InternetNZ

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Election ‘14 and The Internet

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Internet issues that we think are important for New Zealand

The 2014 General Election is a good chance to better understand how we can best realise this vision as a nation.

This document sets out InternetNZ's perspective on a number of key issues related to Internet use in New Zealand. It is designed to contribute to the conversation about whether we are making the most of this technology, and its ability to transform our lives, our economy and our society for the better.

For each of these areas, we will set out:

What each of these areas mean

Why they matter to the Internet in New Zealand, and

How they could be improved, via a series of important questions.

We look forward to having this conversation with you.

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Our Policy Principles

These are our guiding lights in Internet policy matters. They've guided us in developing the issues set out in this document.

1. The Internet should be open and uncaptureable.
2. Internet markets should be competitive.
3. Internet governance should be determined by open, multi-stakeholder processes.
4. Laws and policies should work with the architecture of the Internet, not against it.
5. Human rights should apply online.
6. The Internet should be accessible by and inclusive of everyone.
7. Technology changes quickly, so laws and policies should focus on activity.
8. The Internet is nationally important infrastructure, so it should be protected.

Issue #1

Connectivity - The UltraFast Broadband and Rural Broadband Initiatives (UFB & RBI)

What this means

Being able to connect to the Internet is a vital step in being able to make use of it. The UltraFast Broadband (UFB) programme and the Rural Broadband Initiative (RBI) are both well-known programmes that are delivering a “step change” in New Zealand telecommunications infrastructure.

The UFB will deliver 100 megabits per second to 75% of the population of New Zealand, determined by the top 25 population centres in the country. Contracts for this build have been awarded to Northpower, UltraFast Fibre, Enable Networks, and Chorus. The RBI was awarded to Vodafone and Chorus – Chorus to build out fibre connections to most rural schools and hospitals, and Vodafone to deploy open-access tower infrastructure in rural areas and to provide services that are capable of five megabits per second.

Why this matters

The UFB and RBI were leaps forward in investment, connectivity and performance that promise so much in providing New Zealanders with world-class Internet infrastructure. InternetNZ was, and remains, a supporter of these initiatives for this very reason.

Now that we are four years into these initiatives, some key questions are starting to emerge about how we best utilise this infrastructure to deliver to the greatest potential of this technology. We know that faster, better quality, ubiquitous Internet will provide for better economic growth, community interaction and connectedness and greater innovation of all forms – but do we just wait for it to happen, or are there things we can do to spur change along?

These questions are even timelier now that we see the first UFB candidate area fully completed in its build, with Whangarei becoming New Zealand’s first UFB completed city. Good progress is being made in other candidate areas as well. However, we have yet to see significant numbers of customers taking up these services – and that concerns us.

We also need to start thinking about what comes next. The UFB delivers 100 megabits per second to 75% of New Zealand – that’s fast, but not “ultra-fast” by world standards, and simply not ubiquitous. The RBI has a far more modest speed target of five megabits per second. While these represent significant leaps forward versus what came before, they aren’t the end game for telecommunications in New Zealand. If we want to remain competitive and compare well internationally, we need to start thinking about what happens after these investments are completed - and about how we use the new infrastructure to its capacity.

Finally, there remain big questions about the pricing of copper services as we manage this transition to the UFB. Copper remains an important part of how we connect as we rollout fibre, and possibly for even longer than that. Chorus argues that higher copper prices are necessary to fund the fibre build; we are not so sure, and believe that fair pricing for all technologies is vitally important.

How this can be improved

Note: the questions set out in each "How this can be improved" sections identify issues for those engaged in this debate to consider in improving widespread access to and use of the Internet. We are interested in people's views in response, but also note that most of the questions provide some implicit guidance as to our opinion as to the best direction to take.

