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**Submission to the 2015 auDA
Names Policy Panel**

By:

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Introduction:

In 2007, auDA convened a Names Policy Panel which considered and rejected many of the issues raised in this 2015 Issues Paper. Consequently, this submission should be read in addition to my 2007 submissions.

Executive Summary:

Issue 1: The .au ccTLD should **NOT** be opened up to direct registrations as there is insufficient evidence to support claims that the benefits to the Australian Internet Community (beyond just supply-side stakeholders) would outweigh the costs and the risks. Additional research is required to collect the empirical evidence necessary for all stakeholders to be able to have a fully-informed debate on this topic.

Issue 2: Only minor changes to the eligibility and allocation policy rules for .au 2LDs should be made. Providing a limited amount of flexibility in the registration periods for domain name licences may be appropriate. The existing “close and substantial connection rule” should **NOT** be changed. Changing the eligibility requirements so as to make 2LDs mutually exclusive would be a very complex process and divisive amongst stakeholders, so it may be more efficient to retain the status quo.

Issue 3: The existing reserved and misspellings policies should be retained.

Issue 1: Should .au be opened up to direct registrations (eg: domainname.au)? If yes, should there be any policy rules, and if so what rules?

1.1 Do new gTLDs pose a threat to the “.au brand”?

There is insufficient evidence to support the claims that the “.au brand” is threatened by the introduction of new gTLDs. Claims about a slowing growth rate in the registration of .au domains are insufficient as proponents of that argument have not justified why high rates of growth in the rate of domain registrations should be a normative goal of the domain. There is a big difference between managing a domain in the public interest and managing it with the goal of increasing the annual profits of supply-side stakeholders.

1.2 Evidence from .ca, .uk and .nz:

A pilot study (see Appendix 1) undertaken by this author of the direct registrations which have occurred in .uk and .nz by owners of the 26 3LD .uk and 32 3LD .nz domains featured in the Alexa top-100 most visited domains by Internet users in each of those countries¹ (respectively) shows no evidence to support the claim that the introduction of direct registrations has provided any benefit to UK-based or New Zealand-based Internet users.

¹ The remaining 142 most-visited domains (74 in the UK and 68 in NZ) were registered in gTLDs rather than ccTLDs, so have been excluded from this analysis.

Operators of the most visited commercial domains in each jurisdiction have not used the opportunity presented by direct registration to provide new content to their Internet users. Of the 58 domains reviewed across these two countries, there were no instances found where registered operator of a 3LD had directly registered a domain and then placed new content on that domain different from what they had delivered through their previously-registered 3LD.²

Purely defensive direct registrations appear to have been the motivation for 16 of the 22 .uk domain operators and 5 of the 12 .nz domain operators. 14 of the .nz domain operators appear to have been satisfied to have the domains they could have directly registered sit locked-up with an unresolved “conflicted” status³ that precluded third-parties from registering those domains whilst saving each likely registrant from the need to pay for the registration themselves.

Of the 13 directly registered domains that did resolve⁴, 8 automatically redirected Internet users to the previously-registered 3LDs. The other 5 directly registered domains which resolved either lacked any content or displayed information that the domain has reserved by the registrar. Either way, none of these 13 domains provided any apparent additional value to Internet users.

1.3 Evaluating benefits and risks:

Policy changes should only be introduced after extensive cost-benefit analysis. The Names Policy Panel Issues paper lacks sufficient evidence that such cost-benefit analysis has been undertaken to justify the introduction of direct registrations in .au. Much more extensive research is required to develop the evidence which could inform this Panel as to whether introducing direct registrations will provide benefits to a wide range of Australian internet stakeholders, as compared to providing benefits to only a narrow sub-set of those stakeholders.

1.4 For whom does it provide flexibility and choice?

At present, this proposal to introduce direct registrations into .au appears to provide benefits only to the supply-side stakeholders in the Australian Internet community. The experience in the UK is illustrative – despite overwhelmingly negative media coverage⁵ and negative stakeholder submissions far outweighing positive submissions⁶, Nominet pushed ahead with implementation of direct registrations.

² 7 of these 58 popular domains were run by government agencies that operated 2LDs rather than directly-registered domains. Consequently, these have been excluded from this analysis.

