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The Council of the Internet Society of New Zealand Inc
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WELLINGTON

Internet Society of New Zealand Incorporated - charitable status

Background and nature of instructions

- 1 The Internet Society of New Zealand Incorporated (**Society**) has sought our opinion as to whether it is 'charitable' and capable of applying for registration as a charitable entity under the Charities Act 2005 (**Act**). It is intended that this opinion will be included with that application.
- 2 The approach taken in this opinion is to examine the objects and activities of the Society and consider whether they are charitable in accordance with the definition of charitable purpose contained in the Act. In particular, this opinion considers whether the activities undertaken by the Society that could be seen to have a political aspect to them are incidental to achieving its main objects (such that the Society is capable of claiming charitable status) or have become objects in themselves (such that it would preclude the Society from claiming charitable status).

Summary of our opinion

- 3 In our view, the objects of the Society have charitable purposes according to the definition contained in section 5 of the Act for the following reasons:
 - 3.1 The objects are other matters beneficial to the community in accordance with the spirit and intendment of the preamble to the Statute of Elizabeth, otherwise known as the Charitable Uses Act 1601 (**Preamble**).
 - 3.2 There are no factors which would preclude charitable status (such as the existence of private benefit). In particular, it is our opinion that any activities that have been undertaken by the

Society which could be said to have a political aspect were undertaken to further its objects and have not become objects within themselves.

4 Therefore, in our view, registration under the Act should be obtainable.

Analysis

Eligibility to register under the Act

5 In order for the Society to register under the Act, it must meet the requirements set out in section 13, which provides:

An entity qualifies for registration as a charitable entity if,—

...

- (b) in the case of a society or an institution, the society or institution—
 - (i) is established and maintained exclusively for charitable purposes; and
 - (ii) is not carried on for the private pecuniary profit of any individual; and
- (c) the entity has a name that complies with section 15; and
- (d) all of the officers of the entity are qualified to be officers of a charitable entity under section 16.

6 The Society has no issue as regards its name (given it is registered under the Incorporated Societies Act 1908) and we assume that there is no issue as regards its officers. The requirements as regards charitable purpose and private benefit are considered below.

General tests as to charitable status

What is charitable in New Zealand?

7 The concept of 'charitable purposes' is defined in section 5(1) of the Act as follows:

Meaning of charitable purpose and effect of ancillary non-charitable purpose

In this Act, unless the context otherwise requires, **charitable purpose** includes every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community.

8 The Act came into force in July 2005 but as yet no body of case law has been developed under it. Historically, the law of charities in New Zealand has developed as a result of tax law, due to the availability of various tax exemptions and concessions for 'charitable' entities. The Act is predominantly based on the approach taken by New Zealand tax law (reflected in the fact that where a society or institution has a tax ruling as to its charitable status, it must be regarded as meeting the requirement of section 13(1)(b)) and on the law of charities as it has been developed over the centuries (primarily by the UK).

9 The legal definition of what is a charitable purpose goes back to the Preamble. The list contained in the Preamble formed the basis of the modern legal definition of what

constitutes a charitable purpose, especially with regard to what is a charitable purpose under the 'fourth head', being 'other matters beneficial to the community'. The Preamble reads:

... for relief of aged, impotent and poor people; for the maintenance of sick and maimed soldiers and mariners; schools of learning, free schools and scholars in universities; for the repair of bridges, ports, havens, causeways, churches, sea-banks and highways; for the education and preferment of orphans; the relief, stock or maintenance of houses of correction; the marriages of poor maids; the supportation, aid and help of young tradesman, handicraftsmen and persons decayed; for the relief or redemption of prisoners or captives; aid and ease of any poor inhabitations concerning payment of fifteens; setting out of soldiers and other taxes.

