

In seventeen percent of cases, it could be that the fee was out of the reach of the complainant’s means, or that the price acted as a barrier to further action being taken because it was excessive or disproportionate.

The Commission subsidies the overall costs associated with the end-to-end dispute resolution scheme.

**Questions:**

1. How should the costs of ADR be met under the scheme?
2. Are the current fees for an expert determination set appropriately?
3. Should there be simple Fee waivers for low-income Complainants?

**Precedents/case law**

The Commission’s website makes the outcomes of finalised disputes and complaints available. The aim is to support people in similar situations who want to know what to expect, to get an idea of the likely outcome, as well as to help them decide whether or not to lodge their documents.

These types of decisions form a body of what’s known as ‘precedent’.

In addition to being consistent with the legal concept of ‘precedent’ and the practice of publishing case law they’re also the kind of information that can be used to ‘teach’ machines to reach decisions based on recognisable patterns.

That said, they’re just one source of this type of information.

Problematically, our list of precedents doesn’t include times when the complaint wasn’t progressed because it wasn’t valid; or times when it was withdrawn or decided on a technicality, so it’s possible that people who have a doubtful case will find it challenging to know that, based on what is published.

Additionally, without the decisions reached in similar cases in intellectual property offices and the courts, our database of inputs to a decision-making system is incomplete.

**Question:**

Should the Commission move to engage its counterparts nationally and overseas, about the possibility of sharing our decisions in one place?

Would it be helpful to users if we provided further details about cases? If so, what?
ADR and end to end case management

Although we describe the dispute resolution service as ‘online’ the better way to explain the current approach would be to call it ‘remote.’

To the extent that it’s been possible, and based on international then best practice, we’ve aimed to keep costs down. We’ve also promoted consensus between the parties (by providing them with each other’s registered contact information); and to eliminate the need to travel and meet in person, by using email, telephone, and post, augmented by a bit of elbow grease for managing cases and keeping them moving.

Of course, the option to meet in person is available, for a fee, and although we’ve had no takers, it’s not our intention to eliminate this alternative if both parties want to be heard in person.

That being said, the option of being genuinely online isn’t available to the parties who want to be online at the moment. At least not in New Zealand.

If we were to move to ODR, what would the process look like? It’s worth stating that although our process bears several hallmarks typical of an excellent alternative dispute resolution process, other steps are not in place.

If we move to overhaul the system, it would be useful to have people’s feedback about the stages that an ideal dispute resolution process would cover.

For example:

- We currently don’t supply forms or templates, or a case management system.
- There’s no formal negotiation; no Facilitation; no conciliation or indicative decision.
- There’s no Triage.
- We offer mediation and expert determination only.

Plain language

I’m the first to admit that we could be doing more to make what we do accessible to people whose first language isn’t English and who’s background doesn’t include expertise in policy, administration and the law.

We hope you think this paper is a step in that direction.

Outcomes and sanctions

There’s a question mark around our current sanctions and whether we could be doing more to discourage misconduct.

Are the available sanctions meeting needs, or is there an expectation that more could and should be done by the Commissioner?

For example, canceling domain names if fraud and deception are determined? (https://dnc.org.nz/resource-library/policies/67). Or, referring malicious behaviour to other authorities?


Exploring Options

Roles and Responsibilities

The Commission

When a dispute crops up, it’s crucial to determine what action should be taken.

As often as not, disputes can be resolved early either between the parties or shortly after the problem is reported to the Commission.

The Commission’s current role in the delivery of dispute resolution services is purely administrative.

The organisation may make arrangements for mediation or an expert decision.

There is currently no triaging of complaints by the Commission as to whether mediation or expert determination may be appropriate.

Questions

What, if any, preliminary assistance and resolution should be offered by the Commission to either party to see if the dispute can be resolved before proceeding to mediation or expert determination?

Should there be a provision in policy for financial assistance to file or defend a complaint? For example, small businesses who may have lost control of their domain name ownership through the actions of a rogue employee or where their domain name has been hijacked. Should any financial assistance requests be limited by annual turnover of less than a particular dollar amount?

Should the Commission play a more significant role in assessing disputes to ensure they are managed correctly and to ensure the decisions are made about whether the conflict is best handled by mediation or expert determination?

Should the Commission be able to offer mediation at any stage to parties in dispute over a .nz domain name including the appeals and expert decision processes?

The Mediator

The Commission appoints a mediator on a rotational basis under .nz policy.

The mediator is an independent intermediary and not an advocate nor decision maker for either party.

The current process doesn’t permit the mediator flexibility with discussing preliminary matters, such as the possible modification of the process, to the context of the dispute, timings for discussions, or each party’s needs for information held by the other.

A less strict mediation process that allows the parties to agree to terms of engagement may be desirable.

For example, the current .ZA ADR Regulations makes provision for “informal mediation.”

"Informal Mediation" means impartial mediation which the Authority conducts to facilitate a resolution acceptable to both parties.”

Regulation 19 states the following:
Informal Mediation

19A. (1) Within two days of being informed by the provider as contemplated in regulation 19(3), the Authority will begin to conduct informal mediation. Informal mediation will be conducted in a manner which the Authority, in their sole discretion, considers appropriate. No Informal mediation will occur if the registrant does not file a response.

(2) Negotiations conducted between the parties during informal mediation (including any information obtained from or in connection to negotiations) shall be confidential, that is they will not be shown to the adjudicator. Neither the Authority nor any party may reveal details of such negotiations to any third party unless a court of competent jurisdiction orders disclosure, or the Authority or either party are required to do so by applicable laws or regulations. Neither party shall use any information gained during mediation for any ulterior or collateral purpose or include it in any submission likely to be seen by any adjudicator or judge in this dispute or any later dispute or litigation.

(3) If the parties settle during informal mediation, then the existence, nature, and terms of settlement shall be confidential, unless the parties expressly agree otherwise or a court of competent jurisdiction orders otherwise.

(4) No binding verbal agreements can be reached as part of the informal mediation: any settlement reached by the parties must be in writing or similar electronic form to be enforceable.

(5) If the parties reach an agreement and agree that a disputed domain name should be transferred to the complainant, the Authority must communicate the decision to the second level domain administrator to be implemented as contemplated by regulation 30(4).

(6) If the parties do not achieve an acceptable resolution through informal mediation within five days, the Authority must within two days inform the provider to appoint an adjudicator under regulation 20, which the provider must complete an appointment within two days.

(7) No party may ask the Authority (including their directors, officers, employees, contractors, agents) to reveal information or materials gained as a result of any informal mediation under these regulations unless a court of competent jurisdiction has ordered such disclosure. Neither party shall call the Authority (including their directors, officers, employees, contractors, or agents) as a witness (either in person or to produce documents or other materials) in any proceedings which arise from or are in connection with, the matters discussed in the mediation.

Is there a role for informal mediation in the .nz domain name space?

Presently the DNCL mediation process must be completed with ten working days. While there is some benefit to conducting the mediation quickly, there’s also the risk that the ten working day timeframe is arbitrary and that it might be counterproductive to the parties reaching an agreement.

Rather than a dead-stop date of 10 days, would it be appropriate to allow settlement to continue until one or more factors are met?

For example, settlement discussions may continue until a written settlement is reached, or the mediator concludes and informs the parties that further efforts would not be useful, or one of the parties or the mediators withdraws from the process.
The Expert

The principal attraction of having an expert determine a domain name dispute is that they can provide a binding decision on the parties, especially in technical or specialised areas like domain name disputes.

The operation of the scheme is built on the notion that an expert should be, and should appear to be, independent — the expert when engaged is giving an opinion that is genuinely their own opinion.

Currently, there is no specific provision for draft copies of decisions to be provided by the expert to the Commission for minor factual corrections made at the suggestion of the Commission that is immaterial to an expert’s analysis, conclusions, or opinion.

Question

What role should the Commission play in drafts of the expert’s decision, if any?

Recommendations

The Commission has identified some options for reform.

- Option 1: make no change and rely on the services currently provided by the Commission and the common law.
- Option 2: Enhance the features of the existing system and match our international counterparts.
- Option 3: Adopt or Adapt ODR/ADR systems that have emerged.
- Option 4: An alternative to the current system.

Stakeholders may wish to state which option they are for or against.

However, as Option 2 raises detailed questions about how best to give effect to this option, the Commission invites comments about these questions under Option 2.

