



Submission on .nz Policy Advisory Panel 'Re-imagining the future of .nz' Options Report

Introduction

This submission is made by Mega Limited, New Zealand registered company no. 4136598, (**MEGA**). No part of this submission is private or confidential.

By way of background, MEGA is an end-to-end encrypted cloud storage and chat service provider with over 190 million registered users in 250 countries and territories who have uploaded more than 80 billion files, with 2020 traffic exceeding 800 Gbps.

Although very much operating globally, MEGA's head office is based in Auckland, New Zealand. Also, the primary domain through which MEGA makes its services available worldwide is mega.nz. Consequently, as a solely online business operating from a '.nz' domain, MEGA is keenly interested in and well placed to comment on, the issues surrounding the future of the '.nz' domain system.

MEGA has responded to the questions that are particularly relevant to its experience and operations using the original numbering from the Options Report. The fact that MEGA has not responded to other questions raised in the Options Report does not imply any acceptance or rejection of, or any particular view on, those questions.

MEGA understands and agrees that its submission will be made public on the InternetNZ website.

MEGA understands that its contact details will be redacted from the public version of this submission.

MEGA does not wish to speak to its submission with the Panel.

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?

MEGA does not believe that the .nz guiding principles should be visionary, holistic, inclusive and instructive rather than operational.

The established operationally focused principles provide a reliable level of certainty and clarity in what is a very technical area. Providing for principles of a non-operational nature, to which MEGA understands the operational provisions would then become subordinate, would sacrifice some degree of that certainty and clarity. This would most obviously be seen in trying to determine the degree to which the operational provisions would have to be bent in their application to meet the interpretation (which would involve a large degree of subjectivity) of 'visionary, holistic, inclusive and instructive' principles.

2.

Do you think the .nz policies should be rewritten and simplified? Why / why not? If yes, how?

MEGA does not believe the policies should be rewritten and simplified.

Trying to simplify the policies too much in an attempt to make them more accessible, runs the risk of losing the certainty and clarity which is needed in such a technical area. Also, in attempting to create an 'omnibus' from all currently separate material, the risk is that the new form of documentation will be no less confusing or intimidating to people from outside the industry.

Those already operating in the .nz domain space have also come to understand the policies and their practical application based on their current form. Rewriting and simplifying the policies will require such industry participants to reinterpret the policies in their new context. This will likely create, at least initially, some degree of uncertainty on previously well-established matters.

Although MEGA does not agree that the existing principles are "difficult to properly understand unless you are an industry 'insider'", if it really was felt there was a need to make the policies better understood by a wider audience, then rather than a substantial rewriting and simplification of the policies, a more appropriate approach may be to simply add a glossary or deeper explanation of key terms and concepts where necessary.

MEGA would also note that claims that the existing principles are not written in a sufficiently “inclusive and accessible way” are not helpful when at the same time it is not clearly identified who the affected ‘stakeholders’ are and their priorities which the principles supposedly need to be rewritten to align with.

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?

MEGA supports the motivation behind the desire to have a new ‘secure, trusted and safe’ principle but does not believe such a new principle is necessary or appropriate.

In terms of security, the successful operation of a domain name system requires by its very nature, that it be secure and operationally robust. MEGA does not believe that there is any advantage in placing a ‘principle’ on top of what is already clearly an operational necessity.

With regard to the issue of promoting a ‘trusted and safe’ domain name system, MEGA believes that there is already sufficient protection and recourse for people in these regards under currently existing frameworks. For example, that afforded by legislation such as the Privacy Act, the Harmful Digital Communications Act and the Films, Videos and Publications Classification Act amongst others, as well as of course agencies such as the Police and Department of Internal Affairs. DNCL attempting to meaningfully oversee, regulate and assist in such aspects of the domain name space as well, runs the risk of wasting DNCL resources by duplicating oversight provided by these other well established and specialised mechanisms. It could also result in confusion amongst the people the protection is intended to be afforded to, with regard to whom they should have primary recourse to in the event any issues arise.

