



Submission on InternetNZ .nz Policy Review 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 217 million registered users in 250 countries and territories who have uploaded more than 95 billion files, with 2020 traffic exceeding 800 Gbps.

Although very much operating globally, MEGA’s head office is based in Auckland, New Zealand. MEGA uses the domain mega.io for users who aren’t logged into a MEGA account (for SEO optimisation purposes), but the primary domain through which MEGA makes its services available to registered users worldwide is mega.nz. Consequently, as a solely online business primarily 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 .nz Policy Review Report of February 2021 (“**Policy Review Report**”). The fact that MEGA has not responded to certain questions raised in the Policy Review Report does not, except to the extent stated otherwise, imply any acceptance or rejection of, or any particular view on, those questions.

MEGA also provided a submission in August 2020 in response to the Options Report of the .nz Advisory Panel (“**2020 Submission**”). MEGA has not sought in this submission to restate in detail its position on any of the points it raised in the 2020 Submission. MEGA has however made reference in this submission to applicable sections of its 2020 Submission, where MEGA believes the reasoning it put forward on certain issues in its 2020 Submission, is relevant for the further questions posed in the Policy Review Report. A copy of the relevant sections from MEGA’s 2020 Submission that have been referred to in this submission have been attached for reference in the ‘Appendix’ to this submission.

MEGA understands and agrees that its submission may 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 InternetNZ.

Draft .nz Rules

Questions

1.

Do you favour consolidating and rewriting the .nz policies generally speaking? Why / why not?

For the reasons stated by MEGA in its response to Question 2 in its 2020 Submission, MEGA does not favour consolidating and rewriting the .nz policies.

2.

Could the draft .nz Rules be improved? How?

Given that MEGA does not favour consolidating and rewriting the .nz policies as noted in MEGA's response to Question 1 above, MEGA does not wish to offer comment on this Question.

Notwithstanding the above, MEGA would like to raise one minor issue related to the drafting of the .nz Rules. The term 'sanctioned' is referred to in the first sentence of clause 12.2.16 which reads:

The Commissioner can impose a Compliance Lock when a .nz domain name has been sanctioned.

For the purposes of clause 12.2.16 MEGA believes it should be defined more clearly what exactly 'sanctioned' means, together with how a domain could become sanctioned, and details of the domain holder's rights of review / appeal.

3.

Do you think the difference between policies and operational rules is clear enough? If not, how could this be improved?

Given that MEGA does not favour consolidating and rewriting the .nz policies as noted in MEGA's response to Question 1 above, MEGA does not wish to offer comment on this Question.

4.

Do the draft .nz Rules leave out anything currently in the existing .nz policy documents that should be retained?

Given that MEGA does not favour consolidating and rewriting the .nz policies as noted in MEGA's response to Question 1 above, MEGA does not wish to offer comment on this Question.

Proposed Implementation of Other Panel Recommendations

5.

Do you consider the above principles should be adopted as the new principles for the .nz Rules? Why / why not?

For the reasons stated by MEGA in its response to Question 1 above and in its response to Questions 3,4,5,6 and 8 in its 2020 Submission, MEGA does not favour the adoption of the new principles for the .nz Rules proposed on page 13 of the Policy Review Report.

6.

Do you agree that 'safe' should be removed from the first principle? Why / why not?

Given that as noted in MEGA's response to Question 5 above, MEGA does not favour the adoption of the new principles for the .nz Rules proposed on page 13 of the Policy Review Report, MEGA does not wish to offer comment on this Question.

7.

Do you think any of the principles should be modified in any other way?

As noted in MEGA's response to Question 5 above, MEGA does not favour the adoption of the new principles for the .nz Rules. However, MEGA would still like to raise the following point regarding the suggested first principle, which at present is proposed to read:

.nz should be secure and trusted: .nz infrastructure must be dependable and secure, and .nz be trusted

MEGA does not believe that it is sufficiently clear that this Principle is referring to the overall registration system being secure, as opposed to the content and uses of each individual .nz domain. Consequently, MEGA believes it would be more appropriate to reword the first Principle to read:

.nz should be secure and trusted: .nz registry infrastructure must be dependable and secure, and .nz be trusted

Panel recommendations on existing principles

8.