Option 1: Do nothing, maintain the status quo

The opportunity to change nothing preserves the existing process in New Zealand for resolving domain name disputes.

The current process is mediation-focussed, and the appointment of an expert for a determination process allows parties access to free mediation and allows for a binding decision as an alternative before litigation in the courts.

Option 2: Include all the features that consumers may want to see and step change from our international counterparts

Would you expect to:

- Download an all-in-one application from the Google Play store or App store, be able to submit information in hard copy, or else upload and submit your evidence electronically, online, or some combination of these things?
- Call and speak to a person about the process, rely on FAQs and the web to guide you, or have a conversation with a chatbot?
- Be given tools, and written instructions to handle the dispute yourself, or else make an appointment with someone to discuss a resolution?
Submit information and evidence and wait to be contacted, or access an overseas-based organisation, or an automated application to resolve the dispute, using artificial intelligence and machine learning, for example?
  - Have all or only .nz disputes heard in New Zealand, or be able to raise these issues in other places, at other agencies and about other domains that are not .nz domains as well?

Alternatively, we could:

- do what we did last time around, and model what we do on international best practice, specifically:
  - Nominet, (our UK counterpart) in which case we’d usher in ‘step changes’ and
  - Resolution Canada (our Canadian counterpart)

Finally, we could:

- Expand the service.
- Outsource to another provider or providers internationally.

Option 3: Adopt or adapt ODR/ADR tools that have emerged

As the information and resources on domain name disputes in Australia and New Zealand are presented online, the potential benefits of online dispute resolution (ODR) are starting to be recognised.

Online dispute resolution techniques range from methods where parties have full control of the procedure, such as in an online negotiation; to methods where a neutral third party is in control of both the process and the outcome, such as online arbitration. In online dispute resolution, the information management role is often carried out not by physical persons, but by computers and software.

There is no one format of ODR. Some examples of this include:

- Self-navigated ‘smart forms’ and interactive tools for exploring options and solutions.
- Technologically assisted problem diagnosis.
- Automated negotiation tools.
- Password-protected online chat platforms.
- Assisted mediation and arbitration.
- Online adjudication.

Software as a service

Should an online dispute resolution platform dedicated to domain name disputes be introduced in New Zealand? If so, what tools should be made available on this platform?

- Should we open ourselves up to new, possibly cheaper and better alternative dispute systems and incorporate them into how we handle domain name disputes?
- Should we use or rely on professional mediation services and ODR tools that have emerged in the last ten years in the UK, Canada, and Europe?
- Or should we look closer to home in the guise of the CoCAA.

Option 4: An alternative to the current system
The above options and elements were selected from the range of approaches that emerged out of the Commission’s cross-jurisdictional review of responses to consumer disputes, and specific domain name disputes globally.

The Commission welcomes proposals for alternative options. Alternative options for reform could be an entirely different option, not considered above, or an amalgam of elements from the current New Zealand system and other jurisdictions.

Any proposal must address the critical question for the Commission’s review, which is how the system for domain name disputes can be designed with the future in mind, and uphold the principles of delivering a service that is a simpler, clearer, and fairer alternative to bringing litigation proceedings.

*Question*

Do you have an alternative option for reform that you would like to see introduced in New Zealand?
Appendix 1: Summary of the paper

This paper provides background context and information about the current approach to handling domain name disputes at the Commission.

It compares and considers:

I. How other jurisdictions have tackled the same or similar problems.
II. What constitutes best practice when it comes to handling disputes and assuring access to justice.
III. Possible options for resolving domain name disputes into the future.

The paper draws on global best practice in alternative dispute resolution, an approach to justice that aims to resolve disputes between the parties before they reach the courts. It considers whether ubiquitous or new, emerging technologies could and should be engaged to reduce the time and lower the cost of accessing natural justice; strengthen the system; enhance its integrity (and people’s faith in it); and align the service the Commission provides to its role as the regulator of a high tech, public good.

The paper provides historical background to the development and operation of the Dispute Resolution Service, alternative approaches to resolving disputes, and the context for this review.

Discussion centres on what alternatives look like, and whether:

- Current procedures are satisfactory and meeting stakeholder needs.
- Fees payable are being levied fairly or could be adjusted upwards or downwards.
- The process is simple enough for an ordinary person\textsuperscript{51} to understand and successfully navigate.
- There are barriers to people lodging disputes that the Commission should address.
- The principle of natural justice is met.
- Innovation may be possible and/or is advisable: for example, do technologies such as Blockchain and automated decision support / indicative answers have a role to play?
- The process of registration can prevent disputes occurring.

The paper raises vital areas for discussion, including fees payable, and the prospect of:

- Tightening point of registration controls to lower the risk of a complaint occurring.
- Providing ‘without prejudice’ early indicative judgments to people lodging a complaint modelled on international best practice.
- Emerging technologies and whether they represent an excellent opportunity to innovate and/or revisit our core assumptions about what we do, and how and why we operate the way we do.
- Leveraging offshore schemes and/or providing reciprocal arrangements to others on a competitive basis that promotes international certainty.

\footnotesize\textsuperscript{51} An ordinary person is someone who doesn’t have a law degree or any experience with statutory, regulatory, legal or quasi-legal frameworks as an administrator, investigator or litigant.
Appendix 2 - Glossary

**DNCL** Domain Name Commission Limited. The DNC is a subsidiary company of InternetNZ;

**UDAI** (Unique Domain Authentication ID) is a unique eight-digit code needed to transfer a .nz domain name from one Registrar to another;

**Valid complaint** means a complaint that meets the entry tests; i.e. is submitted in the format required, and addresses the complainant’s alleged rights, and respondent’s alleged unfair registration.

**Appeal Panel** means a panel appointed by the DNC under paragraph B17.7;

**Complainant** means a third party who asserts to the DNC the elements set out in paragraph 4 of this Policy and according to the Procedure, or, if there are multiple complainants, the 'Lead Complainant' (see Procedure, paragraph B2.2);

**Complaint** means a complaint submitted to the DNC by a Complainant under paragraph B2;

**Commencement of Dispute Resolution Service proceedings** means the earliest date upon which the Complaint is deemed to have been received by the Respondent under paragraph B1.5;

**Conclusion of Dispute Resolution Service proceedings** means the date on which the Parties are notified of a Decision or the date on which the parties settle the dispute;

**Conflicted Name** A .nz domain that was registered in at least two Second Levels before 9 am, 30 May 2012 and whose registration Direct at the Second Level needs to go through DNCL’s Conflicted Name Process;

**Days** means, unless otherwise stated, any calendar day other than Saturday, Sunday or any public holiday in New Zealand;

**Decision** means the decision reached by an Expert and where applicable includes decisions of an appeal panel;

**Dispute Resolution Service** says the service provided by the DNC according to this;

**Domain Name** means a domain name registered in the .nz register;

**Domain Name Commission** means Domain Name Commission Limited, a company wholly owned by InternetNZ, responsible for the day to day oversight of the .nz Domain Name registration and management system;

**Domain Name Hijacking** means using the Policy in bad faith in an attempt to deprive a registered Domain Name holder of a Domain Name;
DNC means the Domain Name Commission;

**Expert** means a person appointed to resolve a Domain Name Dispute under paragraphs B7 or B17 of the Procedure;

**Generic Term** means a word or phrase that is a common name in general public use for a product, service, profession, place, or thing. For example toy; shop; cleaner; lawyers; Wellington; sparkling-wine;

**Informal Mediation** means impartial mediation which is conducted under paragraph B6 to facilitate an acceptable resolution to the dispute;

**ISP** means an internet service provider;

**InternetNZ** means Internet New Zealand Incorporated, the organisation ultimately responsible for the .nz Domain Name space;

**Mediator** means a person appointed to mediate a Domain Name Dispute under paragraph B6 of the Procedure;

**NZRS** means New Zealand Domain Name Registry Limited, trading as .nz Registry Services, the body which operates and manages the Register; - company no longer exists

**Party** means a Complainant or Respondent and **Parties** has a corresponding meaning; **Policy** means this Policy;

**Procedure** means the Procedure under this Policy for the conduct of proceedings under the Dispute Resolution Service;

**Register** means the authoritative database and record of .nz Domain Names managed and operated by NZRS;

**Registrant** means the entity entered in the Register as a registrant in respect of the Domain Name;

**Registrar** means the entity entered in the Register as registrar in respect of the Domain Name;

**Reply** means a submission made to the DNC by a Complainant under paragraph B5;

**Respondent** means the entity in whose name or on whose behalf a Domain Name is registered and against whom the Complainant makes a Complaint;

**Response** means a submission made to the DNC by a Respondent under paragraph B4;

**Rights** include, but is not limited to, rights enforceable under New Zealand law. However, a Complainant will be unable to rely on rights in a name or term which is wholly descriptive of the Complainant’s business;

**Sub-domain** means a name added to a .nz Domain Name by the Registrant. For example, the Domain Name could be ‘shop.nz’ and the sub-domain could be ‘anyname’, being in full ‘anyname.shop.nz’. In respect of this policy, a sub-domain is categorised as a domain name for the purposes of the policy and procedures;

**Unfair Registration** means a Domain Name which either:

- was registered or otherwise acquired in a manner which, at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the Complainant’s Rights; OR
• has been, or is likely to be, used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant's Rights.
Appendix 3: Context

The Domain Name eco-system in .nz

The New Zealand Internet Domain Name Commission Limited (the Commission) is a wholly owned subsidiary company of InternetNZ.

