

Domain Name Commission v DomainTools

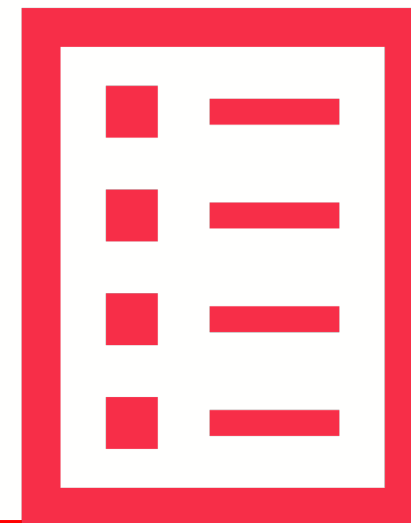
Case re unauthorized access to .nz domain name space

DOMAIN NAME
COMMISSION 

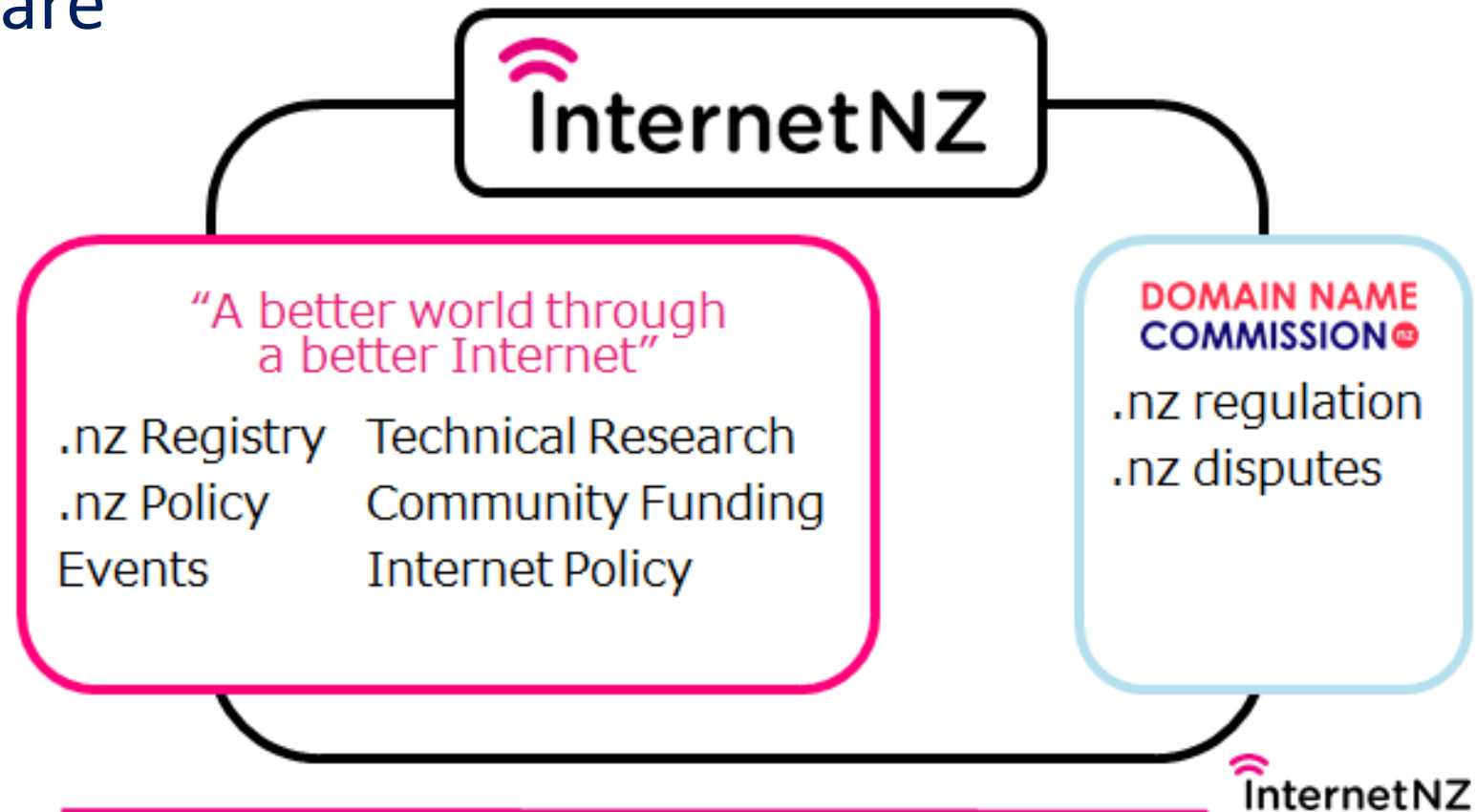


Overview

- The Domain Name Commission – who we are
- What this action is about and why we took action in the US
- Current position
- What others might consider



Who we are



By way of a Memorandum of Understanding with Government we operate the registry in accordance with .nz policies, procedures and formal agreements



What this decision is about and why we acted

Facts

- DomainTools submitted high volume queries to .nz register, apparently to create a secondary register, in effect downloading and storing .nz register data for its commercial purposes
- Domain Name Commission requested and was awarded preliminary injunction
- DomainTools “enjoined from accessing the .nz register ... and/or publishing any .nz register data ... until further order of the Court.”

United States District Court Washington - Judge Lasnik

- Judge found “the law favours [the Domain Name Commission] on the merits of its contract claim”
- and that the Commission “will likely be able to show that [DomainTools] violated” our terms of use “when it downloaded [the Commission’s] data to create a private version of register”



Current position

- Won the preliminary injunction
- Full trial currently scheduled for 9 September 2019
- While .nz only amounts to an estimated less than 2% of Domain Tools overall business, DomainTools took until 10 October to comply with the order because of technical constraints
- Anecdotally understand some ccTLDs have negotiated separately to not have their registry data included in DomainTools' database - this hasn't been the case for .nz
- DomainTools has since filed an appeal of preliminary injunction to higher Court
- No decision expected until early to mid 2019



Relevance to other ccTLDs

DomainTools argued that the lawsuit may cause an avalanche of litigation as other registries attempt to protect the privacy of their registrants - Judge Lasnik said that “may be correct”

What does this mean for other ccTLDs?

1. Is DomainTools collecting, using or storing your current or historical WHOIS registration records?
2. If so, is this permissible under your terms of use or do you have similar terms of service provisions to .nz that restrict or prohibit multiple or high volume queries to download all or part of the register?
3. Has GDPR or other local changes in privacy laws changed the public's or individual registrants' views in respect of enforcement action required of ccTLD operators to protect online privacy?
4. Do you have a basis to demand that DomainTools cease its practices of building a secondary database for its customers to data mine?