- 10 Case law has recognised the need for flexibility in this definition. The law of charity is considered to be a moving subject and, as such, it is understood that the Preamble should not be read literally (which would reflect society as at 1601) but in the context of contemporary society. The correct approach is to ascertain whether the purpose falls within the spirit and intendment of the Preamble, and this involves seeking an analogy with purposes mentioned in the Preamble itself, or with purposes previously held to be within its spirit and intendment.
- 11 For charitable purposes to be directed towards the public benefit, they must be benefits that are capable of being clearly identified and defined, and must be available to a sufficient section of the public. Meeting the requirement of being for the public benefit requires that:
 - 11.1 The potential beneficiaries are not numerically negligible; and
 - 11.2 The quality that distinguishes the beneficiaries from other members of the community must not depend on their relationship to a particular individual or a contract of service.

What is not charitable in New Zealand?

- 12 Societies or organisations that have family, membership or employment criteria which link the class of beneficiaries historically would not satisfy the public benefit requirement, and, therefore, would not be considered charitable. An exception to this position has been included in the Act (section 5(2)) in that relationship by blood of itself will not preclude charitable status (in other words, the class of beneficiaries must be sufficiently wide as to not be a private benefit).
- 13 An organisation is not charitable if it is carried on for the purposes of profit or gain to particular persons including its owners or members - known as the non-profit requirement. In short, if an organisation is carried on for the profit of its owners or members, it is carried on for their private benefit and not for the benefit of the general public. Thus, it undermines the public benefit requirement.
- 14 Political purposes, as a general rule in New Zealand and worldwide, are not charitable purposes. Groups that exist with the primary purpose of bringing about change(s) in the law have been found by the courts not to be charitable. This has been the approach of the courts for the last 400 years (led predominantly by the UK). The courts have not been willing to find that lobbying for a law change, or

change of government, or other political purposes, is charitable because they have considered that it is not possible to judge whether a proposed political change or law change will or will not benefit the public¹. The Charities Commission (**Commission**) has confirmed that it will use this same approach in considering applications for registration under the Act².

Political purpose

15 The Commission has followed the approach of the UK Charities Commission in its approach to political purposes. To determine whether a purpose is political (and, therefore, prevents an entity from qualifying for registration as charitable) involves two stages³. The first stage is distinguishing between those purposes of the Society which are political and those which are not. The second stage is determining whether or not the (or a) main purpose of the organisation is political, as the presence of a non charitable purpose that is merely ancillary to a main charitable purpose will not prevent an entity from qualifying for registration as a charitable entity. This two stage process reflects sections 5(3) and (4) of the Act, which state:

5(3) [Ancillary non-charitable purpose does not prevent registration]

To avoid doubt, if the purposes of a trust, society, or an institution include a non-charitable purpose (for example, advocacy) that is merely ancillary to a charitable purpose of the trust, society, or institution, the presence of that non-charitable purpose does not prevent the trustees of the trust, the society, or the institution from qualifying for registration as a charitable entity.

5(4) [Ancillary non-charitable purpose defined]

For the purposes of subsection (3), a non-charitable purpose is ancillary to a charitable purpose of the trust, society, or institution if the non-charitable purpose is—

- (a) ancillary, secondary, subordinate, or incidental to a charitable purpose of the trust, society, or institution; and
- (b) not an independent purpose of the trust, society, or institution.

16 We note the following in relation to ascertaining what is a political purpose:

16.1 The New Zealand High Court decision of *Re Collier (Deceased)*⁴ succinctly outlined three categories of political involvement which are considered to be political purposes and therefore will effect an organisation's ability to claim charitable status, namely:

¹ For example: *Bowman v Secular Society Ltd* [1917] AC 406; *National Anti-Vivisection Society v Inland Revenue Commissioners* [1948] AC 31; *Re Hopkinson (Deceased)* [1949] 1 All ER 346; and *North Shore Hospital of Sydney v Attorney-General* (1938) 60 CLR 396.

² Update 15, 'Update', October 2006 <<http://www.charities.govt.nz/news/updates/october-2006.htm>> as at 22 August 2007.

³ <<http://www.charities.govt.nz/news/media-releases/advocacy.htm>> as at 22 August 2007.

⁴ [1998] 1 NZLR 81, at 89-90.

