Internet Society of Australia

ABN 36 076 406 801

C/- Maddocks, Level 28 Angel Place
123 Pitt Street., Sydney NSW 2000
Accounts: P.O. Box 351,
Glenorie NSW Australia 2157

A Chapter of the Internet Society

_____

To: Jo Lim
Chief Policy Officer, auDA
Via email: jo.lim@auda.org.au

ISOC-AU SUMISSON: in response to the Australian Domain Name Administrator (auDA) Issues Paper, '*Review of .AU DOMAIN NAME POLICY FRAMEWORK'*.

The Internet Society of Australia (ISOC-AU) is a non-profit society founded in 1996 which promotes the Internet development in Australia for the whole community – private, academic and business users: *the Internet is for everyone!* ISOC-AU is a chapter of the worldwide Internet Society and is a peak body organisation, representing the interests of Internet users in this country. We have a longstanding and ongoing commitment to the effective representation of these interests in code development and self-regulatory processes in the telecommunications, domain name and Internet-related services industries.

The overriding objective of the Society is to give expression to the needs and wishes of individuals, groups, or organisations that have a common interest in the viability of the Internet in Australia, so that all Australian users of the Internet may continue to benefit from, and contribute to, its applications, technologies, and evolution. Our submission, therefore, is made from the perspective of the users of the Internet, drawing on the strong technical base of understanding of our ISOC-AU membership. In particular, users include the individuals, groups and organisations that will be impacted by any changes to the existing Name Policy Framework.

Our specific responses to the Issues Paper are as follows:

1. Should .au be opened up to direct registrations (e.g. Domainname.au)? If yes, should there be any policy rules and, if so, what rules?

ISOC-AU would not support either of the two options proposed for opening up direct registrations.

The two options proposed if direct registration is allowed are:
- Option One: Direct registrations only (and the 2LD hierarchy would be deactivated); or
- Option Two: Combination of direct registrations and 2LD hierarchy – retaining the current 2LD hierarchy, with a choice of registration under a 2LD or directly under .au.

Confusion: As the Issues Paper states, introducing direct registrations would be likely to cause confusion amongst users as to the purpose or intention of the Domain Name. This will be true whether Option One or Two is followed.

The current system clearly identifies whether the registrant is a commercial entity, a not-for-profit entity, a government agency, etc. ISOC-AU supports and endorses the continuation of a clear and easily understood rules based approach to eligibility for licensing domain names, which we believe has contributed to the reliability of the current system of 2LD hierarchy and the respect with which .au names are held internationally. For instance, the .com.au requirement that the applicant be a business or commercial enterprise or otherwise closely and substantially related to the domain name gives internet users confidence that they are interacting or transacting with .com.au entities that are traceable through the Australian companies and business names registers. Removing the 2LDs altogether, or adding direct registrations in addition to the 2LD hierarchy, will remove that signal to the users. For example, under either Option One or Two, an entity could register aph.au, leaving users in doubt as to whether they are accessing either of two currently existing domain names: the Australian Parliament House (www.aph.gov.au) or Australia Pacific Homewares (www.aph.com.au).

Disputation: Under both Options, but particularly under Option Two, there is a real likelihood of increased domain name disputes as entities legitimately holding a domain name in the appropriate 2LD have to fight over which of them has a right to the direct registration of their name.

Would, for example, the existing company Affordable Chauffeured Classic Cars (www.accc.com.au) have a greater right to the domain name accc.au than the Australian Competition and Consumer Commission (www.accc.gov.au), and on what basis would that decision be made?

Cost to Business: As the Issues Paper suggests, there will be considerable costs to business if direct registration is introduced. If Option One is followed and a business can change its domain name to direct registration, the costs will include such things as printing and stationery costs, marketing and advertising costs, plus revenue lost from current branding campaigns.

If Option Two is followed, the costs to business will be to obtain and maintain (if possible) the same domain name for both the .com.au and direction registration in .au, simply to keep their existing domain name out of the direct registration market.

Reduction in possible Domain Names: An additional difficulty with Option One is that, if introduced, there will be a reduction in the number of available domain names.

