

15 June 2007

Dear Ms Lim,

Attached is my submission to the auDA Review of the .au Domain Name Policy Framework.

Yours sincerely,

A handwritten signature in cursive script that reads "J. Selby".

John Selby
Lecturer

**Submission to the auDA Review
of .au Domain Name Policy
Framework**

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Introduction

The 2007 Names Policy Panel issues paper requests comments on three issues. My responses to those issues are:

- 1) The .au domain should **not** be opened up to direct registrations;
- 2) Some minor policy changes may be appropriate to the existing second-level .au domains; and
- 3) Registrants should **not** be allowed to sell their .au domain names in a free-market. The existing policy should be strengthened instead.

More detailed explanations for these submissions are set out below.

Issue 1: Should the .au domain be opened up to direct registrations?

The .au domain should **not** be opened up to direct registration for the following reasons:

A. Loss of policy control by auDA

Under the present hierarchical system of .au domains, auDA maintains the ability to apply different policy rules to different second-level domains to structure those second-level domains to suit different interests within the Australian internet community (eg the rules for .com.au are designed to suit commercial entities and traders, and it would be inappropriate to apply the exact same rules to the .org.au domain which is designed for non-profit organisations).

On its own website, auDA states:

auDA performs the following functions:

- *develop and implement domain name policy*
- *license 2LD registry operators*
- *accredit and license registrars*
- *implement consumer safeguards*
- *facilitate .au Dispute Resolution Policy*
- *represent .au at ICANN and other international fora.*

Allowing direct registrations for .au domains under Option 1 would forever preclude the ability for auDA to craft policies appropriate for particular sub-sectors of the Australian Internet community as those sub-sectors are identified and their needs change. Eg: under the current hierarchical structure, if, in response to a future decision to create a gTLD of .bank designed to reduce online fraud, auDA could protect the Australian internet community by introducing a .bank.au domain in which domains could only be registered by holders of banking licences issued by the Reserve Bank of Australia.

It is impossible to currently predict all of the possible future .au second-level domains which might be needed by sub-sectors of the Australian internet community. For this reason, retaining policy discretion to introduce new second-level .au domains within auDA is more appropriate.

B. Path dependence

Path dependence¹ is a concept under which the high level of investments made by stakeholders on the basis of past decisions made by a regulator means that the options available to that regulator when making policy choices today are constrained. In short, the past restricts your options today.

The original design decisions made by Robert Elz in the 1980's to create a vertical hierarchy of domains within the .au domain led to massive investment by Australians and Australian businesses into building websites within third-level domains (eg www.bhp.com.au, www.mq.edu.au and www.auda.org.au). Those website operators have (collectively) invested billions of dollars in promoting Internet end-user awareness of their websites hosted on third-level domains.

Switching to direct registrations of .au domains would risk destroying the multi-billion dollar investments made by Australian website operators over the last twenty years. A shorter domain name is not necessarily more memorable, especially considering the lengthy history and broad public awareness of the existing second-level .au domains.

C. Re-distributive consequences of introducing direct .au domain registrations

Scholars² regard self-regulatory bodies as suffering from a deficit of legitimacy to make decisions which re-distribute large amounts of wealth within a society. Such decisions are more appropriately made by the Parliament as the elected representatives of the people.

When visiting Australian websites, Australians currently think of .com.au, .org.au, .edu.au etc. The multi-billion dollar cost of re-educating the Internet community to use .au domains would fall onto the operators of websites hosted under existing .au second-level domains who had then registered .au domains. At the same time, the profits associated with introducing .au domains would be received by registries, registrars and re-sellers (and potentially cyber-squatters, domainers, etc) (only a very small component of the Australian internet community).

¹ See eg: Margolis, S. and Liebowitz, S., (1997), An Overview of Path Dependence, available at: http://www2.ncsu.edu/ncsu/grad/econ_grad_pgm/working_papers/gmu6.pdf and Bertelli, A., (2006) The Role of Political Ideology in the New Governance, Vol. 66, Public Administration Review, no. 4, available at: <http://ssrn.com/abstract=844807>.

² Eg: Latzer, M., et al, (2003), Regulation Remixed: Institutional Change through Self and Co-Regulation in the Mediamatics Sector, Vol. 50, Communications & Strategies, No. 2, pp127-157 at p140.

It is arguably not appropriate for an unelected, self-appointed, technical committee to be the forum to impose such a politically significant, re-distributive and financially expensive policy as the introduction of direct registrations within the .au domain without significant and broad-scale consultation with the entire Australian internet community. To be legitimate, such consultation would involve far more wide-scale consultation than has occurred so far under this names policy review (an appropriate venue would be the commonwealth legislature, in the form of an Act of Parliament).

