

Submission on Options Report of the .nz Policy Advisory Panel

I make this submission in a personal capacity, but for full disclosure I note that I am a board director of Public Interest Registry (PIR), which manages the .org TLD, and I am employed as the IETF Executive Director and the IETF is where DNS standards are developed. Also, I held the role of CEO of the .nz registry until 2018 and in that role had significant influence in determining the current .nz policy framework.

General observations

1. The report makes almost no reference to data to evidence or substantiate any of the assertions it makes or to understand the relative importance of the issues raised. This is surprising as the preceding issues report was strongly based on data, which presumably flows into this report. It would be helpful if the assertions and issues detailed in this report could be linked back to the data gathered so that any that are not based on data can be identified. For example, there is the assertion on p39 that option A for IDNs means “No improvement in trust in .nz.” which I suspect is unevicenced given its disconnect from international experience. My concern is that effort will be put into addressing issues that are entirely theoretical and not actually observed.
2. There is mention of an international review being used as background for this report but as this is still to be published I am unable to assess if a good set of comparison ccTLDs was used. This is important because one of the reasons so much time is spent reviewing .nz and changing the policies is because we so often ignore international experience and best practice and choose a unique local way forward, that then fails to stand the test of time.
3. This report is so long and so detailed and the response timeframe so comparatively short that I am unable to respond in anywhere near as much depth as it deserves. As a result, some of my responses are simply a yes/no with a brief explanation rather than the a properly explained position.

Principles

1.	Do you consider that the .nz guiding principles should be visionary, holistic, inclusive and instructive rather than operational? Why / why not? What else should they be?
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Yes. That sounds like a reasonable way of defining guiding principles.

2.	Do you think the .nz policies should be rewritten and simplified? Why / why not? If yes, how?
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No, but a review against a new set of guidelines should be conducted.

If the Operations and Procedures¹ were to be simplified then there is a real danger that registrants would be confused about the procedures they are required to follow, that registrars would offer an inconsistent interpretation of the policies and that DNCL would need to make arbitrary judgements on too many issues.

¹ <https://internetnz.nz/nz-domains/nz-policies/operations-and-procedures/>

The problem I see is that the purpose of the .nz policies is not clearly understood and until that is pinned down the content and structure of the policies will reflect the style and preferences of the current set of authors. I recommend that a set of guidelines for what the .nz policies aim to achieve should be drawn up and consulted on and the policies can then be reviewed against those. Those guidelines could include such elements as “ensure that registrars interpret the policies in a consistent fashion”.

The issue with industry jargon has been overstated in the report. Terms that originate as technical acronyms often end up in common parlance or at least well-known within a specific product/industry. “Domain name” is a perfect example of this. There is an issue with .nz creating its own industry jargon, however that is not reflected in the policies. For example, .nz has created the acronym IRPO for Individual Registrant Privacy Option though that is not used in the .nz policies. Jargon like that should certainly be eliminated and only jargon that is common in the global industry context should be used.

3.

Do you think there should be a new ‘secure, trusted and safe’ principle? Why / why not? Do you have any comments on the proposed formulation of the new principle?

Yes. This is a very basic moral obligation. If InternetNZ is not willing to include this then it should reconsider if it is the best organisation to act as the steward of .nz.

4.

What would be the main benefits and disadvantages of moving from a ‘no concern for use’ approach to a ‘secure, trusted and safe’ approach?

An unfortunate characteristic of the Internet is that people who commit harm using the Internet can hide their tracks very well and the normal policing methods to detect, prevent and prosecute crime are struggling to be effective in this environment. In particular those methods operate at a very different speed to the Internet, where something like a phishing site can inflict considerable harm in just one hour. Consequently, the greatest disruption to criminal behaviour on the Internet comes from the actions of industry participants such as registries and registrars, who are able to act significantly faster than law enforcement. From a principled perspective this is not a position I want to see continue, but it is the reality on the ground and will be for many years to come and so should be accepted and worked within rather than rejected.

Because the action of registries and registrars have so much of an impact, criminals gravitate towards those registrars and TLDs that turn a blind eye to their activities. .nz thankfully has a strong set of registrars who take this seriously and the population size presents a relatively small target for criminals, and together those have kept levels of crime and harm low in comparison to many other TLDs.

However, that does not excuse a policy setting that ignores the direct impact that a registry can have in mitigating harm.

Take the straightforward example of a phishing site that uses TradeMe branding and site structure to steal user logins and has no other purpose. In other words, a domain name registered solely for criminal purposes not a compromised site or hijacked page.