Despite its name, the Commission is not a statutory regulator, but a limited liability company created at the inception of the internet in New Zealand in the 1990s.

Both organisations are jointly responsible for managing the .nz domain name space.

.nz (pronounced Dot EnZed) is a country code top level domain (also abbreviated to ccTLD).

While InternetNZ has “ultimate responsibility” within New Zealand for the way the .nz domain name space is handled, the business has delegated day to day management and administration of the .nz domain name space to the Commission.

The Commission’s tasks include helping to resolve domain name disputes, by facilitating a process without itself becoming a party to them.

From time to time, disputes arise as to who has the right to a registered domain name.

It is .nz policy that domain name registrations must be made in good faith and that individuals and organisations with enforceable legal rights do not need to be resident or actively trading in the New Zealand market to be eligible to register and dispute the registration of.nz domain names.

Nothing in the policies precludes anyone making a complaint to the Commission from seeking other avenues of redress. Such disputes can be validly raised with the courts, the intellectual property office of New Zealand, and/or with the Commission via its Dispute Resolution Service.

Except where a statutory requirement commands the Commission (a change to the law or regulation for example) or else a court order, substantive changes will only be implemented following a process of open public consultation, such as this one.

Each such change will be published in advance (where practicable, 30 calendar days in advance) on the Commission web site: http://www.dnc.org.nz/policies.

The current Dispute Resolution Service Policy can be found at https://dnc.org.nz/sites/default/files/2015-12/dispute_resolution_service.pdf

About the Domain Name Commission

The New Zealand Internet Domain Name Commission Limited (the Commission) is a subsidiary company of InternetNZ.

About InternetNZ

InternetNZ serves as the designated manager (or ccTLD manager) “at the pleasure of the local Internet community”. It regards this role as one being done on trust and on behalf of that community.

InternetNZ has ultimate responsibility for .nz and:
• Puts the best interests of the registrant at the heart of its analysis of TLD issues.
• Holds and will continue to hold the .NZ country code top level domain delegation.
• Manages .NZ on behalf of the local Internet community as a responsible trustee.
• Will remain engaged in the ICANN environment, with an adequate level of resources, to maintain the .NZ delegation and to advance these principles in the broader TLD arena.
• Generally supports adding new TLDs to the domain name system, to give more registrant choice, to allow registrants to choose between more explicit varieties of strings, and to increase competition between TLDs.
• Policy decisions regarding TLDs must be consistent with the technology available to implement them. InternetNZ will not advocate for principles or policies that would require fundamental changes to the Internet’s operating technologies, or undermine the open Internet.

Relationship to ICANN

Global coordination of the Domain Name System (DNS) rests with ICANN, the U.S.-based non-profit corporation that provides the multi-stakeholder consensus-based decision-making framework for policy on domain name issues.

InternetNZ participates in the ICANN environment primarily because of its role as a ccTLD manager, for .NZ. InternetNZ takes an interest in the broader work of ICANN, and has done since its foundation, as an organisation that can project New Zealand interests and values into the broader global policy debate on domain name and Internet issues.

InternetNZ has had some involvement with ICANN’s generic TLD processes, and as a contracted ICANN “At-Large Structure” (ALS), has some obligation to take an interest in the global TLD environment on behalf of the local Internet community. With the forthcoming ICANN process to rapidly deploy many new generic TLDs in the global root, the importance of InternetNZ involvement is arguably more significant than it has ever been.

What is the .nz Framework policy?

The .nz Framework Policy is a governance policy that sets out the high-level framework for the operation of the .nz ccTLD.

It sets out:

• The principles that underpin the operation of .nz.
• The roles and responsibilities of InternetNZ and Domain Name Commission Ltd in operating .nz.

In 2011 / 2012 InternetNZ members endorsed a suite of policies that have implications for the Commission and its administration of domain name disputes.

In 2019 a review of these policies will be undertaken.

52 In developing these principles, InternetNZ has held certain assumptions as axiomatic and as settled parts of InternetNZ policy. If these points are not widely held, as beyond dispute, then changes may be necessary to the principles to reflect the changed basis. Submissions received about this will be submitted to InternetNZ in response to its 2019 review of policy and procedure.
Values
InternetNZ manages the .NZ ccTLD as a public good: it considers itself a trustee responsible on behalf of all the significantly interested parties in New Zealand for providing a secure and trustworthy domain name service.

The values associated with public service – of responsibility and service to the community – are values that are at the core of InternetNZ’s identity.

These values underpin InternetNZ’s engagement in the ICANN environment and affect the management of the Commission.

.NZ Assumptions
InternetNZ is widely respected in the ICANN environment because it’s seen as a principled advocate for a coherent point of view.

InternetNZ has published general principles for the management of top-level domains and give further explanation of how .nz is intended to be operated.

These are available at https://internetnz.nz/tld-principles and are set out below.

These are high-level principles, and set out an ideal state which would represent the best possible framework for a TLD (given InternetNZ’s vision, mission, and objectives). They provide an exacting measure with which to test InternetNZ’s administration of the .NZ ccTLD against current and future opportunities and developments within other areas of domain name policy.

Top Level Domain principles
The principles underpinning the Commission’s management and handling of .nz domain names and disputes are that:

1. Domain name markets should be competitive.
2. Choice for registrants should be maintained and expanded.
3. Domain registrations should be first come, first served.
4. Parties to domain registrations should be on a level playing field.
5. Registrant data should be public.
6. Registry/registrar operations within a TLD should be split.
7. Open multi-stakeholder processes should determine TLD policy.

Changes to overarching principles may only be made after extensive public consultation and discussion within the local Internet community.

InternetNZ serves as the designated manager (or ccTLD manager) at the pleasure of the local Internet community. It regards this role as one being done on trust and on behalf of that community. Consistent with RFC1591, there is no concept of “ownership” involved.
Appendix 4 – Current policy

DISPUTE RESOLUTION SERVICE POLICY

1. Statement of Purpose

1.1. This policy provides an alternative to the Courts in situations where:

1.1.1. Two parties are in dispute over who the registrant of a .nz domain name should be; or

1.1.2. Two parties are in dispute over the addition of a Sub-domain that is attached to a Domain Name registered directly at the second level and that Domain Name is a Generic Term.

1.2. Part A defines the policy and Part B the procedure supporting the policy.

2. Background

2.1. InternetNZ has the ultimate responsibility within New Zealand for the .nz domain name space, and maintains a shared registry system (SRS) for the management of .nz domain name registrations. InternetNZ has appointed Domain Name Commission Limited (“DNC”) to manage and administer the .nz domain name space on behalf of InternetNZ.

2.2. A SRS establishes a single register for registering domain names and associated technical and administrative information. nz Registry Services (NZRS) operates the register.

2.3. The registration of domain names and modification of information associated with that name on the register can be effected only by authorised registrars. Registrars are responsible for the information they collect.
2.4 Neither registrars nor the DNC get involved in disputes regarding who the true registrant of a domain name should be, but will undertake actions as directed either by the Courts or by the Experts under this policy.

2.5 This policy is one of the .nz policies that, as amended from time to time, all .nz registrants agree to be bound by when registering or renewing a .nz domain name.

