

REVIEW OF .AU POLICY FRAMEWORK
2010 NAMES POLICY PANEL
DISCUSSION PAPER, NOVEMBER 2010

WHAT THIS PAPER IS ABOUT

This paper invites public comments on some of the main policies underlying the allocation and use of domain names in the .au domain space.

The paper sets out the issues raised by auDA's 2010 Names Policy Panel in relation to the following policies:

- Domain Name Eligibility and Allocation Policy Rules for the Open 2LDs (2008-05) at <http://auda.org.au/policies/auda-2008-05>
- Guidelines for Accredited Registrars on the Interpretation of Policy Rules for the Open 2LDs (2008-06) at <http://www.auda.org.au/policies/auda-2008-06>
- Reserved List Policy (2008-03) at <http://www.auda.org.au/policies/auda-2008-03>
- Prohibition on Misspellings Policy (2008-09) at <http://www.auda.org.au/policies/auda-2008-09>
- Domain Monetisation Policy (2008-10) at <http://www.auda.org.au/policies/auda-2008-10>

auDA's role is to administer the .au domain space on behalf of the Australian community. Australian domain name policies are created in a highly consultative process to which all Australians are invited to contribute.

We welcome your comments and suggestions, not only in response to the specific questions posed by the Panel at the end of each section, but also on any other issues that are relevant to the Panel's Terms of Reference.

HOW TO SUBMIT YOUR COMMENTS

There are two ways in which you can comment on the issues raised in the paper.

1. Send a written submission to:

Lujia Chen
Policy Officer
email: lujia.chen@auda.org.au
fax: 03 8341 4112

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 21 January 2011.

2. Complete the online survey at <http://www.surveymonkey.com/s/2010namespolicysurvey>

The survey will close on at midnight on Friday 21 January 2011.

BACKGROUND

In August 2010 the auDA Board established the 2010 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.

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/2010npp/2010npp-index/>.

Under its Terms of Reference, 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.

This Discussion Paper has been drafted as a result of general deliberations by the Panel to date. The purpose of the Discussion Paper is to invite comments on the issues raised by the Panel in relation to the relevant policies.

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.

2LD HIERARCHY

2LD	Purpose
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.

DISCUSSION OF ISSUES

The Panel has identified a number of issues for consideration, as outlined below. In some cases the Panel has indicated its preliminary views on the issue, in other cases the Panel has yet to form a consensus opinion.

1. Domain Name Eligibility and Allocation Policy Rules for the Open 2LDs (2008-05) and Guidelines for Accredited Registrars on the Interpretation of Policy Rules for Open 2LDs (2008-06)

1.1 The Policy Rules for the open 2LDs (asn.au, com.au, id.au, net.au and org.au) are divided into two types of criteria:

- eligibility – ie. what makes a registrant eligible to register a domain name?
- allocation – ie. what type of domain name can a registrant register?

The Guidelines provide more explanation of the eligibility and allocation criteria, and specify the information that a registrant must provide to demonstrate compliance.

1.2 There are a number of different eligibility criteria for each 2LD. In most cases, in order to demonstrate eligibility, a registrant must provide an official identifier which is verified against a government database. For example, one of the eligibility criteria for a com.au or net.au domain name is an Australian registered company. To demonstrate eligibility, a company must provide its ACN or ABN, which the registrar is required to verify against the ASIC database.

1.3 There are two allocation criteria for each 2LD – a registrant can register a domain name that is:

- an exact match, abbreviation or acronym of their own name or trade mark
- otherwise closely and substantially connected to them – known as the “close and substantial connection rule”.

1.4 The Panel believes that, overall, the Policy Rules remain appropriate and desirable. The Panel feels that the Policy Rules are reasonably well understood and accepted by industry and the registrant community, and there is no inclination on the part of Panel members to abolish or significantly change the eligibility and allocation criteria.

1.5 However, the Panel has identified some issues that may require amendment or clarification in order to improve the effectiveness of the Policy Rules and provide better outcomes for the community.

1A: Registrants must be Australian (or registered to trade in Australia)

Current policy:

1.6 Foreign entities are eligible to register a com.au or net.au domain name if they are registered to trade in Australia and have an ARBN (verified against the ASIC database), or if they are the applicant for, or owner of, an Australian registered trade mark and have a TM number (verified against the ATMOSS database).

