



REVIEW OF .AU DOMAIN NAME POLICY FRAMEWORK

2007 NAMES POLICY PANEL ISSUES PAPER, MAY 2007

1. BACKGROUND

1.1 In February 2007 the auDA Board established the 2007 Names Policy Panel to:

- review the policy framework underlying the allocation and use of domain names in the .au domain space*; and
- provide recommendations to the auDA board about what changes (if any) should be made to the policy framework.

1.2 The Panel will consider the following issues:

1. Should .au be opened up to direct registrations (eg. domainname.au)? If yes, should there be any policy rules, and if so what rules?
2. Should the policy rules for asn.au, com.au, id.au, net.au and org.au be changed? If yes, what changes should be made?

Relevant auDA Published Policies:

- Domain Name Eligibility and Allocation Policy Rules for the Open 2LDs (2005-01) at <http://www.auda.org.au/policies/auda-2005-01/>
- Guidelines for Accredited Registrars on the Interpretation of Policy Rules for the Open 2LDs (2005-02) at <http://www.auda.org.au/policies/auda-2005-02/>
- Reserved List Policy (2006-02) at <http://www.auda.org.au/policies/auda-2006-02/>
- Clarification of Close and Substantial Connection Rule – Domain Monetisation (2006-03) at <http://www.auda.org.au/policies/auda-2006-03/>
- Clarification of Domain Name Licence – Prohibition on Misspellings (2006-05) at <http://www.auda.org.au/policies/auda-2006-05/>

3. Should registrants be allowed to sell their .au domain names?

Relevant auDA Published Policies:

- Clarification of Domain Name Licence – Prohibition on Sale of Domain Name (2005-05) at <http://www.auda.org.au/policies/auda-2005-05/>
- Transfers (Change of Registrant) Policy (2004-03) at <http://www.auda.org.au/policies/auda-2004-03/>

* The following 2LDs are excluded from the Terms of Reference: csiro.au, edu.au, gov.au and the community geographic 2LDs (act.au, nsw.au, nt.au, sa.au, tas.au, vic.au, wa.au).

1.3 Full text of the Panel's Terms of Reference, a list of Panel members and minutes of Panel meetings to date, are available on the auDA website at <http://www.auda.org.au/2007npp/2007npp-index/>.

2. PUBLIC CONSULTATION

2.1 The Panel is required to undertake at least two rounds of public consultation, to ensure that its recommendations to the auDA Board have been properly canvassed with, and informed by, key stakeholders and the general community.

Issues paper

2.2 This Issues Paper has been drafted as a result of general discussion by the Panel of the three main issues under consideration. The purpose of the Issues Paper is to set out the current situation and invite comment on suggestions and options for change.

auDA market research

2.3 Another input to the Panel is the market research being conducted by auDA, comprising three types of online survey:

1. General public survey – conducted with 800 members of the general public who use the Internet at least weekly
2. Registrants survey – direct mailed to a random sample of 9,900 registrants
3. Website survey – linked from the auDA website.

2.4 The survey questionnaires are necessarily briefer and less explicative than the Issues Paper, and the Panel will weight the survey responses accordingly.

Next steps

2.5 Following this first phase of consultation, the Panel will publish its draft recommendations for further public comment before providing its final report to the auDA Board.

3. SUBMISSIONS TO THE PANEL

3.1 If you would like to comment on the issues discussed in this paper, please send your submission to:

Jo Lim
Chief Policy Officer, auDA
email: jo.lim@auda.org.au
fax: 03 8341 4112

3.2 Electronic submissions are preferred. All submissions will be posted on the auDA website within 2 working days of receipt, unless clearly marked confidential.