1. What can we do to encourage uptake of both UFB and RBI based services?
2. Were we ambitious enough with the RBI? Have we provided Rural New Zealand with a viable, long term connectivity solution via the RBI? How do the Telecommunication Service Obligations fit in with this now?
3. How do we best balance the financial requirements of Chorus with their contracted commitments to the UFB? And what is our future infrastructure plan – a copper AND fibre world, or fibre only? How should the Commerce Commission balance these interests?
4. Do we need to worry about having created geographic monopolies through the way that the UFB has been structured, or do the competitive constraints created by separation preserve consumer interests?
5. Do need a new broadband aspiration, post-2020? The UFB and RBI has been a great leap forward – but what next? What comes next in rural areas? Can we leave urban areas to "business as usual" after the UFB build is finished?

Issue #2

Overseas connectivity & datacaps

What this means

Undersea cabling is a vital part of New Zealand's Internet infrastructure. As a small island nation at the bottom of the world, we need high quality and capacity data connections to major markets to allow New Zealanders to access the best in international services; and to export some of the best intellectual property in the world.

We are already arguably well served. The Southern Cross Cable provides high quality transmission, with high speed and capacity and perhaps most importantly, high redundancy in its "figure 8" configured network between Auckland, Sydney, Hawaii and the western sea board of the United States. Southern Cross also prices New Zealand services at the same level as in Australia where it faces competition, arguably ensuring that we receive the best pricing available across their network.

Market evolution has seen the rise of many options for consumers without datacaps. It may be that this method of rationing Internet connectivity is becoming a thing of the past.

Why this matters

Southern Cross is, notwithstanding its approach effectively a monopoly provider of international connectivity for New Zealand Internet Service Providers, and while they remain "benign" for now, will that always be the case? International connectivity pricing has a direct flow through to consumer pricing and terms, and is often used as a justification for the retention of datacaps. This has become a challenge, as the "content rich" Internet of the last few years has encouraged ever higher levels of utilisation placing pressure on household requirements for data. Likewise, this demand places additional demand on the cabling itself. On the other hand, the increasing move to caching content on-shore is helping reduce demand on the cable and datacaps are increasing – but can we be sure that we will always have sufficient capacity? Finally, what are the implications of having both landing points of our major cable connecting us to the outside world close to Auckland?

InternetNZ hopes that these issues will be solved through new, commercial entrants into this market. However we understand that this is a tough ask – we have already seen Pacific Fibre try and fail. Hawaiki however has been making some positive noises about their project to deploy a new USA-NZ-AU cable, whilst also providing greater connectivity throughout the Pacific. And of course, there is the Tasman Global Access cable proposed between Auckland and Sydney, though this is funded by the dominant ISPs in New Zealand and Australia.

How this can be improved

1. How do we lower the costs (and keep lowering them) for local and international connectivity so that the true potential of the UFB & RBI investments is realised?
2. Another cable will improve our nation's network's security and resilience, and will increase the competitiveness of the international connectivity market in New Zealand, helping protect consumer interests in the long term. What priority should we place on another cable connecting us to the world?
3. Is leaving this to the commercial market the right answer, or is Government intervention, over and above the incentives already offered to Pacific Fibre and more recently Hawaiki, required? If so, on what terms?
4. We have recently seen many new “uncapped” products enter the market – does that mean the datacaps problem is solved? What else can we do to unleash the constraints on New Zealand connectivity?
5. NZ's geographic isolation means that it is likely to be comparatively worse off, if our larger trading partners require data to be stored on-shore and prevent it being stored in NZ. What can NZ do to ensure free flow of data between nations?

Issue #3

Fair Intellectual Property Law

What this means

Intellectual Property is one of the big issues of contention in both utilising the Internet and in driving the next wave of innovation forward. New Zealand has been at the forefront of many innovations in dealing with the challenges that the Internet creates for intellectual property, but also in fostering the opportunities.

In this sense, intellectual property encompasses the rules for how New Zealanders use other people's creations, fairly and reasonably; and how we best protect the ideas of New Zealanders to preserve their worth and fully realise the value of our national creativity.

