

2015 Names Panel Policy Submission on Draft Recommendations

carsales.com Limited (carsales) is pleased to have the opportunity to provide comment on the August 2015 Draft Recommendations of the Australian Domain Name Administrator (auDA) in regards to the management of the .au top level domain (.au TLD).

carsales is the largest online automotive, motorcycle and marine classifieds business in Australia and is listed on the Australian Stock Exchange with a market capitalisation in excess of \$2.2 billion. The carsales network of websites includes carsales.com.au, Australia's number one automotive classified website, motoring.com.au, bikesales.com.au, boatsales.com.au, RedBook.com.au as well as leading caravan, truck and machinery classified websites. Together with its subsidiaries carsales employs more than 600 people in Australia and develops world leading technology and advertising solutions that drive its business around the world. The carsales network has operations across the Asia Pacific region and has interests in leading automotive classified businesses in Brazil, South Korea, Malaysia, Indonesia, Mexico and Thailand.

EXECUTIVE SUMMARY

carsales' view is that registrations under .au TLDs should not be made available because they do not provide the benefits that the Panel rely on to justify their introduction and they present complications for existing and future registrants. The existing 2LDs (.com.au, .net.au, etc.) that are available for use adequately service the needs of Australian domain registrants.

In the event that .au TLDs are introduced, the .au TLD should be reserved for the existing 2LD owner for 5 years at no cost.

carsales' views are based on the following points, each of which will be addressed in turn.

1. DO NOT INTRODUCE .au TLDs
 - 1.1. Does not provide benefits presented by the Panel
 - 1.2. Open to cybersquatting and bad faith registrations
 - 1.3. Increased cost of maintaining domain portfolio
 - 1.4. Impact on trade mark assets of business
 - 1.5. Opens up to user confusion

2. IF .au TLDs ARE INTRODUCED, THEY BE INTRODUCED WITH CERTAIN CONDITIONS
 - 2.1. Protocols for protecting against cybersquatting
 - 2.2. .au domains reserved for 5 years at no cost for existing 2LD holders and preferential allocation to .com.au registrants
 - 2.3. Offer domain registrations that last for 1 year and 5 years

1. DO NOT INTRODUCE .au TLDs

1.1 Does not provide benefits presented by the Panel

The .au domain may very well become largely a duplicate of the .com.au domain. The current domain based national identity is synonymous with the existing domain structure of restricted 2LDs i.e. com.au. Unlike other top level domains (for example, Spain with .es which opens up the option for words that end with “es”) the .au domain space adds limited value beyond dropping “.com” from existing names. That is, dropping the “.com” component of the existing 2LD does not provide the option for many domains that integrate .au, for example www.nouve.au.

The Panel states that .au domains will be “shorter, more appealing and more memorable”. Losing the “.com” part of the domain will make a domain shorter and perhaps more appealing. However given that users are often reliant on search engines to find the website they seek, a shorter or more appealing name will have a limited improvement for user experience. carsales questions whether it will be more memorable given that by their very introduction .au domains will cause a user to query whether the website they intend to visit is .com.au or .au, with no logical way to discern between the two alternatives.

The Panel cites overseas experience that registrants prefer direct .nz or .uk domains. carsales is cautious about drawing inferences from statistics. The statistics do not appear to disclose how many direct registrations are simply duplicates of the 2LD registrations, and where they are duplicates, which domain is ultimately favoured by the registrant and which is used as a redirection. Carsales asks the Panel to carefully consider the inefficiency that results when a system is introduced that simply duplicates an existing, well functioning system.

carsales anticipates that a vast amount of the .au domain registrations will be defensive and will simply re-direct the visitor to the existing .com.au domain. This adds no value to the domain owner or the domain visitor. Nor does it open options to domain seekers, who will be restricted in their choice because it is by no means a certainty that they will be able to register a domain in the .au space that is unavailable in the 2LD space. The necessary defensive registrations will effectively remove a significant bulk from the pool of available domains. carsales queries why the Panel recommend introducing .au TLD in circumstances where there is evidence of defensive registration practices in New Zealand and the United Kingdom and if it were to wait some time the Panel would be in a position to draw fulsome conclusions from overseas experience.

The Panel states that the introduction of .au domains will enable an individual to “obtain an Australian domain name in a simple and straightforward way”. In carsales’ opinion, this is not a compelling reason for introducing a new domain protocol for Australian registered domains. From carsales’ perspective the process for obtaining a domain name is not linked to the question of whether a .au TLD should be introduced. carsales does not oppose the proposed method for individuals to obtain an Australian domain (i.e. warranty, backed up with evidence if challenged) but rather it considers that the Panel has conflated two very separate questions.

