

New Names Advisory Panel Interim Report to the auDA Board, October 2002

1. PURPOSE

The purpose of this interim report is to:

1. Seek the auDA Board's endorsement of the New Name Advisory Panel's understanding of the selection criteria and process to be used in evaluating proposals for new 2LDs; and
2. Provide recommendations to the Board in relation to the creation of new geographic 2LDs.

2. SELECTION CRITERIA AND PROCESS FOR NEW 2LD PROPOSALS

Introduction

The Panel sought approval of the Board, at its August meeting, to issue discussion papers to clarify certain matters which had arisen in considering proposed new 2LDs. The Panel did not seek to change the four selection criteria determined by the Board. The major paper raised a number of issues which the Panel felt needed to be discussed in some detail before proceeding further in its consideration of proposed new 2LDs.

The Panel felt that it could not fulfil its Terms of Reference responsibly without considering these related issues.

This approach was endorsed by the Board, and subsequently further endorsed in a letter to the CEO of the Australian Vice-Chancellors' Committee (AVCC), in response to his letter. The Board noted that following its public consultation "the Panel may ask the Board to clarify or amplify (not change) some of the selection criteria for new 2LDs." This interim report does that.

The discussion paper raised six issues:

1. Preservation of integrity and usability of the .au domain space
2. DNS hierarchy issues
3. Purpose of the DNS
4. Precedent-setting
5. Commercial advantage considerations
6. User demand

Responses to the discussion paper fell into several categories:

- (a) Reiteration of previous submissions, sometimes with a significant amount of new argument and evidence, although not always addressing the questions raised in the discussion paper.
- (b) Simple assertions of support for one of the proposed new 2LDs – geographic, university, or catholic.
- (c) Comments on the issues raised in the discussion paper.

Discussion of issues

The Panel has reached the following conclusions in relation to the issues raised in the discussion paper.

Preservation of integrity and usability of the .au domain space

- Diversity. The Panel concludes that a considerable amount of diversity can be accommodated in the DNS without compromising its integrity and usability. There is no reason to limit the number of 2LDs to the current number – fewer – or to just a small increase. That said, diversity encompasses both quantity and quality, and there is a consensus on the Panel that new 2LDs that merely duplicate existing 2LDs should be avoided. There may be a desired ceiling, and we should aim for dozens of 2LDs at this stage, not hundreds or thousands. If we permit diversity, however, then sustainability becomes a key issue.
- Usability. The Panel is dubious about the idea that the present 2LD structure is intrinsically usable, intuitive or guessable. These concepts are not very objective, and the main means by which people appreciate their use is to learn what they mean, rather than to guess what they mean – people familiar with the current 2LD structure have learned it, and are likely to have developed an unrealistic view of its inherent guessability. However, users of the existing DNS do currently benefit from the guessability and memorability of domain name extensions such as com.au and .com; the new gTLD process has shown that it takes a long time (more than a year) for users to learn new extensions such as .info and .biz. A conclusion is that the number of 2LDs could be expanded without having a negative impact on usability. The Panel agrees with the assertion by the AVCC in its second submission that market forces might define the optimum number of 2LDs.
- Actual names. In terms of actual names used, the Panel has a strong preference for consistency in naming, the use of simple nouns or 3-4 letter abbreviations of them, and a preference for generic terms (such as the existing 2LDs - eg. "org", "com") rather than more specific terms.