³ It appears that the .nz registry places direct-registration domains automatically into “conflicted status” even when the conflict is only between domains registered by the same owner across multiple 2LDs (e.g. google.co.nz; google.org.nz, etc).

⁴ 6 in the .uk ccTLD and 7 in the .nz ccTLD, respectively. Domain resolving tests were run using <www.isup.me>.

⁵ Edwin, ‘Media Sentiment Analysis for the Concept of .uk Domains’ *Webmastering.co.uk* <<http://www.webmastering.co.uk/domain-names/media-sentiment-analysis-for-the-concept-of-uk-domains/>> (last accessed 26 May 2015).

⁶ Nomensa, ‘Nominet Direct.uk Consultation Response Analysis: 25 February 2013’, 16 *Nominet* <<http://www.nominet.org.uk/sites/default/files/NomensAnalysisFinal.pdf>> (last accessed 26 May 2015).

Whilst there has been a significant number of defensive direct registrations in the .uk⁷, the findings of the pilot study discussed above (and in other studies⁸) suggest that the benefits of direct registration have flown almost entirely to the supply-side stakeholders, with little to no benefit flowing to demand-side stakeholders.

If direct registration was to be permitted, the .au industry regulator, auDA, would lose flexibility in its policy choices as it would no longer be able to introduce new 2LDs that could be operated in a similar manner to the ways in which .com.au, .org.au etc are operated today (i.e. the registration by third parties of 3LDs). As new internet industries are developed over the coming decades, retaining this regulatory flexibility in the long-term is arguably far more valuable to the Australian internet community than the introduction of direct registration in the short-term.

Consequently, this policy proposal does not appear to offer flexibility or choice to demand-side stakeholders

1.5 Clarity and Confusion of introducing a flat domain hierarchy

Existing domain name registrants have invested significant money into marketing their domains. The introduction of direct registration would impose upon those demand-side stakeholders significant additional costs (over and above the costs of registration, hosting and site development for new .au domains) through the need to alter marketing materials, business cards, etc so as to incorporate references to their directly-registered domains and to raise public awareness of these new domains to the same level as their existing 3LDs (many of which have been marketed to the public for over a decade).

Unless there is evidence of significant benefit to a wide-range of stakeholders in the Australian Internet community, so as to outweigh these costs, then direct registration should not be introduced as it will not provide clarity to the Australian Internet community.

1.6 Is there really marketplace demand for this service?

Whilst it is very likely that supply-side stakeholders will perceive direct registration as a low-cost means to significantly increasing their profit-margins, evidence from the pilot study suggests that there is little to no demand for this service from demand-side stakeholders. Implementing a policy which promotes purely defensive registrations is effectively the imposition of a tax on Australian businesses. Given the current federal government's attitudes towards increased bureaucratic regulation and taxes on businesses, it is possible that demand-side stakeholder objections to this proposal could result in the federal government considering whether to exercise its co-regulatory powers to give directions to auDA under the Telecommunications Act.

⁷ Edwin, 'Analysis of .uk domain registration trends' *Webmastering.co.uk*
<<http://www.webmastering.co.uk/domain-names/analysis-of-uk-domain-registration-trends/>> (last accessed 26 May 2015).

⁸ Edwin, 'How Well Are Top Websites Making Use of Their New .uk Domains?' *Webmastering.co.uk*
<<http://www.webmastering.co.uk/domain-names/how-well-are-top-websites-making-use-of-their-new-uk-domains/>> (last accessed 26 May 2015).

Consequently, the Names Policy Panel should ensure that it has undertaken much more detailed empirical research before it expresses support for this proposal to auDA.

Conclusion: The introduction of new gTLDs does not pose a significant risk for the .au ccTLD. The experiments in direct registration in the UK and NZ have not delivered significant benefits for the Internet Communities in those countries. Instead, preliminary findings from the evidence suggest that these policies appear to have been almost entirely redistributive in their effect – imposing significant costs upon demand-side stakeholders so as to increase the profits of supply-side stakeholders. Direct registration does not increase clarity and there appears to be very little actual demand (beyond purely defensive registrations, which are effectively a tax on business) for this service. Australia should not follow the examples of other ccTLDs, such as the UK and NZ, in this instance.