Issues:

1.7 It has always been a fundamental policy principle that the .au domain is for Australians, and the eligibility criteria are designed to ensure that only Australian (or Australian registered) entities and individuals are able to register .au domain names.

1.8 The Panel has been advised that foreign entities often attempt to circumvent the eligibility rules, usually in one of two ways:

- registering an ABN as an “other incorporated entity”
- using an Australian agent such as a reseller or registrar.

1.9 In December 2009 auDA found that one registrar had breached the Registrar Agreement by using a related entity to act as an agent for foreign entities that were otherwise ineligible to register com.au domain names¹. The Panel notes that the use of agents is common in many other TLDs, and many foreign entities therefore expect to be able to do the same in .au.

1.10 Whilst the Panel acknowledges that the Internet is a global marketplace, the majority of Panel members believe that .au should remain restricted to Australian entities and individuals. Several reasons have been put forward to support this view:

- the restriction has been in place since the inception of .au, and past auDA Panels have all confirmed the principle that “.au” means “Australian”
- given the strong growth in the .au domain name space², there is no present need open up the space by relaxing or expanding the ways in which foreign entities can be eligible to register .au domain names
- ARBN registration or TM application/registration are relatively low barriers to entry for foreign entities that have a genuine intention to carry on business in Australia
- allowing foreign entities to register .au domain names without having to register an ARBN or TM number may cause significant administrative problems in entity verification and policy enforcement
- opening up .au to more foreign entities may lead to a flood of registrations by overseas domainers, making it more difficult for local businesses and individuals to register .au domain names
- opening up .au to more foreign entities may have an adverse impact on the security (or perceived security) of the .au domain, with a higher risk of fraudulent registrations or other scam activities.

1.11 On the other hand, some Panel members argue that even if the registrant themselves is not Australian, the content of their website would need to be relevant to Australian Internet users or there would be no commercial reason to have a .au domain name, thus preserving the “Australian-ness” of the .au domain space. Some Panel members have also questioned the apparent link between restrictive eligibility criteria and the security of the domain space, pointing out that .jp has been recently rated the most secure ccTLD³ but it allows international registrations.

1A QUESTION

a. Should the restriction on registrants being Australian (or registered to trade in Australia) remain in place?

1B: Org.au eligibility criterion – “special interest club”

Current policy:

1.12 In the past, org.au domain names were restricted to incorporated associations, non-profit Australian registered companies, registered charities, registered political parties and trade unions – these entities were required to provide an official identifier such as ACN or ABN. Following a Panel review in 2004, the eligibility rules for org.au domain names were relaxed to also allow a “special interest club” to register a domain name without having to provide an official identifier. The registrant must warrant that it meets the eligibility criteria, and auDA reserves the right to delete the domain name if it is found that the registrant has made a false warranty.

¹ <http://www.auda.org.au/news-archive/auda-06122009/>

² Approximately 22% growth per annum for .au domain registrations since 1 July 2002.

³ http://us.mcafee.com/en-us/local/docs/MTMW_KeyTakeaways.pdf

Issues:

1.13 In May 2009, auDA conducted an audit of over 18,000 org.au registrations⁴. The audit uncovered a number of registrants who had registered multiple org.au domain names under the special interest club criterion, but which turned out to be commercial entities or individuals who appeared to be using the domain names for monetisation or other commercial purposes. Often this was relatively easy to prove, however the Panel notes that “special interest club” is not defined and therefore auDA’s decision in some cases was necessarily subjective.

1.14 The Panel is concerned that the special interest club criterion, combined with the close and substantial connection rule, provides an easily exploitable loophole for people to register multiple org.au domain names and use them for commercial purposes (eg. domain monetisation). The same loophole exists in asn.au, but it does not appear to have been exploited due to lower recognition and popularity of asn.au domain names.

