

**MEMORANDUM OF UNDERSTANDING
(MoU)**

BETWEEN

Domain Name Commission Limited

AND

Financial Markets Authority

Memorandum of Understanding dated

2021

Between **Domain Name Commission Limited (DNCL)**
And **Financial Markets Authority (FMA)**

The Agencies agree this MoU as follows:

1. PURPOSE

- 1.1. This MoU sets out an agreement regarding 'streamlined access'¹ to public .nz domain 'Query'² data, and access to the 'withheld Query data'³ related to a .nz domain registration.
- 1.2. Following a recent review, changes have been made to the .nz policies around the .nz Query which have meant that individual Registrants that are not using the domain name to any significant extent in Trade are able to withhold the information displayed about them (phone number and address) on any relevant domain registration records. The .nz policy around this 'withheld Query data' includes procedures around when the withheld Query data can be released to third parties, and allows for MoUs to be entered into with appropriate entities who may require access to the withheld data, and includes ongoing reporting on activities relating to withheld data access.
- 1.3. The FMA is a risk-based conduct regulator seeking better outcomes for investors, financial markets professionals, and businesses. As part of the FMA's operations, information relating to domain name registrations is, or may be, required to fulfil its regulatory functions.

2. BACKGROUND

- 2.1. nz is the country code Top Level Domain (ccTLD) for New Zealand. Internet New Zealand Incorporated (InternetNZ) holds the delegation for .nz. DNCL is a fully owned subsidiary of InternetNZ and has been established to manage the day-to-day functions and oversight of the .nz domain name space on their behalf under the terms of an Operating Agreement. Like all other top-level domains, .nz operates a .nz domain name registration data query (Query) via the DNCLs website. A Query of a .nz domain name returns information about

¹ 'streamlined access' is defined in the Background section of this MoU.

² A .nz domain name registration data query (Query) with limited information is available via the DNCLs website. More detail is available in the Background section of this MoU.

³ 'withheld Query data' is defined in the following paragraph of this MoU.

that domain name including its status – and, if registered - details of the person or entity (name, email, and country) who registered the domain. This MoU defines ‘streamlined access’ as access to Query data per 22.34-22.40 of the [the .nz Policy](#).

2.2. The FMA was established under the Financial Markets Authority Act 2011. The FMA’s main objective is to promote and facilitate the development of fair, efficient, and transparent markets. It enforces securities, financial reporting, and company law as they apply to financial services and securities markets. The FMA also regulates securities exchanges, financial advisers and brokers, auditors, and trustees and issuers (including issuers of KiwiSaver and superannuation schemes).

3. BASIS OF THE AGREEMENT

3.1. The purpose of this MoU is to set out an agreement regarding streamlined access to public .nz domain Query data, and access to the withheld Query data related to a .nz domain registration.

3.2. This MoU establishes how DNCL and the FMA (the Agencies) will interact in respect of relevant matters and share information between the Agencies. This MoU is entered into voluntarily, based on mutual respect, and in the spirit of goodwill.

3.3. There is no prior MoU (or equivalent) between DNCL and the FMA.

4. LEGAL FRAMEWORK

4.1. This MoU is subject to, and consistent with, the laws of New Zealand. The Agencies agree to comply at all times with all relevant New Zealand laws, including in particular the Privacy Act 2020.

4.2. Information disclosed between the parties will be undertaken according to the Privacy Principles. It is recognised that the FMA may, in the course of making a request for information from DNCL under this MoU provide private or confidential information to DNCL, and that release would also be made in accordance with the Privacy Principles. Noting in accordance with the Financial Markets Authority Act 2011 that the FMA may at

its discretion release confidential information to a person the FMA considers has a proper interest in the information.

5. SCOPE OF DATA SHARING

- 5.1. DNCL will consider requests which directly assist the FMA in fulfilling its regulatory function(s). Any information shared pursuant to this MoU must be used only for lawful purposes.
- 5.2. At any time, DNCL may ask the FMA for clarification or explanation relating to the request for information. For the request to proceed, a reasonable clarification or explanation will be provided to DNCL by the FMA within five (5) working days.
- 5.3. DNCL acknowledges that it is anticipated that the FMA has and will from time to time have legitimate reasons to access data held by DNCL, and that this data may be needed in a timely manner. Both parties will work together on requests in a way that is as easy as is practicable without risking security matters.
- 5.4. The FMA will be considerate of DNCL resource and will not seek information that is more practicably available via a Query.
- 5.5. Any data shared per this MoU is done so voluntarily, and outside of separate data request legislation such as Section 25 of the Financial Markets Authority Act 2011.
- 5.6. The FMA acknowledges that DNCL may decline or suspend the FMA's access to data held by DNCL if DNCL reasonably believes that the security and stability of the .nz ccTLD is affected by the FMA's access, or for any other material reason as outlined in writing to the FMA.