Issue 2: Should the eligibility and allocation policy rules for asn.au, com.au, id.au and org.au be changed? If yes, what changes should be made?

2.1 Should the existing licence period of 2 years be retained?

An adjustment from fixed licence periods to flexible licence periods would provide greater benefits to demand-side stakeholders. However, too much flexibility (such as the NZ model of 1-month to 10-yr registrations) appears to be detrimental. Yearly licence periods of 1, 2, 3, 4 or 5 years provides a reasonable balance between the interests of supply-side and demand-side stakeholders.

2.2 Should .au operate on a first come, first served with no hierarchy of rights? What would be the impact on expired domain names?

The right to register a .au domain name is structured in the form of a contractual licence, rather than a property right, which would be a permanent right to own. Consequently, the option of requesting notification of expiries would be more appropriate than the operation of a wait-list (if a person was not the first on the waitlist, then their odds of success are exceptionally limited). A limitation on the number of notifications a person could receive is appropriate. If a waitlist system were to be introduced, it would be appropriate to have a limitation on the number of domains onto which a person could be waitlisted (so as to prevent hoarding of waitlist slots).

2.3 Should eligibility criteria in 2LDs be mutually exclusive?

Whilst I am not opposed in theory to the eligibility criteria in 2LDs being mutually exclusive, the transition to such a system would be complex. Who would decide which of the multiple 3LDs a registrant would be entitled to keep? Would they be compensated for the loss of their 3LDs? Who would pay this? Would 3LDs only be

lost upon the expiry of the existing registration terms? How would this system interact with trade mark law?

2.4 Should the “close and substantial connection” rule be retained?

In short, yes. The close and substantial connection rule provides significant benefits to the Australian internet community by reducing the rate of cyber-squatting and reducing the rate of domain name disputes. Whilst some stakeholders might desire to see an increase in the rate of domain name disputes in Australia (particularly if they receive income from advising on or resolving such disputes), the removal of this rule would result in the re-distribution of benefits from one group of stakeholders to another group of stakeholders without increasing the overall volume of benefits for the Australian internet community.

Significantly more detailed empirical research and stakeholder consultations would need to be undertaken before any proposal to change this existing important policy stance could be put to the auDA Board.

Issue 3: Should the policy rules relating to the reserved list and misspellings be changed? If yes, what changes should be made?

Both the Reserved List Policy and the Prohibitions on Misspellings Policies should be retained as these appear to be functioning well for the benefit of the broader Australian internet community.

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[Appendix 1 is attached below]

Appendix 1:

Pilot Study Analysis of the Benefits of the Introduction of Direct .uk Domain Registrations for UK Internet Users

Rank⁹ (rank in Alexa Top-100)	Existing 3LD .uk Domain	.uk domain directly registered¹⁰ by same entity?	.uk resolves¹¹?	.uk site has any content¹²?	Content identical to .co.uk site	Content substantially differed to .co.uk site	Did the Introduction of Direct .uk Domain Registration Add Any Value for .uk Internet Users?
1 (1)	google.co.uk	yes	No	No	N/A	N/A	No
2 (5)	amazon.co.uk	Yes	No	No	N/A	N/A	No
3 (6)	bbc.co.uk	Yes	No	No	N/A	N/A	No
4 (7)	ebay.co.uk	yes	No	No	N/A	N/A	No
5 (13)	dailymail.co.uk	yes	No	No	N/A	N/A	No
6 (18)	telegraph.co.uk	Yes	No	No	N/A	N/A	No
7 (19)	rightmove.co.uk	Yes	Yes	No – registrar info only	No	Registrar info only	No

⁹ Data sourced from: .uk domains within the 100 most most visited domains by UK Internet users listed on 25 May at <http://www.alexa.com/topsites/countries/GB>

