

**auDA PUBLISHED POLICY****Policy Title:** COMPLAINTS (REGISTRANT ELIGIBILITY) POLICY**Policy No:** 2004-01**Publication Date:** 18/03/2004**Status:** Current**1. BACKGROUND**

- 1.1 This document sets out auDA's policy on the handling of complaints about the eligibility of a registrant to hold their domain name licence under the policy rules for the open 2LDs. At the time of publication, the open 2LDs are asn.au, com.au, id.au, net.au and org.au.

**2. DOMAIN NAME ELIGIBILITY CRITERIA**

- 2.1 The eligibility criteria for each open 2LD is set out in the Domain Name Eligibility and Allocation Policy Rules for the Open 2LDs (2012-04). The eligibility criteria ensure that the registrant has the correct status to license a domain name in the requested 2LD. For example, if the registrant want to license a domain name in com.au, they must provide identification details such as Australian registered company name and Australian Company Number.
- 2.2 It is the responsibility of the registrant to ensure that they are eligible to hold the domain name licence, both at the time of registration and during the licence period. In order to renew their domain name licence, the registrant must confirm that their eligibility details are still current. If the registrant is no longer eligible to hold the domain name licence, then the licence cannot be renewed.
- 2.3 auDA recognises that many registrants invest significant time and resources in using their domain name to maintain an Internet presence. Even if registrants do not have an active website, they may use their domain name for email purposes. Therefore, it is auDA policy that a registrant must be given a reasonable opportunity to update their eligibility details, if it is possible to do so, before the licence will be cancelled.
- 2.4 Nevertheless, a domain name licence is a legal contract and as such may only be held by a legal entity. If the entity that initially registered the domain name no longer exists, then the domain name licence is automatically cancelled and the domain name must be deleted. It is not possible for a non-existent registrant to update domain name eligibility details, or transfer the domain name licence to a third party.

**3. COMPLAINTS-HANDLING PROCESS**

- 3.1 Where a person believes that a registrant no longer exists or is no longer eligible to hold their domain name licence, that person should lodge a complaint with the registrar of record for the domain name (disclosed on the WHOIS service).
- 3.2 On receipt of a complaint about the eligibility of a registrant, the registrar must reconfirm the eligibility details of the registrant (for example, check that the registrant's company, business name or trade mark registration is still current). If the eligibility details are current, the registrar is not required to take any further action.
- 3.3 If the registrant's eligibility details are not current, or if the registrant no longer exists, the registrar is required to follow the process outlined in sections 4 and 5 below.

#### **4. EXISTING REGISTRANTS - UPDATING ELIGIBILITY DETAILS**

- 4.1 This section applies where the individual or entity that holds the domain name licence is still in existence, but their eligibility details are not current. Examples include:
- a) where a registered company has changed its name (but the ACN has not changed);
  - b) where a business name registration has lapsed, but the proprietor of the business has not changed; or
  - c) where an application for an Australian Registered Trade Mark has been denied, or an Australian Registered Trade Mark has been removed, but the trade mark applicant/holder has not changed.
- 4.2 The registrar must contact the registrant to request that they update their eligibility details within 14 calendar days. The registrar must use reasonable commercial endeavours to contact the registrant (for example, if an email bounces, the registrar should attempt to contact the registrant by phone or fax).
- 4.3 The registrant may update their eligibility details either by resurrecting the original basis for their domain name registration, or by providing new identification details. The registrant does not have to use the same eligibility criteria that they originally used to support their domain name registration.
- 4.4 If the registrant updates their eligibility details within the 14 day period, the registrar must enter the new information in the registry database as a correction to registrant details.
- 4.5 If the registrant does not update their eligibility details within the 14 day period, or does not respond to the registrar's request, the registrar must delete the domain name. The domain name will enter "pending delete" status for 14 calendar days. While the domain name is in pending delete, the registrant may contact the registrar to update their eligibility details. The registrar must request the registry to remove the domain name from pending delete, and then enter the new information in the registry database as a correction to registrant details.
- 4.6 If the registrant does not update their eligibility details while the domain name is in pending delete, then the domain name will be dropped from the registry database at a random time between 10.30am and 5.00pm AEST (or 11.30am and 6.00pm AEDT) on the next business day. It will then become available for registration by any eligible applicant on a 'first come, first served' basis. The domain name will not be transferred to the complainant, or reserved for the complainant. If the complainant wants to license the domain name, they must apply for it using the normal application process.

#### **5. NON-EXISTENT REGISTRANTS - CANCELLATION OF DOMAIN NAME LICENCE**

- 5.1 This section applies where the entity that held the domain name licence no longer exists.<sup>1</sup> Examples include where a company, incorporated association or statutory body has been wound up or deregistered.
- 5.2 The registrar must give notice to the registrant contact listed in the registry database that the domain name licence is cancelled and the domain name will be deleted in 30 calendar days. The registrar must use reasonable commercial endeavours to give notice (for example, if an email bounces, the registrar should attempt to send notice by fax or post).

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<sup>1</sup> In the case where the registrant was an individual and that individual is deceased, the domain name licence passes to the deceased's estate. The registrar is not required to take any action unless and until contacted by the executor of the estate.

- 5.3 The registrar must delete the domain name at the end of the 30 day period. The domain name will enter "pending delete" status for 3 calendar days after which it will be dropped from the registry at a random time between 10.30am and 5.00pm AEST (or 11.30am and 6.00pm AEDT) on the next business day.
- 5.4 It is not possible for a non-existent registrant to update domain name eligibility details, or transfer the domain name licence to a third party. Therefore the domain name must be deleted even if it is currently being used by another entity or individual (for example, by a former director of the deregistered company).
- 5.5 The sole exception to the above rule is if:
- a) there is documentary evidence that, prior to its demise, the registrant agreed to transfer the domain name licence to the entity or individual currently using the domain name; and
  - b) the transfer meets the requirements outlined in auDA's Transfers (Change of Registrant) Policy (2011-03).

If the above conditions are satisfied, then the registrar must process the transfer of the domain name licence in accordance with auDA's Transfers (Change of Registrant) Policy (2011-03).

## **6. OTHER COMPLAINTS**

- 6.1 This policy deals with complaints about the *eligibility* of a registrant, ie. whether the registrant's identification details are current. This policy does not deal with complaints about:
- a) the underlying validity of the registrant's eligibility (eg. whether the registrant is actually carrying on a business under their registered business name);
  - b) a registrar's interpretation of the allocation criteria (ie. whether a domain name is an exact match, abbreviation, acronym or close and substantial connection); or
  - c) a registrant's use of their domain name (ie. whether the domain name violates or infringes on the rights of another party, such as trade mark rights).
- 6.2 Complaints under paragraph 6.1a) should be taken up with the relevant government authority, such as the Australian Securities and Investment Commission (ASIC) or the state/territory registrar of business names.
- 6.3 Complaints under paragraph 6.1b) are handled under auDA's Complaints Policy (2015-01). Complaints under paragraph 6.1c) may be handled under the .au Dispute Resolution Policy (auDRP) (2016-01), or alternatively the complainant should seek legal advice.