



16 January 2007

Mr Brenton Thomas
General Manager, Network Operations and Spectrum
Department of Communications, IT and the Arts

Dear Brenton

Thank you for the opportunity to provide auDA's comments on public submissions to the DCITA review of the structure and operation of the .au domain.

We are pleased to note that the majority of submissions are supportive of the self-regulatory model and auDA's role within it.

A notable exception is the submission from the Domain Industry Association (DIA) which contains a number of critical comments purportedly made on behalf of 15 accredited registrars. We note that two of those registrars (Melbourne IT and NetRegistry) have sent their own submissions which are at odds with the DIA submission on a number of points. We also understand that at least two other registrars named in the DIA submission have contacted DCITA to disassociate themselves from the submission. It is therefore quite difficult to ascertain the industry's collective position (if indeed it has one) on some of the issues raised in the review.

Several submissions contain useful suggestions for improvement, in relation to both the self-regulatory model and auDA's operations. Many of the suggestions are directly relevant to activities that have already been scheduled for the 2007 calendar year. The key activities are:

- auDA five year strategic plan (due to be considered by the auDA board in February)
- 2007 Names Policy Panel (due to commence in March)
- Industry competition and structure review (due to commence at the conclusion of the Names Panel, to take account of that Panel's outcomes)
- auDRP review (due to commence in first half 2007).

Given that the 2007 Names Policy Panel is due to commence within the next two months, we do not consider it appropriate to respond to comments that fall within its terms of reference, ie. changes to naming structures, domain name eligibility and allocation, and secondary markets (sections 4, 6.5 and 6.6 of the DCITA discussion paper).

Nor have we responded to comments about our internal operational processes, such as the timeframes for policy reviews and awareness-raising priorities, which we intend to address as part of our five year strategic planning process.

We have focused our response on providing correction or clarification of some of the points made in submissions, particularly where we have already taken action to address the issue.

Please let me know if you would like us to comment on any other issues raised in the submissions.

Yours sincerely

A handwritten signature in black ink, reading "Chris Disspain". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Chris Disspain
CEO – auDA



auDA COMMENTS ON SUBMISSIONS TO DCITA REVIEW
January 2007

auDA board

"The board structure to be changed to ensure a more balanced approach is taken with the classic board additions of marketers and those with financial expertise" (Brendan Lewis, p.1)

The skills and expertise of elected directors is a matter for auDA members to decide through the annual board nomination and election process. The appointment of independent directors provides an opportunity to bring particular skill-sets onto the board, as demonstrated by the impending appointment of Retired Air Vice-Marshal Julie Hammer who has a strong background in IT security.

Whilst marketers may be a "classic board addition" in the case of private commercial companies, it is not viewed as a priority for the auDA board because auDA is not engaged in commercial marketing activities.

Several auDA directors have financial expertise, and the board has access to professional financial advice through auDA's accountant John Higgins of Hayes Knight who attends every board meeting.

"Melbourne IT would like to see an increase in the number of independent directors, which could be appointed by the Government for their breadth and depth of experience" (Melbourne IT, p.3)

The recent constitutional amendments increased the maximum number of independent directors from two to three.

By virtue of its observer status on the board, the Government has been involved in the appointment of independent directors. Senator Alston's office (through NOIE) supplied a list of suggested candidates for the auDA board to consider when first making independent director appointments in 2000 (resulting in the appointment of Tony Staley and Greg Crew).

"[T]he auDA Board should review its governance policies with respect to the declaration of conflicts of interest for key votes (eg. on changes to policies that facilitate domain name monetisation, or that relax the eligibility rules for registrations) by industry participants (Melbourne IT, p.3)

The board observes a policy of continuous disclosure. All directors are invited to declare any relevant interests or conflicts of interest at the commencement of each board meeting, and in relation to specific agenda items where necessary. Such declarations are recorded in board minutes.

