

Secondary Market Working Group

Recommendations, September 2011

INTRODUCTION

Secondary Market Working Group

auDA has convened the Secondary Market Working Group to:

- examine the operation of the .au secondary market and identify any points of market failure; and
- provide advice and recommendations to auDA on any actions that should be taken to address any identified market failures.

Working Group membership and minutes of meetings are available on the auDA website at <http://www.auda.org.au/smwg/smwg-index/>.

Issues Paper

The Working Group released an Issues Paper for public comment in May 2011. The Issues Paper examined the effect of the Transfers (Change of Registrant) Policy (2008-08) and the Domain Renewal, Expiry and Deletion Policy (2010-01) on the .au domain name secondary market, and identified some issues for consideration from both consumer and industry perspectives. In some cases, the Working Group put forward its preliminary suggestions and proposals for addressing the issues.

The Working Group received nine submissions, which are posted on the auDA website at <http://www.auda.org.au/smwg/smwg-index/>.

EXECUTIVE SUMMARY

The Working Group's recommendations are summarised below for ease of reference, however each recommendation should be read in conjunction with the explanatory text provided in the body of the report.

1. Consumer issues

Recommendation 1A:

auDA should:

- mandate a registrant transfer process, along the lines of the registrar transfer process; and
- publish information for registrants about the registrant transfer process, including the fact that they can choose to transfer their domain name to another registrar prior to processing a change of registrant.

Recommendation 1B:

The six month prohibition on registrant transfers should be removed.

Recommendation 1C:

auDA should provide more information to the public about drop catching services, including clearly identifying the registrars that provide these services.

2. Industry issues

Recommendation 2A:

AusRegistry should clarify its process for changing the Registry Usage Policy, including timing of changes and communications with registrars.

Recommendation 2B:

auDA should publish a policy which:

- clarifies that connection sharing between related registrars requires auDA's prior written consent; and
- specifically prohibits connection sharing between unrelated registrars.

Recommendation 2C:

AusRegistry should publish a document that provides general information about drop catching to all registrars.

RECOMMENDATIONS

The Working Group has divided its recommendations into consumer issues and industry issues.

1. Consumer issues

A. Registrant transfer process and fees

One of the stated purposes of relaxing the Transfers (Change of Registrant) Policy was to reduce the administrative burden on registrars and registrants. However, the Working Group is aware that this has not necessarily had the desired effect across the entire industry.

The Working Group is aware that the registrant transfer process differs from registrar to registrar, which can be confusing and unnecessarily complicated for consumers. Some registrars have a streamlined and mostly automated process, while others use a manual process. In the absence of any mandatory standard, the process and fee is a business decision for each registrar, based on the volume of transfers they receive, and their desire to differentiate themselves in the market.

The Working Group's view is that many, if not most, registrants and purchasers believe that they have to process a registrant transfer through the current registrar of record, which acts as a limitation on competition and consumer choice. Given the level of fees charged by some registrars (around \$100 - \$300), some purchasers are reluctant to have the domain name transferred into their name at the time of purchase. This creates a potential risk for both the purchaser and the registrant, as it means that the registry database does not reflect the true owner of the domain name.

Working Group members have also raised security concerns associated with registrant transfers, especially given that some domain name transactions are worth large amounts of money.

Public comments supported the Working Group's proposal that auDA should mandate a minimum standard for registrant transfer processes, along the lines of the process mandated under the Transfers (Change of Registrar) Policy.

Submissions also agreed with the Working Group that auDA should advise people that it is permissible to transfer to another registrar prior to processing a change of registrant. Working Group members noted comments that transferring to another registrar is not necessarily straightforward and can sometimes complicate the process. To address this issue, auDA should make it clear that the registrar transfer and registrant transfer processes are separate and will not happen simultaneously.