Given the huge range of issues it potentially alludes to, at one end of the spectrum MEGA would also note that the concept of ‘secure, trusted and safe’ could easily be seen to encapsulate responsibility for combating and providing some form of defense against a number of specific threats present in the online environment today, such as the proliferation of malware and identity theft. Clearly, this shows the danger of adopting such open ended concepts as ‘secure, trusted and safe’ into the principles, when the result could potentially be placing some form of responsibility on DNCL to consider oversight of areas few would rationally have ever thought DNCL could be seen as having any obligation to provide a response to or regulation in respect of and such areas already being covered by other agencies.

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?

MEGA does not believe there should be a move from a 'no concern for use' approach to a 'secure, trusted and safe' approach. The 'no concern for use' approach reflects the reality that other specialised agencies are already responsible for identifying and responding to inappropriate activity in the online space. With the regard to the disadvantages of moving to a 'secure, trusted and safe' approach see MEGA's answer to question 3 above.

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?

MEGA would support a new 'open and accessible' principle as an addition to those currently existing guiding principles rather than as replacement for any currently existing guiding principles.

MEGA believes that if instituted in a commercially prudent manner, such a principle would support the ongoing innovation of the .nz domain and related services. However, this innovation and growth is subject to such openness and accessibility not being achieved at the detriment of the certainty and commercial effectiveness of how the domain name system runs. MEGA believes that this test of not derogating from the certainty and commercial effectiveness of operation, should always be a key assessment of any change proposed to the fundamental nature in which the domain name system runs.

MEGA has no comment on the proposed formulation of the new principle.

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?

MEGA does not believe there should be a new overriding 'New Zealand benefit' principle.

As it is expressed in the Options Report, MEGA sees such a principle as allowing actions and policies which could potentially endanger the certainty and commercial effectiveness of operations of the .nz domain.

Such a 'New Zealand benefit' principle would also raise questions as to how substantial businesses operating in and contributing to the New Zealand economy, but that may be part of larger global corporations or have significant or complete foreign ownership, would be viewed and treated with regard to their activities in the .nz space under such a principle. Ironically, the treatment of such entities in a different way to other New Zealand business with less foreign composition, could tarnish the reputation of the .nz domain overseas, inadvertently hurting New Zealand businesses operating through a .nz domain internationally.

MEGA notes that the Advisory Panel agreed, in the recent webinar, that it did not intend that there should be restrictive requirement for benefit to New Zealand, as it acknowledged the existing significant usage by international businesses.

As already noted, MEGA believes that in any case certainty and the commercial effectiveness of operations of the .nz domain is of prime importance. This should be an overarching consideration that applies regardless of a particular registrant business' nature, structure or ownership composition.

Notwithstanding the above, depending on the wording of the 'New Zealand benefit' principle and the way it was to be applied, MEGA would not necessarily oppose the establishment of one or more specific 2nd level domains under the .nz domain (e.g. something such as 'local.nz') which were the only domains under the .nz domain structure the 'New Zealand benefit' principle was to apply to.

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?

MEGA does not believe there should be a new guiding principle on enabling New Zealand to grow and develop.

For similar reasons outlined in MEGA's response to question 6 above, MEGA believes that certainty and commercial effectiveness of operations of the .nz domain is of primary importance. Any principle that seeks to place the interests of 'New Zealand' (to whatever extent and in whatever manner that might be subjectively interpreted) above or alongside such certainty and commercial effectiveness, potentially poses a significant threat to the effective longer-term operational performance and reputational standing of the .nz domain.

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?

MEGA does not think there should be two types of principles (guiding principles and operational guidelines) particularly if, as suggested by the Options Report, the guiding principles are to prevail if there is any inconsistency between the operational guidelines and guiding principles.

The domain name space is by its nature a very technical area. In MEGA's opinion, the certainty of the current situation, where by the clearly operational matters provided for in the current guiding principles are not fettered by the subjective interpretation of new overarching less operationally focused principles, is the best option.

