**Submission in relation to the review of .nz policies**

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**General comments**

I am not following the template layout because it severely limits and unreasonably restricts my ability to comment on the review findings.

**First principles**

While in general I have no problem with separation between overarching policy statements and operational guidelines, I have a huge problem with the way the Policy Review has defined these. The problem is both practical and philosophical, and in fact these two aspects merge.

Lets start with the Internet. Open and uncapturable. By design; not chance, not because it might be a good idea, but because that is the foundation principle of the engineering of the Internet. And, not incidentally, the foundational philosophy of InternetNZ itself.

So, accepting that regulation in some form, and to some extent, is a necessity for a phenomenon that has become a critically important part of everyday life and our economic and social welfare, how should that regulation be formulated for an open and uncapturable Internet? A good starting point is the organisational structure of the Internet. It is broadly layered. There is a physical level, an interconnection level, a routing and addressing level, a data transfer level, a content/application level and a ‘wetware’ level, vis, the people and institutions that use the Internet. There are many ways that these layers can be cut and sliced and defined and redefined but the main point is, they exist and all are essential to the functioning of the system. And, critically, each level has its own particular regulatory requirements and opportunities.

And pitfalls.

When InternetNZ undertook responsibility for managing .nz, there was considerable debate about how decisions about .nz names should be made. There were existent concerns about intellectual property issues, domain name rights and priorities and even, for a relatively short period, whether ‘owning’ a domain name (whatever that might mean) should be a free good. Except for the latter, by and large these issues remain and are the rationale for all .nz management policies to the present.

One major issue, perhaps the dominant one, was the extent to which management of .nz involved oversight of the names themselves: should they be restricted in terms of usage, exclusion of obscenities and legally restricted words such as ‘royal’? Another major concern was right of ownership, who should have priority when a name was in dispute.

These discussions led to establishment of two fundamental (de facto) principles:

1. Regulation should be limited to the minimum requirement for effective functioning of the domain name system;
2. InternetNZ (or ISOCNZ as it was at the time) should be responsible to ensuring the addressing function worked effectively but not for what uses or services that function enabled.

Arguably, of course, the arbitrary division of the .nz naming space into sublevels was in breach of the first of these but that mistake has subsequently been rectified.

One other fundamental principle established was that .nz names were allocated strictly on a ‘first come, first served’ basis. InternetNZ itself had no interest in intellectual property or any other priority rights. The extent to which these existed in relation of a name was the concern only of the domain name holder. An early extension of the principle was recognition that InternetNZ owed a duty of care to domain name holders against interference with their ability to use their name, such as attempts at reverse domain name hijacking. A consequence was the eventual establishment of the disputes resolution system, the basis for which differs in important respects from the system operated under the WIPO-approved UDRP. Principally and importantly it recognises the rights of, and duty of care to, existing name holders provided that they have followed the applicable rules for domain name holding.

So, if we are looking for principles superior to mere operational guidelines, it would be hard to go past FCFS.

Another would be that, while InternetNZ itself might well be concerned about the greater good of humanity, or at least that portion of it dependent on safe and secure operation of the (NZ) Internet, the DNS operation is but a small (albeit critical) part of the whole. Management/managers of .nz should stick to their knitting.

**‘Layered’ regulation**

As noted earlier, an early point of discussion in relation to management of .nz was whether the name itself, or the use to which it might be put, was a matter of concern to .nz management. The conclusion then and since has been that, except for any requirements of statutes or direction of a court, these are not matters of concern to the .nz manager per se. InternetNZ has concerned itself with these issues to a degree but, at least until relatively recently, has developed and encouraged relationships with other organisations better equipped to deal with such issues. A good example is Netsafe. Another is CERTNZ, with respect to which InternetNZ during most of its existence attempted unsuccessfully to interest responsible authorities in its establishment.

These are good and successful examples of authorities with responsibility for some form of regulatory authority within an appropriate layer of Internet activity.

A counter example is the censorship filters in operation in the UK and Australia where clumsy intervention at the addressing layer in order to censor at the content layer has created numerous unintended and inappropriate consequences. At least in NZ, the content filter, thanks in part to InternetNZ lobbying, has a degree of expert oversight in its operation.

Any attempt to involve the .nz manager in content regulation should be resisted. InternetNZ itself shouldresist such involvement and any action to ‘take down’ a site or block an activity should only be undertaken at the behest of an appropriately empowered legal authority.

**Other general comments**

The review discussion paper more or less adheres to the above (in as far as they constitute ‘principles’), except where it attempts to extend the role of the .nz manager well outside its sensible areas of real concern and responsibility. Each of the options provided includes at least one sensible option (vis: status quo or minimal change from the current situation) and I would advocate that one of these be followed.

**Conflicted domain names**

Here I must descend from matters of principle to the practicality of one who actually has a so-called conflicted DN (full disclosure, curmudgeon.net.nz ‘conflicts’ with curmudgeon.co.nz).

I don’t like any of the the ideas suggested for resolution of the so-called conflicts. In particular if any clown thinks that a .co.nz name should take precedence over any other subdomain they should be cast into outer darkness for eternity. I might be in a position to claim eldest and first use of the curmudgeon name (I don’t know and don’t particularly care) but I do know that any attempt to interfere with ‘my’ name will cause me enormous discomfort and inconvenience. Curmudgeon.net.nz is my Internet username on vast numbers and probably long forgotten applications and loss of the use of it would be a huge problem.

I imagine that much the same will go for many, perhaps most, holders of these ‘conflicted’ names.

Leave us in peace.

If the chap who uses the .co.nz DN wants to contact me, we will sort things out between us. In the meantime LEAVE US ALONE.