6. EXCHANGE OF INFORMATION

- 6.1. When sharing information, each party will be mindful of their obligations under the Privacy Act 2020 (and any subsequent revisions), including the exceptions to the disclosure principle.

- 6.2. The sharing of any information must be consistent with the internal policies and procedures of each Agency. For example, at the FMA this includes the Knowledge Management Policy.
- 6.3. The FMA acknowledges that Registrants have the right to be notified of requests for their data monthly, unless the FMA provides DNCL with valid grounds as to why notification would not be reasonable. For example, given the sensitive nature of the FMA's work, it may be critical that a registrant is not immediately notified. This will likely occur when the request related to an ongoing FMA enquiry or investigation and the Registrant(s) are not aware of these enquires.
- 6.4. The FMA acknowledges that DNCL requires FMA to lodge the request via email (info@dnc.org.nz), inclusive of the FMA requestors' name, position, and reason(s) for the request. It also acknowledges DNCL's high-level public transparency reporting on data sharing. With prior notification by DNCL, the FMA hereby consents to this transparency reporting, provided it protects the privacy of FMA staff. This means that transparency reporting notes the FMA has requested information rather than names of the specific staff member(s) who made the request.
- 6.5. When deciding to share information, DNCL will balance the rights of Registrants (for example, the expectation that data will be closely protected and will not be disclosed without sound reason) against the benefits of Registrant accountability.

7. CONFIDENTIALITY

- 7.1. Where information is declared confidential, the information must remain confidential. The FMA and DNC hereby agree to keep such data confidential, other than where it is required to be disclosed for a lawful purpose (for example, to assist in regulatory function). Prior to responding to any request for release of confidential information (or a part thereof), the Agency will consult the other for direction and advice on such disclosure.
- 7.2. For the avoidance of doubt, disclosure of any personal information under this MoU will be managed consistently with the Privacy Act 2020.

8. COMMENCEMENT, PUBLICATION, REVIEW AND AMENDMENT, DURATION, AND TERMINATION

- 8.1. If signed on the same day, this MoU will come into effect on that date. If the MoU is signed on different days, the MoU will come into effect on the date the last Agency signs.
- 8.2. Once in effect, this MoU will be published by both agencies on their websites.
- 8.3. Two (2) years after the MoU comes into effect DNCL will initiate a review of this MoU. Subsequent reviews will be initiated by DNCL at a period of at least one (1) every three (3) years. Each review will assess how this MoU is functioning and determine whether there are any issues or difficulties that need to be addressed. Any amendments based on the review will be agreed in writing by both agencies.
- 8.4. In addition to scheduled reviews, this MoU may be amended at any time provided the amendment(s) is mutually agreed in writing.
- 8.5. This MoU will remain in effect until terminated. Termination will come into effect on the date mutual agreement of termination is reached, on the 30th calendar day after an Agency gives written notice, or immediately if either Agency can demonstrate that the other has materially breached the terms of this MoU and compromised the Agencies' security and/or integrity. All confidentiality commitments between the Agencies will remain in effect despite any termination of the MoU.

9. MISCELLANEOUS GENERAL PROVISIONS


- 9.1. The Parties will consult and coordinate with each other before either issue any public statements or media release concerning any actions, transactions, commitments, or understandings covered by this MoU.
- 9.2. Nothing in this MoU is intended to limit or affect the independence of either party or affect their statutory obligations.
- 9.3. Nothing in this MoU will make either party liable for the actions of the other or constitute any legal relationship between the parties

10. RELATIONSHIP MANAGEMENT AND DISPUTE RESOLUTION

10.1. As above, this MoU develops working inter-Agency relationships with a basis of mutual respect and in a spirit of goodwill, cooperation, and collaboration. Communication will thus be open and as regular as is necessary without interrupting 'business as usual' priorities.

10.2. Where there is any dispute arising from the implementation of the MOU, the parties must have recourse to all necessary means to resolve the dispute amicably and at the earliest opportunity. If any dispute cannot be resolved within ten (10) working days, the dispute must be referred in writing to the relevant Director in each agency⁴ for resolution. If such dispute still cannot be resolved, a third-party assistance may be sought, subject to the confidentiality clauses of this MoU.

Signed for and on behalf of the Domain Name Commission Limited

Signature: 

Date: 05/08/2021

Name: Brent Carey

Title: Commissioner of the Domain Name
Commission Limited

Signed for and on behalf of the Financial Markets Authority

Signature:



Date:

4 August 2021

Name: Rob Everett

Title: Chief Executive of the Financial Markets
Authority

⁴ The FMA has agreed that their 'relevant Director' is the Director of Regulation.