



**Internet Society of Australia
A Chapter of the Internet Society**

ABN 36 076 406 801

C/- Maddocks, Level 7

140 William Street, Melbourne VIC 3000

Accounts: P.O. Box 351, Glenorie NSW Australia 2157

1 August 2008

To: auDA Industry Competition Advisory Panel

Email: info@auda.org.au

ISOC-AU SUBMISSION: to auDA Industry Competition Advisory Panel

The Internet Society of Australia (ISOC-AU) is a non-profit society founded in 1996 which promotes the Internet development in Australia for the whole community. ISOC-AU is a chapter of the worldwide Internet Society and is a peak body organisation, representing the interests of Internet users in Australia. We have a longstanding and ongoing commitment to the effective representation of these interests in self-regulatory processes in the telecommunications, domain name and Internet-related services industries.

Our responses to the questions raised in the auDA Industry Competition Advisory Panel Issues Paper are as follows:

1. The Method of Registry Operator Selection/Appointment post 2010

Generally, ISOC-AU supports competitive markets in which the end users have genuine choice between service and/or product suppliers. However, it is highly questionable whether there can be said to be competition at the registry level in Australia. As the Issues Paper notes, the 'experience to date is that the incumbent operator [AusRegistry] has a clear infrastructure advantage'.

Over the eight years in which AusRegistry has held the Registry Licence Agreement with auDA, it has spent significant capital and developed the technical skills and ability to manage the open 2LDs. Given the size of the Australian market for open 2LDs, the significant start up costs for any potential competitor to AusRegistry, and the transition costs for the rest of industry switching to a new registry operator, it is difficult to envisage any competitor without existing advantages successfully challenging AusRegistry in an open tender process. In effect, there is now a natural monopoly in Australia for the registry operator.

As the Issues Paper points out, there are several overseas models for managing the registry function. For ISOC-AU, there is less concern with the actual model of Registry ownership and control than with the outcomes for Internet users including the cost to users for the registration of domain names and the security and reliability of the underlying registry processes that support the management of 2LDs.

The paper suggests two options on registry structure:

Option One: Abandon the competitive registry model and make auDA the registry

operator. A 'half-way house' model was included in the option whereby auDA would own the registry infrastructure but outsource operational management.

The Issues Paper identified significant issues raised by both parts of Option One including major change to the existing structures, and significant costs involved.

Option Two: Retain the competitive registry model and implement modifications to make the tender process more competitive and/or more cost effective.

Suggestions under this option include extending the current registry licence period and/or charging the incumbent an amount equal to the costs a competitor would incur in building a registry. If there is an extended licence period, it could be offered to the incumbent, subject to negotiation on pricing and other key terms. Alternatively, auDA could set registry prices and service levels in order to seek tenders accordingly.

The fundamental difficulty with all of the suggestions under Option Two is the aim of trying to create a competitive market at the registry level when competition at that level is probably not sustainable.

An alternative approach: At the beginning of the Issues Paper the statement is made that the current model is 'working well'. If that is the case, the question is what, if anything, needs to be changed, particularly since the options proposed will all involve significant cost.

Given the strong monopoly position of the incumbent AusRegistry, ISOC-AU believes that the issue is whether auDA (and, if necessary, regulators) have sufficient power to ensure continued AusRegistry best practice in terms of price security and service levels. Those issues can be dealt with in both the Registry Licence Agreement, and regular reviews of AusRegistry performance against agreed benchmarks and contractual agreements. If those benchmarks are not being met, auDA should be able call for tenders based on best practice price, security and service levels.