¹⁰ Data sourced from: <http://www.dotuklaunch.uk/whois/lookup>

¹¹ Data sourced from: <http://www.isup.me>

¹² URL tested in both Mozilla Firefox and Internet Explorer

Rank ⁹ (rank in Alexa Top-100)	Existing 3LD .uk Domain	.uk domain directly registered ¹⁰ by same entity?	.uk resolves ¹¹ ?	.uk site has any content ¹² ?	Content identical to .co.uk site	Content substantially differed to .co.uk site	Did the Introduction of Direct .uk Domain Registration Add Any Value for .uk Internet Users?
8 (30)	Gov.uk	All Government websites were merged into gov.uk, which is a 2LD					No
9 (35)	tripadvisor.co.uk	Yes	Yes	No - blank	N/A	N/A	No
10 (37)	lloydsbank.co.uk	Yes	No	No	N/A	N/A	No
11 (39)	argos.co.uk	Yes	Yes	No – redirects to argos.co.uk site	Yes	No	No
12 (45)	hsbc.co.uk	Yes	No	No	N/A	N/A	No
13 (47)	national-lottery.co.uk	Yes	No	No	N/A	N/A	No
14 (50)	independent.co.uk	Yes	No	No	N/A	N/A	No
15 (51)	autotrader.co.uk	Yes	Yes	No – redirects to autotrader	Yes	No	No

Rank ⁹ (rank in Alexa Top-100)	Existing 3LD .uk Domain	.uk domain directly registered ¹⁰ by same entity?	.uk resolves ¹¹ ?	.uk site has any content ¹² ?	Content identical to .co.uk site	Content substantially differed to .co.uk site	Did the Introduction of Direct .uk Domain Registration Add Any Value for .uk Internet Users?
				r.co.uk			
16 (52)	santander.co.uk	Yes	Yes	Blank	No	Yes – Blank	No
17 (55)	mirror.co.uk	Yes	No	No	N/A	N/A	No
18 (56)	Indeed.co.uk	Yes	No	No	N/A	N/A	No
19 (57)	Halifax-online.co.uk	No	No	No	N/A	N/A	Undetermined
20 (59)	barclays.co.uk	Yes	No	No	N/A	N/A	No
21 (61)	zoopla.co.uk	Yes	Yes	No – redirects to zoopla.co.uk	Yes	No	No
22 (71)	Hellou.co.uk	No	No	No	N/A	N/A	Undetermined
23 (73)	Talktalk.co.uk	Yes	No	N/A	N/A	N/A	No

Rank⁹ (rank in Alexa Top- 100)	Existing 3LD .uk Domain	.uk domain directly registered¹⁰ by same entity?	.uk resolves¹¹?	.uk site has any content¹² ?	Content identical to .co.uk site	Content substantially differed to .co.uk site	Did the Introduction of Direct .uk Domain Registration Add Any Value for .uk Internet Users?
24 (77)	Nationwide.co.uk	Yes	Yes	No – registrar info only	N/A	N/A	No
25 (94)	Nhs.uk	Government website. ¹³					Possibly Yes
26 (99)	Aol.co.uk	No	No	N/A	N/A	N/A	Undetermined

¹³ This appears to not be in compliance with the www.gov.uk policy to bring all government websites within that gov.uk domain (see Row 8 above). See: <https://www.gov.uk/> which states “The websites of all government departments and many other agencies and public bodies have been merged into GOV.UK.”

Pilot Study Analysis of the Benefits of the Introduction of Direct .nz Domain Registrations for NZ Internet Users

Rank¹⁴ (rank in Alexa Top-100)	Existing 3LD .nz Domain	.nz domain directly registered¹⁵ by same entity?	.nz resolves¹⁶?	.nz site has any content¹⁷?	Content identical to .co.nz site	Content substantially differed to .co.nz site	Did the Introduction of Direct .nz Domain Registration Add Any Value for .nz Internet Users?
1 (1)	Google.co.nz	No - conflicted	No	N/A	N/A	N/A	No
2 (5)	Trademe.co.nz	Yes	No	No	N/A	N/A	No
3 (6)	Stuff.co.nz	No - conflicted	No	N/A	N/A	N/A	No
4 (7)	Nzherald.co.nz	No - conflicted	No	N/A	N/A	N/A	No
5 (12)	Anz.co.nz	No - conflicted	No	N/A	N/A	N/A	No
6 (15)	Westpac.co.nz	Yes	No	No	N/A	N/A	No
7 (16)	Asbbank.co.nz	Yes	No	No	N/A	N/A	No