Why this matters

One of the big issues for copyright law in New Zealand is in Fair Use. Many other jurisdictions have started to move towards clarifying how and when different parties may use material under copyright without such use being classed as infringing. Australia and the United Kingdom in particular are leading the way in defining new standards for Fair Use, in particular to cover satire, parody and limited personal use. We think that New Zealand needs to start considering these matters as well.

This is because the current rules also make things cumbersome for consumers. Back before we had such things as iTunes, you used to be able to pass your record collection onto your kids, or lend your friend your favourite book. Now this is harder, and sometimes illegal – and we don't think it needs to be.

We also think that consideration needs to be given to the school sector education, and in particular some fair use exceptions for Crown funded materials. Is it right that materials produced by primary and secondary school teachers paid by the state, can be restricted in their use because they are default owned by the creating school's Board of Trustees? In response to this, some schools are using Creative commons policies; but should they even be necessary? We note that in this regard, Canada is doing some interesting and novel things in reconsidering what Fair Use means in an educational context, and we encourage New Zealand legislators to look in that direction too.

MBIE has signalled that they intend to do a more comprehensive review of New Zealand copyright law. We encourage that. However, we also understand that this review is intended to be left until after the Trans-Pacific Partnership Agreement (TPPA) negotiations are concluded. We continue to be concerned that the TPPA is not being negotiated in an open and transparent manner, which would allow the New Zealand public the opportunity to make an informed choice about its benefits and costs. Intellectual Property matters in particular are best dealt with through multilateral forums such as WIPO, rather than trade agreements. We are further concerned by the rumours and leaks that come from this process – around trademarks that could increase the use of Geo-blocking to restrict access to content; and about extensions to copyright terms that will lock content away for ever longer periods of time. These leaks make us concerned that any review of copyright law may make our regime more cumbersome and restrictive, rather than less. That would be the wrong direction for us to head.

How this can be improved

1. How can we drive New Zealand's innovation through copyright legislation, while balancing the interests of copyright owners with the interests of users, and the use of Internet technologies? Has the current copyright law got this balance right?
2. Is NZ copyright law flexible enough to support collaboration and innovation?
3. Do we need a Fair Use provision in New Zealand copyright law? What should be included in that?
4. How do we free up the use of state-funded materials created in New Zealand schools to better utilise good ideas?
5. The TPPA is a key input into the intended review of Copyright Law in New Zealand; yet some of the provisions within it are rumoured to be even more draconian than our current law. How can we increase transparency of intellectual property law negotiations to remove this concern – or, how do we best ensure that the interests of New Zealand users and consumers of content are respected in this process?
6. The promised copyright review is overdue. Should we wait for the Trans-Pacific Partnership Agreement to be concluded, or is it worth reviewing NZ copyright now - perhaps within the bounds of other TPPA participants' laws?

Issue #4

Surveillance & privacy

What this means

Ever since the events of September 11th 2001 and the subsequent passing of the PATRIOT Act in the United States, society has increasingly been asked, or forced, to allow a number of limitations to civil rights in the name of security. Recent revelations by the likes of Edward Snowden suggest that in the online world, privacy is at risk of being illusory at best. Governments are using our data more widely than many thought. The knowledge of this widespread observation of life online has sparked an ongoing debate – including in New Zealand.

Why this matters

New Zealand's place in all this is unclear. There was a stoush between the technical and the local intelligence communities in 2013 when the GCSB and TICSA Bills were passed despite widespread opposition from groups such as us, Tech Liberty, international Internet organisations and the Auckland District Law Society. That legislation opened up the capacity of the Government Communications Security Bureau to work on domestic intelligence matters, and among other things also required local providers to be able to unlock encryption services.

Most people accept there's a role for surveillance in a free and democratic society. Tightly targeted interception and surveillance, authorised by warrants from courts independent of the intelligence community, are an inevitable part of modern life. Mass indiscriminate data collection and surveillance operations are not, and should not become so.

This technological abuse is not what the Internet was designed for, and undermines its potential as a system that can be harnessed for building better lives and prospects. It would be a travesty were the actions of States to eventually turn an open Internet that is a platform for growth and change into a modern-day panopticon. Unregulated, ineffective mass surveillance shakes people's confidence – and they will not use the Internet to its fullest potential. The economic and social costs are high.