Recommendation 1A:

auDA should:

- **mandate a registrant transfer process, along the lines of the registrar transfer process; and**
- **publish information for registrants about the registrant transfer process, including the fact that they can choose to transfer their domain name to another registrar prior to processing a change of registrant.**

B. Six month prohibition on transfers

Under the current Domain Name Eligibility and Allocation Policy Rules for Open 2LDs (2008-05), a registrant may not register a domain name for the sole purpose of resale. To enforce this policy rule, a registrant is not permitted to transfer their domain name licence within the first six months after registration of the domain name.

Under paragraph 4.2 of the Transfers Policy, a registrant may apply to auDA for authorisation to transfer their domain name within the first six months after registration of the domain name. The authorisation will be at auDA's discretion. Circumstances under which auDA may authorise a transfer are provided in the same paragraph.

The block on domain name transfers within the first six months of registration is intended to prevent illegitimate registrations. However, it has been suggested that the policy may not be effective given a registrant could hand over control of the domain name or redirect traffic to the purchaser until the 6 month period expires, and then transfer the domain name without going through auDA for approval.

Statistical data from AusRegistry shows the number of registrant transfers processed within the first 6 months, versus transfers at later dates.

Age of Domain Name	Number of Registrant Transfers
< 6 months	784
6-7 months	531
7-8 months	595
8-9 months	1,779
1-2 years	10,329
2-3 years	6,684
> 3 years	12,337

The Working Group notes that the statistics do not support the view that many registrants are waiting until the six month block expires before transferring their domain name. This would suggest that the incidence of registration for the sole purpose of resale is not high.

The Working Group further notes that the policy is inconsistent, in that the six month block only applies to newly created domain names and not to transferred domain names (ie. there is nothing to stop someone buying a domain name on the secondary market and immediately offering it for sale).

There was no public support for the retention of the six month prohibition on registrant transfers. Most submissions argued that the block has not had the intended effect, and has simply created an administrative burden for auDA, industry and consumers alike.

The Working Group notes that the six month block is merely a mechanism for enforcing the policy rule that prohibits the registration of domain names for the sole purpose of resale. Removing the block would be an administrative change only, and would not change the underlying policy rule.

Recommendation 1B:

The six month prohibition on registrant transfers should be removed.

C. Drop catching services

As more professional domainers become involved in the .au secondary market, a domain drop catching service would now appear to be essential for someone who is interested in acquiring an expired or deleted domain name, especially if it is a generic name or has an existing high level of internet traffic.

To level the playing field between industry experts and general members of the public, the Working Group believes that information about drop catching services should be made available to anyone who needs it. The Working Group acknowledges that some market participants provide information about drop catching services and the secondary market generally, however, its view is that this information is really only available to people who are already using those services.

The Working Group notes that, due to its role as an impartial regulator, auDA has felt constrained in providing any more than general advice on how to acquire an expired or deleted domain name (see auDA blog at <http://blog.auda.org.au/2010/11/08/domain-drops-and-the-process/>). Because not all registrars offer drop catching services, auDA has not listed the ones that do provide the service on its website, due to a concern that it may appear as though auDA is promoting some registrars over others. Currently auDA notes on its website that some registrars share registry connections for the purpose of operating drop catching services, but such information is limited in exposure and its meaning would not be understandable to everyone.

Public comments indicated general support for the suggestion that auDA should provide more information about drop catching services, including clearly identifying the registrars that provide these services.

There was very little support for the Working Group's proposal that there should be a formal accreditation process for registrars that want to provide drop catching services. Accordingly, it was agreed not to pursue this proposal any further at this time.

Recommendation 1C:

auDA should provide more information to the public about drop catching services, including clearly identifying the registrars that provide these services.

D. Domain name sale listings

One of the ways that a registrant can sell their domain name is to list it on an aftermarket sale and/or auction website.

The Working Group is aware that such listings can be out-of-date. Sometimes a registrant will list their domain name for sale, but then let the domain name expire when it fails to sell, without removing the listing. This can cause problems when someone who has purchased a domain name is unaware that the domain name is still listed for sale.