2. The Accreditation and Regulation of Registrars

A number of issues are raised by the Issues paper under this heading.

a) Registrar Accreditation

The only area of possible concern under this heading is that a foreign company may become an accredited registrar. There are clear disadvantages to this. The first is that foreign companies are not liable to pay GST. While this may be an advantage to users in the form of lower costs for domain names, it may give them an unfair advantage over Australian registrars. Another disadvantage is the level of customer service they may provide, given that the company may operate in different time zones. If, however, this results in lower costs for users, and the registrar is very clear to their customers about service levels offered, this should not be an issue. Because they are located outside of the Australian jurisdiction, however, they would not be subject to sanctions and legal constraints and compliance that can be imposed on Australian organisations.

b) Registrar Penalties

We note the range of penalties available to auDA for a registrar's breach of the Registrar Agreement – ranging from a simple warning to termination of the accreditation. In the interests of openness and transparency, ISOC-AU recommends that:

- **auDA develop guidelines covering the various circumstances in which it will take one or more of the actions open to it and make those guidelines publicly available**
- **auDA identify those breaches of the Registrar Agreement that are serious enough to warrant publication of the name of the registrar or reseller that has committed the breach.**

c) Other Registrar Activities

The important issue raised under this heading is the extent to which registrars should be allowed to warehouse domain names for their own monetisation purposes. When auDA reviewed the Domain Names Policy Framework, the ISOC-AU submission stated:

If there are changes made to the existing rules on transfer, their aim should be to ensure that the process is an open and transparent one under which anyone can easily find out what names are available, on what terms and conditions and at what price.

The ISOC-AU Position has not changed. Domain names are not, and should not be, considered as a tradeable commodity. Domain names are a public resource for the benefit of Internet users, providing an easily understood naming system to facilitate user access to Internet websites. Allowing the warehousing of names for monetisation purposes deprives users of access to names that become available.

The Issues Paper makes two suggestions to address this issue: either all deleted and expiring domain names are published so that users have access to those names, or domain names are quarantined for a period of time before becoming available to the general public. The difficulty with the first suggestion is that the names may be snapped by the industry as soon as a new list is published. The difficulty with the second proposal is determining the length of time a name should be quarantined, and how it is made available to the public after that time. A further difficulty would be in determining when a registrar can be said to be warehousing names for their own monetisation purposes.

In spite of the difficulties raised by this issue, ISOC-AU supports further exploration of ways to, as much as possible, ensure user access to deleted or expiring names. One suggestion could be a combination of the two options. All deleted or expired names must be publicly listed for a minimum time period before they are acquired by a registrar or reseller.

3. The Status and Ruling of Resellers

Under current arrangements, registrars are required, under the Registrar Agreement, to notify auDA when they appoint a reseller, and must ensure that their resellers comply with auDA policies and the industry Code of Practice. ISOC-AU is concerned with what appears to be registrar non-compliance with

those requirements.

The Issues paper suggests that auDA does not have a definitive list of resellers; it gave the number of resellers as 'approximately' 2,900 but 'feels that there are potentially many more' resellers than have been notified to auDA'.

The Issues Paper then lists the problems that arise as a result of what it calls the 'somewhat unofficial status of resellers' in the current industry structure. Resellers do not have a good understanding of auDA's role, the code of practice and auDA policies. As a result, they cannot accurately advise their customers, or ensure they are complying with the auDA Code or practice of policies. Further, the registrants do not know who to contact with a complaint, or if they do complain to the registrar (as they should) solving a complaint about a reseller via the registrar can be complicated and time consuming.

The Issues Paper suggests a voluntary resellers program under which resellers could choose to receive benefits in return for being subject to direct regulation by auDA for complaints handling and general regulatory compliance. The issue, however appears to be simple non-compliance by registrars of their obligations under the Registrar Agreement. If registrars do not now comply with what they are required to do, a voluntary scheme would not have high prospects of success.

Instead, ISOC-AU suggests that auDA initiate a program for both registrars and their resellers. Since 2003, registrars have not had to pay a fee for notifying auDA about their resellers. Therefore, cost is no longer a barrier to registrars notifying auDA of every reseller they have appointed. auDA should, therefore, take whatever measures necessary to ensure they are notified of each reseller appointed by a registrar. auDA should also consider developing an education program for resellers on their obligations under the industry code of practice and auda policies, including the information they should provide to their customers on complaint handling.

Yours sincerely

Holly Raiche
Executive Director
Internet Society of Australia
Email: ed@isoc-au.org.au
Mob: 0412 688 544