Our research shows that the overwhelming majority of New Zealanders care about their privacy online, but that most are also concerned about pervasive government surveillance of Internet use. That said, most also accept the need for some surveillance to prevent terrorist activity. There is clearly a balance that could be struck here - we at InternetNZ encourage the Government and the GCSB to open up and have this conversation with New Zealanders, as they've offered, as this balance between personal privacy and security may indeed be achievable.

How this can be improved

1. We believe that Internet users have a fundamental inalienable right towards privacy in their communications as a default policy setting. Do you?
2. The Internet was not designed to be a tool for mass surveillance. How do we prevent the government from overstepping the line in security?
3. How do we ensure government has the right ability to detect and track truly malicious actors online while making sure they do so only when circumstances require?
4. What are the dangers of society becoming ambivalent about the widespread monitoring of its communications?
5. Ever more people worldwide are concerned about their privacy. New Zealand is a key member of the "Five Eyes" surveillance network. Should we instead explore the opposite – becoming the "Switzerland" of private data and a haven for secure information?
6. How do we balance the usefulness of tools like Facebook and Google while protecting privacy - through individual or government actions? Likewise, how can we find the best balance between privacy and data driven innovation?
7. Many people don't know how to best protect their privacy online. How do we help them improve that?

Issue #5

Government's role in the ICT industry

What this means

The Government is an active player in the New Zealand ICT industry – most directly through ownership of four distinct operators of networks or services. These are Kordia, REANNZ, Network for Learning and Crown Fibre Holdings. It is a significant purchaser of ICT services. It is a regulator of aspects of ICT, particularly prices for communications networks at wholesale levels. It is a critical funder for skills and education of industry workers.

But aside from these direct involvements, what else does the Government do to stimulate the health and growth of our national ICT industries? When we talk about the Government's role in ICT, we mean to discuss how exactly the value of other investments (especially UFB and RBI) can be realised.

Why this matters

When we look elsewhere, the Government plays an active role in the ICT industry through not only ownership of key, bottleneck assets, but also in spearheading initiatives that drive consumer confidence, behaviour and uptake, as well as encourage the emergence of a new wave of Internet-enabled entrepreneurs. It can also operate its own activities as a beacon of best Internet practice, if it chooses.

We have done a good job recently in New Zealand of resolving the infrastructure bottlenecks that have previously prevented usage and innovation from occurring; the next stage however is the tricky bit.

A simple example suffices: earlier this year the Government announced:

> *"The Government will invest $28.6 million operating funding (including $11.8 million of contingencies) over the next four years in three Information and Communications Technology (ICT) Graduate Schools to help address significant high-level skills shortages in the rapidly growing ICT industry, Tertiary Education, Skills and Employment Minister Steven Joyce says."*

The policy - and the resources to be committed - is a great idea. The Government has rightfully identified that the country has a shortage of skilled professional in the ICT sector and it's clearly a booming industry that New Zealand wants to develop, not choke. Education and training of this sort is a great example of where action by government can make a useful and positive contribution to New Zealand's ICT sector. Opposition parties are making similar suggestions. As the debate heats up leading into the formal election campaign, other areas where government can help - or hinder - the Internet's development will no doubt arise.

It also matters in terms of how Government approaches its management of ICT related initiatives. At the moment, it seems that too many ideas aren't fully fleshed out as the thinking is not joined up. Internet policy and opportunity arguably suffers from a lack of focus – between the Minister of ICT and Broadcasting, with Education, Culture and Heritage, Commerce and Economic Development all having roles to play in realising the true value of the investments being made. We like to think that the dots can be joined a bit better.

