

## **PROPOSED CHANGES TO THE REGULATION OF REGISTRAR-APPOINTED RESELLERS**

**October 2003**

### **Purpose**

The purpose of this paper is to seek public comment on auDA's proposed changes to the regulation of domain name resellers that are appointed by auDA accredited registrars.

This paper has been developed with the assistance of an ad hoc advisory committee comprising registrar and reseller representatives.

### **What is a reseller?**

auDA defines a reseller as a person or company appointed by an accredited registrar to provide domain name services to registrants on behalf of the registrar. auDA does not vet or approve reseller appointments, but is merely notified when an appointment has been made.

Resellers buy domain names and manage domain name records for their customers through an interface with their registrar. Resellers do not have any direct dealings with the registry.

At present there are approximately 725 registrar-appointed resellers. There are other companies that sell .au domain names but do not have a formal agreement with an accredited registrar; these companies are not generally regarded as resellers under auDA's regulatory regime.

### **Regulation of resellers - current situation**

The industry structure introduced by auDA on 1 July 2002 was based on the recommendations of the Competition Model Advisory Panel. The Panel recommended that auDA should not have a role in regulating behaviour at the reseller level, and registrars should be responsible for managing the behaviour of their resellers.

Under auDA's Registrar Agreement, accredited registrars:

- are required to notify auDA when they appoint a reseller;
- must pay a Reseller Notification Fee to auDA - \$250 for a new reseller and \$25 for a reseller that has already been notified to auDA by another registrar;
- must ensure that their reseller licence agreements require the reseller to comply with auDA published policies (including the .au Domain Name Suppliers' Code of Practice);
- must ensure that their resellers identify the registrar in their customer terms and conditions and on their websites; and
- are responsible for all acts and omissions of their resellers in respect of services provided under the reseller licence agreement.

auDA has minimal contact with resellers. auDA maintains a public reseller search tool which enables people to look up the name of a reseller and the registrar(s) they use (<http://www.auda.org.au/registrars/reseller-search.html>). auDA also handles consumer complaints about resellers; depending on the nature of the complaint, auDA sometimes deals

directly with the reseller but in most cases the complaint is referred to the responsible registrar for resolution.

### **Problems with the current situation**

Industry feedback and auDA's own experiences suggest that many resellers:

- may not be compliant with auDA policies and the Code of Practice;
- have little understanding of auDA policies or the regulatory regime in general, and consequently are not able to provide accurate information to their customers; and
- do not have any dealings with auDA and feel that their role within the industry is not properly recognised or taken into account.

auDA has also identified other problems:

- it is arguable whether registrars should be held liable for resellers who should not really be regarded as resellers (eg. "bulk buyers" - companies who sign up as a reseller to access a discounted rate for their own multiple registrations);
- collection of the Reseller Notification Fee places an administrative burden on auDA and registrars, and acts as a deterrent to notifying auDA of reseller appointments;
- auDA and registrars do not have the resources to actively monitor the conduct of over 700 appointed resellers; and
- the lack of a direct line of communication with resellers limits auDA's ability to conduct targeted awareness-raising or education campaigns.

### **Proposed changes to the regulation of resellers**

auDA proposes to implement the following changes to the regulation of registrar-appointed resellers.

#### **1. Remove the Reseller Notification Fee.**

auDA believes that the publication of the names of appointed resellers (via the reseller search tool) is an important consumer safeguard, because it enables registrants to identify a registrar/reseller relationship in case of complaint. Notification of resellers is also a useful way of identifying participants in the Australian domain name market and measuring industry growth.

Accordingly, registrars would still be required to notify auDA when they appoint a reseller. However, there would no longer be a fee associated with the notification of resellers. Removing the fee would ease the administrative burden on auDA and registrars. It would also help to negate any uncertainty about whether or not a person or company is a reseller; if there is no financial consequence, then registrars should not be deterred from notifying auDA of their reseller appointments.

#### **2. Redraft clause 15.3 of the Registrar Agreement.**

The current wording of clause 15.3 is: "The Registrar is responsible for all acts and omissions of its Reseller in respect of services provided under the Reseller Licence Agreement, as if they were the acts and omissions of the Registrar under this document."

auDA proposes the following wording: "auDA is entitled to regard all the acts and omissions of a Reseller in respect of services provided by the Reseller under the Reseller Licence Agreement, as if they were the acts and omissions of the Registrar under this document."

The effect of this change would be to remove the strict liability of registrars for their resellers, and instead give auDA the discretion to hold a registrar responsible for its reseller on a case-by-case basis. auDA's exercise of this discretion would be subject to clause 19.1 of the Registrar

Agreement, which states that auDA must act in good faith, fairly and equitably towards the registrar.

3. Conduct reseller website audits.

auDA currently conducts annual website audits of accredited registrars, to ensure continued compliance with auDA policies and the Code of Practice. auDA proposes to extend the audit program to include resellers.

auDA does not have the resources to conduct website audits of all resellers, but would instead focus on resellers with high market impact. Registrars would be required to notify auDA of their "top" resellers on a regular basis, based on volume of domains under management, number of consumer complaints/queries received and any significant advertising or marketing activity. auDA would liaise directly with each registrar to determine an appropriate number of resellers to be identified for audit purposes.

The Code of Practice provides for an "auDA compliance mark" to be issued to industry participants who comply with the Code. By conducting reseller website audits, auDA hopes to gauge the readiness of industry participants to start using such a compliance mark. auDA does not consider it appropriate to issue a compliance mark until we can be reasonably sure that it will have real meaning in the marketplace.

4. Establish a reseller mail list for direct communication between auDA and resellers.

All appointed resellers would be asked to supply a contact email address for subscription to an auDA reseller mail list. auDA would use the list to send media releases, consumer alerts and other important announcements directly to all resellers.

## **Conclusion**

auDA recognises that the regulation of registrar-appointed resellers could be more effective. auDA believes that the proposed changes outlined in this paper will:

- address registrars' concerns about the regulatory consequences of appointing resellers;
- improve resellers' understanding of, and compliance with, auDA policies and the Code of Practice;
- encourage greater participation by resellers within the industry self-regulatory regime; and
- lead to better service outcomes for registrants.