



TELSTRA CORPORATION LIMITED AND SENSIS PTY LTD

SUBMISSION TO .AUDA'S REVIEW OF THE .AU POLICY FRAMEWORK

21 JANUARY 2010

Introduction

Telstra Corporation Limited ('Telstra') and its subsidiary Sensis Pty Ltd ('Sensis') welcome the opportunity to respond to .auDA's discussion paper on the review of the .au policy framework.

Telstra is Australia's leading telecommunications and information services company, providing fixed line, mobiles, broadband, information, transaction, search and pay TV services. Sensis is Telstra's directories and advertising business, and is responsible for producing and administering a range of products and services, including the Yellow Pages® business directories and the White Pages® residential directories throughout Australia. Telstra and Sensis both maintain extensive portfolios of domain names, and Telstra also provides its customers with domain name registration services through a third party registrar. As a major brand owner, Telstra deals with hundreds of cybersquatting matters each year, particularly in relation to the TELSTRA and BIGPOND brands. Telstra and Sensis also use the UDRP and .auDRP processes to recover domain names where necessary.

As Telstra and Sensis' interests in the matters under review generally coincide, a reference to "Telstra" can be read as referring to both companies.

Telstra understands that the .au domain name space is regulated more heavily than some other ccTLDs. However, we believe this has been a major factor in keeping cybersquatting in the space under control, to the benefit of Australian brand owners. It may be desirable to streamline certain policies to achieve a greater administrative efficiency, but Telstra is concerned to ensure that such streamlining does not have the unintended effect of promoting undesirable behaviour in the .au space.

Our response focuses on those aspects of the paper that are of particular interest or concern to Telstra.

Issues

1A. Registrants must be Australian (or registered to trade in Australia)

Currently registrants must be an Australian resident or have an ARBN or Australian trade mark, in order to register a domain name in the .au space. Telstra supports the retention of this criterion.

Telstra believes that registrants in the <.au> space should have a connection with Australia; for example, because they are trading in Australia or they are the owner of an Australian trade mark. If there is no such connection, it is difficult to understand why a foreign registrant would want to, or should be permitted to, register in the <.au> space. There are also a number of potential detrimental effects, such as potential confusion among members of the public who expect the registrant of a <.au> domain name to be trading in Australia. Further, opening up the space is likely to lead to an increase in the number of cybersquatters registering Australian brand names as domain names in order to profit from pay-per-click advertising revenue and similar. To avoid these issues Telstra supports the retention of the current eligibility criterion.

1C. Policy Enforcement

Telstra feels that the current methods of policy enforcement could be strengthened and in particular that auDA should supervise more closely the verification procedures implemented by domain name registrars. Telstra also supports the LIV IP/IT Working Group's proposals for policy enforcement.

Enforcement of .au policies is effected through a combination of upfront verification at the time of registration, and complaints-based investigations after registration. Telstra occasionally encounters registrants whose domain name registration does not meet the eligibility criteria and has complained to auDA about this in the past. While we do not believe that additional identity verification measures should be introduced, it seems that auDA may need to exercise more oversight over registrars' implementation of the existing measures.

Telstra supports the proposal of the LIV IP/IT Working Group for a procedure which would allow default judgments to be made in the absence of a response to a complaint. This mechanism would improve the effectiveness of the auDRP and would be a simpler and more transparent mechanism for dealing with policy complaints.

Telstra also supports the component of the proposal that relates to the Notice of Intention to File a Complaint. In particular, Telstra has encountered some domain name companies who offer to transfer a domain name as soon as a complaint has been filed, either pursuant to a supposed "policy" or to avoid having an adverse decision on the record. However at this point the complainant has usually already paid to draft and file the complaint. The Notice of Intention to File a Complaint would provide an opportunity to resolve the matter earlier, at a lower cost and without wasting the time of auDA staff and tribunal members.

1D: Two year licence period

In general, Telstra supports altering the two-year licence policy, provided that this can be done in a cost-effective way and licence fees do not increase as a result.

The Panel is currently investigating whether there is scope to extend the current two-year licence period for domain names to terms of 1, 2, 3, 4 or 5 years. Telstra would support the introduction of varying registration periods to reduce administrative costs and provide additional flexibility. In particular, Telstra has registered key domain names for periods of up to 10 years in other domain name spaces which allow longer registrations. This is to ensure that a key domain is not accidentally allowed to lapse and to reduce the administration involved in renewals.