The current policy requires TradeMe to get an emergency court order for the domain name to be taken down, by which time thousands of user logins could have been compromised. This is simply unconscionable as there is no ambiguity around criminal purpose - .nz should itself take that domain name down once validated.

There are obviously significant risks if that power is misused or incorrectly used, however many registrars and other registries have developed appropriate systems and safeguards and I am sure we are equally capable.

5.	Do you think there should be a new 'open and accessible' principle? Why / why not? Do you have any comments on the proposed formulation of the new principle?
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Yes but not as worded. The word "inclusive" is generally taken to mean a safe space without hostile content or behaviour, but that is not possible within a ccTLD namespace as that will inevitably reflect the wide variety of views of the whole population. This needs to be phrased in the passive sense of what the namespace will not prevent rather than the active sense of what it will aim to deliver.

6.	Do you think there should be a new 'New Zealand benefit' principle? Why / why not? Do you have any comments on the proposed formulation of the new principle?
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Yes, but only if this principle is balanced against the following:

- The global nature of the Internet where the actions of people on one side of the world can affect those on the other.
- The need to ensure that .nz learns from international experience and follows international best practice rather than repeatedly reinventing the wheel.

7.	Do you think there should be a new principle on te reo Māori and Māori participation in .nz? Why / why not? Do you have any comments on the proposed formulation of the new principle?
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Yes there should be a principle on te reo Māori, this is obvious.

No to the principle on Māori participation as written because it is unclear what that means in practice. If this could be tightened up then it could be an operational principle.

8. Do you think there should be a new guiding principle on enabling New Zealand to grow and develop? Why / why not? Do you have any comments on the proposed formulation of the new principle?

Yes, though I note that the principle as written uses the word “enable” and “help” interchangeably when those have quite different meanings. I agree with “enable” and the implication of a passive action in creating a namespace where growth and development are enabled, but not “help” and the implication of taking specific actions to drive growth and development.

9. Do you think there should be two types of principles (guiding principles and operational guidelines) to help manage the .nz domain? Why / why not?

Yes, it is a useful distinction. The operational principles would presumably subject to a more regular review and update than the guiding principles.

10. Do you agree that the ‘rule of law’ principle should not be retained as an operational guideline? Why / why not?

Yes and for the reasons stated, that this does not add anything to the default scenario.

11. Do you think the ‘first come first served’ principle should be modified and retained as an operational guideline? Why / why not?

No, I think this should be reworded for clarity but otherwise retained as a guiding principle.

While the question is solely about the first-come-first-served principle, the section of the report states “*in the future there may need to be some words that should not be freely available for registration*” and my response is written with that subtext in mind.

The important point to remember here is that all the registry sees is a domain name made up of letters, number and hyphens and it is rarely possible to correctly impute any meaning to that collection of characters until it is somehow used and that usage observed. What the first-come-first-served principle means is “wait until that usage is observed before making any decision on the legitimacy of that registration” and from that comes a set of implications that raise this into a guiding principle.

If this principle is modified as proposed and relegated to an operational guideline then this opens the door, as the panel specifically envisions, to blocklists of domain names being created in order to protect the rights to specific terms by peoples, communities, organisations or individuals.

This introduces the following hugely problematic questions of principle, not operations:

1. **What rights are actually being protected?** It is a well-established principle of intellectual property law that rights in a specific term are limited the usage of that term. For example, NZ law² allows copying from an original without permission if it is for any of research, private study, criticism and review, and reporting current events. This is all about the use of content and cannot be determined without considering that use. To be clear, nobody has the right to prevent a term being used for criticism but a blocklist of terms creates that, which is an important matter of principle.
- **Whose rights should be protected?** When rights protection mechanisms are introduced into domain name registration there is always a competition between various parties for protection of their rights. This inevitably involves lobbyists and lawyers as various parties push their case as to the why their rights should be protected and that then becomes a matter of how deep someone's pockets are and how well they can use the law to their advantage. This again is an important matter of principle – do we want to create a mechanism where those with deeper pockets unintentionally get a very different level of recognition within the .nz namespace?
- **What harm to someone's rights is caused by not protecting those rights before registration?** The answer here is none – it is solely the inappropriate use of the domain that causes harm, and as noted above, that cannot be determined based just on the characters in the name. It is worthwhile noting that 'Anzac', which is amongst those most protected by NZ legislation³ is not blocked in .nz and anzac.org.nz is used by the "Australia and New Zealand Association of Kuwait" (yeah right) and yet the sky has not fallen in.
- **How is it implemented?** To explain how this becomes a significant problem, take again the example of 'Anzac', which has a specific legal prohibition on its use in trade. A blocklist could prevent the registration of anzac.org.nz (even though its legal protection doesn't go that far) but what about the entirely illegal anzacspecialoffers.org.nz or any of one of the other millions of ways of using the term illegally?