D. Option 2 is impractical due to the high risk of typosquatting

Having a combination of direct registrations and 2LD domains within the .au domain would be a recipe for chaos and havoc. It would be impossible to prevent dangerous levels of typosquatting and risk of online-fraud without prohibiting the direct registration of a significant combination of letters (eg: .con.au, .vom.au, .cim.au, .cpm.au, .orf.au, .oeg.au, .otg.au, .prg.au, .prf.au, etc).

auDA would be faced with a herculean-task of constantly prohibiting the registration of .au domains creatively registered by typo-squatters.

The prohibition of such domains would also impact on current registrants of .com.au domains who are seeking to register .au domains, eg <http://www.orf.com.au/> is a legitimate website for OfficeRite Furniture. Would auDA permit OfficeRite to register .orf.au given the potential risk for its use in typo-squatting?

E. The proposal to permit .com.au domain holders to pre-register .au domains would unfairly discriminate against holders of other second-level .au domains.

For example, currently, www.whirlpool.com.au is registered to a whitegoods manufacturer; whilst www.whirlpool.net.au is registered to the operator of an Australian broadband internet discussion website.

It would be inappropriate for auDA to create a policy which favours a registrant of a .com.au domain over the registrant of a .net.au or .org.au domain. Direct registration of .au domains effectively **reduces choice** for the Australian Internet community because only one entity can register a .au domain, whilst each second-level .au domain can be registered by a separate entity.

F. Increased revenue for the supply-side of the .au domain name industry on its own is a weak justification for such significant policy changes in the absence of any clear benefit for the broader Australian internet community.

The relative size of the .com domain as compared to the .com.au domain is one of the claimed reasons for seeking to introduce direct registrations of .au domains. However, such claims ignore the artificial inflation of the number of registrations within the .com domain due to ICANN's and VeriSign's policies which permit domain parking and re-selling.

There is no benefit to the Australian internet community in facilitating growth in the *number* of .au domains if such growth is achieved through the registration of vast numbers of domains for the purposes of "parking" or hosting websites containing only google "Adwords" (see <http://www.google.com/domainpark/>). Such domains are a blight on the .com domain and should not be permitted within the .au domain.

Issue 2: Should the policy rules for second-level .au domains be changed?

The introduction of a policy on the deletion of illegal or malicious use of a domain name is useful. The policy could arguably be improved by adding "parked" domains and domains which lack content other than for the hosting of linked-advertisements to grounds for the deletion/de-registration of a domain.

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

A. A regulated market adds greater value to the Australian internet community than a free-market in this situation.

Within the .au domain (and most other TLDs), there is a difference between the perceived value of domains and their cost of registration. In a free-market, this difference facilitates speculators to profit by engaging in arbitrage. Policy-setting bodies within the .au domain have always resisted permitting arbitrage of .au domains, recognising that the benefits to the Australian internet community of regulating this market have outweighed the private profits which might be made by a few "domainers" through engaging in arbitrage.

In 2004, auDA introduced its policy on transfers (2004-03), which facilitated transfers for legitimate commercial or legal reasons, but which constrained opportunities for arbitrage. This policy has arguably been quite successful in enabling legitimate transfers to occur whilst simultaneously reducing opportunities for arbitrage, cybersquatting, etc.

In a global survey of the Internet conducted in March 2007, the leading anti-virus software company, McAfee, rated the .au domain as the fifth safest TLD on the Internet³. That report states

“Four of the five least risky country TLDs are Nordic countries... [Australia being the fifth]... This could be due to governing bodies employing stricter regulations on these domains.”

McAfee’s report recognises the value to the Internet community of stricter regulations and that a “Free-market” approach to Internet regulation imposes significant costs onto the Internet community. Consequently, this report is evidence as to why it would be inappropriate for registrants to be allowed to sell their own .au domain names on the free market.

B. The arguments put forward on p9 of the Issues paper that the current policy is ineffective are weak.

No law is 100% effective at preventing breaches from occurring (eg even capital punishment is not a complete deterrent to murder). Policy 2004-03 might be improved by including an “attempt to sell” a domain in violation of the policy as grounds for breach of the policy. That policy 2004-03 might not be 100% effective is not a reason to remove the policy entirely; rather it is grounds to strengthen the policy.

The argument that all of the “good .au domains are already registered” ignores the long-term dynamism of the Australian economy, wherein new businesses with new names are constantly being created and therefore demanding to register new domains. Allowing free re-sale of domains encourages speculation and imposes barriers to entry for future Australian businesses who can be held hostage to speculators who have used a scatter-gun approach to registering domains in the hope of receiving a “jackpot lottery” return when a legitimate entity comes along seeking to use that domain. Allowing such behaviour would be damaging to the long-term interests of the Australian economy.

Registries, registrars and re-sellers are likely to seek a free-market for the re-sale of .au domains because it would generate large profits for them through encouraging speculation by permitting the re-sale of .au domains. Those parties would not suffer the costs imposed onto the rest of the Australian internet community by such practices. It would be highly re-distributive and inappropriate for auDA to permit this to occur.

³ McAfee (2007) Mapping the Mal Web, available at:
http://www.siteadvisor.com/studies/map_malweb_mar2007.htm.