

Minutes

16th March 2018 at 8:30AM

Present: John Swinson (Chair), Paul Zawa, Brett Fenton, Luke Summers, Narelle Clark, Professor Andrew Christie

Meeting commenced at 8:30am

The key issues discussed were:

Item 1. Registrant Issues Paper

The panel received 60 submissions in response to the Registrant Discussion Paper. Submissions were received from a broad range of stakeholders, including registrars, registrants, consumer representative organisations and government agencies.

.net.au and asn.au (Issues 2 and 3)

The Panel spent considerable time exploring the purpose of the .net.au and asn.au spaces. The Panel acknowledged stakeholders feedback and decided to recommend no further policy changes until a decision has been made on the implementation of Direct Registration.

Subleasing (Issue 12)

The Panel noted that there were divergent views on whether subleasing should be permitted.

Luke Summers stated that he does not support a prohibition on subleasing. Luke said that there are legitimate business reasons for subleasing domain name licenses, such as:

- A head company with agents/subsidiaries that may want to make use of domain licenses (whilst the head company retains the domain name license in its name).

Luke indicated that some submissions that address this issue were supportive of subleasing being permitted.

Panel members noted Luke concerns. The Panel agreed that the situation regarding legitimate subleasing should not change from what is currently in place.

The Panel noted that it was important that the WHOIS details accurately reflect who has control of the domain name.

The Panel decided that subleasing/sublicensing of domain names should be prohibited.

Transferee receiving the benefit of the remainder of the licence period (Issue 13).

The Panel discussed whether the transfer of an existing licence should be allowed. Panel members noted that a licence is a contractual right and not a property right.

Panel members were attracted to a process that allowed the transferee to receive the benefit of the remaining licence period. The Panel agreed that transfer of a licence should be permitted, and pre-payment of the registration fee should go to the benefit of the transferee. The Panel noted that the eligibility and allocation requirements must be met by the transferee.

Internationalised domain names (Issue 11)

The Panel discussed whether internationalised domain names should be trialled at the second level, and if so, under what conditions?

Panel noted that the introduction of internationalised domain names had received good take-up in some ccTLDs but not in the gTLDs. There were serious issues that need to be considered to avoid confusion and cybersquatting if internationalised domain names are to be successfully introduced. The Panel decided not to recommend the introduction of internationalised domain names at this time. This should be a matter that is taken up by a subsequent Policy Review Panel and that a close watch should be kept on the ICANN developments in the implementation of internationalised domain names, specifically to protect consumers.

Whols (Issue 16)

The panel explored whether there was concern about the current level of information listed on WHOIS. Based on submissions received, the Panel agreed that the current level of information on was sufficient and no changes are needed.

Australian Presence (Issue 9)

The panel noted that there was overwhelming support for an Australian Presence requirement.

a. Definition

The panel noted that the definition of Australian Presence at a high level was a legal entity with an Australian connection and that was subject to the jurisdiction of Australian law. This definition is to be defined carefully in the policy.

b. Foreign TM owners and applicants

The Panel discussed whether an Australian trademark application is sufficient to establish an Australian connection where there is no other Australian connection. The Panel considered whether such a domain name holder should be limited to registering a domain name that is an exact match to their Australian trade mark application. With respect to a foreign company or individual with no other Australian connection, the Panel agreed that the applicant should be allowed to register a domain name that is an exact match to their Australian trademark application. The Panel agreed to restrict such trademark applications to word marks, that is, a logo trademark application is not sufficient to give the right to register a domain name where there was no other Australian connection. If the trademark application lapses or is finally refused, then there is an automatic loss of eligibility for the corresponding domain name.

Luke Summers indicated that he believes restricting the requirements to exact match, word only trademarks when considering the Australian Presence requirement is unworkable. The panel noted strong support for tightening this requirement in the public forums.

Eligibility and Allocation Rules for existing spaces (Issue 10)

John Swinson canvassed Panel members' opinions about eligibility and allocation rules for existing spaces, in particular .com.au. Suggestions included:

- leave as is
- liberalise it further
- tighten the rules

The Panel noted that feedback from stakeholders indicated that domain monetisation rules were difficult to follow and should be changed. Panel members agreed that rules to the existing spaces should be tightened.