DNS hierarchy issues

- Hierarchy. The Panel concludes that a hierarchy of names does not exist now, and can not be effectively created. The current 2LDs are not the same kind of thing as each other and overlap substantially; many entities could legitimately have domain names in most of them simultaneously. The AVCC, in its second submission, has made the valid statement that the DNS "should not be viewed as a static structure but a dynamic system that is capable of change in order to meet the needs of users."
- Simplicity. The Panel suggested in its discussion paper that the simpler the structure, the more likely it is to be understood. This is axiomatically the case, but does not mean that a more diverse and complex 2LD structure could not be justified by its benefits. There is perhaps a tendency to underestimate the ability of users to adapt to change, although there is also a tendency to underestimate how long it takes to adapt to change. Users will adapt to change quickly if there is a compelling advantage to them to do so (compare the introduction in Australia of the mobile phone with pay TV).
- Conservation or rationing of names. There is a related principle of parsimony, which suggests that domain names are a scarce resource. This approach has been determined as invalid by the first Name Panel and the auDA Board, with the abolition of the 'one domain name per entity' rule. There is no reason why entities should not have a number of domain names. This fact also undermines the idea that there can be a hierarchy of names. The proposal by, for example, the AVCC that universities would have several domain names (in edu.au, uni.au) is reasonable and accords with the current practice of many registrants in all domains.

Purpose of the DNS.

- "Appropriate" purposes. It is not possible to say that some purposes of 2LDs are appropriate, and others are not. The reality is that domain names are used for a variety of purposes, and that decisions on this are the sphere of users of domain names. In practice, domain names have as much significance (or more) in relation to identity, branding, and marketing as they do for purposes of locating an entity. The purpose of the DNS is also a market issue – demand for new 2LDs is itself evidence of purpose.
- Online identity and branding. The Panel notes that holding a 2LD (eg. myorganisation.au) amongst a limited number of other 2LDs provides some natural market advantages over holding a 3LD amongst hundreds of thousands of other 3LDs (eg. myorganisation.com.au). Thus the online identity or branding of a particular organisation can be enhanced by it being allowed to hold a 2LD while others are restricted to holding a 3LD. There are alternatives to the use of domain names in improving online identity and branding, however, the Panel believes that a new 2LD is a valid consideration for a community of interest seeking to promote itself or enhance its find-ability on the Internet, as discussed by the Australian Retail Association in its second submission.

Precedent-setting

- Precedents. The Panel believes that it is important to bear in mind that the creation of a new 2LD is likely to set a precedent for similar types of 2LDs. The creation of a 2LD for a specific organisation will imply that this is a legitimate action, and will lead to other organisations requesting names to be created for them. In our view, some precedents are likely to have implications related to perceived or legal fairness and equity. It is essential to note that the Panel does not object to new 2LDs that set precedents, provided that the creation of the initial 2LD is a legitimate one, and the subsequent 2LDs meet the stated selection criteria and that they are sustainable.
- Future demand. As the comments on behalf of the Australian Catholic Bishops' Conference suggest, the creation of a precedent does not automatically mean that there will be a flow on in demand. A potential precedent may remain an isolated case for a long time, although if an organisation that is granted a 2LD is able to obtain significant marketing/branding advantages over other similar organisations that hold a 3LD, there will likely be demand from the 3LD registrants to be granted their own 2LD.

Commercial advantage considerations

- Open versus closed. The Board has a clear preference for open 2LDs over closed 2LDs, for a range of reasons. In the Board's Call for Proposals, people were asked to set out the reasons for proposing that a new 2LD be closed. The Panel set out the main difference between open and closed as being the control of policy, but there are other differences, and in fact the two categories form a continuum. In most of the proposals, a closed 2LD is regarded as akin to proprietary right of the sponsoring organisation.
- Why closed? Closed 2LDs need a higher justification than open. auDA has a clear responsibility to manage the .au domain in the public interest, and the Panel's opinion is that this could be undermined (or at least made more complicated) if the number of closed 2LDs outweighs the number of open 2LDs.
- Competition. The Panel believes that most 2LDs should be open, even if in reality the tender process leads to a peak organisation winning management of the 2LD. There is also an issue of whether the 2LD can be supported by a competitive market of

registrars using objective policy guidelines, compared to using a single registrar that can set its own price and whose policy compliance checks may be overly subjective.

- Single organisations. In conducting its review of domain name policies in 2000-2001, auDA explicitly rejected the proposal to open up .au to 2LD registrations, and instead re-affirmed the 2LD hierarchy. It is widely accepted that 2LDs are for categories of entities, not for single entities – with the sole (and grandfathered) example of CSIRO. Therefore, the Panel believes that no 2LD should be created for a specific organisation.