10.

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

MEGA does not agree that the 'rule of law' principle should be removed as an operational guideline.

As InternetNZ looks to move forward with suggested changes arising from the Options Report, some of which if adopted look to provide for greater access and inclusiveness in the operation of the .nz domain, it is vital that such well-intentioned changes do not lose sight of the importance of the .nz domain space continuing to be operated in a certain and predictable manner that will ensure it remains a commercially respected domain. Given that certain legislation and agencies (as discussed in the second paragraph of MEGA's answer to question 3 above) have a notable relevance to the operation of the .nz domain, it is vital that the 'rule of law' principle be retained to serve as a constant reminder that whatever other specific principles and operational guidelines are adopted moving forward, all such polices need to easily work in with and respect the basic philosophical tenets of the 'rule of law'.

Further, MEGA would reiterate the comments of the former Domain Name Commissioner quoted on page 27 of the Options Report in that the 'Rule of Law' principle:

...encompasses safeguards against the abuse of wide discretionary powers and ensures that a person or party is given the opportunity of a fair hearing

before an impartial court or tribunal before they are negatively impacted by a decision of which they had no knowledge or input.

In line with this, and especially if the ‘Rule of Law’ principle ends up being removed, MEGA would implore that any changes made with regard to how compliance is adjudicated and enforced in the new operational matrix of the .nz domain, provide maximum allowance for due process at all times, including such standard features as prior notice, impartial hearing, right of appeal etc.

11.

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

As explained in MEGA’s answer to question 9 above, MEGA does not think there should be two types of principles (guiding principles and operational guidelines). Consequently, MEGA would not support the ‘first come first served’ principle being relegated to the status of an operational guideline.

Particularly given the clarity and certainty the ‘first come first served’ principle provides to users of the .nz domain, MEGA would be particularly opposed to the ‘first come first served’ principle being relegated to the status of an operational guideline where such clarity and certainty could be affected by the subjective interpretation of new overarching less operationally focused principles.

However, in the interests of fairness, MEGA would not be opposed to the clarification of the ‘first come first served’ principle to recognise that in the future there may need to be some words (and provided that this only ever occurs on an extremely limited basis) that should not be freely available for registration (e.g. words which are culturally significant to Maori, or offensive names).

12.

Do you agree that the ‘registrants rights come first’ principle should be removed? Why / why not?

MEGA does not agree that the ‘registrants rights come first’ principle should be removed.

MEGA believes that the removal of the principle, particularly if as the Options Report suggests, it was replaced with one which sought to promote some sort of balance

between the rights of registrants and the rights of the wider New Zealand public, does nothing to add certainty to the intended operation of the .nz domain.

As registrants are the ones currently active in and thereby supporting the .nz domain space, why should their rights be curtailed in any way for some vague measure of the larger public interest? And given the diversity of New Zealand society in every way, what would this larger public interest be that the rights of registrants were to be balanced against?

To be effective moving forward, the consideration of new and existing issues that affect the .nz domain space and how to respond to them, needs to start from the perspective of some identifiable stakeholders. It would make sense that as represented by the principle ‘registrants rights come first’, this should be registrants, as registrants are the ones, as already noted above, currently active in and thereby supporting the .nz domain space. Without having such specific stakeholders to reference in regard to any issue, how would you possibly gauge the appropriateness of a proposed response to an issue and then subsequently measure the effectiveness of any related actions taken.

Trying to broker some perceived balance between the rights of registrants and the rights of the wider New Zealand public also appears to be very similar to the intention behind the proposal in question 6 regarding the creation of a new ‘New Zealand benefit’ principle. As noted in MEGA’s response to question 6, MEGA does not believe the creation of a new ‘New Zealand benefit’ principle is appropriate, as it raises a number of potential issues that are not compatible with providing for long term certainty and the commercially efficient operation of the .nz domain.