- 16.1.1 Lobbying for a change in the law – purposes will not be charitable where they are related to lobbying for a law change or enforcement.
- 16.1.2 Supporting a particular political party.
- 16.1.3 The perpetual advocacy of a particular point of view ('propaganda'), for example, advocacy in relation to birth control, euthanasia, etc.
- 16.2 Purposes that relate to personal and representational advocacy, for example, assisting people to access benefits, will be considered by the Commission as charitable activities and are not classed as political purposes⁵.
- 17 If a purpose falls under one of the three categories noted above and therefore is characterised as political, it will only have a vitiating effect on an organisation's ability to obtain charitable status if it is 'the main' or 'a main' purpose of the organisation (due to section 5(3), see above). The Commission has elaborated further on this point⁶:
 - Political advocacy or advocacy for a law change is considered non-charitable, and would prevent [an] organisation from qualifying [as a charitable entity] if it is a primary purpose.
 - In other words, if political advocacy is not a primary purpose and it is not independent of a primary purpose that is charitable then it won't stop [an entity] from qualifying for registration.
- 18 The position of other jurisdictions with regard to the issue of political activities and charitable status is noted below, as this gives some guidance as to what has been regarded as political and what has been regarded as primary or incidental.
- 19 United Kingdom (UK): The New Zealand position seems to have closely followed the basic approach of the UK Charities Commission. However, the UK Charities Commission appears to have gone a step further by distinguishing between purposes classified as 'political activities' and those classified as 'political campaigning'. In summary:
 - 19.1 Political campaigning may be carried out so long as it is carried out as a means of furthering the organisation's overall charitable purposes⁷.
 - 19.2 Political activities are those activities which are directed at securing, or opposing, any change in the law, policy or decisions of central government or local authorities.

⁵ <<http://www.charities.govt.nz/guidance/common.htm>> as at 22 August 2007.

⁶ Fact Sheet 19, March 2007.

⁷ CC9 - Campaigning and Political Activities by Charities, September 2004
<<http://www.charitycommission.gov.uk/publications/cc9.asp>> as at 22 August 2007.

19.3 Political campaigning covers those activities which are directed at raising public awareness and education on a particular issue, influencing and changing public attitudes, and political activities which are intended to influence government policy or legislation. Political campaigning may involve contact with political parties.

19.4 The distinguishing factor between political campaigning and political activities is whether the organisation is seeking to secure or oppose a change in the law (political activity – non-charitable), or, whether the organisation is seeking to influence government policy or legislation (political campaigning – charitable). Influencing government policy, as opposed to securing/opposing a change in the policy, is an acceptable activity by a charity in the UK provided that the activities pursued are a legitimate means of furthering the charitable purposes of the organisation concerned.

20 Australia: The Australian approach (which is mainly commented upon in the tax context) is consistent with the New Zealand two-stage test. An entity is not a charity if it is primarily for political, lobbying, or promotional purposes. However, if an entity's purpose is otherwise charitable, the presence of a political, lobbying or promotional activity that is incidental to the charitable aims will not prevent it from being granted charitable status⁸. The Australian Taxation Office (**ATO**) has outlined specific examples of political activities that are considered to be charitable⁹, for example:

A family-crisis charity - because of its experience and mission in dealing with family difficulties - is requested, by a government authority, to assist with a review the authority is conducting. The charity prepares an analysis of current problems with family assistance and submits it to the review.

A native flora charity - as part of its purpose of advancing the preservation of native species - makes representations to an authority to change its protection criteria to also include some of those species.

A health promotion charity - as part of its purpose of reducing the incidence of a disease - opposes proposed legislation (that it thinks would discourage potential sufferers from seeking medical attention) by lobbying parliamentarians, issuing press releases and making its representatives available to media outlets.

21 United States (**US**): The New Zealand position appears to be consistent with the approach taken by the US with regard to tax-exemptions and charitable organisations. The US tax exemption requirements state that an organisation may not attempt to influence legislation as a substantial part of its activities, and it may not participate in any campaign activity for or against political candidates¹⁰.