"auDA's board structure gives no direct representation to business – and in particular small business." (NetRegistry, p.3)

"Increased representation on auDA's board by representatives of Australian Internet end users, separate from the current "Demand" class, which is currently more closely connected to business interests." (John Selby, p.25)

The demand class of membership is open to anyone, including large and small business (see NetRegistry's comment) and general Internet users (see John

Selby's comment). Obviously, the composition of the demand class is subject to change depending on the type of people and organisations who become demand class members.

auDA staffing

"One suggestion with respects to auDA's operational structure would be to employ a technical expert who could advise on technical issues and relate matters to the Registry Operator." (AusRegistry, p.3)

auDA employs outsourced technical experts; Leni Mayo of Moniker for auDA's internal IT facilities, and David Keegel of Cybersource for AUNIC and .au operations. In addition, auDA's Technical Administrative Officer is undertaking training to obtain relevant technical qualifications in DNS management.

auDA budget and pricing

"... it appears that there is extreme member lethargy when it comes to fiscal responsibility. Many expense items on the 2005/2006 financial reports seems to be running at non-commercial levels. There appears to be no concern/discussion of this at a member level prior to the 2006 AGM." (Brendan Lewis, p.2)

auDA's audited accounts are published in the AGM notice and members are free to raise concerns or questions with auDA staff or directors before or during the AGM (or even afterwards, as audited accounts are archived on the website).

"Once sufficient reserves are available for downstream developments, auDA pricing should be reviewed." (Brendan Lewis, p.3)

The auDA board reviews auDA's domain name fee at least once annually, as part of the budget process in May/June, and at other times when appropriate (for example, after one-off revenue-raising activities like the generic names auction). The board has operated on the principle that auDA's fee be reduced, subject to maintaining a 12 months operating surplus. We have reduced our fee three times since 1 July 2002.

"Any surplus revenue should be returned to the industry at the end of the financial year, or used to invest in improving the underlying .au DNS infrastructure. auDA should be investing in strengthening the .au DNS infrastructure against distributed denial of service attacks (DDoS)." (Melbourne IT, p.3)

auDA's investment in .au DNS infrastructure is budgeted at \$405,000 for the 2006/07 financial year.

"It may be useful to apply some of the funds generated by domain name auctions towards building a legal fund which could be used by auDA solely to protect the interests of domain name consumers." (John Selby, p.18)

auDA did use some of the proceeds of the generic names auction for a legal contingency fund which has been used for consumer protection purposes, most notably our trade practices action against Domain Names Australia and Chesley Rafferty in 2003-04. Note that the generic domain name auction was a one-off revenue-raising activity which auDA does not intend to repeat in future.

auDA policy development and enforcement

"... it would be useful to make provision in the policies and procedures to enable a registrar or reseller to deregister a domain in response to a request from an authoritative and independent third party with experience in malware detection and analysis." (AusCERT, p.2)

Registrars are rightly concerned about their potential liability in cases where they delete a domain name without the consent of their customer. auDA's preferred approach is for law enforcement agencies to deal with us directly about possible criminal activity, and if necessary we will instruct the registrar to delete the domain name. We have already entered into formal arrangements with some federal and state agencies regarding the disclosure of registry data.

"There have been some cases when operational changes or new policies have been implemented without advance notice to the general public, with no ability for public participation in the policy's formulation other than through indirect means such as lobbying auDA directors." (Kim Davies, p.6)

All policy changes are subject to public comment at some stage in the development/review cycle. In some cases there may be a delay between the public policy review and the implementation of resulting changes, due to the need for technical or operational change at the registry. A recent example is the changes to WHOIS, which were publicly canvassed in August 2005 but not implemented until November 2006 due to the intervening registry tender process and transition to new registry licence. In addition, auDA is required under the Registrar Agreement to give registrars at least 30 days notice of any policy change.