Do you think we should implement the Panel's recommendations on the existing principles as proposed above? Why / why not?

Given that as noted in MEGA's response to Question 5 above, MEGA does not favour the adoption of the new principles for the .nz Rules proposed on page 13 of the Policy Review Report, MEGA does not wish to offer comment on this Question.

9.

Have we correctly assessed the implications of our proposed approach to the existing principles? Are there other implications we have not considered?

Given that as noted in MEGA's response to Question 5 above, MEGA does not favour the adoption of the new principles for the .nz Rules proposed on page 13 of the Policy Review Report, MEGA does not wish to offer comment on this Question.

10.

Is there a better way of doing this?

Given that as noted in MEGA's response to Question 5 above, MEGA does not favour the adoption of the new principles for the .nz Rules proposed on page 13 of the Policy Review Report, MEGA does not wish to offer comment on this Question.

Panel recommendations on the policy development process

11.

Do you think InternetNZ should have greater flexibility to adjust .nz procedures & requirements by notice in writing?

MEGA does believe that InternetNZ should have greater flexibility to adjust .nz procedures & requirements by notice in writing.

12.

Is [20] working days enough notice before a change to the procedures & requirements is made?

MEGA does believe that 20 working days is enough notice before a change to the procedures & requirements is made, unless there are significant concerns raised by other participants about the intended changes.

13.

Are there any .nz procedures & requirements you think should be a .nz policy or .nz rule?
Are there any .nz policies or .nz rules you think should be a .nz procedure?

Given that MEGA does not favour consolidating and rewriting the .nz policies as noted in MEGA's response to Question 1 above, MEGA does not wish to offer comment on this Question.

Panel recommendations on the exceptional circumstances provision

14.

Do you think we should implement the Panel's recommendations on the exceptional circumstances provision as proposed above? Why / why not?

MEGA does believe that you should implement the Panel's recommendations on the exceptional circumstances provision as proposed in the Policy Review Report. MEGA believes the use of the exceptional circumstances powers is essential and wholly justified in the situations contemplated by the exceptional circumstances provision.

15.

Have we correctly assessed the implications of our proposed changes to the exceptional circumstances provision? Are there other implications we have not considered?

MEGA believes that you have correctly assessed the implications of your proposed changes to the exceptional circumstances provision. MEGA does not believe that there are any other significant implications that you have not considered.

16.

Is there a better way of doing this?

MEGA does not believe that there is a better way of doing this.

17.

Should the Commissioner be able to take any of the listed steps (change the Registrar, suspend, assign, cancel and lock) in the circumstances described in paragraphs a, b and c or just some? If not, which steps should apply to circumstances?

MEGA believes the Commissioner should be able to take any of the listed steps (change the Registrar, suspend, assign, cancel and lock) in the circumstances described in paragraphs a, b and c. of the newly proposed Clause 12.2.15 in the draft .nz Rules.

Panel recommendations on privacy

18.

Do you think we should implement the Panel's recommendations on privacy as proposed above? Why / why not?

For the reasons stated by MEGA in its response to Question 45 in its 2020 Submission, MEGA favours an approach whereby only physical address details may be withheld. MEGA believes the Panel's recommendations are too heavily weighted in favour 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 response to Question 44 in its 2020 Submission.

Notwithstanding the above, MEGA would at all times support any initiatives necessary to ensure compliance with the General Data Protection Regulation and the New Zealand Privacy Act.

Subject to MEGA's further comments above, MEGA would still like to raise the following point regarding the wording of clause 6.2.1(b) within the 'Privacy option' section of the .nz Rules. Clause 6.2.1(b) currently reads:

b. does not intend to use the .nz domain name to any significant extent in 'trade' as that term is defined in section 2 of the Fair Trading Act 1986.

