

Date: 12 July 2018
Time: 10am – 3pm AEST
Location: King & Wood Mallesons, Level 61, Governor Phillip Tower, 1 Farrer Place, Sydney NSW 2000
In Attendance: John Swinson (Chair), Narelle Clark (Consumer Protection Representative), Brett Fenton (Supply Class Member), Ian Halson (Demand Class Member – *via Teleconference*), Professor Dan Hunter (Academic Representative – *via Teleconference*) and Nicola Seaton (Business Representative)

MINUTES

1. STANDING ORDERS

1.1 Welcome and Apologies

The meeting opened at 10am AEST.

Narelle Clark joined the meeting at 11:06am AEST.

Professor Peter Butt, Policy Draftsperson, joined the meeting at 2:25pm AEST.

1.2 Declarations of Conflict of Interest

The following conflicts of interest were declared by Panel members at this meeting:

N. Seaton – Shareholder, Melbourne IT

Narelle Clark informed the meeting that she was no longer employed as Deputy CEO for the Australian Communications Consumer Action Network (ACCAN). As Ms Clarke was no longer employed in the consumer space, she asked the Panel to consider whether she should remain as Consumer Protection Representative. Members unanimously agreed that Ms Clarke should continue as a representative to ensure there was continuity within the Panel for the purposes of the review process.

1.3 Confirmation of Minutes

1.3.1 Confirmation of Minutes for the Policy Review Panel Meeting – 8 June 2018

The Panel confirmed the minutes of the Policy Review Panel meeting, held on 8 June 2018, as a true and accurate record of the meeting.

1.4 Action Summary

1.4.1 Actions Arising from the Policy Review Panel meeting – 8 June 2018

The Panel received and noted the actions arising from the 8 June 2018 Policy Review Panel meeting.

Members requested that a rolling summary of all actions arising from Panel meetings be compiled and included in the agendas for all future meetings.

ACTION: Secretariat to develop rolling action summary for all actions arising from Policy Review Panel meetings, to be included in all future meeting agendas (July 2018).

1.5 PRP Administration

1.5.1 Policy Review Project Timeline

Discussed as part of **Item 1.5.6 - Upcoming Deliverables**

1.5.2 Policy Review Panel Budget

Members noted the Budget for the 2018-2019 financial year was currently in development, and would be circulated in the coming weeks for the Panel's reference. This would provide an overview of the proposed expenditure for the remainder of the Policy Review process, including the implementation stage that was scheduled to commence in January 2019.

ACTION: Secretariat to circulate proposed 2018-2019 Policy Review Panel budget for review, subject to its completion (July-August 2018).

1.5.3 Future Public Forums

In preparation for the final stage of the Policy Review, Members considered holding further public fora on the proposed policies. The Panel noted the auDA CEO was keen for public consultation, so as to ensure there was a high degree of transparency affixed to the review process.

The Panel discussed the following:

- Scheduling – John Swinson proposed the next round of public fora take place in September. This would provide sufficient time and opportunity for the final drafts of the policies to be prepared for broader scrutiny.
- Agenda setting – Members agreed any future fora should have a set agenda, and that participants be given an opportunity to submit questions for consideration prior to the meeting.
- Online consultation process – The Panel agreed it would be of greater benefit for interested parties to submit feedback as part of an online consultation process. The Panel would subsequently hold one final public forum at the end of September to enable members to review all the policies for consideration.
- September public forum – John Swinson stated it would be possible to host the final public forum in the offices of King & Wood Mallesons. Interested parties in other Australian centres may be able to view the meeting via videoconference and use a live messaging service to ask questions during the proceedings.
- Independent moderator – Members agreed it would be beneficial to the overall process to contract an independent moderator to direct the forum meeting.
- Technical briefing – Brett Fenton recommended that a technical briefing be arranged with the registry operator, Afiliis, as part of the final consultation process. This should include the go live

date for the relevant policies, the technical implications (if any) of the proposed policies and provide Afilias with an opportunity to in turn raise any issues or concerns. As part of this process, auDA should make a request for the registry operator to provide bi-annual and annual reports on the effectiveness of the policies, both in terms of their implementation and how well they have been received.

The Panel agreed in principle with the projected timeline for the final stage of the review process, and requested that John Swinson submit the timeline to the auDA Board for review. John Swinson stated he would consult with the Secretariat and auDA CEO on developing a comprehensive plan for the final consultation process.

ACTION: Chair to develop strategy for proposed consultation process (online and public forum) in conjunction with the Panel Secretariat and auDA CEO (July 2018).