Telstra further believes that as longer registration periods would result in less administration and hence more profit for registrars, this should also be reflected in the pricing. We would like to see a discounted annual rate for registrations of more than two years.

1E: Leasing of domain names

Telstra does not support expressly allowing leasing of domain names. It also does not support an outright prohibition as there may be limited circumstances where this is acceptable, provided that all other policies are complied with.

Currently, leasing of domain names (in the sense of a legal agreement between the registrant and a third party allowing the third party to use the domain name) is neither expressly prohibited or expressly allowed. However, Telstra's understanding is that it occurs in some cases when domain names are included in a lease of intellectual property. In other cases, it is unnecessary to lease the domain name as the registrant can redirect it to another party's content, while retaining control of the name.

However, Telstra feels that a shift from .auDA to authorise domain name leasing would introduce a number of complexities to the existing system. For example, it would undermine the whois system and allow sublicensees to operate a domain without any oversight or accountability. It would also undermine the prohibition on registering a domain name for sale, as the domain name could simply be leased until the six month non-sale period elapsed. Ultimately, Telstra believes it would send the wrong message in terms of the behaviour expected of registrants in the .au domain name space.

1F: Single character domain names

Telstra supports the introduction of single-character domain names, provided the registration criteria are appropriate.

Single character domain names are currently not able to be registered in any .au 2LD. This was previously a technical restriction, but the technology has progressed and these domains can now be registered in various spaces around the world. If deciding to allow registration of single-character domain names, Telstra urges .auDA to carefully consider the criteria for allocation of single-character domain names, given there are such a limited number.

1H: Direct registrations under .au

Telstra would not support the introduction of direct registrations in any form.

The .au domain name has always been structured into a number of 2LDs and it has not previously been possible to register a domain name directly under .au. The Panel is considering whether it would be desirable to allow such registrations.

Telstra believes there is no public demand to allow direct registrations in .au. If the .au registrations ran in parallel with the 2LDs existing domain name holders would be effectively forced to register the .au versions of their .com.au domain names to avoid customer confusion. This would unfairly disadvantage the holders of 2LDs. In addition, Telstra would be extremely concerned about any solution that would involve deactivating the 2LDs such as .com.au, as the administrative costs for companies with large portfolios would be very high and there would most likely be extensive customer confusion.

3. Domain Monetisation Policy

Telstra strongly favours retaining the domain monetisation policy as a separate policy and not incorporating it into the general policy rules.

.auDA has questioned whether the definition of domain name monetisation is overly broad, and whether the domain monetisation policy should be deleted altogether.

Telstra agrees that the definition of domain name monetisation is perhaps overly broad.

However, the requirements that are imposed as a consequence of meeting the definition are minimal. Telstra feels that this policy has been a significant factor in the low level of cybersquatting occurring in the .com.au space, as the vast majority of cybersquatting domain names we encounter are used to host pay-per-click advertising. It is desirable that websites and domain names which include a commercial component (particularly through advertising) are held to a higher standard than those which are purely non-commercial.

4. Prohibition on Misspellings Policy

Telstra supports retention of the Prohibition on Misspellings Policy in its current form. However, if resourcing the Policy is of concern, it may be appropriate to restrict the Policy to registered trade marks.

The prohibition on misspellings is intended to prevent typosquatting, or the registration of variations of entity, personal or brand names. While auDA recognises that this is not desirable conduct, it is considering whether the policy is the most efficient way of discouraging this conduct or whether for example, more extensive use of the auDRP would be preferable.

Telstra strongly supports the Prohibition on Misspellings Policy. In other spaces such as .com, which do not have an equivalent policy, typosquatters make up a significant proportion of our cybersquatting work. From the public perspective, there is also the danger that these domains could be used for phishing attacks.

The discussion paper notes that auDA has received an increasing number of complaints from SMEs and small traders that their brand name has been infringed. If this is an administrative issue, we would suggest limiting the misspellings policy to registered trade marks. SMEs and small traders without a registered trade mark would still have the option of going to the auDRP but it would be a clear and objective way for auDA to identify legitimate brand names.

Conclusion

The .auDA policies that are the subject of this review are on the whole working well, and Telstra does not believe that substantial changes are required. Some streamlining as discussed above may be desirable, provided that it is implemented in a way that causes minimal disruption and does not increase costs to new or existing registrants in the space.

Telstra would be happy to provide any further information to the Panel to assist with the decision-making process. Please feel free to contact Isobelle Fabian on 03 8648 9051 or Isobelle.fabian@team.telstra.com with any queries.

Regards



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