How this can be improved

1. How can the Government set a good example of using the Internet more effectively?
2. The IRD is contemplating spending considerable sums on improving their core IT platform. This work could be a fantastic way of utilising and demonstrating the capability of New Zealand ICT providers. What role should NZ providers be playing in this project, and how do we encourage that?
3. Government has other tools that could help to stimulate the local ICT industry – be that through procurement policy, investment and tax credits, and immigration settings to ensure we have the skills we need. What policy changes would best enable these things?
4. The UFB and RBI have massive potential in education and health, in transforming service provision and driving more cost effective outcomes. How do we investigate and change delivery of these services to realise the true potential of our investments?
5. How can we encourage greater cooperation and collaboration between Government Departments and Agencies in matters of ICT policy? Or is it time to consider forming a new central agency to coordinate, deepen and drive Internet Policy matters to truly unlock the economic and social potential of the Internet?

Issue #6

Business Use of the Internet & Productivity

What this means

Commerce through the Internet is exploding as more and more people start shopping online. This is dramatic and exciting, as New Zealanders are clearly coming alive to the value of e-commerce, and the opportunities it brings. In doing so however, we are finding that the old rules restrict some of the best behaviours.

This change in behaviour is also having an impact on how businesses use the Internet to gain customers and make sales. But there is still so very much that can be done to increase the confidence and capability of New Zealand business in utilising the Internet to its full potential.

Why this matters

Recent research undertaken by the Innovation Partnership shows that New Zealand businesses are not taking advantage of the full range of opportunities that being online creates. There are two issues in this regard; there is a gap in the number of, particularly small to medium, businesses that use the Internet at all, and even if they do there is a second gap in whether they're using it to its full potential. After all, it is one thing to have an email account, and wholly another to be banking online, or using accounting services, or tracking inventories and orders online. This is a missed opportunity – not only to help New Zealand businesses export more, but simply to service domestic demand in a more efficient, customer friendly manner.

InternetNZ is active in this area as we think about how to both increase penetration of use into small to medium businesses, and in how we deepen that usage once they start using too. Our work with the Innovation Partnership which created the report referred to above as a "call to action" for particular sectors to realise the potential of being online. We've also been involved in helping The Digital Journey start up as a tool to encourage SMEs to explore new ways in which the Internet can enable their business further.

But there is a lot more that can be done. We are excited to see Whangarei being finished as the first fully-wired UFB candidate area. We are hearing some exciting stories coming from there as businesses and their community starts to adapt to these new opportunities. But it would be foolhardy to rely only upon "build it and they will come", when we could encourage it "to come" far faster.

How this can be improved

1. How can we provide the environment to accelerate the emergence and growth of companies using the Internet to sell products and services globally?
2. How can we lift the proportion of commercial activity that happens online, so that we are working faster, more efficiently and better able to access new markets?
3. How can the Government lift its accessibility online, to become faster, easier and more cost effective to engage with?
4. InternetNZ has helped create a tool called The Digital Journey, designed to encourage SMEs to increase their usage of ICT tools to improve their productivity and profitability. How should we better encourage services like these to directly influence SME uptake and usage?
5. How else can we drive “higher quality” usage, and deepening the understanding of the potential of the Internet to increase productivity?
6. And what about those businesses that are not connected at all? When do we consider directly stimulating connectivity for small business?

Issue #7

Human Rights online

What this means

Our lives are increasingly moving online, and the Internet is an integral part of our day to day experience for most New Zealanders. This exposes us all to new challenges in using a medium where information can be spread far further and faster than ever before; where our triumphs and indiscretions may be seen and remembered forever; and where our ideas, allegiances, friends and foes may all be revealed if we aren't careful.

It's natural then that many people have started to think about what rights people possess as they interact with each other on the Internet. Some political parties have stepped into this space too. We all understand the basic conception of human rights, but how these are best applied in an online context, and whether indeed we need to conceive of new rights to help us all online, is something that many are grappling with.

Why this matters

Many of the matters covered in this document relate to human rights – whether it is the "right" to preserve privacy from state surveillance, to the "right" to connect to a high speed network, or the "right" to fair service when shopping online. This illustrates the first challenge in any debate about digital rights – in other words, a right to what, exactly?