3.3 The closing date for submissions is **Friday 15 June 2007**.

4. GLOSSARY

| <i>Term</i> | <i>Definition</i> |
|---------------------|--|
| 2LD | Second level domain, ie. a name at the second level of the .au domain name hierarchy (eg. com.au) |
| 3LD | Third level domain, ie. a name at the third level of the .au domain name hierarchy (eg. domainname.com.au) |
| auDA | .au Domain Administration Ltd |
| auDRP | .au Dispute Resolution Policy |
| ccTLD | Country Code Top Level Domain (eg. .au, .uk) |
| DNS | Domain Name System |
| Domain monetisation | The practice of registering a domain name for the purpose of earning revenue from advertising links on a webpage |
| gTLD | Generic (or Global) Top Level Domain (eg. .com, .biz) |
| Registrant | An entity or individual that holds a domain name licence |
| Registrar | An entity that registers domain names for registrants and is accredited by auDA |
| Registry operator | An entity that operates the central registry database of domain names |
| Reseller | An entity that acts as an agent for a registrar |

5. 2LD HIERARCHY

| <i>2LD</i> | <i>Purpose</i> |
|--|---|
| asn.au | For non-profit organisations, associations, clubs and special interest groups |
| com.au | For commercial entities and traders |
| csiro.au* | For the Commonwealth Scientific and Industrial Research Organisation (CSIRO) |
| edu.au* | For educational entities |
| id.au | For individuals |
| gov.au* | For government departments and agencies |
| net.au | For commercial entities and traders |
| org.au | For non-profit organisations, associations, clubs and special interest groups |
| act.au, qld.au, nsw.au, nt.au, sa.au, tas.au, vic.au, wa.au* | For local community groups. Only Australian place names may be registered – eg. ballarat.vic.au and wollongong.nsw.au |

*These 2LDs are excluded from the Panel's Terms of Reference.

6. POLICY OBJECTIVES

6.1 The Panel has identified the following policy objectives for the .au domain (in no particular order):

1. To maintain the **Australian identity** of the .au domain space.
The Panel believes it is important that policy rules continue to require that .au registrants have an association or nexus with Australia, in order to differentiate the .au domain from other TLDs.
2. To enhance the **usability** of the .au domain space.
The Panel believes that the .au domain should be easy to navigate, simple to understand, not confusing, and responsive to user needs.
3. To preserve the **integrity** of the .au domain space.
The Panel believes that the .au policy framework should aim to minimise the risk of cybersquatting, scams and other misuse, and reduce conflicts and disputes. It should provide adequate protection for rights holders, and as far as possible be consistent with other regulatory regimes.
4. To facilitate **economic benefits** flowing from the .au domain space.
The Panel believes that the .au domain space should support the Australian online economy by promoting high .au domain name penetration rates. To this end, registering a .au domain name should be cost effective and attractive for Australian businesses, and there should be an efficient reuse of domain names.

6.2 These objectives are consistent with auDA's constitutional objects, available on the auDA website at <http://www.ada.org.au/about/constitution/>.

7. DISCUSSION OF ISSUES

Should .au be opened up to direct registrations (eg. domainname.au)? If yes, should there be any policy rules, and if so what rules?

Current situation

7.1 It has never been possible for people to register a domain name directly under .au (eg. domainname.au). Instead, the .au domain is structured into a number of second level domains (2LDs) and people must register their domain name as a third level domain (3LD) (eg. domainname.com.au, domainname.org.au and so on).

7.2 The .au 2LD hierarchy was created by the first administrator of the .au domain, Robert Elz, who adopted a number of global Top Level Domain (gTLD) names – com.au, org.au, net.au, edu.au, gov.au – and added some uniquely Australian names – asn.au, id.au, conf.au, info.au. Elz also determined that each 2LD should be for a different purpose. For example, com.au for commercial entities, org.au for charities, edu.au for educational entities and so on.

Direct registration implementation options

7.3 There are two ways in which a direct registration model could be adopted within the .au domain space:

- *Option 1: Direct registrations only.* This would mean that people would only be able to register a domain name directly under .au, and the 2LD hierarchy

would be deactivated (subject to an appropriate transition plan and timetable).

- *Option 2: Combination of direct registrations and 2LD hierarchy.* This would mean that the current 2LD hierarchy would be retained, and people could choose whether to register in a 2LD or directly under .au.

7.4 There are a number of ways that the introduction of direct registrations could be managed in order to minimise “landrush” problems associated with opening a new namespace. Examples include:

- giving trade mark holders a “sunrise” period in which to secure registration of their trade mark domain names
- giving existing com.au registrants the first right of refusal over the corresponding .au domain name
- implementing a special dispute resolution process for conflicts between existing 2LD registrants
- reserving certain names from registration for a period of time.