1.15 The Panel believes that genuine clubs and groups should be accommodated – whether in org.au or another 2LD – without being forced to incorporate or otherwise acquire some sort of official identifier. The challenge is to formulate eligibility criteria that prevent illegitimate registrations without disadvantaging legitimate registrants, or unduly increasing administrative costs for registrars and/or auDA. The Panel is considering a number of options, including the following:

- include a definition of “special interest club” that specifies the requirements for demonstrating eligibility, such as number of members, documented constitution or organising principles, statement of non-profit principles
- change the special interest club criterion to “unincorporated association”, defined as “an association, society, club, institution of body formed or carried on for any lawful purpose and that has not less than five members”
- require special interest clubs to provide evidence of their existence (eg. membership list, copy of constitution, minutes of meetings, etc) to the registrar at the time of registration
- remove the special interest club criterion for org.au, but keep the criterion for asn.au
- remove the special interest club criterion, and relax the eligibility criteria for com.au and net.au domain names to include unincorporated clubs and groups
- remove the special interest club criterion, and create a new 2LD to accommodate registrants who do not have any official identifier (NB the creation of a new 2LD would need to comply with auDA’s new 2LD policy and process)
- retain the special interest club criterion, and expressly prohibit domain monetisation (and possibly other commercial uses) in org.au and asn.au.

1B QUESTIONS

a. Should informal clubs and groups be allowed to register within org.au?

b. Should informal clubs and groups be allowed to register within com.au and net.au (ie. relax the eligibility criteria for com.au and net.au)?

c. How should the policy rules address illegitimate registrations, such as the use of org.au domain names for commercial purposes?

Issue 1C: Policy enforcement

Current policy:

1.16 Registrants are required to provide certain types of information at the time they register a .au domain name. The registrar must verify any official identifier provided by the registrant, eg. ACN, ABN, TM number. Otherwise, the registrar is entitled to rely on the warranty made by the registrant that they comply with the .au policy rules. auDA reserves the right to delete the domain name if the registrant is later found to have made a false warranty.

⁴ <http://www.auda.org.au/news-archive/orgau-audit/>

Issues:

1.17 There is a general acknowledgement among Panel members that there is no point having policy rules unless they are enforced. Policy rules in the .au domain have long been enforced through a combination of upfront verification of some registrant details at the time of registration, and complaints-based investigations after registration.

1.18 Although registrars are already required to validate official identifiers such as ACNs and ABNs at the time of registration, it has been suggested to the Panel that consideration be given to implementing more stringent upfront identification verification measures. This is considered particularly important where the domain name is a personal name, and the Panel is aware of a few instances of a well-known personal name being registered as a .au domain name by someone other than that person⁵.

1.19 However, the Panel notes that the same issue exists in other registration systems (eg. it is possible to register someone else's personal name as a business name in Victoria) and that other naming authorities do not perform extensive identification checks. Panel members also note that it is difficult and costly to implement effective online identity checks, and there is a concern not to place undue burden on registrars and registrants.

1.20 Panel members believe that the current complaints system appears to be effective in dealing with policy breaches after registration. The Panel has been provided with statistics on the number and type of complaints handled by auDA during 2010, and considers that the number of complaints is fairly minimal given there are now 1.76 million .au domain names.

1.21 However, the Panel acknowledges advice from auDA staff that there are a number of difficulties with enforcement, including the increasingly high expectations of complainants that auDA's role is to protect their rights (trade mark or otherwise). Panel members have suggested that more complaints should be referred to the auDRP instead of auDA, although there is recognition that the cost of lodging an auDRP complaint (\$2,500) is a real disincentive for small business and individuals.

1.22 Many Panel members think that there needs to be greater certainty for all parties, which would be assisted by removing or minimising the subjective nature of some of the policies, as discussed in relation to some of the policy issues above. Transparency of decisions is also felt to be important, and the Panel notes that auDA intends to implement an independent review mechanism for registrants whose domain name has been deleted by auDA for policy breach.

1C QUESTIONS

- a. Are current enforcement mechanisms in the .au domain space adequate and effective?**
- b. If not, how could they be improved?**

Issue 1D: Two year licence period

Current policy:

1.23 There is a fixed 2 year licence for all domain name registrations in the open 2LDs.

Issues:

1.24 The fixed 2 year licence period was introduced in all open 2LDs in 2002. At the time, a fixed licence period simplified the consumer protection message in the face of persistent mail out scams that attempted to mislead registrants into believing that their domain name was due to expire.