User demand

- Demand. Demand can be measured not just by the number of registrants that would register a domain name within the new 2LD, but also in terms of the Internet users that are likely to use the resultant domain names, which in turn can drive the demand of registrants to register names. Experience with the new gTLDs has shown that just creating the new domain does not on its own generate user demand.
- Sustainability. The Panel reached the conclusion that the level of demand is related to sustainability. Sustainability is a core concern for auDA, since the creation of a new 2LD involves a cost, and the drift of a 2LD into a non-sustainable state involves both direct costs, and costs to the credibility of the system as a whole. Currently, 85% of registrations take place in com.au, and the Panel believes that it is likely that this pattern will substantially continue, regardless of the creation of new 2LDs. It is therefore important that creation of new 2LDs address clearly articulated needs and be sustainable.
- Costs and risks. Several comments have indicated that the costs and risk will be borne by the sponsoring organisation. In fact, the costs and risk will be borne in part by auDA, and spread over the full range of industry players. The Panel notes that sustainability is not about the ability of powerful entities to act as "guarantor" for the 2LD, but relates to proven demand and support for a 2LD, and willingness to use and pay for it, from a diverse community in many or most cases.

Impact on the selection criteria

The selection criteria set by the Board are:

1. The 2LD must be robust, sustainable and viable. For example, in the case of closed 2LDs there should be a clear, long-term commitment from the body which it is proposed would manage the 2LD.
2. The 2LD should serve the needs of users, or a community of users, that are not well served by the existing 2LDs. For example, a proposal should define the user group and indicate clearly why its needs are not as well served at present as they would be with the proposed 2LD.
3. There must be clear support for the 2LD, in particular among the users it is intended to serve, and in general terms from the wider community. Strong evidence of this support should be provided (eg. letters of support, the resolution of a governing body, or survey evidence). There should be clear evidence that user community support is broadly representative of that community. Reasonable objections to the creation of the 2LD from the wider community will be taken into account by the Panel during its public consultation.
4. The 2LD should widen the choice of domain names available to users of the Australian DNS. For example, a proposed 2LD that simply duplicates an existing 2LD will generally not be considered to widen the choice of available domain names.

In the Panel's view, it is implicit that in addition to meeting the selection criteria, proposals for new 2LDs must be consistent with the other policies of auDA, and with the matters referred to in the Call for Proposals. In particular:

- (a) auDA has clearly determined that instead of opening up .au to registrations of 2LDs as other ccTLDs have done, there will be a system of broad generic 2LDs which serve as an intermediate level between the ccTLD and registrations of 3LDs for entities of various kinds. Proposals which breach this policy are ineligible.
- (b) The auDA Board has required proponents of closed 2LDs to provide a clear case as to why the 2LD should be closed. Lack of such a case may mean that the proposal is not accepted, or that it is accepted in a modified form as an open 2LD.

In providing this interim report to the Board, the Panel is not seeking to change the selection criteria. The Panel is happy with the criteria as they stand.

Rather, the purpose of this report is to indicate the views of the Panel, as a result of its public consultation, on a number of issues which required some thought before the selection criteria could be applied to actual applications for new 2LDs.

Process - fairness and equity considerations

The Panel is aware that issues of fairness and equity arise, and some proposers of new 2LDs have asserted that the process followed by the Panel has not been fair, or is not what they were led to expect.

One issue is, to what extent should proposers have been aware of prior discussion and decisions of auDA? The Call for Proposals was very explicit in stating (section 1) that previous reports of the Name Policy Advisory Panel were part of the context for proposals, and expected that bodies proposing new 2LDs would familiarise themselves with this work:

The Panel's deliberations will be informed by its Terms of Reference and by the 2001 report of the Name Policy Advisory Panel on new 2LDs, approved by the auDA Board in August 2001.