MEGA believes that as currently drafted, it could be unclear if this clause applies to some online activities whose purpose is commercial gain, but yet such activities do not clearly and obviously fit within the traditional 'trade' definition provided for by the Fair Trading Act 1986. This would include activities that might only be conducted on an intermittent basis and in a relatively informal way, rather than being run like a traditional business. For example, some forms of online affiliate marketing.

These types of activities may also be carried out by 'individuals'. This would then satisfy the first requirement to qualify for the privacy option under clause 6.2.1(a) of the .nz Rules. Consequently, MEGA believes it is then even more important that clause 6.2.1(b) makes it very clear, that where a Domain Name Holder (as defined in the .nz Rules) makes use of a .nz domain for any commercial related activity, they cannot access the benefit of the privacy option. To provide for this, MEGA would recommend clause 6.2.1(b) is redrafted to read:

b. does not use the .nz domain name in relation to any activity, the purpose of which, in whole or in part, is commercial gain.

Further to the above, MEGA would also recommend clause 6.2.5 is appropriately amended, to provide for a new clause 6.2.5(c). This new clause would require a Registrar to direct InternetNZ to remove the privacy option from a Domain Name Holder, where a Registrar subsequently discovers, or is provided evidence that, a Domain Name Holder is using their .nz domain to undertake activity for commercial gain, when they had initially represented that they would not.

For the avoidance of doubt, this would also include where such activity for commercial gain was illegal in nature, such as for example participating in phishing scams or distributing Malware.

MEGA would suggest the new clause 6.2.5(c) should read as follows:

c. a Registrar discovers, or is provided evidence which acting reasonably it considers is credible, that a Domain Name Holder is or has been using the .nz domain in relation to any activity, the purpose of which, in whole or in part, is commercial gain, distribution of malware / viruses or illegal activity.

19.

Have we correctly assessed the implications of our proposed changes to the privacy option? Are there other implications we have not considered?

While noting the concerns MEGA has raised in regard to the privacy option under Question 18 above, MEGA believes you have otherwise correctly assessed the implications of your proposed changes to the privacy option and that there are not any other significant implications that you have not considered.

20.

Is there a better way of doing this?

Given MEGA's differing view to the Panel's recommendations as noted in MEGA's response to Question 18 above, MEGA does not wish to offer comment on this Question.

Panel recommendations on pricing variability and incentives

21.

Do you think we should implement the Panel's recommendations as proposed above? Why / why not?

MEGA agrees that you should implement the Panel's recommendations on pricing variability and incentives. Mega agrees with this on the basis of the reasoning stated on page 28 of the Policy Review Report.

22.

Have we correctly assessed the implications of clarifying that we can offer enhanced features, add-ons and incentives? Are there other implications we have not considered?

MEGA believes that you have correctly assessed the implications of clarifying that you can offer enhanced features, add-ons and incentives. MEGA does not believe that there are other significant implications which you have not considered.

23.

Is there a better way of doing this?

MEGA does not believe that there is a better way of doing this.

24.

How could we implement this in a way that will maximise the benefits for all registrars?

MEGA does not believe it has sufficient commercial experience in this specialist area to offer comment on this Question.

Registry Replacement Project Issues

25.

Have we correctly assessed the implications of moving to yearly registrations and renewals? Are there other implications we have not considered?

MEGA believes that you have correctly assessed the implications of moving to yearly registrations and renewals. MEGA does not believe that there are any other significant implications that you have not considered.

26.

Is there a better way of doing this?

MEGA does not believe that there is a better way of doing this.

Standardising the terminology

27.

Have we correctly assessed the implications of aligning our terminology to reflect standard usage? Are there other implications we have not considered?

MEGA believes that you have correctly assessed the implications of aligning your terminology to reflect standard usage. MEGA does not believe that there are any other significant implications that you have not considered.

28.

Is there a better way of doing this?

MEGA does not believe that there is a better way of doing this.



Stephen Hall

Executive Chairman – Mega Limited

31 March 2021

Appendix

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 defence 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.

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.