⁸ <<http://www.ato.gov.au/print.asp?doc=/content/24483.htm>> as at 22 August 2007.

⁹ <<http://www.ato.gov.au/print.asp?doc=/content/62779.htm>> as at 22 August 2007.

¹⁰ Section 501(c)(3) of the Internal Revenue Code.

Purposes of the Society and activities undertaken in furtherance of those purposes

22 In forming a view as to the charitable status of the Society, it is necessary to consider the purposes of the Society and also to consider the activities it has undertaken (to ensure that these are in furtherance of its purposes). The Society's overall purpose is summarised in its catchphrase:

The Internet, open and uncaptureable.¹¹

23 The Society's objects (purposes) are contained in its Constitution and have remained unchanged since the Society was incorporated some 12 years ago. They are:

- 2.1 To promote the competitive provision of Internet access, services and facilities in an open and uncapturable environment.
- 2.2 To develop, maintain, evolve, and disseminate standards for the Internet and its inter-networking technologies and applications.
- 2.3 To develop, maintain, evolve and disseminate effective administrative processes for the operation of the Internet in New Zealand.
- 2.4 To promote and conduct education and research related to the Internet and inter-networking.
- 2.5 To coordinate activities at a national level pertaining to good management of centralised systems and resources which facilitate the development of the Internet, including but not limited to the Domain Name System.
- 2.6 To collect and disseminate information related to the Internet and inter-networking, including histories and archives.
- 2.7 To develop and maintain formal and informal relationships with the international Internet community, including the Internet Society.
- 2.8 To represent the common interests of the wider New Zealand Internet community both nationally and internationally.
- 2.9 To promote widely and generally available access to the Internet.
- 2.10 To liaise with other organisations, New Zealand government authorities and the general public for coordination, collaboration and education in effecting the above objectives.

24 We are advised that the activities undertaken, or currently in the process of being undertaken, by the Society in furtherance of its purposes, include, but are not limited to the activities as set out in the Society's latest (2005/2006) Annual Report and that shown on its website. The following table sets out the activities we have identified from those sources and our view as to which of the Society's objects each activity has furthered:

Activity	Details of the activities undertaken	Objects furthered by
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¹¹ Strategic Plan for 2007-2009, Draft – version 0.82 – at 7 December 2006.

		that activity
Industry best practice and self regulation	<p>Oversees the management of the .nz domain name space through the Office of the Domain Name Commissioner¹².</p> <p>Operates the .nz register through ownership of the New Zealand Domain Name Registry Limited, trading as NZ Registry Services¹³.</p> <p>Development of an Internet Code of Practice.</p> <p>Sponsored activities of the World Internet Project (an international research project that aims to track local and global Internet trends and impacts).</p>	2.1, 2.2, 2.7, 2.8 and 2.10
Protecting the Internet	<p>Campaigning for a better broadband for New Zealanders.</p> <p>Submissions made on the anti-spam legislation.</p> <p>Funding given to a patent monitoring service.</p> <p>Commissioned prototype work around privacy related issues with regard to the convergence of telephone numbering and the Internet.</p> <p>Sponsored the Internet Safety Group 'NetSafe'.</p> <p>Worked alongside the Department of Internal Affairs to conduct a trial of a system that filters online child pornography.</p>	2.2 and 2.8

¹² The attached Schedule illustrates the structure of the Society in relation to the Domain Name Commission and the New Zealand Registry Services.

¹³ Ibid.