2.6 Thanks go to Nominet UK for their assistance in establishing the .nz Dispute Resolution Service.

3. Definitions

**Appeal Panel** means a panel appointed by the DNC under paragraph B17.7;

**Complainant** means a third party who asserts to the DNC the elements set out in paragraph 4 of this Policy and according to the Procedure, or, if there are multiple complainants, the 'Lead Complainant' (see Procedure, paragraph B2.2);

**Complaint** means a complaint submitted to the DNC by a Complainant under paragraph B2;

**Commencement of Dispute Resolution Service proceedings** means the earliest date upon which the Complaint is deemed to have been received by the Respondent in accordance with paragraph B1.5;

**Conclusion of Dispute Resolution Service proceedings** means the date on which the Parties are notified of a Decision or the date on which the parties settle the dispute;

**Days** means, unless otherwise stated, any calendar day other than Saturday, Sunday or any public holiday in New Zealand;

**Decision** means the decision reached by an Expert and where applicable includes decisions of an appeal panel;

**Dispute Resolution Service** means the service provided by the DNC according to this Domain Name;

**Domain Name** means a domain name registered in the .nz register;

**Domain Name Commission** means Domain Name Commission Limited, a company wholly owned by InternetNZ, responsible for the day to day oversight of the .nz Domain Name registration and management system;

**Domain Name Hijacking** means using the Policy in bad faith in an attempt to deprive a registered Domain Name holder of a Domain Name;

**DNC** means the Domain Name Commission;

**Expert** means a person appointed to resolve a Domain Name Dispute under paragraphs B7 or B17 of the Procedure;

**Generic Term** means a word or phrase that is a common name in general public use for a product, service, profession, place or thing. For example: toy; shop; cleaner; lawyers; Wellington; sparkling-wine;

**Informal Mediation** means impartial mediation which is conducted under paragraph B6 to facilitate an acceptable resolution to the dispute;
ISP means an internet service provider;

InternetNZ means Internet New Zealand Incorporated, the organisation ultimately responsible for the .nz Domain Name space;

Mediator means a person appointed to mediate a Domain Name Dispute under paragraph B6 of the Procedure;

NZRS means New Zealand Domain Name Registry Limited, trading as .nz Registry Services, the body which operates and manages the Register;

Party means a Complainant or Respondent and Parties has a corresponding meaning; Policy means this Policy;

Procedure means the Procedure under this Policy for the conduct of proceedings under the Dispute Resolution Service;

Register means the authoritative database and record of .nz Domain Names managed and operated by NZRS;

Registrant means the entity entered in the Register as registrant in respect of the Domain Name;

Registrar means the entity entered in the Register as registrar in respect of the Domain Name;

Reply means a submission made to the DNC by a Complainant under paragraph B5;

Respondent means the entity in whose name or on whose behalf a Domain Name is registered and against whom the Complainant makes a Complaint;

Response means a submission made to the DNC by a Respondent under paragraph B4;

Rights includes, but is not limited to, rights enforceable under New Zealand law. However, a Complainant will be unable to rely on rights in a name or term which is wholly descriptive of the Complainant’s business;

Sub-domain means a name added to a .nz Domain Name by the Registrant. For example, the Domain Name could be ‘shop.nz’ and the sub-domain could be ‘anyname’, being in full ‘anyname.shop.nz’. In respect of this policy, a sub-domain is categorised as a domain name for the purposes of the policy and procedures.

Unfair Registration means a Domain Name which either:

- was registered or otherwise acquired in a manner which, at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the Complainant’s Rights; OR

- has been, or is likely to be, used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant’s Rights.

PART A – POLICY
4. **Dispute Resolution Service**

4.1 This Policy and Procedure applies to Respondents when a Complainant asserts to the DNC according to the Procedure, that:

4.1.1 The Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and

4.1.2 The Domain Name, in the hands of the Respondent, is an Unfair Registration.

4.2 The Complainant is required to prove to the Expert that both elements are present on the balance of probabilities.

4.3 With the introduction of .nz registrations at the second level, this Policy and Procedure also applies to Respondents when a Complainant asserts to the DNC according to the Procedure, that:

4.3.1 There is a Domain Name registered directly at the second level of .nz and the Domain Name registered is a Generic Term such that the Complainant cannot demonstrate Rights in that Generic Term; and

4.3.2 The Registrant of that name at the second level has added a Sub-domain that has the appearance of being a Domain Name registered at the third level; and

4.3.3 The Complainant has Rights in respect of the name or mark which is identical or similar to the Sub-domain; and

4.3.4 The Sub-domain, in the hands of the Respondent, is an Unfair Registration.

4.4 The Complainant is required to prove to the Expert that:

4.4.1 The Complainant has asked the Registrant to stop using the Sub-domain and Domain Name combination in a manner that infringes the Complainant’s Rights; and

4.4.2 The registrant has declined to stop or has not responded to requests; and

4.4.3 The Complainant has Rights in respect of the name or mark which is identical or similar to the Sub-domain; and

4.4.4 The Sub-domain, in the hands of the Respondent, is an Unfair Registration.

4.4.5 The only remedy that will be granted is an order demanding the deletion of the applicable third level sub-domain, and that the name not be reinstated at any time.

4.4.6 Should the Registrant not delete the sub-domain after an order to do so, or should it be reinstated at any time, the Domain Name will be removed from the DNS so the name will not resolve. The Domain Name will only be reinstated to the DNS when the Domain Name Commission is satisfied that the Expert’s order has been complied with.

4.5 The ability to file a complaint under clause 4.3 will be reviewed after 2 years of operation of the policy with the review completed, and a decision made on whether this provision will remain, before the end of that third year of operation.

4.6 The DNC recommends that both Parties use the guidance and help information, which can be found on the DNC website.
5. Evidence of Unfair Registration

5.1. A non-exhaustive list of factors which may be evidence that the Domain Name is an Unfair Registration is set out in paragraphs 5.1.1 – 5.1.5;

5.1.1. Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily:

i. for the purposes of selling, renting or otherwise transferring the Domain Name to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the Respondent’s documented out-of-pocket costs directly associated with acquiring or using the Domain Name;

ii. as a blocking registration against a name or mark in which the Complainant has Rights; or

iii. for the purpose of unfairly disrupting the business of the Complainant; or

5.1.2. Circumstances demonstrating that the Respondent is using the Domain Name in a way which is likely to confuse, mislead or deceive people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant;

5.1.3. The Complainant can demonstrate that the Respondent is engaged in a pattern of registrations where the Respondent is the registrant of domain names (under .nz or otherwise) which correspond to well known names or trade marks in which the Respondent has no apparent rights, and the Domain Name is part of that pattern;

5.1.4. The Complainant can demonstrate that the Respondent has knowingly given false contact details to a Registrar and/or to the DNC; or

5.1.5. The Domain Name was registered arising out of a relationship between the Complainant and the Respondent, and the circumstances indicate that it was intended by both the Complainant and the Respondent that the Complainant would be entered in the Register as the Registrant of the Domain Name;

5.2. Failure on the Respondent’s part to use the Domain Name for the purposes of email or a web-site is not in itself evidence that the Domain Name is an Unfair Registration.

5.3. There shall be a presumption of Unfair Registration if the Complainant proves that the Respondent has been found to have made an Unfair Registration in three (3) or more Dispute Resolution Service cases in the two (2) years before the Complaint was filed. This presumption can be rebutted (see paragraph 6.3).

5.4. In making their decision, the Expert shall not take into account any evidence of acts or omissions amounting to unfair registration or use which occurred more than three (3) years before the date of the Complaint.

6. How the Respondent may demonstrate in its Response that the Domain Name is not an Unfair Registration

6.1. A non-exhaustive list of factors which may be evidence that the Domain Name is not an Unfair Registration is set out in paragraphs 6.1.1 – 6.1.4:

6.1.1. Before being aware of the Complainant’s cause for complaint (not necessarily the Complaint itself), the Respondent has:
6.1. The Respondent has used or made demonstrable preparations to use the Domain Name or a Domain Name which is similar to the Domain Name in connection with a genuine offering of goods or services;

6.1.1. been commonly known by the name or legitimately connected with a mark which is identical or similar to the Domain Name;

6.1.2. made legitimate non-commercial or fair use of the Domain Name; or

6.1.2. The Domain Name is generic or descriptive and the Respondent is making fair use of it in a way which is consistent with its generic or descriptive character;

6.1.3. In relation to paragraph 5.1.5; that the Registrant's holding of the Domain Name is consistent with an express term of a written agreement entered into by the Parties; or

6.1.4. In relation to paragraphs 5.1.3 and/or 5.3; that the Domain Name is not part of a wider pattern or series of registrations because the Domain Name is of a significantly different type or character to the other domain names registered by the Respondent.