7.5 In a number of ccTLDs these kinds of changes have been made. Each domestic situation is different, and it is difficult to draw clear conclusions from the experiences of others.

7.6 The Panel notes that direct registrations would not necessarily have the same policy rules as the 2LDs. For example, .au registrations could be restricted to entities and individuals of “national significance”. At the other end of the spectrum of regulation, .au registrations could be made “open slather” like .com registrations. There is a wide range of possibilities.

7.7 It is clear that, however implemented, opening up .au to direct registrations would represent a major and effectively irreversible change to the Australian DNS. There would need to be an extensive community education campaign, and the introduction of direct registrations would need to be closely monitored and strongly policed by auDA, at least in the initial period.

Arguments in favour of direct registrations

7.8 The Panel has identified the following arguments in favour of allowing direct registrations under .au:

- Domain names under .au would be shorter and arguably more memorable, ie. domainname.au instead of domainname.com.au. This might have the effect of encouraging Australian entities who have registered their domain name in .com to register in .au. From a user perspective, there would be four fewer characters for people to type.
- .au domain names would more readily and effectively identify the registrant as Australian (compared with com.au, org.au etc), showcasing Australian businesses and brands more effectively in the global market.
- Assuming Option 1 above was adopted, a “flat” structure would be much simpler to understand and navigate than a hierarchical structure, because users would not have to know and remember the different 2LDs and their meanings. This might make it easier for international users, who are more familiar with direct registrations in other TLDs, to navigate the .au domain.

- Assuming Option 2 above was adopted, there would be more choice for registrants to register their domain name directly under .au or under one of the 2LDs (or both). It may also enable new registrants to have access to desirable and valuable domain names that have already been taken in the 2LDs.
- There would be a commercial gain for the Australian domain name industry; the registry operator, registrars and resellers could expect to generate more revenue from increased numbers of registrations. Under auDA's registry competition policy, a new operator may be selected to run the .au registry, potentially leading to lower costs and more choice for registrars.
- Other ccTLDs¹ have managed the transition to direct registrations successfully, and their experience shows that there is strong consumer demand once direct registrations become available.

Arguments against direct registrations

7.9 The Panel has identified the following arguments against allowing direct registrations under .au:

- The existing 2LD hierarchy works well and there is high market recognition of the com.au and org.au brands especially. There are approximately 860,000 3LD .au domain names² compared with over 65 million .com domain names³, indicating that the existing 2LDs are not exhausted in terms of desirable and valuable domain names.
- Unlike new TLDs, this is not a greenfields scenario and the rights and expectations of existing registrants should not be discounted. Existing 3LD domain names may be devalued if .au is opened up to direct registrations, and existing 3LD registrants may be forced into defensive registration or legal action to protect their brands.
- Registrants who choose, or feel compelled, to switch from a 3LD to a direct registration may face significant costs, such as domain name registration fees, printing and stationery, signage, marketing and advertising, as well as revenue already spent promoting the current brand.
- Introducing direct registrations may lead to increased disputes about rights to a domain name. Regardless of the implementation method, ultimately only one entity can secure the .au version of a domain name, which is particularly problematic where the same domain name is held by different registrants in different 2LDs.
- Regardless of which implementation option is adopted, introducing direct registrations is likely to cause user confusion, at least in the short to medium term. User confusion and unfamiliarity with the new domain names may lead to an increased risk of phishing and scams similar to the misleading renewal notices that occurred in Australia during 2003-04.
- Assuming Option 1 above was adopted, direct registrations would reduce the size of the available namespace as well as the branding choice for

¹ Examples include Austria (.at), China (.cn), Japan (.jp), Korea (.kr), Singapore (.sg).

² Refer to .au registry reports at <http://www.auda.org.au/ausregistry/reports/>.

³ Refer to daily domain count statistics at <http://www.domaintools.com/internet-statistics/>.

registrants, because they would not be able to differentiate themselves as commercial (com.au) or not-for-profit (org.au).

