



.auDA Policy Review Panel
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auDA Final Report: Recommendations to the auDA Board:
Reform of Existing Policies & Implementation of Direct
Registration

By Email: policy.review@auda.org.au

Internet Australia welcomes this opportunity to comment on the *auDA Final Report: Recommendations to the auDA Board: Reform of Existing Policies & Implementation of Direct Registration*.

The objectives of Internet Australia 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 Internet users, which include individuals, groups and organisations that are impacted by the auDA Name Policy Framework.

Internet Australia believes that Domain Names, including new second level domains, should be viewed as a public resource to be managed in the interests of Internet users, including individuals seeking access to Internet content and resources, and registrants providing those resources or publishing that content.

About Internet Australia

Internet Australia is the not-for-profit organisation representing all users of the Internet. Our mission – “Helping Shape Our Internet Future” – is to promote Internet developments for the benefit of the whole community, including business, educational, government and private Internet users. Our leaders and members are experts who hold significant roles in Internet-related organisations and enable us to provide education and high level policy and technical information to Internet user groups, governments and regulatory authorities. We are the Australian chapter of the global Internet Society, where we contribute to the development of international Internet policy, governance, regulation and technical development for the global benefit.

We would be happy to have our members and experts meet with the ACCC to further discuss our comments and observations raised in this paper.

Yours Sincerely

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Submission by Internet Australia

auDA Final Report: Recommendations to the auDA Board: Reform of Existing Policies & Implementation of Direct Registration

Introduction

The .au Top Level Domain space is recognised as one of the world's well governed namespaces, with Australian's placing a high level of trust associated with .au domains, and with Australians preferring to register new domains for business and other purposes within the .au hierarchy, as shown by the 2017 Annual Survey published by AusRegistry in November 2017.

Trust by an Internet user in the domain name system is paramount in building the confidence of the general population to increase their digital participation in Australia's digital economy and in digital society. Trust and confidence are embodied by several principles, including:

- Trust that a domain name will accurately reflect the business or content described or expected or associated with the name
- Trust that the establishment and registration of a new name is governed by open processes for review and approval that can weed out illegitimate or harmful registrations or sites before they can be used
- Trust that there are accountability measures that can act quickly in the event a name is misused or directed to a harmful site, including by reference to Australian laws and consumer protection measures expected to be available when doing business in Australia.

Users of the Internet do not distinguish between a name of a site, and the content hosted by the site to which the name points. The confidence and perceived increased safety of Internet users in the use of .au domain names as a preferred Internet destination is and will continue to be set by the trustworthiness of the content that the names point to. For these reasons it is of paramount importance that the Australian .AU TLD continues to be governed, managed, maintained and monitored with the overarching goal of enhancing the trust, safety and confidence of Internet users accessing the content of the registrants' names, ahead of convenience or revenue for registrants and registrars.

1. Reform of Existing Policies

Internet Australia generally supports the recommendations below for simplifying and consolidating existing auDA policies. The current policy structure is confusing and difficult to navigate, even for persons with extensive domain name policy experience, let alone the general public.

Eligibility and allocation – the Australian presence requirement Trade mark applications and registrations

Summary of recommendations:



For all domain names registered in .com.au, .net.au, .org.au, .asn.au, .id.au and .au, the registrant must be a legal person with an Australian presence;

Internet Australia supports this recommendation. The local presence requirement is the single most important policy element for promoting trust in the .au domain space.

A consistent Australian presence test should apply to all domain names registered in .com.au, .net.au, .org.au, .asn.au, .id.au and .au;

Internet Australia supports this recommendation.

The applicant or owner of an Australian trade mark application or registration can rely upon that application or registration to establish an Australian presence, but only in respect of a domain that is an exact match to the Australian trade mark application or registration. This trade mark application or registration must be for a word mark, not a device or logo mark. If a trade mark registration is cancelled or removed from the Register, or if a trade mark application lapses, there is an automatic loss of the Australian presence on this ground.

Internet Australia supports this recommendation.

Resale and warehousing

Summary of recommendations:

The resale and warehousing prohibition rules should be retained and strengthened;

Registrants should be prohibited from registering a domain name “primarily” for the purpose of resale or warehousing; and

A list of factors indicating that a domain name has been registered primarily for resale or warehousing should be included in the new Registrant Policy, and if the majority of these factors are met, then the onus should shift to the registrant to demonstrate that the registrant did not register the domain name for purpose of resale or warehousing.

Internet Australia supports these recommendations in principle, however some of the thresholds indicated appear to be arbitrary and may need to be refined over time.

Eligibility and allocation – “Close and substantial connection” rule

Summary of recommendations:

The “close and substantial connection” rule be retained and expanded to recognise online directories and informational services that specifically and predominantly relate to the subject matter denoted by the domain name;

In Internet Australia’s view, the issues with the ‘close and substantial connection’ rule include the following:

- **It does not explicitly recognise that future ‘products, services and connections’ are equally legitimate reasons for domain registration as are current ‘products, services and connections’.**



- Further, it does not allow for entities to register domain names for future use without disclosing the identity of the entity. For example, it is well-established best practice to secure relevant domain names in advance of a new product or service launch. The rule prevents entities from doing so without ‘telegraphing’ their intentions to competitors.
- The rule is subjective and largely unenforced, and, arguably largely unenforceable.