6.2. Fair use may include sites operated solely in tribute to or in criticism of a person or business.

6.3. If paragraph 5.3 applies, to succeed the Respondent must rebut the presumption by proving in the Response that the registration of the Domain Name is not an Unfair Registration.

6.4. Trading in Domain Names for profit, and holding a large portfolio of Domain Names, are of themselves lawful activities. The Expert will review each case on its merits.

7. Informal Mediation

7.1. After the DNC has received the Parties' submissions under the Procedure (Part B), it will initiate and conduct a period of Informal Mediation under paragraph B6 of the Procedure.

8. Without Prejudice

8.1. Documents and information which are 'without prejudice' (or are marked as being 'without prejudice') may be used in submissions and may be considered by the Expert except that the Expert will not consider such materials if:

8.1.1. they are generated within Informal Mediation; or

8.1.2. the Expert believes that it is in the interests of justice that the document or information be excluded from consideration.

9. Appointment of Expert

9.1. If an acceptable resolution cannot be achieved by Informal Mediation the DNC will notify the Parties that it will appoint an Expert when the Complainant has paid the applicable fees set out in paragraph B20.1 and within the time specified in paragraph B7.1. The Expert will come to a written Decision.

10. Notification and Publication
10.1. A Decision will be communicated to the Parties according to paragraph B16 and all Decisions will be published in full on the DNC website.

10.2. Fees are payable by the Complainant or otherwise according to paragraph B20 only if an acceptable resolution has not been achieved by Informal Mediation and once the DNC has notified the Parties that an Expert is to be appointed.

10.3. Decisions may contain personal information, including the contact details of the Parties, and the Parties consent to personal information being displayed in this way.

11. Exclusion of Liability

11.1 None of InternetNZ, the DNC, NZRS, any Registrar, Expert or Mediator, nor any of those entities’ councillors, officers, employees or servants (as applicable) shall be liable to a party for anything done or omitted, whether negligently or otherwise, in connection with any proceedings under the Dispute Resolution Service unless the act or omission is shown to have been in bad faith.

12. Appeal, Repeat Complaints and Availability of Court Proceedings

12.1. Either Party will have the right under paragraph B17 to appeal a Decision. The Appeal Panel will consider appeals on the basis of a full review of the matter and may review procedural matters.

12.2. The DNC may refer questions of interpretation of the Policy and Procedure to the Appeal Panel. Any decision rendered as a result of this referral will not affect any Decision in any other previous proceedings under the Dispute Resolution Service.

12.3. The DNC will publish Decisions of the Appeal Panel. Appeal Decisions will not be binding precedents, but will be of persuasive value to Experts in future decisions.

12.4. The operation of the Dispute Resolution Service will not prevent either the Complainant or the Respondent from submitting the dispute to a New Zealand court or decision-making body of competent jurisdiction or to an arbitral tribunal of competent jurisdiction.

12.5. If a Complainant has obtained a Decision in previous Dispute Resolution Service proceedings it will not be reconsidered by an Expert (but there may be rights of appeal, see paragraph 12.1 and paragraph B17). If the Expert finds that the Complaint is a resubmission of an earlier Complaint which has been resolved he or she shall reject the Complaint without a consideration of its merits.

12.6. In determining whether a Complaint is a resubmission of an earlier Complaint, or contains a material difference that justifies the Complaint being heard the Expert shall consider the following questions:

12.6.1. Are the Complainant, the Respondent and the Domain Name at issue the same as in the earlier case?

12.6.2. Does the substance of the Complaint relate to acts that occurred prior to or subsequent to the close of submissions in the earlier case?

12.6.3. If the substance of the Complaint relates to acts that occurred prior to the close of submissions in the earlier case, are there any exceptional grounds for the
rehearing or reconsideration, bearing in mind the need to protect the integrity and smooth operation of the Policy and Procedure?

12.6.4. Does the substance of the Complaint relate to acts that occurred subsequent to the close of submissions in the earlier Decision? (Acts on which the re-filed Complaint is based should not be, in substance, the same as the acts on which the previous Complaint was based).

12.7. A non-exhaustive list of examples which may be exceptional enough to justify a rehearing under paragraph 12.6.3 include:

12.7.1. serious misconduct on the part of the Expert, a party, witness or lawyer;

12.7.2. false evidence having been offered to the Expert;

12.7.3. the discovery of credible and material evidence which could not have been reasonably foreseen or known for the Complainant to have included it in the evidence in support of the earlier Complaint;

12.7.4. a breach of natural justice.

13. Implementation of Expert Decisions

13.1. The Expert’s powers, as part of a Decision, include powers to direct that a domain name should be cancelled, transferred, suspended or otherwise amended. The Expert may not, however, make any orders directing a party to pay costs of the Dispute Resolution Service proceedings.

13.2. If the Expert makes a Decision that a Domain Name registration should be cancelled, suspended, transferred or otherwise amended, the DNC will implement that Decision by causing any necessary changes to the Register to take place according to the process set out in paragraph B16. The details set out in the Complaint form will be used unless the Complainant specifies other details in good time.

14. Other action

14.1. The DNC will not cause any Domain Name registration to be cancelled transferred, activated, deactivated or otherwise changed except as set out in paragraphs 13 and B3.4 and in accordance with the .nz policies, which are available on the DNC website.

15. Transfers During a Dispute

15.1. A Domain Name registration may not be transferred:

15.1.1. if the electronic form of a Complaint has been received by the DNC Dispute Resolution Service staff and the matter is pending the receipt of a valid paper copy to confirm the Complaint (to a maximum of five (5) Days); or

15.1.2. whilst Dispute Resolution Service proceedings are ongoing in relation to the Domain Name or for a period of ten (10) Days after the conclusion of Dispute Resolution Service proceedings, unless to the Complainant as a result of a settlement reached between the Parties whether or not pursuant to Informal Mediation; or

15.1.3. whilst a court proceeding, other dispute resolution hearing or arbitration in respect of the Domain Name registration is ongoing in a New Zealand court or
decision-making body of competent jurisdiction or arbitral tribunal of competent jurisdiction.

15.2. The DNC may reverse any transfer of a Domain Name registration which does not comply with paragraph 15.1.

15.3. A Respondent may not without the Complainant's consent (which the Complainant will not unreasonably withhold) transfer the Domain Name to another Registrar whilst proceedings under the Dispute Resolution Service are ongoing in relation to the Domain Name or for a period of ten (10) Days after the conclusion of Dispute Resolution Service proceedings.

16. Modifications to the Policy and Procedure of the Dispute Resolution Service

16.1. The Internet is an emerging and evolving medium and the regulatory and administrative framework under which it operates is constantly developing. For these reasons the DNC reserves the right to make reasonable modifications to the Policy and Procedure at any time. Except where the DNC is acting in pursuance of a statutory requirement or a court order, substantive changes will be implemented following a process of open public consultation. Each such change will be published in advance (where practicable, 30 calendar days in advance) on the DNC web site: http://www.dnc.org.nz/policies and will become binding and effective upon the date specified therein.

16.2. In any Dispute Resolution Service proceedings, the Parties will be bound by the Policy and Procedure which are current at the commencement of Dispute Resolution Service proceedings, until the conclusion of the Dispute Resolution Service proceedings.

17. General Information

17.1. If anyone has any questions regarding this document they should email policies@dnc.org.nz
PART B – PROCEDURE

B1. Communication

B1.1 The DNC will send a Complaint (see paragraph B2) to the Respondent by:

B1.1.1. sending the Complaint by post, fax or e-mail to the Respondent at the contact
details shown as the registrant or other contacts in the Register for the Domain
Name in dispute;

The DNC may also, at its discretion use any or all of the following means:

B1.1.2. sending the Complaint in electronic form (including attachments to the extent
available in that form) by e-mail to:

a) postmaster@<the Domain Name in dispute>;
b) if the Domain Name resolves to an active web page (other than a
generic page which the DNC concludes is maintained by an ISP for
parking Domain Names), to any e-mail address shown or email links on
that web page so far as this is practicable; or

B1.1.3. sending the Complaint to any addresses provided to the DNC by the
Complainant under paragraph B2.3.3 so far as this is practicable.