1.25 The gTLDs and many other ccTLDs allow domain name licence periods between 1 and 10 years. Panel members believe that .au registrants should also have access to flexible licence periods, and suggest that .au domain name licences be available for 1, 2, 3, 4 or 5 year periods.

⁵ Example: <http://www.abc.net.au/news/stories/2009/08/20/2662278.htm>

1.26 Variable licence periods would give registrants better choice in terms of managing their domain names. For example, a 1 year licence period would suit registrants who want to use domain names for temporary promotions or events, while a 5 year period would offer some protection during business start-up or research and development phases.

1.27 Under auDA policy, registrants are able to transfer their domain name to another registrar at no cost to themselves, but some registrars may not be prepared to take on the long-term provision of support and infrastructure services when they will not receive any payment until the end of the licence period. Panel members have suggested that auDA's transfers policy could be modified along the lines of ICANN's policy, which allows the gaining registrar to charge for a minimum one year renewal when accepting a transfer.

1.28 Another problem with longer licence periods is the difficulty in keeping registrant data up-to-date. It is common for registrant contact details to change even within a 2 year licence period, let alone 5 years. To counteract any detrimental effect on the integrity of the registry database, Panel members have suggested that registrars should be required to implement regular WHOIS data checks, regardless of the length of the domain name licence period.

1.29 The Panel acknowledges that registrars may incur some costs in adapting their systems to accommodate different licence periods, however it would not be compulsory for registrars to offer the service. The Panel also notes that the implementation costs, and impact on cash flow, for auDA and the registry operator would be significant, which may have consequences for the domain name fees charged by both organisations.

1.30 The Panel is aware that the 2004 Name Policy Review Panel recommended that the licence period be changed to allow 1, 2 and 3 year periods⁶, however the recommendation was not accepted by the auDA Board at the time. The Panel understands that the auDA Board was concerned about the impact that variable licence periods would have on registry competition. The .au 2LD registry operator is appointed through open tender every 4 years, so each year that is added to the domain name licence period makes it more difficult for a prospective new registry to manage its cash flow and recoup its investment.

1D QUESTIONS

a. Should the fixed 2 year domain name licence period be changed?

b. If so, what other domain name licence periods should be made available?

1E: Leasing of .au domain names

Current policy:

1.31 Currently, there is no .au policy that expressly addresses whether a registrant can lease (or sub-license) their domain name to another entity.

Issues:

1.32 The Panel is aware that some registrants have sought to generate revenue by leasing .au domain names to another entity. The domain name may be temporarily leased while the registrant prepares to launch a website, or may be used only for leasing if the name itself is highly sought after.

1.33 The Panel acknowledges that there may be legitimate commercial reasons for sub-licensing domain names (eg. as part of intellectual property rights management). However, if the domain name has been registered under the close and substantial connection rule, then the questions arise whether:

- the registrant has a genuine connection with the domain name if they are leasing it to someone else; or

⁶ <http://www.ada.org.au/pdf/nprp-final-report.pdf>

- whether the entity actually using the domain name has a close and substantial connection to it, and whether this would (or should) be sufficient to satisfy the policy rules..

1.34 It has been suggested that leasing be allowed as a category under the close and substantial connection rule, however Panel members have identified some issues for consideration:

- would leasing undermine the purpose of the close and substantial connection rule, which is intended to ensure that a registrant itself has a genuine connection with the domain name; and
- would leasing be inconsistent with the prohibition on registering domain names for the sole purpose of sale.

1E QUESTIONS

- Should a registrant be allowed to lease their domain name to another entity?**
- If so, under what circumstances?**

Issue 1F: Single character domain names (a-z, 0-9)

Current policy:

1.35 Single character domain names (eg x.com.au or 4.net.au) are currently not able to be registered in any .au 2LD⁷.

Issues:

1.36 Although previously restricted for technical reasons, many TLDs have now released single character domain names (eg .co, .net) and others such as .uk plan to release them subject to certain conditions (applicant must be a trademark holder and have evidence of trademark use in the UK prior to 1 January 2008).