MEGA also notes that on page 30 of the Options Report it is stated that:

The principle [‘registrants rights come first’] does not appear to be common internationally. The other ccTLDs the Panel looked at do not use this principle. More common are statements on the importance of connecting with and being responsive to users.

MEGA would argue that such a focus on ‘users’ internationally is in fact exactly in line with deferring to the interests of those who are currently engaged with and making use of the services in question, as opposed to the wider public generally. Consequently, this observation actually supports the retention of the ‘registrants rights come first’ principle rather than its removal.

13.

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

MEGA does not agree that the 'low barriers to entry' principle should be removed.

MEGA believes that registrars are the most significant commercial players in the .nz domain space and that consequently the actions of registrars largely sets the tone for the commercial operation of the .nz domain space as a whole. Therefore, the 'low barriers to entry' principle focusing solely on competition between registrars is not inappropriate. MEGA also does not believe that the retention of the 'low barriers to entry' principle is necessarily at odds with the development of a more secure, trusted and safe .nz in the next decade and beyond.

14.

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

As explained in MEGA's answer to question 9 above, MEGA does not think there should be two types of principles (guiding principles and operational guidelines). Consequently, MEGA would not support the 'no concern for use' principle being relegated to the status of an operational guideline.

MEGA also does not agree that the 'no concern for use' principle should be modified. Related to this please see MEGA's answers to questions 26 and 28 below.

15.

Do you agree that the 'structural separation' principle should be retained as an operational guideline? Why / why not?

As explained in MEGA's answer to question 9 above, MEGA does not think there should be two types of principles (guiding principles and operational guidelines). Consequently, MEGA would not support the 'structural separation' principle being relegated to the status of an operational guideline.

16.

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

As explained in MEGA's answer to question 9 above, MEGA does not think there should be two types of principles (guiding principles and operational guidelines). Consequently, MEGA would not support the 'clear chain of relationships' principle being relegated to the status of an operational guideline.

No geographical limits on registrants

- Option A: The current situation
- Option B: Educate .nz users that .nz domain names can be held from anywhere around the world
- Option C: Impose a local presence requirement

23.

Do you agree with our assessment of the options? Why / why not? Are there viable options that we have not mentioned?

Yes, MEGA agrees with your assessment of the options.

24.

Which option do you prefer? Why?

MEGA prefers Option A: The current situation

MEGA believes that the current situation is working satisfactorily and that no significant changes are needed. There are a significant number of overseas entities who operate .nz domains, often replicas of their primary domain, so it is too late to think that "there is a risk that .nz users will receive a surprise about who can hold a .nz domain name, leading to reduced trust in .nz...."

Option B: Educate .nz users that .nz domain names can be held from anywhere around the world

MEGA does not believe that this would result in any meaningful improvement on the current situation and consequently does not see this as being necessary.

Option C: Impose a local presence requirement

MEGA believes that instituting and ensuring compliance with such a requirement would be extremely costly and time consuming and that DNCL resources could be better focused in any number of other areas.

Such a requirement would also raise the issue of how to deal with current registrants who may not be able to meet the new eligibility requirements to hold a .nz domain. If, in the interests of fairness and commercial certainty, such registrants were allowed to continue to hold their .nz domain registrations, some of the supposed benefits of instituting such an eligibility requirement would be undermined.

Similar to the above, what would happen in the situation where a New Zealand owned entity with a .nz domain became wholly or substantially owned by an overseas party? And how would it be determined what degree of overseas ownership or control would be regarded as being incompatible with satisfying the local presence requirement? Also, if following the whole or partial acquisition by an overseas party such a registrant was allowed to continue to hold their .nz domain, which practically speaking in the interests of fairness and commercial certainty they would have to be, some of the intended benefits of instituting a local presence requirement would be undermined.

