

## Submission on InternetNZ Organisational Change proposal – June 2017

I am one of the founders of the Society and am now an InternetNZ fellow. I was part of many of the decisions that led to the current structure. This submission focusses on the reasons for our current structure and attempts to assess the extent to which they remain valid.

### **The Prehistory of the Current Structure**

The roots of having NZRS as a separate company go back to the beginning of ISOCNZ's (as it then was) stewardship of .nz.

ISOCNZ was formed at least in part to take over .nz, because the founders, or at least some of them, were concerned that the incumbent telco (Telecom New Zealand) would otherwise assert ownership over the DNS, as it had done with the telephone numbering plan. The reason for our concern was enunciated as the 'open and uncapturable' ethos that the Society has neologically espoused ever since. As an aside, it was this value that later drove the Society to be part of the effort to break Telecom's effective monopoly over the last mile a decade ago, which is now bearing the fruit of vastly improved Internet access speeds available to most New Zealand people and businesses.

Within a year of its formation, ISOCNZ Council resolved to apply for the stewardship of .nz, which at the time was being run as a public good by Waikato and Victoria universities, both of which had signalled that they wished to stop doing so. ISOCNZ was faced with having to run an operation to register and renew names and to ensure names resolved. This operation was going to need money to operate, and the only practical source of funds was a charge on domain name holders. Therefore, something that looked a lot like a business needed to be set up – this became Domainz.

There were two reasons why Domainz was set up as a separate company – the potential for legal liability for the (entirely voluntary) ISOCNZ officers and Council, and the perceived financial risk of operating a business in an entirely new area, which might also have led to liability. Domainz's corporate structure firewalled, we hoped, those of us who were doing what we believed to be the right thing for public good reasons against the possibility of losing our houses if we were successfully sued or the new business ran into the ground.

The finances of the new organisation had to be self-sustaining from its inception – the founding executive Patrick O'Brien literally had to earn his salary from day one, something the volunteers in ISOCNZ would have lacked the time to do, as well as possibly the skills and the inclination. The company's finances gradually improved as the Internet became more widespread and the demand for domain names increased.

In its first couple of years, Domainz weathered several storms, including a legal challenge over its first-come first-served names policy (the 'Oggi case') and outrage from people who had previously seen domain names as a free good and objected in principle to them being charged for. However, entirely valid concerns over Domainz's scope and activities led to a rebellion at the ISOCNZ 2000 AGM that saw the company's mission split into two, registry

and registrar, with the registry business being passed to the newly-created company NZRS, the registrar market opened to competition and Domainz eventually being sold.

Separating the registry and registrar was recommended by the Hine Commission, a working group led by ISOCNZ co-founder John Hine. Hine also recommended the creation of a separate policy, regulation and compliance body as part of ISOCNZ, which was created as the Domain Name Commission, accountable to a special committee of ISOCNZ called the NZ Oversight Committee.

ISOCNZ became InternetNZ. In 2007 InternetNZ had a structural review performed by Westlake Consulting that recommended (among other things) that the Domain Name Commission be incorporated as a company and the Oversight Committee be replaced by its company board. This has happened and the office of the DNC is now DNCL. Westlake's justification was to provide legal protection for the assets of InternetNZ against any successful suit over domain name policy or enforcement. Westlake noted that this risk was not a high likelihood given that policy and enforcement decisions to that date had been robust, but that the potential consequences of any successful suit were high.

In summary, the current use of subsidiary companies arose from a desire to manage business and legal risk.

## **Validity of These Reasons Today**

### *Business Risk*

We have moved a very long way from the position of ISOCNZ on taking over .nz. We now have staff, governance, premises and accountants. InternetNZ has shown that it can manage its business affairs prudently, both at the level of the entire group including the subsidiaries, and at the level of the individual entities including the core society.

Therefore, I do not consider that the business risk argument for having a subsidiary company or companies holds today. It has not held for some time.

### *Legal Risk*

The perception of legal risk has changed. I am not aware of any serious attempt to sue InternetNZ or the DNC(L) since the Oggi case in 1998. ISOCNZ's victory in the Oggi case was total in that the court described us a 'disinterested gatekeeper' and awarded costs in our favour. This was seen as vindication of the first-come first-served policy that remains in place today. Stability of policy is no doubt a major factor in the lack of legal aggression against us since.

Westlake's view 10 years ago was that the likelihood of a successful legal challenge to domain name policy was low, since we had not been sued for almost a decade at that stage, but that the consequences would be severe. A further decade of policy stability and freedom from lawsuits has since passed. It seems unlikely in the extreme that, provided InternetNZ continues its robust and stable domain name policy, a successful suit could threaten the society itself. It could be argued that, if InternetNZ were to mismanage domain name policy and enforcement to the extent that a lawsuit threatened its very existence, this would signal a failure of InternetNZ to meet its core objectives and it would deserve the consequences.

Making money is not the reason for InternetNZ's existence. We are a not-for-profit that delivers a service and distributes any excess revenue back into the Internet community in accordance with our objects as an incorporated society. The fact that we are stewards of resources that need to be handled prudently should not blind us to the fact that money is not the point of what we do, our objects are the point. Our objects do not mention money at all. Arranging our affairs to protect a body of funds rather delivering our objects efficiently and effectively would be a case of the tail wagging the dog. Rather, if we can find a way of being more efficient we will be able to deliver more for less, and possibly distribute more funds, all in service of our objects.

## **Conclusion**

I have no way of assessing the benefits of the proposed change and have to accept the plausible if broad statements made in the proposal. Were I a decision-maker I would expect more analysis of benefits than has been presented thus far. My point in the analysis above is that the reasons for our current structure are rooted in history and mostly no longer apply. Therefore, if I could be convinced of the benefits and that the risks of transition were well-managed, I would vote for the change proposal.

Colin Jackson  
Port Moresby  
30 June 2017