

Second Public Consultation Report Submission

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Comments on specific sections are included where appropriate enclosed in “” quote marks.

2. PUBLIC CONSULTATION PROCESS

People wishing to comment on the recommendations or any other matters contained in the Panel's second public consultation report should send their submission to:

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Electronic submissions are preferred.

All submissions will be posted on the auDA website within 2 working days of receipt, unless clearly marked 'Confidential'.

The closing date for submissions is **Friday 16 March 2001**.

3. DOMAIN NAME LICENCE ELIGIBILITY

Recommendation 3.1:

3.1.1 There should be no restriction on the number of domain name licences that may be held by a single entity or individual.

“Agreed, there should be no artificial barriers to the use of the name space.”

3.1.2 All domain name licences should be subject to a renewal period, to be specified by auDA, or by the relevant 2LD administrator subject to ratification by auDA. The domain name licence holder should be required to provide evidence of continued eligibility to hold the licence at the time of renewal.

“In most other name spaces the renewal period is set at twelve months with an option of having extended renewal periods up to a maximum of ten years, given the criteria necessary to be fulfilled for renewal to be approved it may be helpful to specify a definite term such as 12 or 24 months between renewals.”

3.1.3 In order to license a domain name in the .au domain space, the following conditions should be satisfied:

a. The domain name licence applicant must be an Australian entity.

“This seems to be contradicted later where it is stated that an entity holding an Australian registered trademark may apply for a domain name licence. I am not familiar enough with Australian trademark registration rules but my understanding is that being an Australian entity is not a condition for the registration of a trademark in this market space. Please ignore if my understanding is not correct.”

b. The proposed use of the domain name licence must fit the purpose envisaged by the relevant 2LD. [Schedule A](#) lists the existing .au 2LDs and their purposes as currently stated.

c. There must be a declaration of a bona fide intention to use the domain name licence for the purpose envisaged by the relevant 2LD.

“It would be helpful if the form of this declaration of bona fide intention was defined. Making an application under the appropriate 2nd LD would appear to be declaring such an intention unless the form of the declaration is made clear.”

d. A bona fide intention to use the domain name licence for the purpose envisaged by the relevant 2LD, should be demonstrated in accordance with the rules applicable in that 2LD. [Schedule A](#) lists the eligibility criteria for the current 2LDs.

“This would appear to only apply on renewal unless there was an auditing procedure introduced to check that the domain was in fact used in compliance with the criteria within some specified time frame. If there is to be such a procedure it should be defined within this recommendation.”

e. Purposes that would not be considered bona fide include but are not limited to:

i.licensing a domain name for the sole purpose of selling it;

ii. licensing a domain name for the purpose of diverting trade from another business or website;

“Any commercial licensing of a domain name would be attempting to divert trade from other competing businesses or websites, this needs to be clarified as to the conditions of that diversion being unacceptable or dropped and included in the following provision”

iii. deliberately licensing misspellings of another trader’s company or brand name in order to trade on the reputation of another trader’s goodwill; and

iv. licensing and then passively holding a domain name licence for the sole purpose of preventing another (eg. an Australian Registered Trade Mark owner) from licensing it.

f. The domain name licence applicant must acknowledge at the time of application that their entitlement to a domain name may be challenged by a third party with superior legal rights in the words forming the domain name.

“I fail to see why this should be acknowledged or be written into the policy. If any third party has superior legal rights to the words forming the domain name they can either apply to have those rights enforced within a court of law or resolved using the Dispute Resolution provisions of the Name Space Policy. Enshrining such provisions in the policy is conveying additional rights beyond those that may apply in a legal sense.”

g. The domain name licence applicant must agree to be bound by any Dispute Resolution Procedure specified by auDA.

“I certainly hope that any Dispute Resolution Procedure learns from the lessons being gained from the ICANN UDRP process and looks very closely at the ICANN model and institutes a vastly improved version”

4.DOMAIN NAME ALLOCATION POLICY

Recommendation 4.1:

4.1.1 There must be a substantial and close connection between the domain name and the domain name licence holder.

4.1.2 A connection between the domain name and the domain name licence holder can be demonstrated if the domain name:

- a. exactly matches the name on which the domain name licence application is based (eg. company name, trade mark, etc); or**
- b.is a name by which the domain name licence holder is generally known (eg. an acronym, abbreviation, nickname or alias) or is otherwise derived from the name on which the domain name licence application is based.**

“Some recognition of domain names held in other name spaces may be in order here. A company may already have a series of domain names in the gTLD’s that could be taken under consideration also. It would be of assistance if this was mentioned as a possible criteria for an acceptable hostname as allowed under 4.1.2.b.”

Recommendation 4.2:

4.2.1 Domain names that begin with a number should be allowed.

4.2.2 Two character alpha domain names that match existing or new country code top level domains (ccTLDs) should not be allowed. Domain name licence applicants should be advised that if they license a two character alpha domain name that is subsequently allocated as a ccTLD, then the licence may be revoked.

Recommendation 4.3:

4.3.1 Until an appropriate licence allocation method has been devised, the licensing of generic domain names should be prohibited and following ‘reserved list’ approach should be adopted:

- a. a definition of the term ‘generic’ will be developed;**
- b. domain names that have to date been rejected by the current registrars for being generic will be placed on a reserved list;**
- c. new applications for domain names that may be considered generic will be referred to auDA;**
- d. if the domain name is determined by auDA to be generic then it will be added to the reserved list; and**
- e. applicants may challenge domain names on the reserved list, and auDA will determine whether the name should remain on the reserved list or whether changed circumstances mean the name can be licensed.**

“In this situation the reserved name list must be published and assessable by all”

4.3.2 Until an appropriate licence allocation method has been devised, the licensing of geographic domain names should be prohibited, using the same reserved list approach outlined in 4.3.1 (substituting ‘geographic’ for ‘generic’).

4.3.3 The licensing of objectionable domain names should be prohibited, using

the same reserved list approach outlined in 5.3.1 (substituting 'objectionable' for 'generic').

Recommendation 5.1:

5.1.1 A limited number of new 2LDs should be introduced in the .au domain space.

5.1.2 The Name Policy Advisory Panel will undertake a separate public consultation process to determine what the new 2LDs should be, and how they should be managed.

Recommendation 6.1:

6.1.1 Changes to domain name eligibility and allocation policies should not have retrospective effect for current domain name licence holders, and should only apply to existing domain name licences if the licence is re-registered to a different entity, or when the existing licence holder's licence expires.

"I personally feel that on renewal the policies should be applied to those domain names currently existing that do not follow the new policies, there will always be the feeling that those registering after the policies became effective have been disadvantaged unfairly whilst domains remain in operation that would otherwise not have been available under the new or even existing policies. There is a need to address the wrong decisions made in the past and errors in policy implementation that have already occurred."

Recommendation 6.2:

6.2.1 Dispute resolution procedures should apply to all open 2LDs, and to closed 2LDs on an opt-in basis, with appropriate modifications if necessary.

6.2.2 Uniform dispute resolution procedures should be devised and implemented by auDA for all 2LDs before or at the same time as the recommendations of this Panel are implemented.