¹⁴ Data sourced from: .nz domains within the 100 most popular domains visited by New Zealand Internet users listed on 25 May at <http://www.alexa.com/topsites/countries/NZ>

¹⁵ Data sourced from: <http://www.domainz.net.nz/whois.asp>

¹⁶ Data sourced from: <http://www.isup.me>

¹⁷ URL tested in both Mozilla Firefox and Internet Explorer

Rank ¹⁴ (rank in Alexa Top-100)	Existing 3LD .nz Domain	.nz domain directly registered ¹⁵ by same entity?	.nz resolves ¹⁶ ?	.nz site has any content ¹⁷ ?	Content identical to .co.nz site	Content substantially differed to .co.nz site	Did the Introduction of Direct .nz Domain Registration Add Any Value for .nz Internet Users?
8 (18)	Kiwibank.co.nz	No - conflicted	No	N/A	N/A	N/A	No
10 (23)	Asb.co.nz	Yes	No	N/A	N/A	N/A	No
11 (28)	Bnz.co.nz	Yes	No	N/A	N/A	N/A	No
12 (330)	Lrd.govt.nz	Yes	Yes: (govt.nz is a 2LD); No: Lrd.nz				No
13 (40)	School.nz	Yes	Yes (school.nz is a 2LD)				No
14 (41)	Seek.co.nz	No - conflicted	No	N/A	N/A	N/A	No
15 (48)	Airnewzealand.co.nz	Yes	No	N/A	N/A	N/A	No
16 (49)	Realestate.co.nz	No - conflicted	No	N/A	N/A	N/A	No
17 (53)	Thewarehouse.co.nz	Yes	Yes	Registrar Placeholder only	No	Yes	No

Rank ¹⁴ (rank in Alexa Top-100)	Existing 3LD .nz Domain	.nz domain directly registered ¹⁵ by same entity?	.nz resolves ¹⁶ ?	.nz site has any content ¹⁷ ?	Content identical to .co.nz site	Content substantially differed to .co.nz site	Did the Introduction of Direct .nz Domain Registration Add Any Value for .nz Internet Users?
18 (57)	Nzpost.co.nz	No - conflicted	No	N/A	N/A	N/A	No
19 (61)	Auckland.ac.nz	No - conflicted	No	N/A	N/A	N/A	No
20 (62)	Realenz.co.nz	No - conflicted	No	N/A	N/A	N/A	No
21 (64)	Spark.co.nz	Yes	Yes	Redirects to co.nz	Yes	No	No
22 (66)	Business.govt.nz	No	Yes: (govt.nz is a 2LD); No: business.nz				no
23 (68)	Tripadvisor.co.nz	No - conflicted	No	N/A	N/A	N/A	No
24 (72)	Mylotto.co.nz	No - conflicted	No	N/A	N/A	N/A	No
25 (73)	Vodafone.co.nz	No - conflicted	No	N/A	N/A	N/A	No
26 (75)	3news.co.nz	Yes	Yes	Redirects to .co.nz	Yes	No	No
27 (79)	1-day.co.nz	Yes	Yes	Redirects to .co.nz	Yes	No	No

Rank¹⁴ (rank in Alexa Top-100)	Existing 3LD .nz Domain	.nz domain directly registered¹⁵ by same entity?	.nz resolves¹⁶?	.nz site has any content¹⁷?	Content identical to .co.nz site	Content substantially differed to .co.nz site	Did the Introduction of Direct .nz Domain Registration Add Any Value for .nz Internet Users?
28 (83)	Geekzone.co.nz	Yes	Yes	Redirects to .co.nz	Yes	No	No
29 (84)	Mightyape.co.nz	No - conflicted	No	N/A	N/A	N/A	No
30 (96)	Pricespy.co.nz	Yes	Yes	Parked by Registrar	No	No	No
31 (98)	Pbtech.co.nz	Yes	Yes	Redirects to .co.nz	No	No	No
32 (100)	Nzta.govt.nz	No	Yes (govt.nz is a 2LD); No: nzta.nz				No