If such a requirement involved potential registrants having to meet conditions that were seen as too onerous, it may deter many legitimate overseas businesses wanting to target New Zealanders from looking to register and trade through a .nz domain. Over the longer term this would be commercially detrimental to the .nz domain market in a number of ways, including by reducing the competition for and trade in .nz domains and consequently as a result likely also innovation in the space. Similarly, if the conditions required to be met in regard to the local presence requirement were not onerous enough, it may not significantly reduce the number of motivated bad faith actors holding .nz domains. This would significantly undermine one of the key intended benefits of instituting such an eligibility requirement.

Even if a workable and effective local presence requirement was introduced, in many cases it would still be difficult to hold an overseas-based person to account for .nz-related conduct. This would once again undermine one of the key intended benefits of instituting such an eligibility requirement.

Security and trust

Domain and website content abuse

- Option A: The current situation
- Option B: 'No concern for use'
- Option C: Suspension of a domain name on advice by a trusted notifier
- Option D: Implement an 'acceptable use' policy

25.

Do you agree with our assessment of the options? Why / why not? Are there viable options that we have not mentioned?

Yes, MEGA agrees with your assessment of the options.

26.

Which of these options do you prefer? Why?

MEGA prefers Option A: The current situation

MEGA believes that this is the appropriate balance between regulation and oversight being left to the courts and other established specialised agencies such as the Office of Film & Literature Classification and the Digital Safety Unit of the Department of Internal Affairs, while still allowing for the continued operation of the 'emergency circumstances' powers. MEGA believes the 'emergency circumstances' powers are essential and wholly justified in emergency or exceptional circumstances where use of the .nz domain is causing or may cause irreparable harm.

Option B: 'No concern for use'

Option B which does not allow for the continued operation of the 'emergency circumstances' powers, provides far too much of a 'hands off' approach to regulation in emergency or exceptional circumstances where MEGA believes such intervention is wholly justified and essential.

Option C: Suspension of a domain name on advice by a trusted notifier

Option D: Implement an 'acceptable use' policy

Options C and D would require DNCL to police domain name use and content in a substantial way. This would entail extensive investment and focus, even with the assistance of 'trusted notifiers', which would distract from DNCL's existing core activities which should always be it's primary focus.

Given the ever increasing importance of a domain name to a business as more and more commerce moves online, including in many situations where a business may solely operate online via such a domain name (such as is the case with MEGA), the incorrect, even if well intentioned actions of DNCL in suspending a domain name, would have catastrophic effects for a business.

Given the ever-increasing range of material and services represented online, it will also not always be a simple matter to determine if illegal activity is in fact being conducted through a particular domain name. MEGA believes such determination is much better left to already existing, experienced and specialised entities such as the courts, the Office of Film & Literature Classification and the Digital Safety Unit of the Department of Internal Affairs. Also, tasking DNCL with having to take action against domain names being used legally but allegedly 'inappropriately', would potentially have a chilling effect on freedom of expression, not to mention the impossibility of deciding what is 'inappropriate' particularly as such values in society continually change.

Mega has experience with being incorrectly blacklisted, even by experienced agencies such as Microsoft, and the time it takes to reverse these invalid decisions can have significant commercial impact.

The interim emergency circumstances clause

- Option A: Allow the interim policy to lapse
- Option B: Make the interim policy permanent as it is currently phrased
- Option C: Modify the interim policy and make it permanent

27. Do you agree with our assessment of the options? Why / why not?

Yes, MEGA agrees with your assessment of the options.

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

*MEGA prefers Option B: Make the interim policy permanent as it is currently phrased
MEGA believes operation of the 'emergency circumstances' powers is essential and wholly justified in emergency or exceptional circumstances where use of a .nz domain is causing or may cause irreparable harm. MEGA believes the interim policy as it is currently phrased is adequate.*

Domain name registration abuse

- Option A: Current situation
- Option B: Introduce data validation for all domain name registrations
- Option C: Introduce data verification for high risk domain name registrations

29. Do you agree with our assessment of the options? Why / why not? Are there viable options that we have not mentioned?

Yes, MEGA agrees with your assessment of the options.

