the browser InternetNZ News April 2007

InternetNZ responds to Operational Separation plan

On 27 April InternetNZ made an extensive submission to the Government in response to the Ministry of Economic Development paper setting out the requirements for Telecom's operational separation.

Largely supportive of the direction set out by the Ministry, InternetNZ focused its comments on the range of services covered by "Equivalence of Inputs" requirement, and on the need for stronger forward-looking provisions in the separation plan.

In particular, the Society believes it is vital that all future services over bottleneck assets are provided on an Equivalence of Inputs basis. The Ministry's proposal is different - they suggest that only services that are otherwise regulated under the other parts of the telecommunications regulation framework should be required to be EoI based.

Additionally, InternetNZ strongly supports a mandatory consultation process in the development of Next Generation networks by Telecom, to ensure that these are not developed in a manner that would create future competition problems in the industry. This was a well-received outcome of the UK operational separation process and should be easily replicable in New Zealand.

InternetNZ did not comment in any detail on Telecom's proposed alternative model of separation, not having seen enough information from Telecom by the submission deadline to make a considered response.

The Society supports structural separation in general, but notes that it is not necessarily a simpler solution than the existing operational separation proposal. While welcoming Telecom's initiative, a more in depth analysis is required before InternetNZ can make a call either way.

Anti-spam plans

InternetNZ attended a workshop with the Department of Internal Affairs (DIA) and the Ministry of Economic Development to help formulate the communications plan surrounding the introduction of the Unsolicited Electronics Messages Act on September 5.

The DIA has formed a group to enforce the Act, appointed an operational manager, and is appointing an overall manager shortly.

At the meeting, InternetNZ helped in the process of identifying stakeholders that can help spread the messages both to consumers and to businesses. Also discussed were the key messages for each stakeholder group. An important piece of the program, for example, will be reaching out through business groups such as BusinessNZ to ensure businesses know what will be regarded as Spam and what won't when it comes to their marketing.

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InternetNZ

Joe Abley's IAB move

Canadian-based Kiwi and InternetNZ Fellow Joe Abley was appointed as the new Executive Director of the Internet Architecture Board. Joe has worked with Paul Vixie and the Internet Systems Consortium (isc.org) which is the not-for-profit public benefit corporation supporting internet infrastructure primarily through BIND. Joe held a number of roles in New Zealand in the early days of the internet and was a stalwart of the NZNOG community.

Peering group seeks solutions

In late March InternetNZ established an independent working group to explore any issues around internet peering in New Zealand and propose industry solutions.

That working group is headed by consultant and ex-Telecom CTO Dr Murray Milner and includes Prophecy's Dean Pemberton (ex-TelstraClear), Catalyst's Neil Bertram (who wrote an academic paper on peering last year), and Dr Peter Komisarczuk of Victoria University of Wellington.

The group has met with a range of stakeholders in both Auckland and Wellington to seek their particular views on the issues including whether they saw issues at all. These included ISPs, content providers, telcos, banks, and Government. A focus of the group is to identify factual bases for peering issues and establish common ground in the language used. This will enable a clearer picture of what may need to be dealt with.

In the meantime Telecom has also begun a consultation process around an offer of local interconnection at 29 points around the country, which would appear to target at least some of the issues raised in terms of keeping local data local and has been generally received positively in the industry.

events

TUANZ Telecommunications Day
May 31, Wellington
tuanz.org.nz

APTLD Dubai
June 3-4, Dubai, UAE
aptld.org

PACNOG 3
June 16-22, Rarotonga, Cook Islands
pacnog.org

TelCon8
June 25-26, Auckland
www.conferenz.co.nz

ICANN Puerto Rico
June 25-29, San Juan, Puerto Rico
icann.org/meetings/sanjuan

Building KAREN Communities for Collaboration
July 2-5, Wellington
karen.net.nz

PacINET 2007
August 15-24, Honiara, Solomon Islands
picisoc.org

Farrar on TV

InternetNZ Vice President David Farrar is appearing weekly on TV1's Good Morning program, usually at 11.30am on Mondays.

David, along with journalists Barry Soper and Jane Clifton discuss the week in politics with a focus on the lighter side.

Broadband measurement

Consumer Institute has requested expressions of interest for potential suppliers to develop a broadband measurement tool for New Zealand. This might have some appeal to some InternetNZ members and their organisations for a response. Deadline is May 20.

InternetNZ will nominate some of it technical policy committee members with an enthusiasm for this project to work with Consumer.