- Increased commercial opportunities and revenue for the Australian domain name industry is not in itself a sufficient business case for making a change, in the absence of any clear benefit for the broader community.
- Experience with new TLDs, most recently .eu, suggests there would be a high risk of implementation problems and people trying to game the system.⁴ Any special protective rules or procedures would have a high overhead, with the likelihood that costs would be passed onto consumers.

The Panel invites comments on whether or not .au should be opened up to direct registrations.

Should the policy rules for asn.au, com.au, id.au, net.au and org.au be changed? If yes, what changes should be made?

Current situation

7.10 The current policy rules for asn.au, com.au, id.au, net.au and org.au (known as the “open 2LDs”) have been in place, mostly unchanged, since 1 July 2002.

7.11 The Domain Name Eligibility and Allocation Policy Rules for Open 2LDs (2005-01) set out three types of rules:

- General policy rules that apply to all 2LDs, eg. “first come, first served” and a fixed 2 year licence period.
- Eligibility criteria that apply in each 2LD, eg. commercial entities are eligible for com.au and net.au, not-for-profit entities are eligible for asn.au and org.au, individuals are eligible for id.au.
- Allocation rules that apply in each 2LD, eg. exact match, abbreviation or acronym, or “close and substantial connection” rule.

7.12 In addition to the core domain name policy rules, two other auDA policies also govern the types of domain names that people can register in the open 2LDs:

- Reserved List Policy (2007-01) – prohibits the unauthorised registration of words and phrases restricted under Commonwealth legislation.
- Clarification of Domain Name Licence – Prohibition on Misspellings (2006-05) – prohibits the registration of misspellings of company and brand names.

7.13 The Panel notes that the policy rules are aimed at striking an appropriate balance between allowing people to register the domain names they want whilst protecting the overall integrity and usability of the .au domain.

The Panel invites comments on whether the policy rules are too restrictive, or not restrictive enough.

The Panel invites people to provide:

- **examples of where the policy rules have prevented them (or would prevent them) from registering a domain name they want**
- **examples of where the policy rules have allowed someone to register a domain name that may be inappropriate or undesirable.**

⁴ For example, refer to www.euridsucks.eu.

Suggested change to policy rules

7.14 The Panel has identified a gap in the current policy rules relating to illegal or malicious use of a domain name, and puts forward the following suggestion for change:

- The policy rules should include a clear process and authority for the deletion of a domain name for illegal or malicious use. Such uses would include, but are not limited to, disseminating spam, hosting a “phishing” site, malware hosting and distribution, capturing stolen personal information and access credentials, hosting child pornography, and recruiting individuals to launder or transfer stolen funds.

The Panel invites comments on this proposed change to the policy rules.

The Panel invites any other comments on changes which might be made to the policy rules.

Should registrants be allowed to sell their .au domain names?

Current situation

7.15 A domain name is not a property asset; the registrant does not “own” the domain name, they hold a licence to use it. For this reason, the .au domain name licence conditions (also known as the Registrant Agreement) prohibit a registrant from transferring, or purporting to transfer, a proprietary right in a domain name registration; ie. registrants are not allowed to sell their .au domain name. Under auDA’s Clarification of Domain Name Licence – Prohibition on Sale of Domain Name (2005-05) policy, registrants who offer their domain name for sale risk having their domain name deleted for breach of policy.

7.16 auDA’s Transfers (Change of Registrant) Policy (2004-03) permits domain name licence transfers for legitimate commercial or legal reasons, but stops short of sanctioning a secondary market in .au domain names. The policy allows registrants to transfer their domain name licence to another eligible party, but only under the following specific circumstances:

- where the registrant sells all or part of their business operations or assets to the other party
- where the registrant assigns their intellectual property rights to the other party
- where the registrant enters into administration or liquidation, and the administrator or liquidator authorises the transfer to the other party
- where the registrant and the other party are related corporate entities
- where the registrant originally registered the domain name as agent for the other party
- where the registrant dies or becomes insane, and the executor or power of attorney authorises the transfer to the other party
- where a competent authority (eg. a court or auDRP arbitrator) orders the transfer to the other party
- where the registrant transfers the domain name to the third party in settlement of a dispute.