Public comments endorsed the Working Group's view that providers should bear responsibility for ensuring that domain name auction and sale listings are accurate. Accordingly, as there is no requirement for action, the Working Group has not put forward a recommendation on this issue.

2. Industry issues

A. Registry operations

Registrars who provide drop catching services typically attempt to catch a particular domain name by sending multiple EPP Create commands to the registry when the domain name is due to purge. This activity creates an additional load on the registry, over and above the normal transaction rate. The registry has taken steps to minimise the impact by requiring registrars to ensure that all EPP Create commands are preceded by an indication from the Domain Name Registry System that the domain name requested is available. This indication must have been received from the Domain Name Registry System within the 10 minute period prior to the corresponding EPP Create command. Registrars who breach this policy are blocked from EPP Create commands for 15 minutes before and 15 minutes after the Purge Cycle; first occasion penalty is being blocked for one day, second occasion penalty is 7 days, third occasion penalty is 30 days.

AusRegistry's submission to the Issues Paper confirmed its earlier advice to the Working Group, which is that there is no current problem with registry performance. The Working Group notes that if many more registrars started to provide drop catching services, then further action may need to be taken to minimise the impact on the registry. The impact would not be on the registry per se, but on AusRegistry's SLAs. In the event that a problem arises, AusRegistry has a mandate to change the Registry Usage Policy to address the problem (eg. rate limits).

The Working Group members notes that if AusRegistry decided to change the Registry Usage Policy, it would apply to all registrars at all times (ie. not just to registrars participating in the drop, during the purge cycle). Whilst the effect would be negligible on normal transactions, all registrars would need to be informed about the changes in advance.

Recommendation 2A:

AusRegistry should clarify its process for changing the Registry Usage Policy, including timing of changes and communications with registrars.

B. Registrar connection sharing

The way that drop catching works means that, generally speaking, the more connections a registrar has to the registry, the greater their chance of catching domain names. Each registrar has five EPP connections to the registry. Currently some registrars share registry connections, either within the same related entity group or with unrelated entities, thereby allowing them to use more than their allocated five EPP connections for drop catching purposes.

As the .au market grows, the Working Group notes that more registrars may decide that they need to increase their connections to the registry, either by entering into agreements with other registrars, or by applying to auDA to accredit new registrar entities. In either case, connection sharing raises potential security and privacy implications for both registrars and registrants. The Working Group is also concerned about the risk that the .au market will become flooded with “shell” registrars which exist only for their EPP connections (as has already occurred in the gTLD market).

Submissions did not demonstrate much public concern or interest in this issue. Nevertheless, the Working Group believes that its concerns are valid, and action should be taken at this time to prevent the possibility of gTLD problems occurring in .au in future.

Recommendation 2B:

auDA should publish a policy which:

- **clarifies that connection sharing between related registrars requires auDA’s prior written consent; and**
- **specifically prohibits connection sharing between unrelated registrars.**

C. Registrar competition

Drop catching has become an important aspect of industry competition, because it provides registrars with an opportunity to offer additional customer services and differentiate themselves against their competitors.

Registrars who want to offer drop catching services must develop their own proprietary systems and software. Whilst this encourages technical innovation in the industry, it does constitute a barrier to entry, especially for smaller registrars. Drop catching falls outside the standard suite of registrar services, which means that AusRegistry is not required to provide any development or testing assistance. In any case, AusRegistry would most likely be in breach of its licence obligation to treat all registrars fairly if it did provide any assistance to individual registrars.

As with 2B above, this issue did not attract much public comment, however the Working Group feels that there is scope to improve the current situation.

Whilst AusRegistry cannot provide direct advice and assistance to individual registrars, in the interests of transparency, the Working Group considers that AusRegistry should publish general information about drop catching which would be available to all registrars. For example, AusRegistry could highlight the sections of the Registry Usage Policy that are particularly relevant to drop catching, and the penalties for breach.

Recommendation 2C:

AusRegistry should publish a document that provides general information about drop catching to all registrars.