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30 September 2015

Jo Lim
Chief Operations and Policy Officer
auDA
jo.lim@auda.org.au

Dear Jo

Re: Submission re the Names Policy Panel's Report

The Submission below is in response to the Names Policy Panel's Draft Recommendations of August 2015.

Would you please confirm to me that this document will be actually read by yourself and the Names Policy Panel.

My reason for making this request is that there is no mention whatsoever, in either of the last two documents issued by the Panel, of the points that I've made in my succession of submissions.

The credibility of auDA as a multi-stakeholder organisation is being seriously undermined by the bull-headed manner in which this campaign for a further revenue-bonanza is being conducted.

Thank you for your consideration.

Yours sincerely



Roger Clarke
As Principal of Xamax Consultancy Pty Ltd

I am also a Director for the Internet Society of Australia (ISOC-AU)

Submission re Direct Registration in .au

Roger Clarke, Xamax Consultancy Pty Ltd
30 September 2015

Introduction

I have submitted to the Panel on this matter twice before:

- <http://www.rogerclarke.com/II/Direct2LDs.html>, in June 2007
- <http://www.rogerclarke.com/II/Direct2LDs-2015.html>, in June 2015

The primary points that I made were that:

- (1) Opening up .au "would create an enormous amount of additional contention over short names and acronyms", and hence:
- (2) Registrants would "need to have imposed on them a contractual obligation to implement a suitably-formatted preliminary 'disambiguation page'".

Neither point was reflected in the Issues Paper of April 2015.

Neither point has been reflected in the Draft Recommendations document.

The Spurious Claim of Benefits to Individuals

The Panel suggests that "the biggest benefit will be for individuals, who would be able to obtain an Australian domain name in a simple and straightforward way" (p.1. See also p.6).

This appears to me to be at the very least misleading, and at worse fatuous or downright false.

One consideration is that it is unclear to what extent any given individual can demonstrate the "close and substantial connection" necessary to gain a <personalname>.com.au domain-name, and hence a <personalname>.au domain-name.

Similarly, the suggestion that "it would mean [individuals] could register a name they had missed out on in com.au" completely misses the point that contention in the .au TLD space would under no circumstances be less than, would always be at least as great as, and in many cases would be even greater than, that in .com.au and other 2LDs.

One source of contention for <personalname> domain-names is corporate names that comprise or mirror the form of personal names. A topical example is Ashley Madison.

In addition, many names are shared by multiple individuals. For example, LinkedIn shows 15 people in Australia who go by the name 'Roger Clarke'. One of us already has rogerclarke.com.au (and rogerclarke.com). A sculptor from Bath UK has rogerclarke.net. There has been no apparent interest in rogerclarke.id.au, but there would be contention for a domain-name as prominent as rogerclarke.au. And note that 'Clarke' is not one of the top-ten surnames, and 'Roger' is a moderately unusual given name.

Particularly noteworthy is the fact that the benefits of enabling some people to acquire <personalname>.au would flow primarily to the organisations in the feeding-chain.

I further note that strong arguments have been made by demand-side advocates against direct registrations within the TLD, including by ACCAN and by John Selby of Macquarie University.

The Management of Conflicting Applications

Another complete failure in the Panel's work is evident in the discussion of "a first right of refusal on the matching name" (p.9).

There are many instances of duplicate names across the .com, .org., .asn, .edu and .id 2LDs. My 2007 Submission provided an example, using acs.au.

The statement that "the Panel does not agree that com.au should be given preference, and believes that all 2LDs should be regarded as equal" is either utterly naive or blatantly disingenuous.

If a contested domain-name is to be allocated, there has to be a set of rules that determines the winner. An 'equal right' could only be achieved through dual / multiple allocation, or a 'Mexican stand-off', i.e. no allocation at all.

My submission is that:

- no-one-wins is best, i.e. do not open up .au to direct registrations;
- everyone-wins is second-best, i.e. impose a disambiguation mechanism on whichever entity wins the name; and
- winner-takes-all is the absolute-worst.

The All-Too-Apparent Dominance of Supply-Side Interests

The tone throughout the Panel's document is excusatory.

Expressions such as "The fact that change may be driven from the supply side does not mean that the change will not also be beneficial to people on the demand side of the industry" (p.7) make abundantly clear that the proposition is motivated by the bonanza it promises for players within the industry, particularly registrars and lawyers, but also auDA itself.

This impression is reinforced by the failure to address the '.au domain monetisation' issue (p.9).

Another indicator arises from the fundamental clash between:

- "perhaps the highest level of demand for direct registrations will come from individuals" (p.9) and
- "It has been suggested that a 'premium' pricing model could help to distinguish and differentiate .au names from 2LD names" (p.10).

It is very difficult to interpret the 'first right of refusal' and 'equal right' text any other way than as preparing the ground for an auction or other price-based allocation mechanism, with the best-resourced contender winning the right, and lawyers and auDA sharing in the cash flow.

The racketeering overtones evident throughout the Panel's document makes entirely clear how that tension would be resolved.

Conclusion

Regrettably, the secondary point that I made in a previous Submission is all too relevant:

"Opening up .au ... would, in many people's eyes, significantly reduce auDA's well-deserved reputation [because it will now be perceived as] a money-grubbing monopolist, as ICANN is".