7.17 Other TLDs allow registrants to trade in domain names (or domain name licences) with little or no regulation. The rationale for auDA’s more restrictive policy has been to minimise cybersquatting and other potentially unfair and exploitative practices.

Arguments in favour of allowing registrants to sell their .au domain names

7.18 The Panel has identified the following arguments in favour of allowing registrants to sell their .au domain names:

- The current policy is not effective because:
 - auDA's complaints-handling process under the Clarification of Domain Name Licence – Prohibition on Sale of Domain Name (2005-05) policy does not provide adequate remedy for trade mark or other rights holders, because it allows a registrant who has sought to sell their domain name to withdraw it from sale without suffering any penalty
 - it is possible for registrants to get around the prohibition by disguising a sale of domain name under one of the acceptable circumstances in the Transfers (Change of Registrant) Policy, and it is difficult for auDA to investigate and determine that there has been a breach of policy when both parties are complicit in the breach
 - if auDA finds that the registrant has sold their domain name in breach of policy, the only available remedy is to delete the domain name, which penalises the person who has bought the domain name and not the registrant who sold it.
- A secondary market would increase the options available to both registrants and prospective registrants, and would facilitate the efficient reuse of domain names. For example, a registrant may have initially registered a domain name for a genuine business activity which never eventuated, but rather than delete the domain name they will continue to renew it because of the internet traffic that they can attract, either to their main website or for monetisation purposes. However, if they were allowed to sell the domain name, they might decide to relinquish the domain name to a new registrant who is able to put it to a better purpose.
- One of the aims of the current prohibition on selling domain names was to prevent domain hoarding and speculation in the early days of .au, so that all the “good” names would not be registered before others had a fair opportunity under a first come, first served system. However, now that there are nearly 1m .au domain names, most of the “good” names have now been registered and the potential for domain hoarding and speculation has lessened.
- What is the policy reason for stopping someone who is willing to pay a secondary market price for a domain name from paying it? The generic domain names auction⁵ and geographic domain names ballot⁶ conducted by auDA demonstrated that people are prepared to buy desirable domain names at a market price which is higher than the current range of prices offered by registrars.

⁵ The highest price paid for a generic name was \$153,000 and the median auction price was \$2,900. Refer to auDA media release at <http://www.auda.org.au/news-archive/auda-01102002/>.

⁶ There were nearly 10,000 applications for over 2,700 commercial geographic domain names, at a fee of \$825 per name. Refer to auDA media release at <http://www.auda.org.au/news-archive/auda-19082005/>.

- Other policies, such as the auDRP and the prohibition on misspellings, could be strengthened if necessary to deal with trade mark infringement and other bad faith behaviour. Moreover, the domain name policy rules would ensure that domain names could only be sold to another eligible registrant, thereby reducing the pool of potential buyers and acting as a disincentive to domain speculators and warehousemen.
- To the Panel's knowledge, no other TLD has a prohibition on a secondary market for domain names (although some TLDs like .biz have rules against registering a domain name for the sole purpose of selling it). There has been an active secondary market in .com and other TLDs for many years, with few problems.

Arguments against allowing registrants to sell their .au domain names

7.19 The Panel has identified the following arguments against allowing registrants to sell their .au domain names:

- Given that transfers are allowed under current auDA policy, it is unclear why there is a need for a more liberalised secondary market. There does not appear to be any public benefit or value to the broader community in allowing individual registrants to sell their domain names. Domain names can be seen as a public resource, similar to telephone numbers or spectrum. If a registrant no longer has use for their domain name they should simply delete it so it can be returned to the pool and re-allocated to someone else.
- A secondary market in domain names may artificially increase demand, leading to higher prices; for example, the generics auction conducted by auDA in 2002 shows that some domain names sold for tens of thousands of dollars. This may disadvantage sole traders and small businesses in particular.
- There is a risk that allowing people to register domain names for the purpose of selling them would legitimise a business model based on cybersquatting or domain speculation.
- The cost of any transitional regime may be high, both in terms of the direct cost of administration and regulation, as well as indirect cost to industry and consumers.

The Panel invites comments on whether or not registrants should be allowed to sell their .au domain names.