



## Submission

to the Justice and Electoral Committee

on the Electoral Finance Bill

September 7, 2007

**Public Version**  
**(There is no confidential version)**

## **Introduction**

- 1 This submission is from InternetNZ, the Internet Society of New Zealand (Inc).
- 2 InternetNZ is a non-partisan, non-profit membership organisation, with the responsibility for managing the .nz domain name space, a key part of New Zealand's Internet infrastructure.
- 3 Using some of the proceeds from that role, InternetNZ advocates for the interests of New Zealand Internet users, as well as playing a limited role in the development of the Internet in the Pacific.
- 4 This submission gives the Committee some more information about the work InternetNZ does. It then expresses our concerns with how the Bill seeks to regulate that work, and poses the question of whether Parliament should be seeking to restrict the speech of organisations like ours. As such it is not a technical or legally focused submission seeking to propose detailed amendments to the Bill: it is focused on principles and possible outcomes.
- 5 For further information please contact:  
  
Keith Davidson, Executive Director  
InternetNZ  
PO Box 11-881, Wellington  
[keith@internetnz.net.nz](mailto:keith@internetnz.net.nz), or +64 4 495 2119.
- 6 InternetNZ **does not seek** to make an oral submission to the Committee in respect of this submission.

## **InternetNZ's work**

- 7 This section focuses on the work that InternetNZ does that may be affected by this Bill.
- 8 There are two broad areas of work that InternetNZ believes may be covered by the Bill as drafted:
  - 8.1 Advocacy work on issues of public policy.
  - 8.2 Efforts to publicise parties' positions on Internet-related policy issues.

## **Advocacy work**

- 9 InternetNZ conducts a wide range of activities aimed at persuading government and parliamentary decision makers to adopt improved policies for New Zealand's Internet infrastructure.

- 10 For example, the Society makes submissions to the Commerce Commission on matters before it under the Telecommunications Act. It makes submissions to Select Committees on a range of matters (most recently, the proposed amendments to the Copyright Act). It supports the work of a non-partisan Parliamentary Internet Caucus within the Parliamentary establishment. It makes regular media comment on a wide range of topical issues, for instance recently around the Code of Banking Practice which discriminates against Internet banking users.
- 11 All these activities form part of the Society's core business – they are what we exist to do.
- 12 They all involve taking a position on a matter which a political party or candidate will inevitably have, and almost inevitably express, a position of some sort. It seems that they would therefore be caught under the definition of third party political activity, and face restrictions under the Bill as currently proposed. In particular, some or all of these activities, where they may involve publications or public statements, could be caught by the definition of election advertising.
- 13 Further, the way publication has been defined to include any website or email is impractical and unworkable. It would be useful to differentiate between advertising which forces itself to be seen by people, and Internet messages that people actively subscribe to or seek out.

### ***Publicising Parties' Positions***

- 14 In election year, InternetNZ seeks to publicise the positions that political parties take on a range of Internet related issues, and to persuade political parties to adopt better policies for Kiwi Internet users.
- 15 For example, in the past we have conducted a questionnaire seeking responses from parties about their specific policies relating to Internet issues. We have also broadcast a live debate between political party spokespeople on Internet issues. The Society has made major advances in its public policy capacity since the 2005 General Election, and therefore would be looking to a more comprehensive programme of analysis and commentary during the next general election.
- 16 It is almost inevitable that a comparison between parties' policies would be caught under the definition of election advertisement currently contained in the Bill. It is certain that if InternetNZ were to judge parties' policies and advise the public to support the party/ies with the "best" policies on Internet issues, it would be considered under the Bill's framework to be a third party conducting electioneering activities.

## **Should InternetNZ be caught in the Bill's regime?**

- 17 InternetNZ believes that it is in the public interest for its work, as outlined briefly above, to be able to occur during election year.
- 18 We seek to inform and educate the public about the best policies for the Internet, and that work carries implicit arguments for supporting or not supporting some parties or candidates.
- 19 As worded, the Bill will seriously restrict our ability to both inform and educate the public on the issues they face during the general election. It seeks to privilege the speech of political parties, and discriminate against or heavily restrict the speech that expert outside organisations can engage in.
- 20 This problem extends to our broader advocacy work as well. Because the Internet is a dynamic and changing area, many of the policy questions it faces are occasionally controversial. Political parties are showing an increased understanding of the importance of ICT issues, and are more likely than ever before to take positions on these issues in the next general election.
- 21 InternetNZ is therefore concerned not only that its ability to educate and inform the public during an election might be restricted by this Bill, but also that its ordinary work of advocacy and lobbying might also be restricted.
- 22 InternetNZ has paid careful attention to statements by ministers and other Members of Parliament on the intent behind the Bill, and is not convinced that the Bill currently meets the intent expressed by many.

## **Recommendations**

- 23 It is to be hoped that the Committee can take our own example into account when designing changes to the regime. In particular we suggest three points:
  - 23.1 That the ordinary advocacy work of organisations like ours be clearly and entirely excluded from any regime associated with the electoral laws, including from the third party regime established under this Bill.
  - 23.2 That the definition of election advertisement be tightened so that it does not unreasonably restrict the ability of third parties to inform the public about the choices they face during an election. (InternetNZ has no position on whether third parties should or should not be able to actively campaign for or against parties or candidates, as it has no intention of doing so.)
  - 23.3 That Parliament carefully consider the implications of privileging the generalist speech of political parties, and simultaneously denying informed third parties the ability to engage in legitimate and robust debate with political parties, during an election period.

24 InternetNZ is available to expand on any of the points raised in this submission should the Committee consider this helpful, but does not wish to make an oral presentation to the Committee, as already noted above.

25 Thank you for considering this submission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'K Davidson', enclosed in a thin black rectangular border.

Keith Davidson  
**Executive Director**