ISOC does not support opening up .au to direct registration.

2. Should the policy rules for asn.au, com.au, id.au, net.au, and org.au, be changed? If yes, what changes should be made.

The Issues Paper indicates that the Names Policy Panel identified a gap in the current policy rules relating to illegal or malicious use of a domain name, and suggested that:

> *The policy rules should include a clear process and authority for the deletion of a domain name for illegal or malicious use. Such uses would include, but are not limited to, disseminating spam, hosting a 'phishing' site, malware hosting and distribution, capturing stolen personal information and access credentials, hosting child pornography, and recruiting individuals to launder or transfer stolen funds.*

In principle, ISOC-AU supports the possibility of removing domain names in certain circumstances, with reference to our long held view that **'*Online legal regimes, should be no more harsh than off line legal regimes,*'** and with the following qualifications:

- That auDA, through its arrangements with registrars, is given the authority to suspend and, ultimately, delete a domain name;
- That auDA, as an initial response to the claim of a domain name being involved in illegal or malicious use, has in place a process for the prompt suspension of operation of such a domain until the illegal or malicious activity is considered and proved. This could be important in the case of illegal or malicious activity that is threatening the functioning of the Internet;
- That, before deleting a domain name on the grounds of malicious or illegal use, auDA have a process for satisfying itself on reasonable grounds that the domain name has been so used, based on a clear and well understood standard of proof as to what constitutes 'illegal' or 'malicious' use;
- That the registrant has a recognised right of appeal against such suspension and deletion; and
- That the forum for such the decision to suspend and, ultimately delete domain names is both accountable and transparent in its activities.

> **ISOC-AU supports auDA having the authority for the suspension and deletion of a domain name for illegal or malicious use, under conditions set out above.**

3. Should registrants be allowed to sell their .au domain names?

Under the auDA policy *Clarification of Domain Name Licence – Prohibition on Sale of Domain Name, Policy Number 2005-05*, it is explained that there are *no proprietary rights* in a domain name; a registrant simply *holds a licence to use the domain name for a specified period of time subject to the licence terms and conditions*.

It is ISOC-AU's belief that the above proposal to permit the 'sale' of domain names is not meant to change the basic premise that registrants will not acquire a proprietary right to a domain name under the proposed relaxed rules on 'selling' the name; all domain names will remain under the control of auDA, which will continue to only **licence** the use of the name.

If the proposal were to give registrants proprietary rights over their domain name such that they can 'sell' their domain name, ISOC-AU would not support the proposal. ISOC-AU believes auDA should retain control over the licensing and use of all domain names.

ISOC-AU believes, instead, that the proposal to permit the 'sale' of domain names is more accurately described as a proposal to relax policy rules on the transfer of domain names. The auDA *Transfers (Change of Registrant) Policy (2004-03*) already permits the transfer of a domain name from an existing to a new registrant, under certain circumstances. Widening those circumstances could permit a more direct transfer of licence between registrants.

ISOC-AU would not object to such widening of the rules on the transfer of domain names per se. However, if those rules are widened to permit direct transfer, ISOC-AU believes the following must apply:

- auDA policy rules: All existing policy rules should apply to any 'secondary' market in domain names. The rules should be reviewed to consider whether, with the relaxation on the transfer of domain names, they are sufficient to prevent cybersquatting and domain name hoarding;
- Eligibility of new registrant: The new (acquiring) registrant must meet all of the existing criteria rules, including the rules applicable to all 2LDs and the specific rules applicable to the domain name being transferred; and
- Price transparency: If a secondary market is allowed to develop through the more direct transfer of names, there must be a transparent pricing mechanism such that prospective customers can make informed decisions on acquiring the domain name licence.

ISOC-AU would not object to widening auDA policy rules on transfer to allow the direct transfer of domain names, under conditions set out above.

The ISOC-AU President Tony Hill president@isoc-au.org.au, or ISOC-AU Executive Director Holly Raiche ed@isoc-au.org.au are happy to discuss this submission at any time.

Holly Raiche
Executive Director ISOC-AU
On behalf of the Board
ed@isoc-au.org.au

15 June 2007