

COSBOA Response to Discussion Paper

“Review of .AU Policy Framework, 2010 Names Policy Panel Discussion Paper, November 2010”

About COSBOA

The Council of Small Business Organisations of Australia (COSBOA), is Australia’s peak body exclusively representing the interests of small businesses.

Questions Asked in Paper and COSBOA Responses

1A QUESTION

a. Should the restriction on registrants being Australian (or registered to trade in Australia) remain in place?

Response to Question 1A.

WE believe that AuDA should retain the restriction on registrants being Australian. We are not convinced by arguments that non-Australian entities should be able to register domains in the .au level 2 TLDs. We are however willing to accept continuation of the current policy, as stated in Para 1.6 of the Discussion Paper, if strict adherence to it is enforced.

“Foreign entities are eligible to register a com.au or net.au domain name if they are registered to trade in Australia and have an ARBN (verified against the ASIC database), or if they are the applicant for, or owner of, an Australian registered trade mark and have a TM number (verified against the ATMOSS database).”

We believe that the .au level 2 TLDs should be substantially reserved for the benefit of Australian entities and we are particularly concerned that the ability of Australian entities to register appropriate domain names within the current allocation criteria is maximised.

1B QUESTIONS

- a. Should informal clubs and groups be allowed to register within org.au?
- b. Should informal clubs and groups be allowed to register within com.au and net.au (ie. relax the eligibility criteria for com.au and net.au)?
- c. How should the policy rules address illegitimate registrations, such as the use of org.au domain names for commercial purposes?

Responses to to Question 1B.

- a. Informal clubs and groups should be allowed to register within both .org.au and .asn.au to the extent that they can show their legitimacy and existence. We suggest that this be accommodated in two ways by taking up two of the dot points in the Discussion Paper (Dot Point 2 and most of Dot Point 2 of Para 1.15).

The first of these is would give a simple, clear and unambiguous criterion for the majority of clubs and groups.

- “change the special interest club criterion to ‘unincorporated association’, defined as ‘an association, society, club, institution of body formed or carried on for any lawful purpose and that has not less than five members’”

Where an informal club or group cannot meet the unincorporated association or other criterion for .org.au or .net.au registration they should be measured against a second criterion by being given the opportunity

- "..... to provide evidence of their existence (eg. membership list, copy of constitution, minutes of meetings, etc) to the registrar at the time of registration"

This second criterion can allow discretion to registrars sufficient to provide appropriate domain registration facilities.

- b. Definitely no. To do so would make the distinction between the 2nd level TLDs pointless.
- c. If the policy is not followed at the time of registration the registration should be cancelled immediately. Some discretion must however be exercised if a legitimate non-commercial entity becomes a commercial entity.

1C QUESTIONS

- a. Are current enforcement mechanisms in the .au domain space adequate and effective?
- b. If not, how could they be improved?

Response to Question 1C.

In general there is a need to remove or limit the subjectivity on policies to increase, where practical, the certainty and clarity for all parties. It is equally important to continue the process of educating registrants in both their rights and obligations. A necessary pre-requisite for a successful complaints based system is that the registrants understand both their rights and obligations. This understanding is the exception rather than the rule in the small business community.

In any system where the user community has a less than adequate understanding of their rights and obligations there is a particular need for the suppliers in the system to be meticulous in their dealing with users. This has not always been so.

The enforcement of policy for users and suppliers will become more effective as users become more aware of their rights and suppliers, particularly resellers, become more aware of their obligations. There is perhaps a need for registrars to become more accountable for the actions of their resellers.

A key part of any enforcement system is the sanctions available. The basic sanction of deleting a domain name is clear and understandable in dealing with users. The options for enforcement in the supply side of the system are less clear and perhaps need further consideration. In both cases there is a need for a range of sanctions ranging from the immediate and transient through to the considered and permanent. While deletion of a domain can be a minor sanction for a domainer with hundreds of domains it can be an extremely severe sanction for a small business with a single domain registered.