Luke Summers strongly disagreed with tightening the space and he indicated that his preference is to liberalise it further or leave eligibility and allocation rules as is. Luke stated that some submissions favoured those two options. Luke also asserted that the vast majority of respondents that addressed monetisation supported its continuation "as is" or with reduced restrictions; very few respondents indicated that it should be limited or ceased. However, Luke also noted that there could be improvement such as a requirement that there is a set time period within the registrant must meet the monetisation rules.

The majority of the Panel were critical of some of Luke Summer's comments and approach, noting that the public submissions received should not be treated as a vote or poll, and that the quality of a submission should be considered (and not merely the number of submissions supporting a particular view).

The panel noted that feedback from the public consultation process included comments that the current monetisation rules could easily be used to register any domain name that a registrant wanted to register, and served no real policy purpose. It is also difficult to determine when a domain name is registered merely for the purpose of resale and when it is registered for business operation purposes, such as operating a monetised directory website.

The Panel established a working group consisting of Brett Fenton, Narelle Clark and John Swinson to consider this issue further and to report back to the Panel at the next panel meeting.

Item 2. Implementation of Direct Registration

Consultation process

The Panel noted that in respect of the implementation of direct registration, the two most contentious issues discussed in the public consultations were:

- a. The lottery approach to resolving contested names.
- b. Cut-off date for eligibility to participate in the contested name process and the priority registration period.

Paul Zawa expressed concern that not all stakeholders may be aware, or have a clear understanding of, the policy reform process as evidenced by the confusion in several submissions received. Paul also noted concerns around:

- Public fear and misconception
- Struggle to reach smaller businesses
- Culturally and Linguistically Diverse (CALD) Individuals and businesses
- The timeline of the process

Given the low level of awareness of Direct Registration, the panel agreed that explanatory statement and the possibly draft rules will be released for further public consultation.

Refinements to the proposed model

The Panel found comments made at the public forums on the “straw man” proposed model to be very useful.

The Panel noted suggestions raised at the public forums that an appropriate guiding principle for the implementation of Direct Registration would be least harm for maximum benefit. The Panel noted that a lottery approach for contested domains may create ‘random harm’.

Panel members decided that where no agreement has been reached between Competing Priority Applicants through negotiation, the SLD domain name should be blocked from registration indefinitely or until all but one of the priority applicants:

- withdraws from the process, or
- ceases to exist (e.g., entity wound up, death), or
- allows their underlying 2LD domain name to lapse.

Cut-off date

The Panel revisited the cut-off date for determining priority registration. The Panel agreed to keep the cut-off date at 18 April 2016 for contested name process.

Where there was only one domain name at the 3rd to 5th levels, the holder of that domain name should have the benefit of the priority registration period.

The Panel was to further consider the issue where there is a Change of Registrant after the cut-off date, for example, where there is a sale of business assets, and whether the transferee should be able to participate in the contested names process.

Luke Summers indicated that he does not support the cut-off date of 18 April 2016, and stated that this was going back too far. Luke agreed with Panel members that where there is no contested domain, there should be priority access to direct registration for brand protection.

The Panel agreed that the cut-off date should also apply to the priority allocation process.

The Panel discussed whether there should be a prohibition on the transfer or sale of SLDs for a period of time after the cut-off date, and it was tentatively agreed not to recommend such a prohibition.

Eligibility and allocation rules for direct registration (Issue 1)

The Panel discussed eligibility and allocation rules in .au namespace. Panel members debated whether domain monetisation should be prohibited in .au., and the exact match, and close and substantial connection rules should be retained with tighter definitions.

The Panel agreed that Brett Fenton, John Swinson and Narelle Clark should form a working group to further explore options and report back to the Panel.

Luke Summers indicated that he does not support increased restrictions in the .au namespace. Luke expressed concern that if the proposed model was adopted, it would not accurately reflect the majority of submissions received.

Item 3. Other Business

Panel members noted that the .gov.au forum will be held on the 27th March 2018. All Panel members will attend in person, except for Luke Summers.

Luke Summers stated that he had tabled prior to the meeting concerns that others had raised with him about Panel Member interactions with stakeholders and the consultation process to date.

John Swinson reiterated that Panel members should act professionally and maintain confidentiality at all times.

Narelle Clark declared that she has been appointed to the PIR board which runs .org starting May 2018.

Due to time, it was agreed that Issues 1,5,6,7,8,10, 14 & 15 of the Registrant Issues Paper will be held over to the next meeting.

The next meeting will be held on 27 March 2018.

The meeting closed at 2:45pm