As identified in the report, the concerns that are driving this change are about the rights that specific peoples/communities/organisations/individuals consider that they have to certain words and phrases and how those rights are protected by .nz policy. The report specifically links that back to "*how te reo Māori should be used in domain names*".

I strongly agree that there are significant issues with the misappropriation of Māori culture (and globally with misappropriation of indigenous culture generally) and that there needs to be a mechanism to recognise and protect those rights. But relegating first-come-first-served so that it can be conditionally ignored, is a retrograde step that creates many more serious issues of principle that cannot be resolved.

² <https://www.copyright.co.nz/understanding-copyright/copyright-exceptions>

³ <https://mch.govt.nz/nz-identity-heritage/anzac-day/anzac-guidelines>

The correct way to address this is for .nz policy to recognise Māori cultural rights in te reo and to afford them exactly the same status as the legal rights of copyright and trademarks and so allow the current dispute resolution service to be used to seek remedy for infringement of those rights. That is both a workable and principled response to this issue.

Finally, I agree with the implicit view of the panel that ‘first-come-first-served’ does not capture the intent of the principle with clarity and so my suggested rewording is **“.nz should aim to fairly balance the legal, moral and cultural rights of all stakeholders based on how the domain names are used.”**

12.

Do you think the ‘registrants’ rights come first’ principle should be modified and retained as an operational guideline? Why / why not?

I agree with the panel that this principle should be dropped. Operation of a ccTLD requires a complex balancing of rights between multiple stakeholder groups and a narrow statement like this is counter to that reality.

13.

Do you agree that the ‘low barriers to entry’ principle should be removed? Why / why not?

Yes it should be removed.

Despite the many claims to the contrary, .nz does not have low barriers to entry. .nz actually has high barriers to entry compared to the many TLDs where all it takes to become a registrar is a cheque in the post. There are probably other TLDs where the principals of a company applying to be a registrar must have been active in the industry for three years or more, but I doubt there are many.

These high barriers to entry have kept .nz safe and secure far better than any other part of the .nz policy as they have ensured that we have a committed, knowledgeable and well engaged registrar population.

14.

Do you agree that the ‘no concern for use’ principle should be modified and retained as an operational guideline? Why / why not?

I would go further and remove this principle entirely as explained in my answer to question 4.

I support the proposed substitution of this with *“The ccTLD manager should keep restrictions on the way domain names can be used to the minimum necessary to enable the .nz domain to be trusted and safe”*.

15.	Do you agree that the 'structural separation' principle should be retained as an operational guideline? Why / why not?
16.	Do you agree that the 'clear chain of relationships' principle should be retained as an operational guideline? Why / why not?

In discussing first-come-first-served the panel has made it clear that they believe that an operational guideline can be set aside in exceptional circumstances. If either of these principles were set aside then that could easily mean a different market structure for .nz. Such a decision should only be taken with full public consultation and clear explanations of the implications of the new structure.

My suggested alternative is to create a new guiding principle about the fairness and transparency of the market structure, such as **“.nz should operate with a market structure that is fair and transparent to all participants”**.

17.	Should the Panel consider any other principles?
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Yes, in my answers to q11 and q15/16 I proposed two new guiding principles:

- **.nz should aim to fairly balance the legal, moral and cultural rights of all stakeholders based on how the domain names are used**
- **“.nz should operate with a market structure that is fair and transparent to all participants**

18.	Is there anything else the Panel should bear in mind when making recommendations on the principles or operational guidelines for the .nz policies?
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Without seeing the international review, it is hard to tell if that was sufficiently comprehensive and/or correct to properly inform the panel.

Accessibility and openness of .nz domains

Due to time constraints I am unable to respond to all of the questions in this section or even to respond in depth.

20. Which option do you prefer? Why?

Amended **Option B: Make the policies available in te reo Māori as well as English.** Policies and content should be provided in or fully support the three official languages of Aotearoa. That means all words translated into English and te reo Māori and all video/audio content close-captioned.

22. Which option do you prefer? Why?

First, I should note that the emoji character shown in the table at the top of page 38 cannot be used in a valid Internationalised Domain Name (IDN) as that is not allowed by the rules for IDN names.