"It is likely appropriate for auDA to take a more proactive role in ensuring eligibility criteria is adhered to. Random audits of eligibility might help first identify the scope of the problem, and also help remedy faulty registrations." (Kim Davies, p.7)

auDA already conducts regular audits of domain registrations, sometimes at random but more often targeted at a particular registrant or pattern of registrations which come to our attention. For some policies, we maintain an active "watch list" at the registry (for example, prohibited misspellings).

"Panels are usually convened with a consensus vote being some super majority; thereby ensuring the few industry members granted access have never been able to make meaningful change to policy. The structure effectively grants veto to career activists." (DIA, p.5)

Panel operations, including voting arrangements, are determined by the Panel itself. Past Panels have chosen to operate by consensus and use formal vote as a last resort. In cases where a Panel has been unable to reach consensus it has reported that fact to the board; in one instance a minority report was provided to the board along with the main Panel report.

"There appears to be no policy emphasis around the .au brand and the benefits it can bring to Australian organisations ... there is little focus on developing more effective preventative policies or a vigorous policing agenda because concepts such as brand equity are foreign to the main constituent groups of auDA." (Brendan Lewis, p.2)

auDA's role is to administer the .au domain on behalf of the Australian Internet community; whilst it is part of auDA's role to educate the community, it is not our

role to market or sell the “.au brand”. However, several participants in auDA's Panels and committees have brought a sales and marketing perspective to .au policy development, and it is a strong and consistent theme in policy input from one of auDA's main constituent groups, the registrars (see for example, comments on p.8 of NetRegistry's submission).

“... auDA Board could consider imposing a requirement on panel members and stakeholders to consult with members of the Internet community where it is identified that personal information is being collected.” (Office of the Privacy Commissioner, p.2)

auDA and its Panels and committees have endeavoured to take privacy issues into consideration where appropriate, for example in the .au Domain Name Suppliers' Code of Practice. We held direct consultations with OPC staff during the formulation of the first WHOIS Policy in 2002.

“... greater transparency, procedural fairness, accountability and an appeals process would improve the decisions made by auDA's policy development committees ...” (John Selby, p.16)

auDA's policy development Panels and committees do not make decisions, their role is to provide recommendations to the auDA board. Moreover, Panels and committees focus their deliberations on general policy issues, they do not consider individual cases or complaints. As such, an “appeals process” would appear to be unnecessary. Transparency and accountability of Panels and committees is provided through publication on the website of all minutes, papers, reports and public submissions.

auDA Foundation and auCD

“... the process by which [the auDA Foundation and auCD] were selected and incorporated could possibly have been made more obvious and apparent to industry members and the general public.” (AusRegistry, p.3)

The decisions to establish the auDA Foundation and auCD were made at board level. The industry, through its supply class representatives on the board, had the opportunity to provide input into those decision-making processes. auDA published the draft charter for the auDA Foundation on the website 12 months prior to it being incorporated and endowed. In the case of auCD, the board's decision was based on the recommendation of the National Reference Group, which included an industry representative and whose deliberations were published on the website.

“There was no significant public or industry consultation during the process of creating aucd ...” (DIA, p.8)

“The entire discussion [about CGDNs] was biased by calling the agenda “Community Geographic Domain Names” ... [other] uses were never discussed, and there appears to be no government policy input, to the detriment of Australia.” (Brendan Lewis, p.2)

As is well-documented on our website, the proposal to create geographic 2LDs for community use was first submitted to auDA in 2000. auDA conducted lengthy and extensive consultations for more than five years, before finally releasing the CGDNs in August 2006. All levels of Australian government were involved in formulating policy for CGDNs. The NSW Government sponsored a 12 month pilot project. DCITA is an observer on the auCD board. Alternative uses were not

discussed, because the whole point of the initial proposal was that the geographic domain names would be reserved for community use.

Stakeholder involvement

"... auda should actively seek input from business representative groups, such as chambers of commerce, which it has never done." (DIA, p.5)

auDA has made regular attempts over the past 5 years to engage with business representative groups. ACCI and SETEL were members of the first Name Policy Advisory Panel and the Competition Model Advisory Panel.

