

To: Jamie Baddeley, Joy Liddicoat and Keith Davidson
From: Domain Name Commission Limited Staff, Cristy Cable, Dylan Connolly, Josh Cookson, Caleb Smith and Henry Williams
Date: 28 June 2017
Subject: InternetNZ Organisation Review Proposal Submission from DNCL Staff

Introduction

The Staff team at the DNCL have taken the time to review the proposal from the view of the regulator and policy setting body established to serve .nz as a leading ccTLD. Personal submissions could be received from the staff members dealing with other subjects covered in the proposal.

The DNCL and the Team

Currently, DNCL can make conscious regulatory and compliance decisions, unhampered by any different missions or goals. Presently, Policy decisions can be made with recourse to the DNCL board in a prompt manner. This is because of our small, engaged team that has the ability to discuss and action matters in real time and agree on a course of action.

DNCL has a very particular mission and knows its roles, setting .nz policy, along with regulating the .nz domain name space. It does not have the identity issues that other organisations may have, such as NZRS running a registry, and pursuing business development; or InternetNZ's changing community and advocacy roles.

In the Consultation document, there is no analysis or statement on how merging all three organisations into one would clarify DNCL's role, or aid its ability to fulfil its independent regulatory operation. From a staff operational point view, the proposed all-in-one structure would be of detriment to the operations of our small team that allows us to communicate and stay up to date on issues that are often sensitive both in time and confidentiality. This culture would not be tenable to be maintained if we had to fit around other staff, who often work with the same stakeholders with often conflicting or contradictory issues. It would also affect the ability for staff to work efficiently and effectively with the registry staff and still be the independent regulator and uphold the standards of the SLA.

Independence of Regulator

The presentation to staff read that "people value the independence of .nz policy and regulation", however, the proposal is to strip that independence and establish a much weaker advisory group leaving decision making up to the InternetNZ Council. An advisory group, by its name, lessens the current, valued independence. It is also contrary to the 'specific principles' talked about in the proposal document regarding ensuring the independence of .nz policy and management of registrars.

Building on from this, the loss of true independence also carries risks when it comes to the accountability of decisions regarding regulation and

compliance. DNCL makes, and the organisation will have to continue making, decisions that carry risk. Whether that is the de-authorisation of Registrars for non-compliance with .nz policy, the cancellation or suspension of domain names due to breaches of .nz policy, or by subsequent action required to by court order, there needs to be some form of accountability for these decisions.

The conflict this has with the proposed restructure is that these decisions will also be sitting with the Chief Executive. This 'wearing of many hats' has the risk of leading to conflicts of interest. While this does align with the single face of the organisation idea, there has to be a cost/ benefit of when this is needed and if it is the most effective way to operate. The lack of separation also leads to potential issues when it comes to the risks that enforcing policy holds as well, and absorbing of the risk that comes with this (one of the main reasons the DNC exists).

While the DNCL has never had to deal with these risks eventuating into actual events, these potential risks still exist. For instance, if a registrant were to lodge court proceedings regarding the cancellation of a domain name, or a registrar for being de-authorised under the new proposed structure the whole organisation would be liable for damages sort, rather than that of purely the DNCL under the current structure.

DNCL and the InternetNZ Group

There are concerns around the knowledge gathering of this process and the approach of removing the only professional directors and the subsidiaries Boards, mean that the achievements and effective work of the DNCL has slipped under the radar of the council. The way the restructure is proposed shows that the DNCL is a quiet achiever that is being fixed when it is not necessarily broken.

The employee presentation stated, 'Our three organisations are doing good work, and our people are highly regarded by stakeholders and members.' Moreover, 'Registrars say we deliver a quality customer experience.' This does not demonstrate an argument for the need to radically change our system for the regulation of .nz. The consultation document notes that all entities should be working towards the same goal. However, the DNCL role is to regulate the .nz domain name space. Obviously, at times, this will be in conflict with the actions/ tasks of the other entities in the group, and also with stakeholders that more than one entity has in common (such as registrars).

The proposal advises that having a "single face" will allow us to be more responsive to stakeholders, and provide clarity and consistency. However a single face has drawbacks, as DNCL works with government, registrars, and organisations that InternetNZ's advocacy and lobbying side and often speaks out against policy issues. This has the potential to damage these relationships. It is worth noting that other ccTLDs do not perform the advocacy work that InternetNZ does.

One entity, covering three different roles, is likely to require much more inward focused effort to fulfil these, as different missions will cause internal conflict, with staff and goals, and potentially with one CE having to make decisions based on, sometimes conflicting roles and dealing with staff who are in conflict. Such internal conflict would make an organisation less agile and less able to take actions and make key decisions.

Conclusion

While we as a staff group acknowledge and see the need for change, this proposal falls short of where we believe we need to be going as an organisation. The DNCL is recognised as a world leader in its area and does a strong job of independently managing the market in the .nz space.

We believe that for the InternetNZ group to protect its standing in the internet community it needs to be clear and strong on ring-fencing that DNCL is an independent regulator. There is a range of options for this, whether as a company, or an office of InternetNZ with its own reporting structure to prevent any conflicts of interest. The DNCL operationally is highly responsive and the small team allows us to cooperate on matters as needed. The proposal put forward as is, is not the best solution for the InternetNZ group and the .nz space long term.