1.37 Now that technical restrictions seem to no longer apply, the Panel is in favour of releasing single character domain names in .au. The Panel notes the difficulty in establishing eligibility for a single character domain name (eg. any business could be entitled to a single character domain name as long as it is a letter in their business name), and it acknowledges that there were some policy clarification issues when TLD domain names were introduced in 2006⁸.

1.38 Given that there is a limited number of single character domain names available, the Panel suggests that it would be relatively easy to check for policy compliance. Panel members note that these domain names would be considered highly valuable and sought after, and have suggested various means of release, such as an auction or ballot process. The Panel notes that the method of release would be a matter for auDA to determine.

1F QUESTIONS

- Should single character domain names (a-z, 0-9) be permitted in the .au domain?**
- If so, what requirements should a registrant have to meet to be eligible to register a single character domain name?**

1G: Registration of domain names for personal use

Current policy:

1.39 Individuals who want to register a .au domain name for personal use have the following options under the current eligibility criteria:

⁷ There are a few existing single letter domain names (eg. i.net.au, x.net.au), which are legacy domain names created prior to auDA's administration of the .au domain.

⁸ <http://www.auda.org.au/news-archive/auda-18052006/>

- registration in id.au, provided the domain name is an exact match, abbreviation or acronym of the registrant's personal name, or a name by which they are commonly known (ie. a nickname)
- registration in com.au or net.au, provided the registrant has an ABN or a registered business name
- it is not possible for an individual to register in asn.au or org.au, because the eligibility criteria only allow for organisations, associations, clubs or groups.

Issues:

1.40 Panel members have pointed out that the eligibility criteria for the open 2LDs do not accommodate individuals who want to register a domain name that relates to a personal hobby or interest. For example, an individual who wants to set up a personal hobby website about yachting but is not carrying on business, nor is known by the name "yachting", would not be able to register the domain name "yachting" in any of the open 2LDs under current eligibility criteria.

1.41 Anecdotal evidence suggests that people who want to register this type of domain name end up registering an ABN in order to meet the com.au eligibility criteria (which, given they are not commercially trading, possibly constitutes an abuse of the ABN registration process), or registering the domain name in a gTLD.

1G QUESTIONS

a. Should individuals be able to register domain names that relate to a personal hobby or interest?

b. If so, how should the eligibility criteria be changed to accommodate this type of domain name?

1H: Direct registrations under .au

Current policy:

1.42 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 2LDs and people must register their domain name as a 3LD (eg. domainname.com.au, domainname.org.au). The .au 2LD hierarchy was created by the first administrator of the .au domain, Robert Elz.

Issues:

1.43 The issue of direct registrations under .au was last considered by the 2007 Names Policy Panel, which recommended that .au not be opened up to direct registrations at that time. The 2007 Panel found that there was no groundswell of support for direct registrations, and even among those who supported it, there was no agreement on a method of implementation.

1.44 The current Panel believes it is worth revisiting the issue of direct registrations to see if public opinion has changed over the past few years. The pros and cons of direct registrations were thoroughly canvassed by the 2007 Panel, and are reproduced at Attachment A.

1H QUESTIONS

a. Should .au be opened up to direct registrations?

b. If so, what requirements should a registrant have to meet to be eligible to register a .au domain name?

2. Reserved List Policy (2008-03)

Current policy:

2.1 The current Reserved List contains names (including letters, numbers and hyphens) that are either:

- restricted under Commonwealth legislation; or

- may pose a risk to the operational stability and utility of the .au domain.

2.2 Words and phrases currently restricted under Commonwealth legislation are “Commonwealth”; “Federal”; “ANZAC”; “Geneva Cross”; “Red Crescent”; “Red Cross”; “Red Lion and Sun”; “United Nations”; “University”; “Olympic(s)”; “Olympiad(s)”; and “Olympic Games”.

2.3 Words and phrases on the restricted list are blocked at the registry and cannot be registered unless consent is provided by a particular governing body, with the exception of the words “Commonwealth” and “Federal”, where total restriction applies.

Issues:

2.4 The Panel believes that the current policy is appropriate and effective, but may require updating to ensure consistency with Commonwealth legislation.