"Consumer groups are frequently based on volunteer labour or operating at extreme budget limitations so facilitation of both travel or connectivity to be involved in processes would need to be considered as a prime enabling factor." (ISOC-AU, p.7)

auDA has always provided dial-in teleconference facilities for remote participation in Panels and committees. We are offering direct financial assistance (at our discretion) to members of the upcoming 2007 Names Policy Panel.

"[auDA] should be working with the many operators of DNS Nameservers (which include Government departments, corporations and many Internet Service Providers) to improve the configuration of their DNS Nameservers, and increase their resilience against attack." (Melbourne IT, p.3)

auDA is working with stakeholders to improve DNS security, for example we produced a report on gov.au security for AGIMO in 2004-05. For obvious reasons, auDA does not publicly discuss its work on DNS security issues, but DCITA would be aware that we are in contact with relevant federal government agencies.

Industry structure and competition

"AusCERT recommends that 1) resellers with termination authority for a domain are listed in WHOIS data; and 2) registrars should have more control over and accountability for the policies of resellers." (AusCERT, p.3)

Resellers do not have "termination authority" for a .au domain name. Only a registrar has the technical authority and ability to delete a domain name in the registry database (although the initial request to delete a domain name may come from or via a reseller). It is for this reason that WHOIS lists the registrar of record for a domain name; so that the registrant knows who has ultimate authority to manage their domain name, even if they purchased it from a reseller.

auDA's Registrar Agreement makes the registrar responsible for all acts and omissions of its resellers. This allows auDA to instruct the registrar to modify or delete a domain name without reference to the reseller. We have taken this action several times, most often in cases where the reseller has incorrectly put their own details in the domain name record in place of their customer, or where the reseller has transferred the domain name to another registrar without the customer's consent.

"... the ACCC has received complaints regarding 'domain name facilitators' that appear to operate outside the domain operator/registry/registrar/reseller model. Such facilitators may not be bound by the same policies, codes of practice and contractual arrangements applicable to traders that do. Moreover, it should be noted that the registry function has monopoly characteristics that may result in

sub-optimal industry outcomes. These may be aspects of the industry that require further consideration.” (ACCC, p.2)

We note that the ACCC was an active member of the Competition Model Advisory Panel which recommended the current industry structure.

We have always acknowledged the existence of ‘facilitators’ who operate outside the model. Because auDA’s regulatory power is contract-based, we do not have jurisdiction over operators who will not enter into a contract with us. This is an inherent feature of the self-regulatory model; the extent to which it is also a flaw is dependent on the behaviour of those who operate outside the model. To date, we do not believe there has been a serious problem, with the notable exception of Domain Names Australia and Chesley Rafferty which we addressed via other means.

The registry function is a natural monopoly, because of the technical requirement that there can be only one authoritative database of domain names. auDA has sought to minimise the impact on industry competition by ensuring that the registry technical specification adheres to the narrowest possible definition of registry services.

“... competition could be further increased by giving consideration to allowing the major global registrars to register in .au.” (CSIRO, p.3)

auDA’s registrar accreditation criteria and process do not preclude overseas registrars from applying. Namescout Corporation, a major global registrar based in Canada, has been an auDA accredited registrar since 1 July 2002, and a UK-based registrar currently holds provisional accreditation. We regularly receive expressions of interest from overseas registrars, however they often find that the unique policy requirements of .au make it difficult and uneconomic for them to proceed.

“... auda mandates the verification of abn information through abr and ASIC. To date, despite 4 years of registrars asking for direct access to ASIC, auda has failed to deliver.” (DIA, p.11)

Granting registrars direct access to the ASIC database is within the control of ASIC, not auDA. We have held discussions with ASIC on this issue, but the purpose for which registrars want direct access does not fall within any of the business purposes allowed by ASIC. We are currently exploring an alternative approach with the Australian Business Register. We have advised registrars of this on several occasions.