1D QUESTIONS

- a. Should the fixed 2 year domain name licence period be changed?
- b. If so, what other domain name licence periods should be made available?

Response to Question 1D.

There should be increased flexibility in domain name licence periods. As a starting point it would be sensible to allow a 1 year licence for temporary promotions or events and a 5 year domain licence period for certainty. The current 2 year period should be maintained.

It would be reasonable to implement periodic WHOIS checks. An annual check would serve as a reminder for registrants as well as being a contact opportunity for registrars.

We are puzzled by the concerns about cash flow. It seems logical that the NPV of up front payments for longer terms would be attractive to registrars.

It would not be too challenging to allow for the varying outstandings in any registry tender process.

1E QUESTIONS

- a. Should a registrant be allowed to lease their domain name to another entity?
- b. If so, under what circumstances?

Response to Question 1E.

We see no reason to allow leasing or sub-licensing. We regard this as being inconsistent with the prohibition on registering domain names for the sole purpose of sale. We believe that any provision for this would be the subject of abuse.

1F QUESTIONS

- a. Should single character domain names (a-z, 0-9) be permitted in the .au domain?
- b. If so, what requirements should a registrant have to meet to be eligible to register a single character domain name?

Response to Question 1F.

We have no particular comment on this. Given that we are talking less than 40 domains in total for each 2nd level TLD we regard the issue as trivial. Any such domain name should satisfy all requirements for the 2nd level TLD concerned.

1G QUESTIONS

- a. Should individuals be able to register domain names that relate to a personal hobby or interest?
- b. If so, how should the eligibility criteria be changed to accommodate this type of domain name?

Response to Question 1G.

This is a very difficult question. On balance we see no reason to change the eligibility requirements.

1H QUESTIONS

- a. Should .au be opened up to direct registrations?
- b. If so, what requirements should a registrant have to meet to be eligible to register a .au domain name?

Response to Question 1H.

We see no reason to allow direct registrations in .au.

2 QUESTION

a. Do you have any comments about the contents of the Reserved List, and/or the operation of the Reserved List Policy?

Response to Question 2.

We have no comments on the Reserved List Policy

3 QUESTIONS

- a. What do you understand by the term “domain monetisation”?**
- b. Should domain monetisation continue to be subject to specific regulation?**
- c. If so, how could the Domain Monetisation Policy be made more workable?**
- d. If not, would the general Policy Rules offer sufficient safeguards to deal with bad faith registrations by domainers?**
- e. Should domain monetisation be permitted in the non-commercial 2LDs (asn.au, id.au and org.au)?**

Response to Question 3.

We understand “domain monetisation” to mean registering a domain name in order to earn revenue from a “monetised web site” where a “monetised web site” means a web site or landing page that has been created for the purpose of earning revenue from advertising, including monetised domain parking pages. This definition is from current auDA policy.

We do not believe domain monetisation should continue to be governed by a specific policy. This implies that Clause 4.1 of the Domain Monetisation Policy would no longer apply.

With the removal of the Domain Monetisation Policy, in particular clause 4.1., the General Policy rules would offer sufficient safeguards.

We believe that, in principle, no domain monetisation should be permitted in the non-commercial 2LDs.

4 QUESTIONS

- a. Should the restriction on prohibited misspellings remain in place?**
- b. If so, what type of names should be protected?**
- c. How should a prohibition on misspellings be enforced?**

Response to Question 4.

There are sound consumer protection reasons for banning some mis-spellings. In general these relate to banks, financial institutions, government entities and other major institutions. The list must however be open and contestable and based on the entity being protected. Where an entity is created that is deemed worthy of protection, or an entity added to the list, all existing potentially affected domain registrants must be notified and given the chance to object. In this case the possibility of compensation should be considered.

It is arguable that, beyond prohibition for consumer protection, auDA should not be in the name protection business beyond enforcing its current policies on eligibility and allocation.

John Graham

**On behalf of
Council of Small Business Organisations of Australia (COSBOA)
20th January, 2011**