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

MEGA prefers Option A: Current situation

MEGA believes the current system is in line with the majority of top-level registration systems overseas, such that the registration of .nz domains is not open to any greater level of abuse than other top-level domain names are. Introducing requirements of validation and/or verification of registration information would be a time consuming and costly process, which would still potentially be open to abuse from motivated parties. However, it would also delay new registrations across the board, including by legitimate registrants. This may lead to such potential registrants choosing to register under other domain systems which would consequently inhibit the growth of .nz.

Grace periods and domain tasting

- Option A: The current situation
- Option B: Removal of grace periods
- Option C: Adopt different policies towards new registration and renewal grace periods

31.

Do you agree with our assessment of the options? Why / why not? Are there viable options that we have not mentioned?

Yes, MEGA agrees with your assessment of the options.

32.

Which option do you prefer? Why?

MEGA prefers Option C: Adopt different policies towards new registration and renewal grace periods

MEGA believes this would be an improvement on the current situation by still permitting registrants to rectify failed renewal payments but yet closing the door on the potential for using grace periods to avoid domain name registration costs when using a .nz domain name for malicious activities like phishing.

Misleading, deceptive, and offensive domain names

- Option A: The current situation
- Option B: Introduce a 'reserved and restricted names' policy

33.

Do you agree with our assessment of the options? Why / why not? Are there viable options that we have not mentioned?

Yes, MEGA agrees with your assessment of the options.

34.

Which of these options do you prefer? Why?

MEGA prefers Option A: The current situation

MEGA believes the current system operates effectively and trying to introduce a 'reserved and restricted names' policy is unlikely to provide any significant improvement on the current situation, while just introducing another level of complexity and potential controversy around the registration process.

Ensuring security best practice across the .nz domain name system

- Option A: The current situation: Registry has no levers to monitor or improve registrar security
- Option B: Require all registrars to adhere to minimum security standards
- Option C: Incentivise or mandate security features or practices

35.

Do you agree with our assessment of the options? Why / why not? Are there viable options that we have not mentioned?

Yes, MEGA agrees with your assessment of the options.

36. Which option do you prefer? Why?

MEGA prefers Option A: The current situation: Registry has no levers to monitor or improve registrar security

Until there is greater agreement and implementation internationally on minimum security standards for registrars, MEGA supports the current situation. Seeking to impose and monitor compliance with mandatory security standards would be a costly and time intensive endeavor.

More advanced and hence costly security requirements would likely lead to increased costs being passed onto registrants, thereby reducing the accessibility and affordability of the .nz domain.

More advanced and hence costly security requirements would also discriminate against smaller and new entrant registrars, who would likely not have the same financial resources as larger registrars to implement such requirements. This could discourage new registrars from entering the industry, which would have the follow-on effect of reducing competition and increasing prices charged to registrants.

With the ever-increasing rate at which advances in technology occur, any mandatory security requirements would also have to be constantly reviewed and updated to ensure they continued to provide the required 'standard' of protection against then current threats. This would lead to continual further costs and investment of time being required by DNCL as well as registrars.

Technology specific approach

- Option A: The current situation
- Option B: A 'technology neutral' approach to policy drafting replaces the current prescriptive approach

37.

Do you agree with our assessment of the options? Why / why not? Are there viable options that we have not mentioned?

Yes, MEGA agrees with your assessment of the options.

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

MEGA prefers Option A: The current situation

MEGA believes it is appropriate to specify specific security products such as DNSSEC which play such a fundamental role in the operation of the .nz domain. Although such specificity does potentially limit the adoption of new technologies, given that any such new technologies would play such a key role in the operation of the .nz domain, it is appropriate that the adoption of them should first require some degree of further industry wide consultation.

Enhancing privacy across the .nz domain name system

Level of registrant data collected and stored

- Option A: The current situation
- Option B: Introduce different registrant profiles, requiring different levels of contact data to be collected for each.

41.

Do you agree with our assessment of the options? Why / why not? Are there viable options that we have not mentioned?

Yes, MEGA agrees with your assessment of the options.