In particular, the Call for Proposals specifically singled out one defining characteristic of the Australian system of 2LDs:

... it is not possible to license a domain name directly in the .au domain. In other words, instead of being able to license "yourname.au", people have to license their name in a 2LD, eg. "yourname.com.au" or "yourname.org.au"

This should have, but failed to, deter proposals of this kind.

Similarly, although the Call for Proposals was very specific in indicating that proposals for closed 2LDs (the great majority of proposals) should include an indication as to why the 2LD should be closed, this was not done, or in the Panel's opinion not done convincingly.

Further, some proposers of new 2LDs have failed to note that the Call for Proposals also specified:

The Panel will invite public comment on all proposals.

The Panel will reserve the right to seek further information from the proposer, or to request that the proposer seek further evidence of support for the proposal, or of the nature of that support. .

The Panel will reserve the right to recommend proposals subject to the provision of further information, or to recommend modified versions of proposals.

The consultation stages of the process will be used by the Panel to ensure that the final form of any proposal to the Board meets the criteria set out above, and that members of the user community have had adequate opportunity to express their views on the proposal.

Should a proposal be accepted, the proposer will be required to waive any rights in the proposal.

Taken together, these conditions make the process a very open, iterative, and public process. Although some proposers have regarded it as akin to a tender process, the Call for Proposals makes quite clear that it is not.

It may also be the case that some proposers were influenced by the ICANN process for new TLDs, which was run along commercial tender lines. However, it has been made quite clear that this is not seen as a desirable model.

The Panel does not believe that its decision to seek the Board's endorsement of its understanding of the selection criteria departs from the spirit or intent of its Terms of Reference or the Call for Proposals.

Impact on scheduling

The Panel will be unable to meet its current reporting deadline of the end of 2002 – early December for practical purposes. It proposes to hold a meeting of an informal Drafting Committee on 17 October, and a fourth meeting of the full Panel in mid-November. This would be followed by a public consultation on proposals for (a) a process for determining new 2LDs in the future, and (b) the Panel's recommendations relating to the remaining proposed new 2LDs from this round. The Panel seeks approval for an extension to its reporting deadline to March 2003.

3. GEOGRAPHIC 2LDS

Introduction

The Panel recommends to the Board that it proceed to implement the proposal for a geographic system of 2LDs (state/territory.au) as proposed by the One City One Site (OCOS) working party (and generally supported by cBallarat Ltd). An overview of the OCOS proposal is at [Appendix A](#).

Notwithstanding the discussion of general policy issues in the first part of this report, the Panel has agreed to bring this matter before the Board at this time, for these reasons:

- (a) the Board has previously emphasised the importance of giving priority to proposals that focus on community use of geographic domain names;
- (b) the issues raised in the proposal have previously been canvassed by the earlier Name Policy Advisory Panel; and
- (c) there seems no reason for delaying implementation of the proposal, which at any rate will take some time to implement.

The Panel believes that the OCOS proposal meets the selection criteria set by the Board.

1. The 2LDs are robust, sustainable and viable. There is a clear, long-term commitment from the Geographic Names Board, the Online Council and the NSW Government.

2. The 2LDs will serve the needs of users, or a community of users, that are not well served by the existing 2LDs. The user group is geographic communities (ie. the residents of a geographic area), and the needs of these communities are not well served by any of the existing 2LDs (because a community is not a commercial entity, association, organisation, individual, government or educational body).
3. There is clear support for the 2LDs, in particular among the users it is intended to serve, and in general terms from the wider community. Strong evidence of this support has been provided (several letters of support, and a resolution of the Online Council). There is evidence that user community support is broadly representative of that community. There have been no reasonable objections to the creation of the 2LDs from the wider community.
4. The 2LDs will widen the choice of domain names available to users of the Australian DNS. The proposed 2LDs do not duplicate, or form a sub-set, of an existing 2LD.

Recommendations

The Panel commends the proposal to create eight new second level domains, and in doing so makes the following recommendations to the Board.