“There have been significant [security and stability] issues that have been inadequately addressed resulting in massive disruption to Registrar operations.” (NetRegistry, p.7)

auDA does not accept that there have been “significant security and stability issues that have been inadequately addressed”, and in any event AusRegistry must report all registry outages and other degradation of service incidents to auDA and registrars under the terms of the Registry Licence Agreement and Registry-Registrar Agreement. AusRegistry is also required to investigate each outage or incident and take necessary follow-up action to prevent or minimise repeat occurrences. It should be noted that a number of outages/incidents during 2006 were caused by registrar activity.

“The Registry tender process which was widely seen as rigged ...” (NetRegistry, p.10)

auDA strongly refutes any suggestion that the 2005 registry tender process was “rigged”. The tender process was scrutinised by probity advisers from Maddocks, and we can provide a copy of their report if required.

“The winning [registry] tenderer has only 20 customers and the transactional relationship is fully automated.” (NetRegistry, p.10)

There are currently 25 fully accredited and two provisionally accredited registrars. Registrars do not have a “fully automated” relationship with the registry, as there are some functions that must be performed manually in order to meet policy requirements.

“A reseller or agent for a number of domain name owners is not free to select a supplier. In doing so, the names he administers can only be moved to a new supplier with the explicit consent of each and every customer for each and every name.” (NetRegistry, p.11)

Resellers and agents are in fact “free to select a supplier”. The Transfers (Change of Registrar of Record) Policy (2003-03) requires to reseller to obtain the consent of their customer before transferring the domain name to another registrar.

auDA goals and activities

“auDA’s specific focus must remain as the coordinator of Australia’s sovereign domain systems such as .au, and possibly closely related services such as “1.6.e164.arpa” (the ENUM domain for Australia), or the top-level domains of Australian dependencies should they not have a better alternative.” (Kim Davies, p.3)

“Melbourne IT recommends that auDA should re-focus on its core mission of being the administrator of, and the Australian self-regulatory policy body for, the .au ccTLD and its associated Second Level Domains.” (Melbourne IT, p.4)

“TEDICORE recommends that auDA develop a policy together with AusRegistry to promote, raise awareness and positively encourage website accessibility.” (TEDICORE, p.2)

These comments (and similar comments made in other submissions) illustrate the challenge faced by auDA in balancing the expectations of stakeholders about our role and the scope of our responsibilities. On the one hand, there is a view that auDA should focus only on the “core mission” of administering the .au domain – although some believe that this may also encompass certain non-.au but “closely related” services. On the other hand, some stakeholders want auDA to be involved in broader non-DNS activities that benefit the wider Australian Internet community.

Errors of historical fact

We note that the submission from John Selby of Macquarie University is largely supportive of auDA and the self-regulatory model, however we feel that we should point out a number of factual errors he has made about auDA and the history of the .au domain.

“After feedback from Internet users, Elz eventually relaxed these policies, permitting registration of a domain name on the basis of a trade mark ... The requirement that an applicant holds either a registered trade mark or a registered

business name/company name identical or closely connected to the domain name they were seeking to register was retained by auDA" (John Selby, p.3)

Robert Elz did not permit registration of a domain name on the basis of a trade mark, nor did he allow registration of a "closely connected" domain name. auDA introduced these policy rules on 1 July 2002.

	2000-1	2005-6
auDA Staff (FTE)	4	5
(John Selby, p.6)		

auDA had only two staff in 2000-1, and four staff in 2005-6. auDA currently has five staff.

"... the generic name and geographic domain name auctions undertaken by auDA ..." (John Selby, p.7)

auDA conducted a ballot for geographic domain names, not an auction.

"The removal of Melbourne IT's monopoly on the marketing and licensing of the registration of .au domain names by auDA ..." (John Selby, p.17)

Melbourne IT's monopoly was over the licensing of com.au domain names only.

"[auDA's] fee has reduced from \$15 per domain name in 2002 to its current price ..." (John Selby, p.18)

auDA's domain name fee in 2002 was \$10 (ex GST).