1.2 Open to cybersquatting and bad faith registrations

The registration process must retain robust processes and protocols to protect legitimate businesses from cybersquatting and bad faith registrations. carsales supports the policy rules set out as they apply to 2LDs but notes that those processes and protocol are not always effective and the introduction of the .au TLD provides a new avenue for misuse of a domain in terms of passing off, cybersquatting and unlawful activity.

1.3 Increased cost of maintaining domain portfolio

The Panel's recommendation to open the .au TLD will add additional costs to existing domain name registrants who will be compelled to take out defensive registrations for all existing domains. Should existing registrants elect not to take out defensive registrations they risk being vulnerable to cybersquatting and confusing the public. This proposal will add no benefit to existing web centric businesses and instead will increase the cost of managing and protecting those businesses' domain portfolio.

This applies equally to new entrants to online business who will be very concerned to ensure that their business is not susceptible to cybersquatting etc and as a consequence will be required to take out an additional defensive registration with the associated costs and administration.

1.4 Impact on trade mark assets of business

Carsales holds multiple trade marks that incorporate .com.au, for example 'carsales.com.au' and 'homesales.com.au'. One consequence of introducing .au TLD domains is that online businesses will be required to assess their trade mark portfolios in light of that change and arrange for any necessary new registrations.

Established businesses will also need to consider taking out the .au domains for all trade marks in their portfolio in order to prevent the risk of infringement by a third party as a domain.

This process has the real prospect of being costly and diverting resources from the productive activities of businesses.

1.5 Opens up to user confusion

The Panel states that introducing the .au TLD will "make the domain name system simpler and easier to use". The Panel provides no clear explanation for this statement and carsales disagrees with this view. Introducing .au domains has the real potential to confuse internet users about whether ".com.au" or whether ".au" is the genuine domain for the business they are seeking. Providing an alternative domain does not simplify the system, which is simple as it currently exists. It is difficult to see how creating two domains where there used to be one will produce a system that is easier to use.

2. IF .au TLDs ARE INTRODUCED, THEY BE INTRODUCED WITH CERTAIN CONDITIONS

In the event that it is decided that .au TLD is to be introduced, carsales recommends that additional protection for existing domain holders (in any of the existing .au 2LDs) be granted. These should include at a minimum the following:

1. Automatic registration of the .au TLD for the existing registrant of the equivalent 2LD.
Existing registrants are initially gifted the equivalent domain names within the .au TLD for 5 years where that holder elects to utilise the respective domain.
2. A streamlined dispute resolution process to deal with cybersquatting once new registrations are permitted.
3. Change to the duration of registrations across both .au TLD and 2LDs.

2.1 .au domains reserved for 5 years at no cost for existing domain holders

In the United Kingdom the new TLDs were reserved for the equivalent registered 2LD holders at no cost for 5 years. carsales recommends that auDA take the same approach. The introduction of .au TLDs will be an additional burden on existing 2LD holders and it is fair that some of that burden is relieved in the short to medium term while the new domains are being introduced.

The United Kingdom also adopted a process for preferential allocation of the TLD so that the existing registrant of the .co.uk domain took first priority, followed by other 2LDs. carsales agrees with this approach. In the Australian context, .com.au is the most recognised of the 2LD and for that reason the TLD should be offered to the .com.au registrant first.

Reserving the domain for 5 years also gives existing trade mark owners time to consider their trade mark portfolio and make any changes they consider necessary.

2.2 Protocols for protecting against cybersquatting

carsales agrees with the Panel's view in relation to maintaining the existing eligibility criteria for com.au and net.au domain names, including making the appropriate changes to reflect the nationalised business names registrations where there is no disadvantage to registrants.

In the event that .au TLDs are made available it is the view of carsales that the existing eligibility and allocation criteria should remain the same and be enforced to the extent they are applicable.

carsales agrees with the Panel's view in relation to maintaining the existing Prohibition on Misspellings Policy and complaints based enforcement mechanism. carsales also agrees with the recommendation to revise the audit list provisions to provide more flexibility in the way the policy is enforced.

carsales agrees with the Panel's view in relation to maintaining the existing Reserved List Policy for maintaining the integrity of the .au domain space.

2.3 Offer domain registrations that last for 1 year and 5 years

The view of Carsales is that the current 2 year renewal period is too short for domain name renewals within the .au. It is recommended that two terms (either additional or replacing the existing 2 year term) be introduced, both a longer term of 5 years, and a shorter term of 1 year.

The longer 5 year term will reduce registrant overhead of managing the domains that will be continuously renewed, and reduce the risk of inadvertent lapsing of registrations.

The shorter 1 year term will allow for increased utilisation of short term domain names for fixed period activities and events such as competitions, concerts etc.