<p>Promoting the Internet</p>	<p>Supported and maintained its relationship with the Internet Service Providers Association of New Zealand.</p> <p>Sponsored the inaugural Digital Cities and Regional Networks Conference 2005 which focussed solely on regional and municipal broadband infrastructure and IT initiatives.</p> <p>Sponsored the World Summit Awards to acknowledge work which developed valuable information and communication solutions to benefit communities and society in general.</p>	<p>2.1, 2.4, 2.8 and 2.9</p>
<p>Internet innovation and technical leadership</p>	<p>On-going sponsorship of New Zealand Network Operators' Group conferences.</p> <p>IPv6 workshops held with the object of promoting its goal of seeing telcos, ISPs, corporates, home users and the industry in general convert to IPv6.</p> <p>Digital Communities two day strategic planning workshop held for all strategic leaders and decision makers of local councils and economic development agencies.</p> <p>Worked alongside New Zealand Computer Society in the creation of a Technical Scholarship programme for Internet innovation. For the 2005/06 scholastic year scholarships were given to six college undergraduates studying Internet networking technology and related subjects.</p>	<p>2.2 and 2.4</p>
<p>New Zealand in the global Internet</p>	<p>The majority of the Society's international work relates to its responsibility for the .nz ccTLD (country code Top Level Domain).</p> <p>Hosted an Internet Corporation of Assigned Names and Numbers meeting.</p> <p>Served as the Secretariat for the Asia Pacific Top Level Domain Association during the 2005/06 period.</p> <p>Created the Pacific Island Partnership to improve the use of Internet communications technology in the Pacific Islands.</p> <p>Attended the World Summit on the Information Society.</p>	<p>2.2, 2.3, 2.4, 2.7, 2.8 and 2.9</p>

<p>Campaigning and representation to government</p>	<p>Submissions made to the Commerce Commission in the course of the TelstraClear unbundled bitstream determination process made at the request of the Minister of Communications.</p> <p>Submissions made in response to the Implementation Review of the Telecommunications Act 2001.</p> <p>Submissions made in response to the Copyright (New Technologies and Performers' Rights) Amendment Bill.</p> <p>Sponsorship of a fellowship in Cyber Law at Victoria University of Wellington.</p> <p>Facilitated New Zealand's first ICT political debate between ICT leaders and the general public.</p> <p>Progress made in developing a Parliamentary Internet Caucus to improve the knowledge base of MPs, relating to laws affecting the Internet.</p>	<p>2.1, 2.4, 2.5, 2.8 and 2.10</p>
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The purposes of the Society are charitable

25 In our view, the objects/purposes of the Society are charitable under the fourth head (general public benefit) and the activities undertaken (including any activities with a political aspect) are in furtherance of those purposes, in accordance with the two-step test employed by the Commission. Further, there are no factors of which we are aware, that would prevent the Society from claiming charitable status. The basis for our view is discussed below.

Purposes are within the fourth head

26 In our view, the objects of the Society are consistent with it being established and maintained exclusively for charitable purposes, more particularly, under the fourth head 'other matters beneficial to the community'.

27 To date, there have been no charities recognised in New Zealand (of which we are aware) that have similar purposes to that of the Society. However, recent case law in Canada has shown that the Internet is considered to be the 'modern highway of information', and analogous to 'highways' in the Preamble. Thus, organisations that are established with regard to the Internet could be established for charitable purposes. The case in question is *Vancouver Regional FreeNet Association v*

*Minister of National Revenue*¹⁴, a decision of the Federal Court of Appeal of Canada:

27.1 The taxpayer, the FreeNet Association, provided free public access to all members of the community who wanted such service in the lower mainland of British Columbia, as well as to information stored in the taxpayer's own system by community organisations. The issue in the case was whether the provision of free access to the Internet was a charitable activity so as to qualify the organisation with charitable status within the meaning of the Income Tax Act¹⁵. The question to be decided was whether the purpose, hence the benefit conferred by the taxpayer, came within the spirit and intention of the Preamble to the Charitable Uses Act 1601.

27.2 A 2:1 majority held that information was the currency of modern life and that the free exchange of information amongst all members of society had long been recognised as a public good. Specifically it was held that:

The information highway is almost limitless in its scope and capacity but that is no reason for failing to recognise its vast potential for public benefit. The appellant's purpose in providing access to it is one of general public utility.

Nor should the fact that the appellant's system, and indeed the Internet itself, can be used for private or commercial purposes or misused for criminal or destructive purposes serve to disqualify the free provision of access thereto from obtaining charitable status under the Act.