- (a) auDA should create the eight new 2LDs (act.au, nsw.au, nt.au, qld.au, sa.au, tas.au, vic.au, wa.au) and conduct a commercial tender process for the registry operations, in accordance with auDA's competition model.
- (b) All geographic names should be registered as 3LDs (eg. carlton.vic.au, not carlton.melbourne.vic.au). The Panel notes that there are some duplicated geographic names, but does not consider it desirable to introduce a system of 4LDs to deal with exceptions to the rule.
- (c) Operational processes, including provision of registrar services and the development of policy rules, will need to be determined by the National Reference Group in conjunction with auDA. Some operational processes will need to be further developed and tested through progressive implementation of the 2LDs.
- (d) The progressive implementation should commence with NSW (in line with the stated commitment of the NSW Government to undertake pilot testing), but other states should be permitted to participate at an early stage if they have the available resources.

Restriction on geographic names in com.au and net.au

A majority of the Panel believes that, once a system for community use of geographic domain names is implemented, there is no longer good reason to maintain the restriction on the use of geographic names in com.au and net.au. The majority constitutes a consensus as defined for this purpose (2/3 of the Panel).

A majority of the Panel believes that the current policy is not effective in its stated aim of protecting geographic communities from commercial exploitation, because:

- (a) there are a significant number of geographic names that were registered before the restriction was introduced in 1998, or have been mistakenly registered since 1998;
- (b) new geographic names are being created all the time, and it is not possible to retrospectively apply the policy to existing domain names; and
- (c) geographic domain names are widely used in other 2LDs, and in gTLDs and other ccTLDs.

There is evidence to suggest that most of those seeking to use geographic names in com.au and net.au do so because:

- (a) they have a company or business name that happens to be a geographic name, but they are not located in the geographic area or associated with the local community in any way; or
- (b) they represent the local community (eg. local council, chamber of commerce, tourist board, etc).

The OCOS model will provide an appropriate naming structure for registrants in category (b). A majority of the Panel believes that providing access to geographic names for registrants in category (a):

- (a) does not constitute "unfair competition" for the OCOS model, which should be strong enough to stand on its own merits in any case;
- (b) will not cause confusion among users, because commercial and non-commercial use would be clearly denoted by the different domain extensions;
- (c) does not open the door to unreasonable commercial exploitation, because the auDRP provides a mechanism for a community to bring a complaint about bad faith use of geographic names in the commercial domains.

The Panel notes that the Geographic Names Board does not support lifting the restriction.

4. PROPOSED OUTCOMES

The Panel proposes that the Board consider the interim report and resolve to:

1. Agree that the Panel should proceed to evaluate the remaining new 2LD proposals according to its understanding of the selection criteria and process as set out in this interim report; and
2. Accept the Panel's recommendations for new geographic 2LDs.

APPENDIX A

Overview of One City One Site (OCOS) Model

The core purpose of the OCOS model is to preserve geographic domain names for use by the relevant community.

The domain structure is: placename.state/territory.au. Domain names must be an exact match with the place name; no variations are allowed.

Use of domain names will be restricted to community website portals that reflect community interests such as local business, tourism, historical information, culture, special interest groups, events, news and media. Only applicants that meet the "community website committee" requirements will be eligible to license a domain name.

There will be an OCOS Management Authority (OMA) in each state and territory, responsible for managing the allocation and use of domain names. The OMAs will also be responsible for marketing and promoting the 2LD to local communities, and assisting communities with the application process.

Applications for domain names will be received and initially assessed by the relevant OMA, then forwarded to an Independent Assessment Panel (comprising representatives from community interest groups, local government and the Geographic Names Board) for final ruling.

The OMAs will be coordinated nationally by a National Reference Group (NRG), responsible for ensuring national uniformity of the OCOS model. The NRG will be accountable to auDA and the community for management of the 2LDs.

The full OCOS proposal is available at <http://www.auda.org.au/policy/panel-newname-2002/>