

MEMORANDUM OF UNDERSTANDING

BETWEEN

**THE DIGITAL SAFETY DIRECTORATE
DEPARTMENT OF INTERNAL AFFAIRS**

PO Box 805, Wellington 6140

AND

DOMAIN NAME COMMISSION LIMITED

PO Box 11 881 Wellington 6142

Dated: 5th this day Nov of 2018

PARTIES

The parties to this Memorandum of Understanding (**MOU**) are (jointly, the Parties):

- a) **The Domain Name Commission Limited**, a registered company (**DNCL**); and
- b) **The Sovereign in right of New Zealand** acting by and through the Digital Safety Directorate of the **Department of Internal Affairs (Digital Safety)**.

BACKGROUND

- A. DNCL is appointed by Internet New Zealand Inc. (InternetNZ) to develop and monitor a competitive self-regulated .nz registrar market, create a fair environment for the registration and management of .nz domain names and administer an independent .nz dispute resolution service. The DNCL achieves a competitive and fair market largely through its enforcement and compliance of its contracts and .nz policies with .nz authorised Registrars.
- B. Digital Safety is a directorate of Regulatory Services in the Policy, Regulation and Communities branch in the Department of Internal Affairs. The Digital Safety Group, in particular the Electronic Messaging Compliance Unit and the Censorship Compliance Unit, contribute to reduce harm in the online space, using a range of regulatory tools. The Electronic Messaging Compliance Unit enforces the Unsolicited Electronic Messages Act 2007, and the Censorship Compliance Unit enforces the Films, Videos, and Publications Classification Act 1993, particularly in regard to online objectionable publications depicting child sexual abuse and exploitation.
- C. In the course of dealing with enquiries and complaints the Parties both have responsibilities to prevent and/or minimise behaviours that do not contribute to a safe secure and trusted .nz online environment. They have shared objectives to prevent negative economic impacts on New Zealand, protect New Zealand's international reputation, and to prevent illegal activity in New Zealand.
- D. The Parties have accordingly decided to enter into an MOU to enable them to share information to achieve these joint objectives.

1. BASIS OF THE AGREEMENT

- 1.1. This MOU sets out the manner in which the Parties will interact with each other in respect of any matters relating to domain name registration, information abuse, electronic messaging compliance, online objectionable and restricted publications, and associated consumer issues.
- 1.2. This MOU is entered into on the basis of mutual respect, in a spirit of goodwill and cooperation. It does not affect the independence of the Parties as regulatory bodies and does not create any legal relationship between the two.
- 1.3. Both Parties aim to cooperate and collaborate in terms of information provision, expertise, and advice in relation to information that arises from handling domain name enquiries, electronic messaging compliance, and objectionable publications matters.
- 1.4. This MOU is not legally binding on the Parties and is not enforceable against either Party. Instead, it sets out the agreed basis for the relationship between the Parties.

2. PURPOSE

- 2.1. The Parties agree to collaborate and cooperate in their respective roles in dealing with matters relating to:
 - 2.1.1. Compliance and enforcement functions in relation to domain name , electronic messaging compliance, and objectionable publications matters;
 - 2.1.2. The exchange of information and compliance strategies about the effective use of regulation policies by Government and Industry in support of enforcement actions;
 - 2.1.3. Consumer Protection and security related issues;

- 2.1.4. Education material and prevention;
 - 2.1.5. Any other relevant area of collaboration agreed between the Parties from time to time.
- 2.2. The Parties will work together in a spirit of cooperation including by:
- 2.2.1. Referring complaints to the other agency where appropriate;
 - 2.2.2. Use of technical expertise from each agency;
 - 2.2.3. Voluntary capacity building between each agency;
 - 2.2.4. Sharing of best practices and international benchmarking practices;
 - 2.2.5. The exchange of intelligence, where practicable, relating to .nz domain name enquiries and messaging compliance complaints gathered as a result of enforcement activities;
 - 2.2.6. Working together, where practicable, in raising awareness and educating consumers about safety and security issues that may arise in the .nz domain name space;
 - 2.2.7. Facilitate research and education related to compliance techniques and any necessary investigative assistance
 - 2.2.8. Communicating and sharing information and know how to enable the effective monitoring of overall or system problems (including scams, phishing, fraud and malware), issues or trends in the .nz domain name space;
 - 2.2.9. Stimulate discussion on learning of new approaches and good practices;
 - 2.2.10. Stimulate discussions on Complaint Handling processes and promote enforcement of the processes;
 - 2.2.11. Any other strategy deemed necessary and appropriate by both

Parties.

3. EXCHANGE OF INFORMATION

- 3.1. A Party may request or share any information consistent with the purpose of this MOU with the other Party.
- 3.2. In requesting or sharing information, the Parties will comply with all applicable New Zealand laws, including the Privacy Act 1993 and .nz policies and agreements, which may be updated from time to time.
- 3.3. Request for, and provision of, information under this MOU may be done via any format (including electronic means or meetings between the Parties) as the Parties consider appropriate in the circumstances.
- 3.4. A request for information under this MOU may be declined:
 - 3.4.1. where compliance would require either Party to act in a manner that would violate the applicable laws of New Zealand;
 - 3.4.2. under circumstances where there is an imminent risk to national security;
 - 3.4.3. where provision of information would interfere with an ongoing investigation in circumstances where prejudice to the investigation is likely to result; and/or
 - 3.4.4. In any other circumstances by written notice to the other Party.

4. CONFIDENTIALITY

- 4.1. Any information shared by the Parties in accordance with this MOU must be used by the receiving Party only for lawful supervisory, regulatory, or statutory purposes.
- 4.2. Where information is shared in confidence by a Party, this must be advised by the sharing Party at the time. This information will be held in confidence by the other Party unless disclosure is required by law,

including under the Official Information Act 1982.

- 4.3. In particular, for the avoidance of doubt, disclosure by one Party to the other of any personal information under this MOU will be managed consistently with the Privacy Act 1993.
- 4.4. The Parties will, prior to responding to any request for release of either agency's confidential information, consult each other on such disclosure.

5. COMMENCEMENT, AMENDMENT AND TERMINATION

- 5.1. This MOU will come into effect when signed by both Parties and will remain in effect until terminated by either agency by giving 30 days' written notice or by mutual consent.
- 5.2. Clause 4 (Confidentiality) will remain in effect despite any termination of the MOU.
- 5.3. The MOU may be amended by mutual written agreement by the Parties.

6. PUBLICITY

- 6.1. The Parties will consult and coordinate with each other before either Party issue any public statements or media release concerning this MOU.
- 6.2. This MOU will be made available on both agencies' websites.

7. DISPUTE RESOLUTION

- 7.1. Where there is any dispute arising from the implementation of the MOU, the Parties will cooperate to resolve the dispute in good faith.

8. AUTHORISED REPRESENTATIVES

8.1. For purposes of communication or notices with respect to this MOU, the following are the Parties' authorised representatives:

DNCL: Brent Carey, Commissioner of DNCL

Email: dnc@dnc.org.nz

Address: PO Box 11 881 Wellington 6142

Phone: 04 4 495 2334



Digital Safety: Peter Merrigan, Acting Manager of EMCU

Email: peter.merrigan@dia.govt.nz

Address: PO Box 805, Wellington 6140.

Phone: 04 494 0504 (5504)

8.2. The Parties may change their authorised representatives at any time by notice to the other Party.

Signed for and on behalf of DNCL	Signed for and on behalf of Digital Safety
	
Brent Carey (Commissioner of the Domain Name Commission Limited):	Jolene Armadoros (Director, Digital Safety Directorate)