ACTION: Chair to submit projected timeline for final stage of policy review process to the auDA Board for review (July 2018).

1.5.4 Appointment and Progress of Policy Draftsperson

The Panel noted that Professor Peter Butt, a plain English expert based at the University of Sydney Law School, had been engaged to act as Policy Draftsperson for the Direct Registration Policy.

Members noted that John Swinson was interested in appointing Professor Butt to act as Policy Draftsperson for the remaining policies subject to review. As auDA had a Procurement Policy regulating the appointment of external contractors, John Swinson stated he would need to consult auDA on whether it would be necessary for the appointment to be subject to tender.

ACTION: Chair to confirm formal process for appointing Professor Peter Butt to act as Policy Draftsperson for the Policy Review Panel (July 2018).

1.5.5 Appointment of Government Regulator Representative

The Panel noted the auDA CEO was in the process of seeking an appointee from within the Office of the Commissioner for Better Regulation, more commonly known as the Red Tape Commission. John Swinson noted that appointing a Government Regulator Representative at this stage of the review process had its benefits as, from a user perspective, it had the potential to add value.

John Swinson informed the Panel that he was progressing a Peak Body Representative and would be in a position to provide further information over the coming weeks.

ACTION: Chair to provide update on appointment of Government Regulator Representative for next Panel Meeting (August 2018).

ACTION: Chair to provide update on appointment of Peak Body Representative for next Panel Meeting (August 2018).

1.5.6 Upcoming Deliverables

The Panel noted that a proposed timeline outlining all remaining deliverables had been distributed to all Members by John Swinson via email. John Swinson requested that the project plan for the overall

review process be updated to be inclusive of these dates.

Members agreed it was necessary to ensure there was relatively little overlap in terms of the release and review of policies as part of the consultation process.

Due to the potentially contentious nature of the policy on Direct Registration, John Swinson proposed that this policy be released for consultation first and the remaining policies will be released as part of a combined consultation process.

At the final stage of the review, the final draft versions of the proposed policies will be submitted to the auDA Board in a single report in December.

ACTION: Secretariat to update Policy Review Panel project plan to include newly confirmed deliverables (July 2018).

2. POLICY REVIEW

2.1 Implementation of Second Level Domain Name Registrations (Direct Registration)

2.1.1 Implementation of Direct Registration Policy

Professor Peter Butt was in attendance to speak to his proposed draft for the *Implementation of Second Level Domain Name Registrations* (“Direct Registration Policy”).

John Swinson advised the Panel that the consultation process on the Direct Registration Policy would be underway before the end of July 2018, and would remain open for a period of 10 weeks. Any additional recommendations on proposed wording for the policy would need to be submitted via Confluence no later than 8am Tuesday, 17 July. These would then be forwarded to Professor Butt for inclusion in the version of the policy to be released as part of the consultation process.

The Panel noted the Direct Registration policy would be one of the more contentious policies for review, so the intent of the document needed to be as clear and concise as possible. The Panel gave in principle support for the proposed policy, subject to its discussions as part of this meeting. The Panel recommended the following additional items and amendments:

- Inclusion of an explanatory note outlining the purpose of the policy, its application and how it affects the different classes of members associated with auDA.
- Inclusion of a glossary for commonly used terms.
- Avoid the use of acronyms where possible, so as to avoid any confusion within the policy.
- Inclusion of more process-driven clauses, with more descriptive outlines.
- Inclusion of examples to assist in illustrating the implications of any policy breaches.
- That longer paragraphs are broken down into bullet points to clarify the policy provisions.
- Implementation items should be excluded from the policy, as these were administrative rather than regulatory mechanisms.
- That auDA provide a tech interpretation of the policy, outlining the technical requirements that will be needed to implement it effectively.
- That a guidance document be produced for use by auDA on a preferred model for contested and uncontested domain names, with additional information to be included in the relevant policy document.

The Panel also requested that a flow diagram be developed to compliment the policy, so as to alleviate any confusion. Nicola Seaton agreed to draft the flow diagram and distribute a copy to the Panel via Confluence.

On behalf of the Panel, John Swinson thanked Professor Butt for his assistance in developing the Direct Registration Policy and for attending the meeting. John Swinson stated he would be interested in engaging Professor Butt to act as Policy Draftsperson for the remaining policies for review, and would follow up on this matter with auDA management.

ACTION: Additional amendments or comments on the Direct Registration Policy to be submitted via Confluence no later than 8am, 17 July (July 2018).