...

The appellant's purpose is to provide public access for the inhabitants of the lower mainland of British Columbia to the modern information highway. That is ... as much a charitable purpose in the time of the second Elizabeth as was the provision of access by more conventional highways in the time of the first Queen of that name.

27.3 This decision has relevance to the Society as both the FreeNet Association and the Society aim to maintain and ensure ease of access for the general public to the Internet (the modern information highway). Similar to the FreeNet Association, the Society also endeavours to 'educate ... the public in the use of computer telecommunications ...', and 'research ways to improve and expand public access to and use of information resources and facilities' (as listed in the purposes of the FreeNet Association). Therefore, it is our view that the purposes of the FreeNet Association, which gained charitable status, are analogous to those of the Society.

¹⁴ [1996] 3 F.C. 880.

¹⁵ R.S.C. 1985, c.1.

- 27.4 The minority judgment of Déary J.A indicated charitable status should be withheld on the grounds that the Internet service, which was provided for free, offered "only selected information highway services of exclusively community interest" and was "vested with the manifest capacity to provide a platform for the expression and promotion of private interests". With all due respect to Déary J. we disagree with this minority judgment – it is inherent in every public benefit that someone could gain or have the potential to gain a private benefit (for example, the homeless person who receives a free meal from a shelter, the infirm who receives care in a free hospital, or, in the context of the Preamble, the highwayman who held up a carriage). Further, even if Déary J's approach were adopted, it is distinguishable from the Society's position in that the Society endeavours to keep the Internet 'free and uncapturable' and it does not provide only selected information highway services.
- 27.5 Our view is that the purposes of the Society fall within the fourth head of the Preamble as the Society is endeavouring to keep the Internet 'free and uncapturable', and therefore is maintaining access to the information highway for all New Zealanders, which is analogous to 'repair of bridges, ports, havens, causeways, churches, sea-banks and highways'. The following objects of the Society exemplify this: 'To promote the competitive provision of Internet access, services and facilities in an open and uncapturable environment', 'To promote widely and generally available access to the Internet', and 'To coordinate activities at a national level pertaining to good management of centralised systems and resources which facilitate the development of the Internet, including but not limited to the Domain Name System'.
- 28 Additionally, several of the purposes of the Society (and activities in furtherance thereof) fall within the category 'advancement of education' as contained within section 5(1) of the Act. For example, the various workshops held, the scholarships sponsored, and the various Conferences run by the Society (see above table), have been undertaken by the Society in furtherance of its purpose of promoting and conducting education related to the Internet (object 2.4). Similarly, in our view, the following objects also fall within this category: collecting and disseminating information related to the Internet and inter-networking, including histories and archives (object 2.6), liaising with other organisations, New Zealand government authorities and the general public for coordination, collaboration and education in effecting the objectives (object 2.10).
- 29 Therefore, our view is that the overall objects of the Society can be said to be established and maintained for charitable purposes.

No factors precluding charitable status

- 30 There are no factors which would prevent the Society from gaining charitable status of which we are aware.
- 31 *Beneficiaries not linked:* The Society is directed towards the public benefit as the potential beneficiaries are not numerically negligible (the benefit is enjoyed by the

general public of New Zealand). The ability to benefit is not dependant on any relationship to a particular individual or contract of service.

32 *No private benefit.* The Society is not carried on for the private pecuniary profit of any individual and is for the public benefit. In this regard we note:

32.1 Clause 15 of the Society's Constitution expressly provides that:

No Member or Associated Person shall derive any income, benefit, or advantage from the Society where that person can materially influence the payment of the income, benefit or advantage except where the income, benefit or advantage is derived from professional services to the Society rendered in the course of business charged at no greater rate than current market rates, or interest on money lent at no greater rate than current market rates.

