

**.au Policy Review Panel
Registrant Policy
Submission on Issues Paper January 2018**

carsales.com Limited thanks the .au Policy Review Panel and welcomes the opportunity to comment on the January 2018 Registrant Policy Issues Paper of the auDA.

carsales is the largest online automotive, motorcycle and marine classifieds business in Australia. The company is listed on the Australian Stock Exchange with a market capitalisation in excess of \$3.4 billion and employs over 700 people in its Australian businesses.

The carsales network of websites includes carsales.com.au, Australia's number one automotive classified website, motoring.com.au, bikesales.com.au, boatsales.com.au and Redbook.com.au, as well as leading caravan, truck and machinery classified websites. The company develops world leading technology and advertising solutions that drive its businesses around the world. The carsales network has operations across the Asia Pacific region and owns businesses in South Korea, Mexico, Chile, Argentina and has interests in leading automotive classified businesses in Brazil, Malaysia, Indonesia and Thailand.

EXECUTIVE SUMMARY

carsales wishes to reiterate its position contained in its submission in response to the 2015 Names Panel Policy Review that the issuing of a .au TLD is not justified. However, assuming the Panel has moved on from this threshold question and decided that a .au TLD should be implemented, carsales focuses on safeguards to protect Australian businesses and consumers.

1

In making its recommendations, the Panel should be attuned to the costs and complications the introduction of the .au TLD is likely to cause to Australian businesses with an online presence if existing 2LD holders are not adequately supported. Businesses which have invested heavily to establish their online identity and the trust of their online audience stand to be most detrimentally affected by this change if it is not implemented with appropriate safeguards. It is imperative that any process to introduce the .au TLD supports these businesses by reserving the .au TLD for existing 2LD registrants, with .com.au 2LD registrants afforded preference over other 2LD holders.

In addition, the Panel should note that the introduction of a .au TLD without proper safeguards could expose Australian consumers to danger through an increase in phishing scams. Given the similarity of domainname.com.au and domainname.au (and potentially an internationalized version dōmainname.com.au), even astute internet users may fall victim to sophisticated fraudsters taking advantage by registering domain names that are nearly identical to those of trusted Australian businesses.

carsales supports mandating an Australian presence for registrants of .au TLD domains, and views it as critical to preserving the trust in and integrity of all .au domains. In addition, carsales' view is that if internationalised domain names are trialed, all variations should be reserved for the original registrant.

SUBMISSIONS

carsales has reviewed the .au Policy Review Panel's January 2018 Issues Paper, as well as the Policy Review Panel Forum Presentation which was posted on the same webpage as the Issues Paper and provides the following comments to the Panel.

The Issues Paper acknowledges that the DNS is a key enabler of the Australian digital economy and society and the opening of a .au domain namespace at the second level is the most significant change to the .au DNS structure in decades. carsales agrees with these statements and cannot overstate the potential for damage to Australian businesses with an online presence and consumers if the change is not handled with proper regard to their interests.

I. No Benefit from .au TLD

1. The Panel has stated that the utility of a .au domain namespace requires it to provide 'something more' than the existing 2LD namespaces. The 2015 Names Policy Panel Final Report recommended that the .au TLD be for 'all Australians'.
2. If the aim is to provide a TLD for individuals, this is not required to be in the .au namespace. If it is to be in the .au namespace, there is no reason for commercial names that are currently operated in the .au 2LDs to be open for registration in the .au TLD. If this was to be pursued as an individual namespace, it would require a massive educational program for the Australian public to ensure they are not misled on the meaning of the new domains.
3. If a .au TLD is opened for liberal distribution, carsales does not conceive how either of the aims stated above will be achieved without seriously compromising consumers and Australian businesses which have invested heavily to establish and maintain their online brand identity.

2

II. Burden on Australian businesses

4. Paragraph 82 of the Issues Paper states 'registrants have often made a significant investment in online branding, search engine listings and other directory services. Domain names are an essential part of a registrant's business goodwill and reputation.' Australian businesses of all sizes which have used their 2LDs as a major source of business stand to be most adversely impacted by the introduction and liberal issuing of .au TLDs, specifically with risks of:
 - a. other entities seeking to pass off on the original registrant's goodwill and reputation;
 - b. erosion of goodwill and reputation by brand dilution and loss of consumer confidence;
 - c. administrative proceedings, payments or commercial settlements with cyber squatters who obtain a relevant .au TLD; and
 - d. if the .au TLD is acquired by the registrant, additional costs and administration.
5. carsales understands that there are legal means to address passing off and misleading and deceptive conduct in trade or commerce. However, the reality is that to take appropriate legal action is often costly, protracted and damaging even to the innocent party. With the potential for another business to begin using a near identical domain name for similar goods or services eg domainname.com.au and domainname.au, business operators are at risk of consumers being misled

to believe a connection between the site operators or that the .au operator is in fact the same as the .com.au operator.