B1.2. Except as set out in paragraph B1.1 above, all written communication to a Party or a
Party’s representative under the Policy or this Procedure shall be made by fax, post or e-
mail.

B1.3. Communication shall be made in English. E-mail communications should be sent in plain
text so far as this is practicable.

B1.4. During the course of proceedings under the Dispute Resolution Service, if either Party
wishes to change its contact details it must notify the DNC of all changes.

B1.5. Except as otherwise provided in this Procedure or as otherwise decided by the DNC or if
appointed, the Expert, all communications provided for under this Procedure shall be
deemed to have been received:

B1.5.1. if sent by facsimile, on the date transmitted; or

B1.5.2. if sent by post, on the second Day after posting;

B1.5.3. if sent via the Internet, on the date that the communication was transmitted;

B1.5.4. and, unless otherwise provided in this Procedure, the time periods provided for
under the Policy and this Procedure shall be calculated accordingly.

B1.6. Any communication (except for communications relating to Informal Mediation)
between:

B1.6.1. the DNC and any Party shall be copied by the DNC to the other Party and if
appointed, the Expert, subject to paragraph B12; and
B1.6.2. A party to another party shall be copied by the sender to the DNC and the DNC will copy such correspondence to the Expert, if appointed.

B2. The Complaint

B2.1. Any person or entity may submit a Complaint to the DNC in accordance with the Policy and this Procedure. In exceptional circumstances, the ability to accept complaints may have to be suspended. If so, a message will be posted to that effect on the DNC website which will indicate when the suspension is likely to be lifted.

B2.2. More than one person or entity may jointly make a Complaint. Where this occurs the joint Complainants must:

B2.2.1. All sign the hard copy of the Complaint (or have it signed on their behalf);

B2.2.2. Specify one of the Complainants, or a single representative, who will be the 'Lead Complainant' who will receive correspondence on behalf of all the Complainants and is entitled to act on behalf of them all (e.g. in Informal Mediation); and

B2.2.3. Specify which Complainant the Complainants wish to become the sole registrant of each Domain Name(s) which are the subject of the Complaint if the Complainants are successful (this does not bind the Expert).

B2.3. The Complainant must send the Complaint to the DNC in hard copy and (except to the extent not available for attachments) in electronic form. The Complaint shall:

B2.3.1. Not exceed 2000 words (not including the text set out in paragraph B2.3.9 and annexes);

B2.3.2. Specify whether the Complainant wishes to be contacted direct or through an authorised representative, and set out the e-mail address, telephone number, fax number and postal address which should be used;

B2.3.3. Set out any of the Respondent’s contact details which are known to the Complainant;

B2.3.4. Specify the Domain Name(s) which is the subject of the dispute and the name or mark which is identical or similar to the Domain Name and in which the Complainant asserts it has Rights;

B2.3.5. Describe in accordance with the Policy the grounds on which the Complaint is made including in particular: what Rights the Complainant asserts in the name or mark; why the Domain Name should be considered to be an Unfair Registration in the hands of the Respondent; and any applicable aspects of paragraph 5 of the Policy above, as well as any other grounds which support the Complainant’s assertion;

B2.3.6. Specify whether the Complainant is seeking to have the Domain Name transferred, suspended, cancelled or otherwise amended;

B2.3.7. Tell the DNC whether any legal proceedings have been commenced or terminated in connection with the Domain Name which is the subject of the Complaint;

B2.3.8. State that the Complainant will submit to the exclusive jurisdiction of the New Zealand courts with respect to any legal proceedings seeking to reverse the effect of a Decision requiring the suspension, cancellation, transfer or other
amendment to a Domain Name registration, and that the Complainant agrees that any such legal proceedings will be governed by New Zealand law;

B2.3.9. conclude with the following statement followed by the signature of the Complainant or its authorised representative:

"I, the Complainant agree that my claims and remedies concerning the registration of the Domain Name, the dispute, or the dispute’s resolution shall be solely against the Respondent and that none of InternetNZ, the DNC, NZRS, any Registrar, Expert or Mediator, nor any of those entities’ councillors, officers, employees or servants (as applicable) shall be liable for anything done or omitted in connection with any proceedings under the Dispute Resolution Service unless the act or omission is shown to have been in bad faith."

"The information contained in this complaint is to the best of my knowledge true and complete. This complaint is not being presented in bad faith, including not being for a dominant purpose other than resolving the issue of who the proper registrant of a Domain Name is, and the matters stated in this complaint comply with the Policy and Procedure and applicable law."

"I agree to the terms of the Dispute Resolution Services Policy and Procedure, and agree to be bound by any resulting Decision, subject to any rights of review or appeal."

and

"I acknowledge that if the Expert orders a transfer of the domain name(s) to me or at my request, I will need to select an Authorised .nz Registrar to provide me with the necessary .nz registry and other services in respect of domain name(s). I will advise the DNC of my decision on request."

B2.3.10. attach four (4) copies of any evidence on which the Complainant relies including correspondence and any trade mark registration and/or evidence of use of or reputation in a name or mark, together with an index of the material attached.

B2.4. The Complaint may relate to more than one Domain Name, provided that those Domain Names are registered in the name of the Respondent.

B3. Notification of Complaint

B3.1. The DNC will check that the Complaint sufficiently complies with the Policy and, if satisfied, this Procedure and, if so, will forward it to the Respondent together with an explanatory coversheet within three (3) Days of the receipt of the hard copy of the Complaint.

B3.2. If the DNC considers that the Complaint does not sufficiently comply with the Policy and this Procedure, the Complainant will be promptly notified of the deficiencies identified. The Complainant shall have three (3) Days from receipt of notification within which to correct the deficiencies and return the Complaint, failing which the DNC will deem the Complaint to be withdrawn. This will not prevent the Complainant submitting a different Complaint.

B3.3. The DNC will promptly notify the Parties of the date of Commencement of Dispute Resolution Service proceedings.
B3.4. On receipt of the complaint the DNC will cause the domain name to be locked until the conclusion of the proceedings, at which time the domain name will be unlocked.

B4. The Response

B4.1. Within fifteen (15) Days of the date of commencement of Dispute Resolution Service proceedings, the Respondent shall submit a Response, if they choose to do so.

B4.2. The Respondent must send the Response to the DNC signed, and in hard copy and (except to the extent not available for attachments) in electronic form at the addresses set out in the explanatory coversheet. The Response shall:

B4.2.1. not exceed 2000 words (not including the text set out in paragraph B4.2.5 and annexes);

B4.2.2. include any grounds that the Respondent wishes to rely upon to rebut the Complainant’s assertions under paragraph B2.3.5 including any relevant factors set out in paragraph 6 as well as any other factors which rebut the Complainant’s assertions

B4.2.3. specify whether the Respondent wishes to be contacted direct or through an authorised representative, and set out the e-mail address, telephone number, fax number and postal address which should be used;

B4.2.4. tell the DNC whether any legal proceedings have been commenced or terminated in connection with the Domain Name(s) which is the subject of the Complaint;

B4.2.5. conclude with the following statement followed by the signature of the Respondent or its authorised representative:-

"The information contained in this response is to the best of the Respondent’s knowledge true and complete and the matters stated in this response comply with the Policy and Procedure and applicable law."; and

B4.2.6. attach four (4) copies of any evidence on which the Respondent relies including correspondence and any trade mark registration and/or evidence of use of or reputation in a name or mark together with an index of the material attached.

B4.3. Within three (3) Days following the receipt of the signed copy of the Response, the DNC will forward the Response to the Complainant.

B4.4. If the Respondent does not submit a Response, the Parties will be notified that an Expert will be appointed on receipt from the Complainant of the applicable fees according to paragraph B20 and in the absence of exceptional circumstances.

B5. Reply by the Complainant

B5.1. Within five (5) Days of receiving the Response from the DNC, the Complainant may submit a Reply to the Respondent’s Response, which shall not exceed 2000 words (not including annexes). The Reply should be confined to answering any new points raised in the Response and not previously dealt with in the Complaint. The expert will not be obliged to consider any other material included in the Reply.
B5.2. If a Reply is submitted it must be submitted in signed, hard copy (including four (4) copies of all annexes) and as far as possible in electronic form. If the Complainant does not submit a Reply within five (5) Days the DNC will proceed to Informal Mediation.