Fibre presentation to regional networks

InternetNZ deputy executive director Jordan Carter made a presentation to a recent meeting of the Regional Networks Liaison Group, sharing the lessons for network developments he learned on a recent study trip to the Netherlands.

Amsterdam and other Dutch cities are using a range of local government-initiated business models to roll out fibre optic infrastructure. Advanced service delivery - for example telemedicine, high definition video, effective distance learning - requires the very high bandwidth and high quality connections that only fibre allows.

Jordan outlined the easier situation New Zealand local government faces in developing fibre rollout plans, in the absence of Europe's state-aid prohibitions. These mean that governments there cannot directly subsidise networks that compete with incumbent telcos. New Zealand does not face similar restrictions.

He also suggested those present need to consider the wider context of advanced network building, and the possible role of central government in providing financial support to local rollouts, and joining up such local fibre networks with national backbone infrastructure, either directly or in partnership with private industry. A clear picture of national rollout plans would help organisations be more certain in developing their investment strategies.

The Regional Networks Liaison Group is bringing together government networks and those projects that have been funded by the Digital Strategy's Broadband Challenge programme to share ideas and experience.

cyberlaw

CyberLaw website kicks off

The InternetNZ CyberLaw Fellow Philip Greene is now posting online on a website set up at the domain name cyberlaw.org.nz, hosted by InternetNZ. Members are welcome to contact Philip if they feel they can contribute articles to the website. Or are welcome post comments directly on the site in response to his articles.

Philip, who took up the year-long position at Victoria University at the end of January, is the former Senior Counsel for Internet Technology at the United States Department of Commerce, which provides intellectual property counsel to the Department worldwide. He has also advised the White House's Executive Office of the President on domain name dispute and cybersquatting issues.

While at Victoria, he is teaching a course entitled "The Law and Regulation of Cyberspace" in Trimester 2, and undertaking a major research project.

Here is an article from the new site:

Is YouTube "Copyright Tasting?"

Two recent stories have a similar ring to them. The World Intellectual Property Organization (WIPO) complained about "domain tasting," while Viacom filed a huge lawsuit against YouTube. In both cases, "safe harbours" are being used to turn a quick buck, and the aggrieved parties aren't amused.

Domain Tasting

A March 12 statement from WIPO noted the problems domain tasting poses for IP owners and the Domain Name System (DNS). See: http://www.wipo.int/pressroom/en/articles/2007/article_0014.html

Payment for a new domain registration is deferred during a five-day "grace period," allowing a registrant to back out. "Domain tasting" involves registering a name (in many cases, one that infringes another's trademark rights), linking it to a site with advertising, and deriving "pay per click" revenues from the resulting traffic. The registrant only "tastes" the name long enough to test its value and, ideally, make some money.

Domain tasting (assuming no trademark infringement) is legal, since the grace period is required by ICANN. Tasting has spawned "domain kiting," the repeated act of "tasting." In other words, "taste" a domain for five days, let it lapse, re-register it for another five, and so on.

Continued overleaf...

briefs

Structural Review

The external consultants, Westlake Consulting have completed its project and is finalising its report and recommendations which will be considered by Council at its next meeting on June 16.

Broadly the outcomes remain aligned to the model demonstrated to members during the members consultation meetings earlier this year and a number of more detailed recommendations flow from the general acceptance of the overarching model.

KAREN

InternetNZ continues to progress discussions with REANNZ over connecting to the KAREN network. InternetNZ is also considering the possible deployment of test IPv6-based DNS servers for .nz on KAREN.

Wellington broadband

Wellington City Council has put out a "Request for Concept" in relation to its broadband plans for the City and potentially for the broader Wellington region. At this point the Council is aiming to identify strategic partners and explore options prior to a potential tender process.

from the DNC

Dispute Resolution Service

On 31 March 2007 the DRS had been in operation for 10 months. Over that time 84 complaints were received in total.

54 of these were valid complaints; 30 complaints were deemed invalid (e.g. involved non .nz domain names, no signed copy received etc).

Of the 54 valid complaints:

- 10 proceeded to an Expert determination;
- 7 were ordered transferred
- 1 was ordered cancelled
- 2 complaints were dismissed
- 21 disputes were resolved between the parties either at, or prior to, mediation;
- 12 were withdrawn;

The remainder are continuing through the process.

cyberlaw continued...

Due in part to tasting, domain name disputes are up (1,823 cases were filed last year with WIPO, the most since 2000). WIPO further noted:

> The rate at which domain names change hands and the difficulty to track such mass automated registrations challenge trademark owners in their pursuit of cybersquatters. With domain names becoming moving targets for rights holders, due consideration should be given to concrete policy responses.

