2015 Names policy panel issues paper, April 2015

re: MelbourneIT response, prepared by Brett Fenton and Emily Rice

June 1st, 2015

Dear Jo,

Thank you for the opportunity to respond to the published issues paper. The response of the MelbourneIT Group to the specific questions posed are below.

The MelbourneIT Group is based in and primarily operates within the Australian market, servicing a diverse spectrum of customers ranging from individuals, sole traders and micro business, through to corporates in the ASX 100 and government. The group holds a number of auDA .au registrar accreditations which include MelbourneIT, Netregistry, TPPWholesale and ZipHosting.

1) Direct registrations in .au

Do new gTLD's pose a threat to the .au brand?

By any textbook definition, any market in which available choices increase and there is a finite number of users will place competitive pressure on existing products. As challenger brands gain acceptance and momentum, the value of the category leader brand is eroded.

Based on this, and the fact that we are seeing early but steady growth in the numbers of registrations in the new TLD spaces, it is inevitable that over time the value of the .au brand will be eroded.

Is there evidence of any market demand for direct registrations?

There is both direct and indirect evidence of this. The direct evidence comes via our direct retail customers asking "Why can't we register our domain as xyz.au?". We have had enough of these conversations to clearly identify that there is market demand.

The indirect evidence comes from releases in analogous spaces, for example .nz. From pubicily available stats (http://dnc.org.nz/content/2015-04_stats.html) at the end of April, there were 90,000 domains registered in the second level of .nz, in a total domain space of 690K (including .nz). That represents 13% of the total .nz domain market. Other recent examples of opening into the second level include .uk (United Kingdom), .jp (Japan) and .cn (China).

We would also note that 'market demand' has not previously been a benchmark in defining the shape of the .au landscape. For example, .asn.au represents 0.12% of the domain space,

id.au 0.43% and the community geographic domains (CGDN's) 0.007%. Clearly there is no market demand in any of these spaces.

What types of Registrants/Users would benefit from direct registrations?

This would depend on implementation. An open approach to policy would benefit anyone who, because of existing policy, is currently unable to obtain a .com.au domain (which comprise a vast majority of the space). For example, individuals would be better served by direct registrations.

Depending on the release process, direct registrations may create more choice by allowing people to secure a second level .au version of a domain which is currently registered by someone else (even though it may not be in use).

For example, I have a business XYZ Pty Ltd, which has a ACN, and I was not able to register xyz.com.au because another user had already registered it (based on, say, the monetization rule). They have owned the domain for a number of years, and presently there is no website or email. In an open release process through a landrush without proprietary rights (other than ™ holders), I may be able to secure and use a domain that aligns to my business.

Some users will prefer the simplicity of a shorter domain. To them, it presents better in online and offline material, and would be a consideration in their choice and application of branding.

Finally, I would note that rather than trying to define benefits to existing users, we ask ourselves the question - "Could opening the space create opportunity and innovation that doesn't exist today because current policy precludes it?".

What policy rules should apply to direct registrations?

If we look at the top 10 ccTLD spaces, it is evident that .au has the most onerous policy framework. This ultimately drives cost to the end user and causes confusion among users who cannot understand the policy.

We strongly recommend that registrations in the second level of .au be free from arbitrary policy and be open to registration by anyone with an Australian address. This implementation would be similar to the nexus rule in the .ca (Canada) second level domain space.

What issues would need to be taken into account as part of the implementation process?

The rights of existing ™ holders should be respected. If people or businesses have taken the time to register their marks in Australia, the rights that are associated with those registrations

should be protected. Once these users have been accounted for, the space should be open to all users on a "first come, first served basis" in a landrush process.

Should .au follow the example of other ccTLD's like .uk and .nz?

Yes. We should absolutely follow their example and open up registrations in the second level.

In the ccTLD space, the top 20 spaces hold over 80% of all global ccTLD registrations. If we exclude the largest space, Tokelau (.tk), which provides free domains to anyone, .au is the only space in the top 10 ccTLDs that doesn't allow registrations in the second level.

It is useful to look at these other spaces as models for the way in which domains are released. How analogous these models truly are would depend on the policy that is adopted in the second level. If .au opened in the second level with a substantially different set of eligibility and allocation rules to .com.au, then the releases in .uk and .nz may not be as relevant. In this case, it may be worth looking at other spaces such as .jp.

2) 2LD eligibility and allocation policy rules

Should the domain license period remain fixed at two years

Previous panels have concluded that it is time to allow flexibility in the registration terms of .au. Unfortunately, this has not been adopted by the board of auDA. We reiterate the comments of previous panels regarding strong market demand for registration periods of 1-10 years.