I prefer **Option A: the current situation.** There are a number of international examples of ccTLDs that allowed multiple character sets without registry or registrar staff generally being able to read the languages those characters are used for, and this introducing significant problems leading to a narrowing of the policy. So, contrary to the assertion that Option A would mean “*No improvement in trust in .nz.*” taking a different option could actually reduce trust in .nz.

24. Which option do you prefer? Why?

Serious consideration should be given to **Option C: Impose a local presence requirement.** This works well for Australia and many other countries and helps to maintain a safe and trusted namespace.

Security and trust

Due to time constraints I am unable to respond to all of the questions in this section or even to respond in depth.

26. Which of these options do you prefer? Why?

Option C: Suspension of a domain name on advice by a trusted notifier. There are some high-quality organisations, such as Netsafe, that are perfectly capable of being trusted notifiers.

28. Which of these options do you prefer? Why?

Option B: Make the interim policy permanent as it is currently phrased. My reasoning is explained in the answer to q4.

30. Which of these options do you prefer? Why?

I prefer **Option A: Current situation.** In order for data validation to work, the following pigs need to be spotted flying over Wellington:

- A single consistent addressing scheme for New Zealand if local requirements are introduced and also for the rest of the World if not.
- A national identity scheme if local requirements are introduced and a global one if not.
- Criminals to promise not to use fake data.
- A definition of a “high-risk” domain.

32. Which option do you prefer? Why?

Option A: The current situation. There is no evidence that any of this is even noticeable let alone a problem.

34. Which of these options do you prefer? Why?

Option A: The current situation. Repeat after me, “You cannot tell if a domain name is a misleading/deceptive registration until you have seen it in use”. See my response to q11 for more details.

36. Which option do you prefer? Why?

Combination of **Option B: Require all registrars to adhere to minimum security standards** and **Option C: Incentivise or mandate security features or practices.** For example, DNSSEC should not be optional and should attract a small discount for each DNSSEC domain a registrar has.

The main issue against appears to be cost to the registrar but in my view if a registrar cannot afford the cost of operating securely then they should not be a registrar.

38. Which of these options do you prefer? Why?

Option A: The current situation. The technology doesn't change that often that the policy cannot be amended to match. Again, there doesn't seem to be any evidence that this is a problem.

Conflicted domain names and Enhancing privacy across the .nz domain name system

Due to time constraints I am unable to respond to any of the questions in these sections.

The .nz domain space and Māori

Due to time constraints I am unable to respond to all of the questions in this section or even to respond in depth.

48. Do you agree that following the Panel's work, InternetNZ should take reasonable steps to engage with Māori when amending the .nz policies? Why / why not?

Yes. See my response to q11 for more details.

Opportunities to enhance .nz growth and improve market operation

Due to time constraints I am unable to respond to all of the questions in this section or even to respond in depth.

52. Which of these options do you prefer? Why?

Option B: Enable variable wholesale pricing to Registrars. DNSSEC enabled names are a good example of a class of name that other ccTLDs have shown are adopted quicker if priced cheaper than non-DNSSEC enabled names.

54. Which of these options do you prefer? Why?

Option A: Do not incentivise registrars or registrants (the current situation).

Incentivisation can be made to work but it is a huge undertaking to do it correctly and too often it turns into a habitual discount being offered with no measurement and no outcomes.

New product launches can be enabled by variable wholesale pricing and are not dependent on incentivisation.

56. Which of these options do you prefer? Why?

Unable to respond without much more thought.

58. Which of these options do you prefer? Why?

Option B: Establish a two-tier registrar system which incorporates resellers. Other ccTLDs have done this very successfully and there are no clear reasons why we shouldn't.

60. Which of these options do you prefer? Why?

Amended **Option B: The Registry defines minimum service/feature set all registrars must provide. The Registry may not sell/market directly to registrants. The Registry incentivises registrars to provide services it provides under agreed rules.** I do not agree with the incentivisation as the variable wholesale pricing is sufficient. Provided that .nz decides on what features to mandate through an open process rather than making arbitrary decisions, there are no excuses for registrars not to implement them. This is exactly what happens in many other industries with a wholesale/retail split.

62. Which of these options do you prefer? Why?

Unable to respond without much more thought.

64. Which of these options do you prefer? Why?

Option B: The Registry collects and communicates market information including customer segments, activity/utilisation and product use for industry to better understand and develop the .nz market. I thought this had already been consulted upon and agreed as part of the last .nz review.

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12th August 2020