ICANN has received prior complaints about tasting, see: http://www.icann.org/correspondence/reidl-to-icann-16nov06.pdf)

and has debated taking "concrete policy responses," see: http://www.icann.org/correspondence/viltz-to-cerf-21nov06.htm).

However, last month's ICANN meeting in Lisbon saw no action on the tasting front. Perhaps WIPO's complaint was too close to the meeting. ICANN meets again in June in Puerto Rico, so stay tuned.

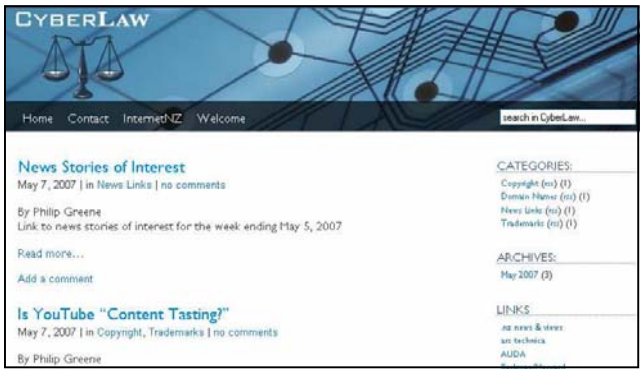
Viacom vs. YouTube

Also on March 12th, media giant Viacom filed a $1 billion copyright infringement suit against YouTube, alleging "almost 160,000 unauthorized clips of Viacom's programming have been available on YouTube and that these clips have been viewed more than 1.5 billion times." (See: http://www.money.cnn.com/2007/03/13/news/companies/youtube_viacom_reaction/index.htm)

Viacom has asserted that YouTube is illegally and unfairly exploiting a "safe harbour" in U.S. copyright law, and is deriving substantial revenues from this practice:

> YouTube is a significant, for-profit organization that has built a lucrative business out of exploiting the devotion of fans to others' creative works in order to enrich itself and its corporate parent Google. Their business model, which is based on building traffic and selling advertising off of unlicensed content, is clearly illegal and is in obvious conflict with copyright laws. In fact, YouTube's strategy has been to avoid taking proactive steps to curtail the infringement on its site, thus generating significant traffic and revenues for itself while shifting the entire burden – and high cost – of monitoring YouTube onto the victims of its infringement. (see http://www.viacom.com/view_release.jhtml?inID=10000040&inReleaseID=227614)

YouTube maintains that it will remove infringing content *once it is aware of it*, and that's all it is required to do. YouTube relies on the "safe harbour" found within the U.S. Digital Millennium Copyright Act (DMCA) (see, Title 17 United States Code Section 512(c)), which would only trigger liability only if YouTube failed to remove the content upon receiving notice.



Analysis

The two stories are similar, in that both feature entities taking advantage of a revenue-generating, temporal situation. Further, tasting is entirely legal where no infringement exists, and many video clips on YouTube are not infringing, in that they are in the public domain, or original content offered by the poster, or third-party content offered under license.

YouTube claims it has no duty to proactively monitor its site to police the interests of others, and the safe harbour shields it until it has actual knowledge of infringement. Viacom counters that YouTube has such a duty since it controls the site, and that the safe harbour does ***not*** apply, since YouTube is ***not*** a "service provider," and "receives a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity."

Perhaps the greatest difference lies in perception. While few would likely shed a tear over the loss of domain tasting, YouTube is something of a media darling in the "free culture" movement, seen as an innovative new medium for the expression of thought, creativity and free speech. Recalling the landmark, 1984 U.S. Supreme Court decision in *Sony v. Universal Studios*, which favoruably decided the fate of the video cassette recorder, YouTube's supporters fear a decision *against* YouTube will stifle innovation, killing the Golden Goose, which *could* have happened had *Sony* gone the other way.

What will come of these phenomena? For domain tasting, action likely will have to come from ICANN. With the DMCA safe harbour, and YouTube's reliance thereon, we will have to await action by the court system, and possibly the U.S. Congress, as is noted by Professor Lawrence Lessig (see http://www.lessig.org/blog/archives/003734.shtml)

Perhaps the key lies in the fact that many clips posted on YouTube are not infringing, calling to mind the "substantial non-infringing uses" test from *Sony*. Recognizing the desirability of VCR technology, the Supreme Court declined to find Sony liable for contributory infringement. Will today's Court have this same enlightened reluctance to stifle innovation, interpreting the safe harbour in favour of YouTube? Or, will Congress statutorily narrow the safe harbour? As noted above, these are cases worth watching.