B6. Informal Mediation

B6.1. No Informal Mediation will occur if the Respondent does not file a Response. Within three (3) Days of the receipt of the Complainant’s Reply (or the expiry of the deadline to do so), the DNC will arrange for Informal Mediation to be conducted. Informal Mediation will be conducted in a manner which the DNC, at its sole discretion, considers appropriate. The DNC will appoint a Mediator on a rotational basis from its list of Mediators.

B6.2. A Mediator may only be a person named in the list of Mediators which the DNC will maintain and publish along with the Mediators’ qualifications. No Mediators’ appointment will be challenged on the grounds that they are insufficiently qualified. Once the DNC has appointed the Mediator, the Parties will be notified of the name of the Mediator appointed.

B6.3. Negotiations conducted between the Parties during Informal Mediation (including any information obtained from or in connection to negotiations) shall be confidential as between the Parties, the mediator and the DNC. Any such information will not be shown to the Expert. Neither the DNC nor the Mediator nor any Party may reveal details of such negotiations to any third parties unless a court or decision making body of competent jurisdiction orders disclosure, or the DNC, the Mediator or either Party are otherwise required to do so by applicable laws or regulations. Neither Party shall use any information gained during mediation for any ulterior or collateral purpose or include it in any submission likely to be seen by any court or decision-making body of competent jurisdiction or arbitral tribunal of competent jurisdiction in this dispute or any later dispute or litigation.

B6.4. Notwithstanding paragraph B6.3, the Parties may refer to the fact of Informal Mediation in subsequent proceedings before any New Zealand court or decision making body of competent jurisdiction or arbitral tribunal of competent jurisdiction in this dispute or any later dispute or litigation.

B6.5. If the Parties reach a settlement during Informal Mediation then the existence, nature and terms of the settlement shall be confidential as between the Parties, the mediator and the DNC, unless the Parties specifically agree otherwise, a court or decision-making body of competent jurisdiction orders otherwise, or applicable laws or regulations require it.

B6.6. No binding verbal agreements can be reached as part of the Informal Mediation: any settlement reached by the Parties must be in writing to be enforceable.

B6.7. The DNC will notify the Registrar of a settlement reached in accordance with B6.5 where that settlement requires the Registrar to take action to give effect to that settlement.

B6.8. Any action to be taken by the Registrar will be completed by it as soon as possible, and no later than three days, after receiving notice from the DNC.

B6.9. Where the settlement requires a change of registrant, the new registrant is deemed to have accepted the Registrar’s standard terms and conditions.

B6.10. If the Parties do not achieve an acceptable resolution through Informal Mediation within ten (10) Days, the DNC will send notice to the Parties that it will appoint an Expert when
the Complainant has paid the applicable fees set out under paragraph B20.1 within the
time limit specified in paragraph B7.1. The Expert will be told whether or not Informal
Mediation occurred, but will not be told what happened during Informal Mediation or
why it failed to resolve the dispute.

B6.11. No Party may ask the DNC (including its officers, employees, contractors, agents and any
Expert or Mediator) to reveal information or materials gained as a result of any Informal
Mediation under the Dispute Resolution Service unless such disclosure has been ordered
by a court or decision-making body of competent jurisdiction. Neither Party shall call the
Expert, Mediator or the DNC (including its officers, employees, contractors, or agents) as
a witness (either in person or to produce documents or other materials) in any
proceedings which arise from, or are in connection with, the matters discussed in the
mediation.

B7. Appointment of the Expert and Timing of
Decision

B7.1. If the DNC does not receive the Complainant’s request to refer the matter to an Expert
together with the applicable fees within ten (10) Days of the Complainant’s receipt of
the notice referred to in paragraph B6.10, the Complaint will be deemed to have been
withdrawn. This will not prevent the Complainant submitting a different Complaint.

B7.2. Within five (5) Days of the receipt of the applicable fees from the Complainant the DNC
will appoint an Expert on a rotational basis from its list of Experts.

B7.3. An Expert may only be a person named in the list of Experts which the DNC will maintain
and publish along with the Experts’ qualifications. No Expert’s appointment will be
challenged on the grounds that they are insufficiently qualified. Once the Expert has
been appointed, the Parties will be notified of the name of the Expert appointed and the
date by which, except in exceptional circumstances, the Expert will forward his or her
Decision to the DNC.

B8. Impartiality and Independence

B8.1. The Mediator and/or Expert shall be impartial and independent and both before
accepting the appointment and during the proceedings will disclose to the DNC any
circumstances giving rise to justifiable doubt as to their impartiality or independence. The
DNC will have the discretion to appoint a substitute Mediator or Expert if necessary in
which case the timetable will be adjusted accordingly.

B9. Communication Between Parties and the Expert

B9.1. A Party and the Expert must not communicate directly. All communication between a
Party and the Expert must be made through the DNC.

B10. Transmission of the File to the Expert

B10.1. The DNC will forward the file except for documents relating to Informal Mediation to the
Expert as soon as the Expert is appointed.

B11. General Powers of the DNC and the
Expert
B11.1. The DNC, or the Expert if appointed, may in exceptional cases extend any period of time in proceedings under the Dispute Resolution Service.

B11.2. The Expert shall determine the admissibility, relevance, materiality and weight of the evidence.

B11.3. The DNC shall decide a request by a Party to consolidate multiple Domain Name disputes in accordance with the Policy and this Procedure.

B12. Further Statement

B12.1. In addition to the Complaint, the Response and if applicable the Reply, any appeal notice and appeal notice response, the Expert may request further statements or documents from the Parties. The Expert will not be obliged to consider any statements or documents from the Parties which he or she has not received according to the Policy or this Procedure or which he or she has not requested. The Expert may request that a further statement be limited to a defined topic, and the Expert will not be obliged to consider any material beyond that requested.

B12.2. Any communication with the DNC intended to be passed to the Expert which is not part of the standard process (e.g. other than a Complaint, Response, Reply, submissions requested by the Expert, appeal notice or appeal notice response) is a ‘non-standard submission’. Any non-standard submission must contain as a separate, first paragraph, a brief explanation of why there is an exceptional need for the non-standard submission. The DNC will pass this explanation to the Expert and the Respondent, and the remainder will only be passed to the Expert and the Respondent at the Expert’s sole discretion. If there is no explanation, the DNC may not pass on the document or information.

B13. In Person Hearings

B13.1. No in person hearings (including hearings by conference call, video conference and web conference) will be held unless the Expert determines in his or her sole discretion and in exceptional cases, that such a hearing is necessary to enable him or her to come to a Decision.

B14. Default

B14.1. If the DNC finds that a submission by a Party exceeds the word limit, the submission will be returned to that Party who will within three (3) Days return a submission which complies with the word limits. If the DNC does not receive the submission back within the deadline from:

B14.1.1. the Complainant, the Complaint will be deemed to have been withdrawn, which will not stop the Complainant from submitting a different Complaint; or

B14.1.2. the Respondent, the Parties will be notified that the Expert will be appointed when the Complainant has paid the applicable fees set out in paragraph B20 and in the absence of exceptional circumstances. Once appointed the Expert will decide the dispute based upon the Complaint and evidence attached to it.

B14.2. If, once the Expert has been appointed, and in the absence of exceptional circumstances, a Party does not comply with any time period laid down in the Policy or this Procedure, the Expert will proceed to a Decision on the Complaint. If the Expert has
not been appointed the DNC shall take any action which it deems appropriate in its sole discretion, unless prescribed by this Procedure.

B14.3. If, in the absence of exceptional circumstances, a Party does not comply with any provision in the Policy or this Procedure or any request by the DNC or the Expert, the Expert will draw such inferences from the Party's non compliance as he or she considers appropriate.

B15. Expert Decision

B15.1. The Expert will decide a Complaint on the basis of the Parties' submissions, the Policy and the Procedure.

B15.2. Unless exceptional circumstances apply, an Expert shall forward his or her Decision to the DNC within ten (10) Days of his or her appointment pursuant to paragraph B7.

B15.3. The Decision shall be in writing and signed by the Expert, provide the reasons on which it is based, indicate the date on which it was made, the place the Decision was made and identify the name of the Expert.

