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Sent: Sunday, 4 March 2018 3:38 PM
To: auDA Policy Review
Cc: Anthony Peake
Subject: Trellian Group PRP January discussion paper submission

auDA January 2018 Policy Review Panel Submission

Attention: John Swinson, chair of the 2018 Policy Review Panel.

Submitted: 04/03/2018

Who we are:

Within the context of the .au namespace, Trellian group of companies own and operate multiple auDA accredited registrars. The focus of these registrars is on supporting and growing the .au Aftermarket. Our customers are both Portfolio Holders (more than 50 domains held by a single entity) and the businesses who have purchased domains on the .au Aftermarket. We also own and operate Above.com which offers real time switching between parking companies and Direct Advertisers. Our main aftermarket brand within Australia is drop.com.au.

Purpose

To outline our views in relation to the January 2018 request for public comment made by the panel. The questions were provided by the panel. Our answers here may also help clarify our comments provided during the public meeting held in Melbourne on 14 Feb 2018.

Questions and answers.

.au Structure

1. Should the .au Domain namespace be a 'general purpose' domain for all Australians allowing use for any purpose?

Yes it should be allowed for any purpose.

The current system does not cater for innovation nor does it cater to the average Australian Internet user. We would like to see it being used by our own children for school projects in secondary school. Artists and bloggers should not be made to use .io and .xyz extensions. We'd like everyone who works for a large corporation to not have the added complications of having to register an ABN to have a usable and recognised domain extension.

Further observations: When you open up the ownership rules to anyone living in Australia, a registrant would only have to warrant that they are Australian. Having to prove that you are a citizen, provide TTF number or any other form of ID is going to be a strain on the registrars. They may not have the resources to manage, and also keep secure let alone verify that any of that information is valid or not. There are so many variations like citizen, resident, has an AU drivers license, a working visa in au, TTF, etc. There are literally too many variations for this to be easy unless it is opened to up anyone with a valid postal address, aka no PO Boxes. and if a PO box then perhaps they need to supply other forms of ID to qualify.

2. Should the net.au namespace be closed to new registrations? If so, should existing net.au registrants be permitted to continue to renew their domain name indefinitely?

Not sure that we need to phase it out deliberately as there are 300,000 domains registered currently which represents 10% of the name space. If you did close it then yes they should be allowed to renew indefinitely, domain registrations come with a right to renew and to remove that would be grossly unfair. As far as restricting it, we would let the market decide the future of .net.au domains. If the current decline in popularity was to continue then it could be looked at again in the future.

3. What should happen to the asn.au namespace? Should it be closed to new registrations or retained as a dedicated namespace for associations?

Like .net.au, let the market decide. At a guess it would lose popularity rapidly as many registrants would probably chose the .au instead.

4. Should the State and Territory namespaces be used for other purposes? If yes, why and what are the purposes for which domain names should be registered under these namespaces?

We don't have an opinion on this.

Reserved Names

5. Should auDA continue to maintain a public reserved list? Should the public reserved list be published? What process or steps should auDA take before deleting a restricted or prohibited name?

We don't object to the existence of "a" reserve list. It should be published and it should not be used by brands or individuals for protection. For example why is bjndesign.com.au on the reserve list at the registry? It should be based on existing laws like it currently is but the wording should be clarified from "contains" to "exact match", especially for terms less than 6 characters in length. For example ADF, there are literally thousands of domains which "contain" the term and only one which is an exact match. Even then it would seem to be unfair to delete a three letter domain based on being an exact match.

For restricted names auDA should restrict the registration of the domain name at the registry so that deleting domains should not be required.

6. Should auDA be able to reserve names in the public interest? How should the public interest be defined? What names should be reserved in the .au domain namespace? Should the public interest test replace the Prohibition on Misspellings Policy?

Yes, perhaps a small group of interested parties could meet annually to review the list of nominated names. They can accept or reject them. Names can also be nominated for removal. Yes it should replace the misspelling list, which seems to be used primarily for brand protection.

7. Should the names identified in the discussion paper be reserved as future 2LD namespaces? Are there other names that should be reserved for use as future 2LD namespaces and why?

Not unless they are three letters or less. Even then there is no evidence of a tendency towards more 2LDs in our name space. General sentiment has always been towards less red tape on the existing 2LDs rather than adding new ones.

8. Should there be a requirement for auDA to publish a list of names that are reserved for use by the registry and names that pose a risk to the operational stability and utility of the .au domain? Should there be any exceptions to the publication of names?

No need to publish the list but initial registration must be prevented and a suitable whois check response should be presented. i.e. we have "Reserved" in addition to the current "Available" and "Not Available" message.

Eligibility and allocation rules

9. How should the Australian presence requirements be defined? Should trademark applicants and registrants only be allowed to register a domain name that is an exact match to their Australian trademark application or registration when relying on the trademark application or registration to establish an Australian connection?

Users can warrant their local presence to a Registrar. auDA could consider rewarding registrars with high levels of compliance rather than the current system of punishing (or ignoring) mistakes. auDA can audit for compliance. Exact match has not been popular in our namespace for the last decade. Logic dictates that license must be tied to a legal entity, once that is established then what the domain does should not be dictated by policy. We should be aiming for freedom of expression and a fair go for all. If a registrant puts objectionable or illegal content on a website we see this as outside of the remit of auDA and should remain so.

10. What eligibility and allocation rules should apply to the .au domain namespace (direct registration) and the open 2LD namespaces, and why? Should the close and substantial connection rule be retained and why? Should allocation criteria be removed, and the focus be on registrant eligibility? Should domain monetisation continue to be permitted in the com.au and net.au 2LD and at the second level? How should domain monetisers interests be balanced against the needs of the broader Australian Internet Community?