ACTION: Recommendations arising from the meeting to be forward to Professor Peter Butt for inclusion in the Direct Registration Policy (July 2018).

ACTION: Flow diagram for Direct Registration to be distributed to Panel via Confluence (July 2018).

ACTION: Chair to discuss appointment of Professor Peter Butt as Policy Draftsperson for overall Policy Review with auDA CEO (July 2018).

2.1.1a LATE AGENDA ITEM – Direct Registration Policy - Public Consultation Paper

The Panel noted the distribution of the draft *Implementation of Direct Registration Public Consultation Paper* by John Swinson prior to the meeting. The document would be distributed as part of the forthcoming consultation process on the proposed Direct Registration Policy.

Members noted the inclusion of comprehensive information on both the token system and corresponding “lock down” response endorsed by the Panel. John Swinson stated it was his intention to hold a long consultation process specifically for the Direct Registration Policy. This would provide interested parties, in particular member-based organisations, with more than sufficient time to submit a response. The Panel noted online submissions would be accepted until 28 September 2018.

In an effort to ensure ease of submission, feedback would be submitted via an online program (such as SurveyMonkey) and a consultation document. John Swinson said he would develop the feedback forms for the online consultation processes in conjunction with auDA via the Secretariat. The dedicated Policy Review website could be used for the consultation process, and auDA resources could be used to publicise it to the broader membership. The Secretariat will receive all submissions and function as the point of contact for anyone experiencing issues.

The Panel considered the combined online strategy to be an effective means of seeking feedback. It was also considered an excellent opportunity to gain a better understanding of those interested parties who submitted feedback. Members requested the SurveyMonkey page also include optional questions for respondents, including their membership status (Registrar, Registry Operator, Demand Member, Supply Member, etc).

The Panel reviewed the questions for consideration within the consultation paper, and submitted the following recommendations:

- That links to relevant sections of the Direct Registration Policy be included in the questions.
- That questions 10 and 11 (Contestable Levels) be combined, as the wording and subject matter

were already closely aligned.

John Swinson asked the Panel to submit any further changes to the consultation document to him via Confluence.

ACTION: Links to relevant sections of the proposed Direct Registration Policy to be included in the Public Consultation Paper (July 2018).

ACTION: Questions in the Public Consultation Paper to be updated as per July 2018 minutes (July 2018).

2.1.2 Close and Substantial Connection Rule

The Panel considered the draft proposal for the 'close and substantial connection' rule submitted by Professor Dan Hunter, further to the development of the policy on Direct Registration. Professor Hunter provided an overview of the proposal, stating that the scope of the proposal was intentionally confined so as to ensure Members could provide their own insights into this aspect of the Direct Registration Policy.

The Panel discussed the following:

- Proposed wording – Some Members stated the need for a broader definition of what constituted a 'close and substantial connection'.
- Eligibility rule – as was stated in the Panel's Interim Report, the proposal recommended that the same allocation rules which apply to open 2LDs should not apply to direct registrations.
- Consultation process – any future consultation processes should include more substantive information on the close and substantial connection rule for interested parties.
- Regulatory framework – Indicators would need to be developed to assist in making a distinction between minor and major breaches in registering domain names for the substantial purpose of resale, transfer or warehousing.
- Reverse Onus – if certain factors were met, a domain name holder would have to demonstrate that they did not register domain names for the primary purpose of resale.
- Penalties and sanctions – In any instances where an individual is found to be registering domain names for the substantial purpose of resale, transfer or warehousing, or cannot demonstrate reasonable grounds, a domain name will be deregistered.
- Norway Model – Some Members considered the Norwegian model of restricting the number of domain names held by an individual (50-100 per portfolio) to be a viable option. This did not have majority support.
- Legitimate use – The framework would need to account for both a current and future domain name use. Members noted it was commonplace for individuals to buy domain names to retain for future legitimate use, so further guidance would be needed on how auDA would respond in these instances.

John Swinson recommended that further discussion on the close and substantial connection rule take place via Confluence. Professor Hunter stated he would follow up on the recommendations arising out of the meeting and review his proposal accordingly.

ACTION: Panel to submit further recommendations on the close and substantial connection rule via Confluence (July 2018).

ACTION: Dan Hunter to review recommendations arising out of July 12 Policy Review Panel meeting

regarding proposed additions to the close and substantial connection rule (July 2018).

2.2 Registrant Policy

The Panel noted the Registrant Policy was subject to a combination of policies and a variety of changing policy settings.

A brief issues paper outlining the proposed policy changes would be issued as part of the review process. This would provide interested parties with a limited opportunity to respond to the projected amendments.