B15.4. If the Expert concludes that the dispute is not within the scope of paragraph 4, he or she shall state that this is the case. If, after considering the submissions, the Expert finds that the Complaint was brought in bad faith, for example in an attempt at Domain Name Hijacking, the Expert shall state this finding in the Decision. If the Complainant is found on three separate occasions within a 2-year period to have brought a Complaint in bad faith, the DNC will not accept any further Complaints from that Complainant for a period of 2 years from the date of the third such Decision.

B16. Communication of Decision to Parties and Implementation of Decision

B16.1. Within three (3) Days of the receipt of a Decision from the Expert, the DNC will communicate the full text of the Decision to each Party and the date for the implementation of the Decision in accordance with the Policy.

B16.2. The DNC will publish the full Decision and the date that any action which the Decision requires will be taken, on the DNC website.

B16.3. If the Expert makes a Decision that a Domain Name registration should be cancelled, suspended, transferred or otherwise amended, the DNC will implement that Decision by causing the necessary changes to be made to the Register after ten (10) Days of the date that the parties were notified, unless, during the ten (10) Days following the date that the parties were notified the DNC receives from either Party:

B16.3.1. an appeal or statement of intention to appeal complying with paragraph B17, in which case the DNC will take no further action in respect of the Domain Name until the appeal is concluded; or

B16.3.2. official documentation showing that the Party has issued and served legal proceedings before a New Zealand Court or decision-making body of
competent jurisdiction, or an arbitral tribunal of competent jurisdiction against the other Party in respect of the domain name. In this case, the DNC will take no further action in respect of the Domain Name unless it receives:

a). evidence which satisfies it that the Parties have reached a settlement; or

b). evidence which satisfies it that such proceedings have been disposed of.

B16.3.3. In the event of the DNC being satisfied that a judgment, decision or award has been made directing or requiring that a Domain Name be cancelled, suspended, transferred or otherwise amended, the DNC will implement that Decision by causing any necessary changes to the Register to take place and the dispute resolution service proceeding will be terminated.

B17. Appeal

B17.1. Either Party shall have the right to appeal a Decision by submitting either:

B17.1.1. a statement of the intention to appeal (see paragraph B17.2), plus the nonrefundable deposit (see paragraph B20.4), which must be followed within fifteen (15) Days by an appeal notice (see paragraph B17.3) and the balance of the fee (see paragraph B20.4); or

B17.1.2. an appeal notice (see paragraph B17.3) and the whole fee (see paragraph B20.4).

B17.2. A statement of intention to appeal should only contain sufficient information to make it clear that an appeal is requested. The statement of intention to appeal should not contain the actual grounds or reasons for appeal, and the panel of Experts will not be obliged to consider any such grounds or reasons.

B17.3. An appeal notice should not exceed 1000 words, should set out detailed grounds and reasons for the appeal, but shall contain no new evidence or annexes.

B17.4. Within three (3) Days of the receipt of the:

B17.4.1. statement of the intention to appeal and deposit; or

B17.4.2. appeal notice and the full fee, the statement of intention to appeal or appeal notice (as the case may be) will be forwarded to the other Party.

B17.5. Within ten (10) Days of receiving the appeal notice from the DNC, the other Party may submit an appeal notice response (paragraph B17.6).

B17.6. An appeal notice response must not exceed 1000 words, should set out detailed grounds and reasons why the appeal should be rejected but should contain no new evidence or annexes.

B17.7. Following the filing of an appeal notice response (or the expiry of the deadline to do so) an appeal panel of three Experts will be appointed. The test of impartiality shall apply to each appeal Expert. Subject to that qualification the appeal panel shall consist of:
B17.7.1. the Chair of the group of Experts, or at his or her discretion, an Expert of his or her choice; and

B17.7.2. the next available two Independent Experts appointed by rotation from the list.

B17.8. The appeal panel should not normally take into consideration any new evidence presented in an appeal notice or appeal notice response unless they believe that it is in the interests of justice to do so.

B17.9. So far as is appropriate in the circumstances paragraphs B15 and B16 apply equally to appeal Decisions, except that:

B17.9.1. appeal Decisions should be returned by the appeal panel to the DNC within thirty (30) Days of the appointment of the last panellist, but this deadline may be extended by up to ten (10) Days by agreement with the DNC; and

B17.9.2. appeal Decisions cannot be subject to any appeal within the Dispute Resolution Service.

B18. Settlement or Other Grounds for Termination

B18.1. If, before a Decision is made the Parties agree and notify the DNC of a settlement, whether or not pursuant to Informal Mediation, proceedings under the Dispute Resolution Service will terminate.

B18.2. If, before a Decision is made, it becomes unnecessary or impossible to continue proceedings under the Dispute Resolution Service for any reason, the DNC will terminate proceedings under the Dispute Resolution Service unless a Party raises justifiable grounds for objection within a period of time which the DNC will determine and notify the Parties of.

B19. Effect of Court Proceedings

B19.1. If the DNC is satisfied that legal proceedings relating to a Domain Name which is the subject of a Complaint are issued before a New Zealand court or decisionmaking body of competent jurisdiction or an arbitral tribunal of competent jurisdiction, before or during the course of proceedings under the Dispute Resolution Service and are brought to its attention, it will suspend the Dispute Resolution Service proceedings, pending the outcome of the legal proceedings.

B19.2. A Party must promptly notify the DNC if it initiates or becomes aware of legal proceedings in a court or decision-making body of competent jurisdiction or arbitral tribunal of competent jurisdiction relating to a Domain Name which is the subject of a Complaint during the course of proceedings under the Dispute Resolution Service.

B19.3. Either party may request, before or during the Dispute Resolution Service, an interim measure of protection from a Court.

B20. Fees

B20.1. The applicable fees in respect of the referral of proceedings under the Dispute Resolution Service to an Expert are $2,000 plus GST for disputes involving 1-5 Domain Names and only one Complainant. For disputes involving 6 or more
Domain Names, and/or more than one Complainant, the DNC will set a fee in consultation with the Complainant. Fees are calculated on a cost-recovery basis, and are passed on in their entirety to the Expert(s). The DNC does not charge for its mediation or administration services in respect of the Dispute Resolution Service.

B20.2. Fees are payable by the Complainant only if an acceptable resolution has not been achieved after Informal Mediation and the DNC notifies the Parties that an Expert is to be appointed.

B20.3. In exceptional circumstances, for example if an in-person hearing is held, the DNC will request that the Parties pay additional fees to be agreed between it, the Parties and the Expert.

B20.4. The applicable fees for the submission of an appeal are $7,200 + GST. If the option is used to pay a deposit and the balance, the deposit is $800 + GST and nonrefundable, and the balance is $6,400 + GST. If the deposit is paid, and the balance of the fee and/or appeal notice are not filed in time, that appeal is deemed withdrawn and the case will be closed.

B21. Exclusion of Liability

B21.1. None of InternetNZ, the DNC, NZRS, any Registrar, Expert or Mediator, nor any of those entities’ councilors, officers, employees or servants (as applicable) shall be liable to a party for anything done or omitted, whether negligently or otherwise, in connection with any proceedings under the Dispute Resolution Service unless the act or omission is shown to have been in bad faith.

B22. Modifications to the Policy and Procedure of the Dispute Resolution Service

B22.1 The Internet is an emerging and evolving medium and the regulatory and administrative framework under which the DNC operates is constantly developing. For these reasons the DNC reserves the right to make reasonable modifications to the Policy and Procedure at any time. Except where the DNC is acting in pursuance of a statutory requirement or a court order, substantive changes will be implemented following a process of open public consultation. Each such change will be published in advance (where practicable, 30 calendar days in advance) on the DNC web site: http://www.dnc.org.nz/policies and will become binding and effective upon the date specified therein.

B22.2. The Parties will be bound by the Policy and Procedure which are current at the commencement of the Dispute Resolution Service proceedings until the conclusion of the Dispute Resolution Service proceedings.
Appendix 5 Current complaint form

Complaints Form.pdf
Appendix 6

Bibliography


Domain Name Commission, Dispute Resolution Policy, https://www.dnc.org.nz/drs


Thomson Reuters

http://images.info.legalsolutions.thomsonreuters.co.uk/Web/ThomsonReutersLegalUKI/%7Ba3e94bca-c2d5-4f10-adcc-37f40d307863%7D_2_ODR_digital.pdf