32.2 The 'benefits' that members of the Society currently receive¹⁶ are:

- The opportunity to participate in wide ranging discussions concerning the ongoing development of the Internet.
- The opportunity to participate in the development of the information society by encouraging responsible policy making and an open and orderly development.
- The opportunity to have a say in the management of the New Zealand domain (.nz).
- Access to up to date information and expertise.
- The opportunity to network with other members of the NZ Internet community.
- The opportunity to identify directions in important areas such as education, commerce, and inter-national relationships through the public forum process.
- To vote at the AGM at which the Society Council members are elected, and as "Ordinary" members, the eligibility for nomination to stand for Council, or the ability to register interest to be accepted onto one of the Society's working groups or committees.

32.3 The 'benefits' that members of the Society can receive are not pecuniary in nature. Further, the opportunity to participate in discussions and to access information are arguably overstated as being benefits given that the Society listens to submissions and seeks input from the public generally and given that the Society posts all its reports, etc. on its website, which is open to anyone to view. Indeed, the Society has difficulty in attracting members due to the lack of benefits associated with membership – it recently has reduced its membership fees in an effort to increase its attractiveness to prospective members. In essence, the 'benefit' to members is the 'feel good' factor of being part of an organisation that is acting in the public good. The charitable purposes of the Society are undertaken for the benefit of the whole of New Zealand and not for the benefit of its members.

¹⁶ As set out on the Society's website in accordance with clause 3.1.3 of the Constitution.

33 *Regulatory activities not a bar:* The fact that the Society undertakes activities to regulate the Internet (for example the development and maintenance of standards and administrative processes for the Internet – objects 2.2 and 2.3) does not prevent it from gaining charitable status. We note:

33.1 An organisation can be charitable even though it regulates a particular area, industry or group. As an illustration of this point, we refer to the following organisations that undertake regulatory activities and that nevertheless have been recognised as charitable by the UK Charities Commission:

33.1.1 The Liverpool Board of Legal Studies (Incorporated)¹⁷: The UK Charities Commission found this organisation to be charitable notwithstanding that one of its main purposes was for the regulation and management of courses of study, lectures, classes and examinations in law.

33.1.2 The Chartered Society of Designers¹⁸: One of the main objects of this organisation is to 'regulate and control for the public benefit all matters of professional practice and conduct concerning the members of the Society [of Designers]', and it was given charitable status.

33.1.3 National Electrotechnical Training Organisation¹⁹: This organisation regulates training for the UK electrical and engineering industry and is held to be charitable by the UK Charities Commission.

33.2 Further, the position of the Society is distinguishable from that of the Auckland Harbour Board in terms of any regulatory type activities it undertakes. The decision in *Auckland Harbour Board v Commissioner of Inland Revenue*²⁰, which related to the Preamble category of 'repair of bridges, ports, havens, causeways, churches, sea-banks and highways', does not apply to the Society. In that case, charitable status was declined on the grounds that the Auckland Harbour Board was an elected statutory body that was given statutory powers by the Harbours Act 1950. In contrast, the Society is not an elected statutory body having statutory powers. Therefore, in our view, charitable status is not precluded by this case.

¹⁷ Charity Number 526667.

¹⁸ Charity Number 279393.

¹⁹ Charity Number 1068863.

²⁰ [1959] NZLR 204.

34 *Activities with a political aspect not a bar.* The presence of activities which may be said to have a political aspect do not prevent the Society from gaining charitable status, in our view. None of the Society's objects are overtly political. However, some activities undertaken by the Society have a political aspect to them. In our view, these activities are merely advancing the Society's charitable (non-political) purposes and are not purposes in themselves. We note:

34.1 Examples of the activities with a political aspect include:

Advocacy and representation to government:

- (a) Submissions made to the Commerce Commission in the course of the TelstraClear unbundled bitstream determination process made at the request of the Minister of Communications.
- (b) Submissions made in response to the Implementation Review of the Telecommunications Act 2001.
- (c) Submissions made in response to the Copyright (New Technologies and Performers' Rights) Amendment Bill.
- (d) Facilitated New Zealand's first ICT political debate between ICT leaders and the general public.
- (e) Progress made in developing a Parliamentary Internet Caucus to improve the knowledge base of MPs, relating to laws affecting the Internet.