We encourage the panel to restate the findings of earlier panels and recommend that .au domains be registered in 1 year increments, from 1 year to a maximum registration period of 10 years.

Should the principles of "first come, first served" and "no hierarchy of rights" be retained?

This is not only the core principle of current eligibility and allocation policy, but is at the core of an open and fair domain space in Australia. This principle should be retained in its current form.

We also note that this comment only extends to domains that are available for registration. The creation of 'waiting' lists or central allocation of expired domains runs completely counter to the "first come, first served" principle. We strongly oppose any policy that queues potential registrants of a taken domain in a central location (either at the Registry or managed by auDA).

Should the current 2LD eligibility critieria (ie restricting com.au/net.au to commercial entities, org.au/asn.au to not-for-profit entities, id.au to individuals) be modified?

It is confusing that different spaces have identical policy. What differentiates asn.au or org.au if the policy is the same?

We strongly advocate that policy be refined in the spaces of asn.au and net.au so that a valid Australian address is the only requirement to secure names in these spaces.

We also support a model in which asn.au users can be encouraged to take an org.au (or com.au or .au) domain potentially at low or zero cost. Existing asn.au registrations would be grandfathered for up to 10 years through which time there is an investment in advocacy and education to impacted registrants through a wind down phase through to a hard close date.

Although there are more than 20M potential individual domain registrants in Australia, there are less than 15,000 .id domains, It is easier and more flexible to simply register a personal domain in an alternate space or to simply use non-domain based addressing such as social media. Clearly id.au has failed to capture any type of market demand or linkage to other personal channels such as social.

In many ways, the opportunity has been lost to develop a sense of individual identity around a .au domain. While reducing policy and cost may help reduce the barriers to ownership, it is probably better to tie this into a general release of registrations in the second level of .au. That is, allow individuals to simply and effortlessly register their own personal domains in the second level. It is conceivable to consider a model that transfers an existing domain (that is in use) in the third level under .id.au to a no-cost registration in the second level, and to deprecate the space over a 2 year period.

Is the "close and substantial connection" rule desirable"?

In the absence of removing eligibility criteria and requiring only a local postal address, the close and substantial rule effectively allows domains to be registered without an exact match. It was put in to stop the registration of a business name solely for the purpose of gaining an exactly matching domain. The rule continues to solve this issue and should be retained.

Again, the preferred outcome is that an Australian postal address be sufficient to meet eligibility requirements.

What changes are required to address the new practice regarding business name registrations?

There is much confusion over the legal definition of a 'registrant'. A registrant can only be a natural person or a company. This is because a 'legal' entity by definition of law is required to enter into the Registrant Agreement.

For people using a registered business name to support a domain registration, the registrant is the owner of the business name, whether it be an individual or a company.

For a registrar it is broadly impossible to ascertain that the listed individual or company owns a business name. This makes automated validation largely impossible.

There is no simple solution to this; however, it is something that is poorly understood across the wider community of domain users.

We have stated that a postal address is sufficient to meet eligibility, which solves this problem. If this is not adopted, we recommend that a domain be allowed to be directly associated with a registered business name. That is, the business name is listed as the registrant. For any policy or enforcement, auDA can contact the owner of the registered business name.

3) Other 2LD policy rules

The panel invites comments on the policy rules relating to the reserved list and misspellings

Although the current reserved list and misspellings rules are sufficient as is, the implementation is flawed.

If a domain is registered and exists on the list, it goes through a deletion process and is then available to be re-registered. This is a common issue where the same domains are deleted on a frequent basis.

The implementation of the policy should require that domains found to be in breach to be deleted and to then go into a reserved list. WHOIS should show the domain as being on a reserved list and link to the relevant policy.

This would prevent domains on the list from being able to be registered at a technical level.

There would need to be a simple policy allowing domains on the list to be reviewed should a potential registrant demonstrate that it is a legitimate registration, rather than a misspelling.

4) General .au policy

The panel invites comments on any other aspects of .au policy relevant to its Terms of Reference, which have not been raised in this paper

There continues to be strong demand in many other spaces for WHOIS privacy. In the .com space, more than 30% of domains are registered with privacy on the domain at the initial point of registration.

While WHOIS was recently reviewed by auDA, the review was conducted by auDA staff and not by a panel. This review ultimately did not support WHOIS privacy, despite overwhelming public support. The reason provided was that in a restricted name space like .au, WHOIS privacy would not allow fair public review of whether a registration met the eligibility and allocation policy.

We argue that if any material changes were made to policy in the existing spaces, or if a new space were to be opened (i.e. registrations in the second level of .au), that a review of the existing WHOIS policy be tied into those changes outside of the normal review process and period.