The second element to this is that we all possess human rights. These are embodied in both New Zealand legislation (the Bill of Rights Act, the Privacy Act) and international law, are well understood and widely respected, enforced and recognised. This provides us with the answer to "what rights" but raises a challenge of how these conceptions of human rights are best applied in a digital context, where they haven't been applied before.

We need to understand how to best apply our current collective conception of human rights in a digital context, as opposed to trying to describe a new set of "digital rights" instead. This fits with a core principle of ours: that because technology changes quickly, the focus of rights (and all other law) should be on the right itself and the activity it allows, rather than the particular technology involved. Where new technologies enable new activity, there may be changes to the law required to take this into account

We also need to consider accessibility. In particular, if there was to be proposed a right to be online, then surely that would need to apply to everyone in our society. We believe that the Internet is a tool for everyone, and that means that we need to think about how to encourage and support usage for those who have different access requirements. An example of the challenges here is in the Government Web Standards - these are only compulsory for departments in the state services sector. This means that there is no absolute requirement, for example, for the Health and Disability Commissioner to meet even the most basic level of accessibility. That doesn't seem right.

How this can be improved

1. A number of organisations and political parties have advanced proposals to develop a Digital Bill of Rights. Do we need separate “digital rights” legislation, or are amendments to existing human rights laws a better approach?
2. It is clear that either way, New Zealand could use a better conception of what rights we have when online and how best they are preserved, protected and enhanced. What is the best way of getting that done – and how and when would we go about that?
3. In any conception of human rights online, access is the first question. How do we increase accessibility for those with different requirements? Should the Government Web Standards be more universally applied?
4. What can we, at InternetNZ, do to help Parliamentarians, Government Agencies and other parties involved in the legislative agenda better understand digital rights, and digital law in general, to improve how the Internet is reflected across NZ law?

InternetNZ overview

A better world through a better Internet

InternetNZ is a voice, a helping hand and a guide to the Internet for all New Zealanders. It provides a voice for the Internet, to the government and the public; it gives a helping hand to the Internet community; and it provides a guide to those who seek knowledge, support or any other method of benefiting the Internet and its users.

InternetNZ's vision is for a better world through a better Internet. To achieve that, we promote the Internet's benefits and uses and protect its potential. We are founded on the principle of advancing an open and uncaptureable Internet.

The growing importance of the Internet in people's everyday lives means that over the last twelve months we have significantly reoriented our strategic direction. The Internet is everywhere. We are a voice for the Internet's users and its potential to make life better.

InternetNZ helps foster an Internet where New Zealanders can freely express themselves online – where they can feel secure in their use of the Internet. We foster an Internet where a start-up can use the web to develop a presence and customer base for a new product, and we foster an Internet where gamers can get online and battle it out.

We work to ensure this Internet is safe, accessible and open.

The work we do is as varied as what you can find on the Internet.

We enable partner organisations to work in line with our objects – for example, supporting Internet access for groups who may miss out. We provide community funding to promote research and the discovery of ways to improve the Internet. We inform people about the Internet and explain it, to ensure it is well understood by those making decisions that help shape it.

We provide technical knowledge that you may not find in many places, and every year we bring the Internet community together at NetHui to share wisdom, talk about ideas and have discussions on the state of the Internet.

InternetNZ is the delegated manager for the .nz country code top-level domain and represents New Zealand at a global level through that role.

InternetNZ is a non-profit open membership incorporated society, overseen by a council elected by members. We have two wholly owned subsidiaries that ensure that .nz is run effectively and fairly – the Domain Name Commission (DNC) develops and enforces policies for the .nz domain name space, and .nz Registry Services (NZRS) maintains and publishes the register of .nz names and operates the Domain Name System for .nz.

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InternetNZ (Internet New Zealand Inc) is the open membership incorporated society, established to promote the Internet's benefits and uses, and protect its potential.

InternetNZ has overall responsibility for the .nz domain name space, and is an advocate for the interests of Internet users and domain name registrants in New Zealand and overseas.