42.

Which of these options do you prefer? Why?

MEGA prefers Option A: The current situation

There is simplicity in the current model and registrar platforms have been set up to deal with the current level of data collection. The issue of how to treat already existing registrants at the point the new system is implemented and what aspects of any new system to extend to them would also have to be considered. There are considerable issues with this including the burden it would place on registrars to deal with such historical registrants and also what was to be done with historical registrants who refused to provide the required information or verification specified under any new system. If

anything, it would be better to direct more resources into public information campaigns, making new and existing registrants aware of their rights to request the Individual Registrant Privacy Option and letting everyone know what personal information is currently searchable online when they register for a .nz domain.

Registrant data is made public by default

- Option A: Current situation
- Option B: The IRPO is opt out, i.e, individual registrants have the option activated by default
- Option C: All registrant contact details are withheld from query services for all individuals not in trade (no option to opt out or in)

43.

Do you agree with our assessment of the options? Why / why not? Are there viable options that we have not mentioned?

Yes, MEGA agrees with your assessment of the options.

44.

Which option do you prefer? Why?

MEGA prefers Option A: Current situation

Following on also from MEGA's comments under question 42 above, MEGA believes that the current system and approach is appropriate. If anything, it would be better to direct more resources into public information campaigns, making new and existing registrants aware of their rights to request the Individual Registrant Privacy Option and what personal information is currently searchable online when they register for a .nz domain.

As a substantial online business, MEGA is frequently required to issue cease and desist requests in respect of other online websites. This is usually in relation to registrants who are either adopting the imagery and 'getup' of the MEGA website to deceive and mislead consumers for various purposes, or trading under deceptively similar domain names to MEGA.nz for similar reasons. Although it would be unusual for MEGA to find such a bad faith registrant operating under a .nz domain, the difficulty MEGA has in finding actionable contact details for such bad faith registrants overseas, where in some circumstances it appears easier to hide a registrants' contact information, and the

subsequent lessening in trust MEGA comes to have in certain such domains, makes MEGA extremely opposed to any attempt to further hide registrant information on .nz domains.

Notwithstanding the above, MEGA would at all times support any changes, where such was necessary to ensure compliance with the General Data Protection Regulation or the New Zealand Privacy Act.

45.

Under the IRPO, which contact details do you think should be withheld from WHOIS?

It would be MEGA's preference that only physical address details are withheld from WHOIS under the IRPO. This would provide for the physical personal safety of the registrant. However, it would still ensure that there were always sufficient details by which a registrant could be contacted for legitimate business purposes, such as where a registrant was using a domain name in bad faith as discussed in the second part of MEGA's answer to question 44 above.

Implementation of the IRPO and access to registrant information when required

- Option A: The current situation
- Option B: Streamline the process described in clause 22 of the *Operations and Procedures* policy and make it more user friendly for requests to access 'Withheld Data'
- Option C: The creation of a form that allows people to communicate with a registrant without requiring the registrant's email address

46.

Do you agree with our assessment of the options? Why / why not? Are there viable options that we have not mentioned?

No, MEGA does not agree with the assessment of the options.

No option offers any meaningful change to the current process which is time consuming, uncertain and too heavily weighted in favor of protecting the contact information of a registrant, even in situations where the registrant may be operating their .nz domain in a bad faith manner as discussed in the second part of MEGA's answer to question 44 above.

As a further option for consideration, MEGA would recommend a process whereby a business was able to request access to an individual registrants contact details (with no prior notice to be provided to the registrant) in return for providing a declaration that there was a relevant legitimate business purpose for requiring such contact details (such as bad faith use of the domain by the registrant which was impacting on the business). Abuse of this process would entitle DNCL to refuse to accept further requests for access to contact details from the business or to place such conditions on granting any further requests as DNCL deemed appropriate.

47. Which option do you prefer? Why?

See MEGA's answer to question 46 above.



Stephen Hall
Executive Chairman – Mega Limited
14th August 2020