The rule should therefore be updated to cater for the following scenarios:

- An entity registering a domain name at an early stage of the planning process for a new product, service, campaign, or other entirely legal and legitimate activity.
- An entity may wish to use a third-party to register domain names at an early stage of the planning process for a new product, service, campaign, or other entirely legal and legitimate activity, to avoid ‘telegraphing’ their intentions to competitors. The rule should be updated to allow this.

Internet Australia supports the proposed changes to the ‘close and substantial connection’ rule. In addition, Internet Australia recommends that the phrase “or intends to” be added to each of the bullet points in the rule.

Domain Monetisation

Summary of recommendation:

Domain Monetisation (ie. the use of a website which is automatically generated with paid advertising matching the subject of a domain licence e.g. books.com.au) no longer be a basis to meet the allocation criteria to register a domain name.

Domain Monetisation should no longer be a basis to meet the allocation criteria to register a domain name in the .com.au and .net.au domain name spaces; and

A registrant should have a six months grace period from first registration to meet the close and substantial connection test.

Internet Australia supports this recommendation. There should be a clear and substantial link between the name and the site content and Internet users should not be diverted to websites that do not offer a real service or information.

Eligibility and allocation – Grandfathering considerations

Summary of recommendation:

Existing registrants should be allowed to retain their registrations until the end of the current registration period, but should only be able to renew their registrations if they meet the then current eligibility and allocation rules at the time of renewal.

Internet Australia supports the grandfathering of existing registrations, but is concerned that a time-limited grandfathering will open auDA up to significant potential liability to existing registrants. While Internet Australia does not necessarily support an ongoing, un-time-limited



grandfathering of existing registrations, this is something that the auDA Board should consider, given the likelihood of legal action from some existing registrants.

Licence conditions – Licence transfer

Summary of recommendation:

A process be created to allow transferees of existing domain names to receive the benefit of the remainder of the licence period.

Internet Australia supports this recommendation.

Licence conditions – Licence suspension and cancellation

Summary of recommendations:

In addition to auDA's ability to cancel a domain name licence in defined circumstances, auDA will have the power to suspend a domain name licence. The period of suspension should be limited;

During the period of suspension, the registrant of a suspended domain name will have the ability to appeal the suspension under the new Complaints Policy; and

The ability to cancel or suspend a domain name licence to "comply with a request of a law enforcement agency, or an order of a court or under any applicable law, government rule or requirement, or under any dispute resolution process" will be clarified as set out above.

Internet Australia supports the intent of these recommendations. Ideally, names should not be cancelled or suspended without an order of court, to prevent arbitrary suspension or cancellation of a name, with consequent damage to the registrant. At the least, the policy must include clear appeal and reinstatement processes for registrants wrongfully harmed by the suspension or cancellation.

Prohibition on misspellings

Unblocking domain names on the Prohibited Misspellings List

Summary of recommendations:

The Prohibited Misspelling List be retained;

The list remain publicly available on the auDA website. The following details will be disclosed on the published list: the blocked domain name, the date the domain name was blocked, the person or entity that lodged the complaint, and the rights the complainant relied on. The misspelling should be blocked in all relevant name spaces;

Prohibited misspellings will be blocked from registration, unless a potential registrant can demonstrate that it has legitimate grounds for use of the domain name; and

auDA will have the discretion to unblock the prohibited misspelling if the potential registrant can demonstrate that it has legitimate grounds for use of the domain name.

Internet Australia supports this recommendation.



Reserved names

Summary of recommendations:

A Reserved List will be retained and comprised of:

- Words, phrases and acronyms prohibited by Australian law, including both Commonwealth and State law;
- Names and abbreviations of Australian states and territories and the name “Australia”;
- Names that threaten the integrity and stability of the .au name space; and
- Names for use as future 2LDs, with registrations at the third level.

The Reserved List will be published in its entirety on the auDA website (except for names that cannot be published for security reasons)

Internet Australia supports these recommendations.

2. Implementation of Direct Registration

Summary of recommendations:

That Direct Registration be implemented as soon as practical in accordance with the implementation policy set out in Annexure E to this paper.

That domain names directly registered under .au will have no eligibility or allocation criteria, other than an Australian presence requirement.

That all auDA Policies (where applicable) apply to domain names directly registered under .au.

That there be a widespread education and awareness campaign leading up to the release of direct registrations.

Internet Australia supports these recommendations, subject to the following:

- **Clause 7.1 of the Registration Rules (Annexure E) should be expanded to cater for the situation where there are multiple corresponding domain names at Contestable Levels, which are all registered to the same entity. The obvious examples are where a non-profit has registered the same name in .com.au, .net.au and .org.au, or a business has registered the same name in .com.au and .net.au. Where the corresponding domain names are registered to ‘related’ entities, it seems simplest to allow those entities to resolve the contention through the Token process as described.**
- **It is made explicit that there is no hierarchy of rights between the Contestable Levels – ie that a .org.au domain name has an equivalent right to the corresponding .au name as would the corresponding .com.au domain name. This is implicit in the policy, but is probably worth stating clearly to avoid any confusion.**

Ends