John Swinson informed the Panel that the next step is to request Professor Butt to consolidate the various policies that fell within this subject area. A quote will be needed to do this.

Members noted that it was expected that a final version of the Registrant Policy would be completed by the end of September.

ACTION: Chair to develop Registrant Policy – Issues Paper to be developed as part of consultation process (July 2018).

ACTION: Chair to circulate proposed draft Registrant Policy to Policy Review Panel via Confluence (July 2018).

2.3 Registrar Policy

2.3.1 Registrar Policy Working Group – Report

The Panel noted the Registrar Policy Working Group would meet in the coming weeks to review all relevant policies. Brett Fenton informed the Panel that there had been some difficulties in convening meetings for the Working Group due to conflicting schedules.

Brett Fenton stated that he had spoken with individual members of the Working Group concerning the review, and that there would be little contention in developing a Registrar Policy. He added there may be some issues due to the upcoming renewal of the Information Security Standard (ISS), so the Working Group will focus on developing a principles-based approach and will work through the practicalities of any security issues.

As part of its review, the Working Group would identify the necessary policy retentions and discard outdated or irrelevant policies. The final draft of the policy will be submitted to the Policy Draftsperson for final review prior to any broader distribution. Recommendations on the necessary changes will be submitted to the registrar group for comment, though it was not intended to be a wide-ranging review process. The final version of the policy would form part of the consultation process for the overall policy review.

2.4 Complaints Policy

2.4.1 Content and Structure

The Panel noted that Nicola Seaton had uploaded a recommended approach for a more comprehensive complaints procedure for auDA.

As the complaints assessed by the organisation were relatively narrow in scope, Nicola Seaton recommended that a standardized approach be considered and that an appropriate assessment procedure is developed to compliment the policy. The Panel agreed there was a need for a more consistent approach in managing complaints received by auDA.

Members agreed that to develop a comprehensive complaints policy it would be necessary to request further information from auDA on the current process. Areas identified by the Panel were:

- Information on the current auDA complaints procedure, including the assessment criteria, administration process and reporting procedure.
- Data on the number of complaints assessed by auDA.
- The nature of the complaints currently assessed by auDA.
- Any identifiable gaps or loopholes in current policies and procedures.
- Any controversies, issues or contention regarding auDA complaint management processes.
- Information on the outcomes of any complaints received – rejected, accepted, domains amended to meet policy, domains deleted.

The Panel noted there was relatively little information publicly available on auDA's complaints procedure, and that the auDA Board had only a minimal amount of oversight. John Swinson stated it would be good for the Panel to see the reports on the complaints issued to the auDA Board, as required by the current policies.

The Panel agreed:

- auDA should be responsible for managing the complaints process to avoid any complications.
- There was a need for a minimum public threshold on information and disclosure within any complaints framework.
- That the policy should be supported by a strong procedural framework, including timeframes for response, clear lines of responsibility within auDA, official application forms, a checklist / tracking process for complaints and administration procedures.
- Applicants and respondents should receive information concerning the nature of any complaints, subject to what is permissible within the law.
- That any decisions be made publicly available, subject to the agreement of the parties involved. The Panel agreed that publishing decisions had the potential to reduce the number of vexatious or frivolous complaints received by auDA.
- That if auDA undertakes a review or investigation as part of a complaint that its findings are made publicly available.
- Where a complaint is rejected by auDA the grounds for the decision must be identified.
- That the policy also includes a structured appeals process, which also imposes a limit on the number of occasions a complaint can be assessed by auDA.
- That a repository of all complaints received by auDA is made publicly available via the auDA website. This would affix a high degree of transparency to the overall process, as well as providing an important source of information for prospective applicants.
- That the policy includes a provision where the auDA Board receives regular reports on any complaints received by the organisation.

Some Members queried whether complaints should remain anonymous, as per the current process. This would be assessed as part of the policy development process, though the Panel agreed there was scope for complaints to be given anonymity on a case-by-case basis.

John Swinson requested that Members forward their recommendations for the proposed complaints policy to Nicola Seaton.

ACTION: Secretariat to forward request for data / information on current complaints to auDA Complaints Team (July 2018).

ACTION: Members to forward recommendations for the auDA Complaints Policy to Nicola Seaton (July 2018).

2.4.2 Complaints Policies – Examples from Other Jurisdictions

Noted.

3. OTHER BUSINESS

3.1 Other Business

None this meeting.

There being no further business, the meeting closed at 3:15pm AEST.