6. With similar businesses operating on near identical domain names, the original business owner may find consumers confused and losing confidence in the origin of its goods or services. The business owner will likely need to increase its investment to differentiate itself from the new .au registrant so as not to entirely lose the benefit of its previous reputation and goodwill.
7. An open system for a .au TLD is also an invitation for cyber squatters to become active with a view to eliciting settlement payments from existing 2LD registrants. Regardless of the legal position regarding that TLD, many Australian businesses are likely to take a pragmatic approach and suffer an expensive payment rather than endure a protracted procedure to cease the cyber squatter's use of the domain name. A business that has invested in its online brand would not wish to suffer the risk of having their online audience base eroded or confused by a cyber squatter while the principle is being argued. This could lead to unwarranted costs to these business as well as a diversion of resources better used elsewhere.
8. The Panel's claim in the Forum Presentation that 'you do not have to register a .au domain name if you don't want to' does not take into account the commercial realities for Australian businesses. If an Australian business which relies on its online presence fails to secure the .au registration for its current domain, it knows it opens itself to complications that will likely absorb significant resource.

III. Consumer protection

9. carsales spends considerable resources on the safety of its users. There is no shortage of attempted cyber attacks on any high profile online business, and it requires attention, skill and investment to prevent the success of these attacks.
10. Some of the most effective scams through which Australian consumers suffer loss (including financial loss and identity theft) are phishing attacks. This is a fraudulent practice of sending emails or establishing a website that appears to be from a legitimate and usually well known business. The object is to obtain personal details, often credit card information or passwords, from recipients or visitors.
11. carsales is concerned about the ability for fraudsters to take advantage of a new .au TLD (or internationalised domains) for phishing practices. More sophisticated internet users will often look at the domain an email has come from or the domain of the website they are on to determine whether they should trust it. With these new domain name possibilities it is much more likely that even experienced internet users familiar with the potential for phishing would miss a subtle difference like the dropping of .com from a .com.au domain name.
12. If third parties are able to register new domain names that closely replicate trusted Australian brands such as carsales.com.au, carsales worries that not only will Australian businesses suffer the consequences, but so will Australian consumers.

IV. Assisting existing domain holders if .au TLD is introduced

13. In the event the .au TLD is to be introduced, it is imperative that auDA support Australian businesses by reserving the .au TLD for existing 2LD registrants.
14. carsales understands auDA's fundamental principles that underpin the .au domain name registration system, and specifically that there be no hierarchy of rights. However, this principle is not at odds with providing support to Australian businesses when introducing the .au TLD.
15. The principle that a trade mark owner has no better entitlement to a domain name than a business name owner is a fine stance. However, once a domain name has been registered and significant time, expense and resource put in to build the reputation and goodwill for that business and the domain name, it would be patently unfair to strip the business of much of that benefit by allowing another party to register an identical domain name in the .au TLD namespace.
16. At present, internet users can rely on the fact that they are dealing with the entity it appears to be on the face of a .au domain name due to the requirements for obtaining that domain name. If TLDs are introduced without reference to or recognition of existing 2LD holders there may be a negative impact on the online consumer and the integrity of the .au DNS as a whole.
17. auDA must give preference to 2LD holders to claim the equivalent TLD so that internet users can continue to enjoy trust in the .au domain namespace and so that Australian businesses do not have their legitimacy unreasonably called into question due to the actions of another entity with an equivalent domain name.
18. carsales notes the Panel's views on priority registration on slide 80 of the Forum Presentation and appreciates the approach of giving existing registrants priority registration. However, carsales opposes the proposed lottery method on slide 84 of the presentation. There must be an objective and organised method to deal with priority and conflict. Resorting to a lottery is not appropriate and may lead to incongruous outcomes likely to confuse internet users.
19. carsales considers the most appropriate approach to assisting 2LD registrants is to reserve the equivalent .au TLD domain name for the existing .com.au 2LD. carsales recommends the approach taken in the United Kingdom when a new TLD was introduced – the new TLDs were reserved for the equivalent registered 2LD holders at no cost for 5 years and there was a process for preferential allocation of the TLD so that the existing registrant of the .co.uk domain took first priority, followed by other 2LDs.
20. The approach adopted by the United Kingdom is appropriate for the Australian system, where .com.au is the most recognised of the 2LDs. .com.au 2LDs comprise the majority of domain name registrations and usually attract a much higher sale price than other .au 2LDs.
21. While organisations certainly have responsibility to monitor and protect their own brand and assets, support from authorities like auDA in this regard is appropriate and would undoubtedly alleviate the burden to business from an unconstrained TLD.

V. Australian presence requirements

22. carsales considers that mandating an Australian presence is critical to preserving the trust in and integrity of .au domains.
23. If a trade mark registered in Australia is to be relied on to satisfy the Australian presence requirement, carsales agrees that the domain must be the exact match of the word component of the trade mark.

VI. Internationalised domain names

24. carsales does not see a benefit to introducing internationalised domain names. In fact, if internationalised domain names are introduced, carsales foresees further detriment to existing Australian businesses which will need to invest additional resources in brand protection, including registering deceptively similar domain names to their current brands.
25. If a trial of internationalised domain names is initiated, all variations of an existing registrant's domain should be reserved for that registrant. One can readily see that issuing of a domain such as cārsales.com.au could lead an internet user into error about who they are dealing with. This is a fraud risk, an .au domain integrity risk and, if it is not prevented, could risk the trust in the existing registrant's domain and business more broadly.
26. As stated in previous paragraphs, phishing scams are a serious threat to ordinary Australians, and the ability to register such subtle variations to well known and trusted brands by including foreign characters, further exposes Australian consumers to risk.
27. It is straightforward for auDA to reserve internationalised variants. Indeed, this has been done in Canada. To spare online Australian businesses the compliance and reputational burden and consumers the fraud risk, carsales advocates for auDA to make such a reservation.

2 March 2018