We think the close and substantial connection rule should be removed as it blocks innovation and reduces freedom of expression. It is also complicated for auDA to audit and enforce.

Domain monetisation needs to continue to be permitted in .com.au. If the .com in .com.au stands for commerce then why would we want to limit a perfectly legitimate commercial activity like advertising. It is hard to imagine a namespace

without monetisation, there would be no more yellow pages, no more carsales and no more realestate websites. We would be left with only branded websites spruiking their own product. Domain monetisers are a part of the broader Australian Internet Community, they are not doing harm in a way that they need to be segregated like this. Only 4% of domains and about 1% of traffic is monetised, compared to other extensions, the average consumer is hardly exposed to any advertising by .com.au monetisers.

So we could reduce the eligibility of [com.au](#) from the current 3:

- exact
- close or substantial
- monetization

and just have monetization, as effectively every [.com.au](#) is there to make money from the domain, so it should all fall under monetization.

We also believe there is a need to reduce the requirements of the Monetization section to also cover current technologies such as behavioral targeting, where the content does not need to match the name of the domain as long as the content is well matched to the visitor. This targeting gives the end user a better experience and less clicks to reach their intended destination but it makes auditing by auDA for a close and substantial connection even harder than it currently is.

Some further observations (about who should get the .au)

Despite traditionally not having a hierarchy or rights, We would strongly urge for first access rights for all .au names to be given to the [.com.au](#) holder. This means that a cut off date is irrelevant and there is no need for a lottery which would tend to reward previous speculation in less popular 2LDs.

We need to follow international best practice as to how other countries, such as UK and NZ, have implemented this. Lets not try to do something different that has never been tested.

90,000 contested names means there are at least double that number of companies who are going to be spending a significant amount of time trying to solve this contention. Affecting adversely such a large number of companies time is arguably more harmful than just allocating the rights to the .com.au holder, who has traditionally been judged to be the holder of the best extension already.

The lottery solution based on the above is probably the worst solution of all as there are 180 - 250,000 companies who would be locked into a 6 month long negotiation that needs to reach an agreement before a lottery. The amount of time this would require from these parties needs to be seriously considered. As soon as one party indicates interest the others will blackmail that party to pay them a lot more than they would have. If they do not get it they will take their chance in the lottery and then sell it to for much more to the other party or to someone else. This will be a large and expensive distraction for companies and their lawyers, especially those that also have the complication of a TM to consider.

Further considerations will be required on how will this be done when one domain is with one registrar and another domain at a different registrar. Where and how will this be processed? Which registrar will get to process the final claim? Will both registrars be allowed to contact one another's customers? What technology needs to be built to cover this? How will registrars be informed about who has rights to register these contested names?

In the event that awarding the names to the com.au owners is not accepted, the next fairest option is to run an auction, this is something that existing systems are already place and can be used to manage this entire process. And this is the same model that was run with other ccTLDs that have gone through the same process. auDA has also used a similar process to release generic names and geographic names in the past. auDA can commit all the proceeds from this to promoting the .au name space and the benefit of .au to non-commercial registrants. They can also use these funds to assure the public of the close link between .com.au and Australian Business/Company Numbers as the most trusted place to undertake commercial transactions.

11. Should internationalised domain names be trialled at the second level, and under what conditions?

No, not that this is a good or bad idea just that the timing is wrong so we don't want to add to the discussion.

Licence conditions

12. Should a registrant be able to sublease the domain name to an unrelated party? If yes, in what circumstances should this be permitted?

Yes, if they want to and auDA should not be dictating special rules for this. Eligibility is still the responsibility of the registrant and what they do after that is being their problem and their opportunity.

13. Where a domain name licence is transferred between registrants, should the transferee receive the benefit of the remainder of the licence period?

Yes, and once you introduce the 1 – 5 year registration period then this should be possible.

We feel that a new license as part of the CoR, should include an extra 1 year of registration, which is added to the existing registration period.

14. Should auDA be given the power to suspend a domain name licence? When should auDA suspend rather than cancel a domain name licence? What should be the maximum suspension period before a domain name licence is cancelled?

Yes auDA should be able to suspend rather than delete. Further to that we believe that auDA should be able to maintain the DNS in order to make the website resolve to a parked page with links to auDA policy, to auDA policy escalation rules and also contact details for auDA directly. We have the unfortunate position of talking to registrants who are having their domains deleted. They are always frustrated and often confused by the process so more information would be useful.

15. For what purposes should auDA be allowed to collect, use and disclose registrant data?

For the purpose of delivering a DNS resolution service, in compliance with their policies at the time. They should not be collecting more data than is required and they should be disclosing all of the data which is collected. I do not believe it is in the best interest of registrants to have a closed zone file, nor to have a hidden expiry date for domains. All this data should form part of the public record even if access to the zone is restricted (on application only) and the expiry date can be delivered under the same mechanism as the registrant contact email address.

16. Are there any concerns with the current level of information included in the public WHOIS service? Should the technical contact field be utilised for agent and lessee details?

We think the expiry date should be available to registrant (even if protected). We have a reseller ID system which is barely used, to add a new requirement for the tech contact to be used is not going to work out any better. We think we should make the zone file available to parties willing to pay to have access or made available to registrars. Further to this Domain Privacy should be allowed for .au registrations. The email, like with current .com privacy, still needs to work and redirect any messages to the domain owners real email address and physical post would also be redirected.

For [.com.au](#) privacy would be nice for emails, to reduce spam emails.

We would also support an option for the Privacy Protection to be offered at the registry level. Then law enforcement still has access to the registrant data without having to deal with each registrar directly. That would meet the need for privacy of registrants and still meet the requirement for the police to have a single point of contact to access that data.

thank you

Kind Regards

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