34.2 These activities were to further the objects of the Society, in our view. For example, the development of a Parliamentary Internet Caucus to improve the knowledge base of MPs is, in our view, is simply advancing object 2.1 which is 'To promote and conduct education and research related to the Internet and inter-networking', and therefore is charitable under the category of advancement of education. The table above indicates our view as to what objects/purposes the various activities further.

34.3 In our view, the activities undertaken by the Society that have a political aspect to them would not be considered 'political' (in New Zealand or in authoritative jurisdictions), so as to prevent the Society from claiming charitable status. This is because:

34.3.1 The activities generally have not sought, or opposed, a change in the law, rather they have been aimed at assisting the New Zealand Government in reviews it already had underway, or, they have been a response to an invitation from the New Zealand Government to provide the Society's views on an issue. Where submissions on proposed legalisation were made by the Society (e.g. on anti-spam legislation), they formed a part of the legislative process and sought only to influence the New Zealand Government on particular issues. The Society has not instigated any particular law change to date, although, even if it

were to be the instigator of a law change and this were done in order to achieve the main objects of the Society, then it would be ancillary to the main purposes of the Society.

- 34.3.2 Under the approach of the UK Charities Commission, the current activities of the Society would be considered political campaigning, such that the Society could gain charitable status, as the Society has sought only to influence and educate the New Zealand Government on issues (such as local loop unbundling, and other Internet related issues), as a means of achieving its charitable purposes outlined above.
- 34.3.3 In Australia, in accordance with the approach taken by the ATO, the Society would not be prohibited from claiming charitable status as the activities undertaken have been incidental to the objects of the Society, and were political activities analogous to examples deemed by the ATO not to effect charitable status.
- 34.3.4 Lastly, under the approach taken by the US, the Society would not be prohibited from claiming charitable status as they have not campaigned for or against any political candidates to date, and any activities which have influenced legislation have been undertaken in furtherance of the main non-political objects of the Society, and have not been a substantial part of its activities.
- 34.3.5 It is also important to note that the Society's total expenditure relating to the above activities is projected to be, for the year 2006/2007, to the value of \$423,500 out of a total expenditure of \$2,540,100. This means that the percentage of funds allocated to advocacy and representation activities is approximately 16%. This figure is relevant as it illustrates that the Society has not engaged in substantial political activities – over 80% of its revenue is spent on charitable activities other than political campaigning. This is of note as in other jurisdictions caps have been made on the allowable percentage of expenditure relating to advocacy. For example, we understand that in Canada it is a requirement that for an organisation to retain its charitable status, it must spend around 80% of its donation income (for which tax receipts are issued) on charitable activities or gifts to other charities.

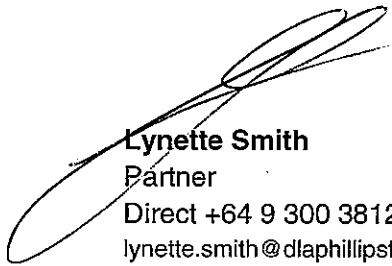
Conclusion

- 35 In our view, for the reasons set out above, the Society meets the requirements to be regarded as charitable. This view is based on a conclusion that:
- 35.1 The Society's overall objects relate to matters beneficial to the community and are for the benefit of the general public of New Zealand.
- 35.2 There are no factors preventing the Society from gaining charitable status. Specifically, the presence of a small amount of political activities


undertaken by the Society does not prevent the Society from claiming charitable status (as the Society has not lobbied for a law change, has not supported a particular political party and has not perpetually advocated a point of law) and any political activities undertaken by the Society have been in furtherance of the Society's overall charitable purposes and have not become objects in themselves.

- 36 Ultimately, in our view, charitable status should be granted to the Society should it apply for registration under the Act.
- 37 Please do not hesitate to contact us should you have any queries in relation to this report.

Yours sincerely



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Crystal Clayton
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Schedule 1

Basic structure of the Society