2 QUESTION

a. Do you have any comments about the contents of the Reserved List, and/or the operation of the Reserved List Policy?

3. Domain Monetisation Policy (2008-10)

Current policy:

3.1 Under the Domain Monetisation Policy, “domain monetisation” means “registering a domain name in order to earn revenue from a monetised website”, and a “monetised website” means “a website or landing page that has been created for the purpose of earning revenue from advertising”.

3.2 The policy permits the registration of domain names for the purpose of domain monetisation under the close and substantial connection rule, under the following conditions of use:

- the content on a monetised website must be related specifically and predominantly to the domain name
- the domain name must not be, or incorporate, an entity name, personal name or brand name in existence at the time the domain name was registered.

Issues:

3.3 When the Domain Monetisation Policy was first introduced in 2006, a monetised website was easily recognisable and mostly followed a common format, which meant that enforcement of the policy was relatively straightforward. However, the practice of domain monetisation has significantly changed from a simple webpage with click-through advertising links, to incorporate other formats such as news articles, blogs, images and so on. Methods employed by domainers are becoming increasingly sophisticated and complex. In some cases it may be that domainers are attempting to circumvent the policy. However, to be fair to the domainer industry, the practice itself is constantly evolving as domainers test and refine ways of generating revenue.

3.4 Given the maturation of the domainer industry and the dynamic nature of the practice, it is timely to consider how domain monetisation should be treated within the overall .au policy framework. It is generally agreed that the current policy is unworkable, due to the broad and uncertain definition of “domain monetisation”. It is becoming increasingly difficult for auDA to determine whether or not a website is monetised within the meaning of the policy, and the decision is necessarily subjective. Domainers and complainants alike have expressed frustration at the apparently inconsistent outcomes of complaints made under the policy.

3.5 There is a suggestion that domain monetisation should no longer be subject to specific regulation, but should simply be included within the general Policy Rules, for the following reasons:

- domain monetisation is a legitimate commercial endeavour and has been an accepted practice in the gTLDs for some time
- conditions about the content of monetised websites are redundant since it is in the interest of domainers to ensure that the content of the website is relevant to the domain name
- auDA's jurisdiction arguably does not extend to checking or controlling the content of websites..

3.6 Arguments for the retention of a separate policy for domain monetisation include:

- domain monetisation is inconsistent with the long-standing .au policy principle that there must be some kind of valid and recognisable link (ie. a "close and substantial connection") between the registrant and their domain name
- in the case of domain monetisation, the public interest lies in ensuring that Internet users are not diverted to monetised websites that offer no relevant service or benefit
- the conditions of use under the current policy are not onerous, and there is evidence to suggest that many domainers have already modified their practices to ensure compliance.

3 QUESTIONS

a. What do you understand by the term "domain monetisation"?

b. Should domain monetisation continue to be subject to specific regulation?

c. If so, how could the Domain Monetisation Policy be made more workable?

d. If not, would the general Policy Rules offer sufficient safeguards to deal with bad faith registrations by domainers?

e. Should domain monetisation be permitted in the non-commercial 2LDs (asn.au, id.au and org.au)?

4. Prohibition on Misspellings Policy (2008-09)

Current policy:

4.1 The Prohibition on Misspellings Policy prohibits the registration of domain names that are misspellings of entity, personal or brand names (also known as typosquatting). For example, under the policy, google.com.au is a prohibited misspelling of google.com.au. The main reason why people register misspellings is to "catch" Internet users who intended to go to the real website. auDA maintains a list of names that have been determined under the policy to be prohibited misspellings; the list currently contains approximately 2,000 names.

Issues:

4.2 The Panel believes that there are good consumer protection reasons behind the policy, such as preventing phishing scams, avoiding user confusion and generally protecting the integrity of the .au domain space. Many of the names on the list of prohibited misspellings belong to major banks and well-known government agencies and programs (eg. ATO, Medicare), and there is a public interest in minimising the risk of Internet users mistakenly going to a bogus bank or government website.

4.3 The policy protects entity, personal and brand names. Entity and personal names are straightforward and objectively defined, but brand names are more problematic. The term "brand name" is defined in the policy as "the name of an identifiable and distinctive product or service, whether commercial or non-commercial". The policy was drafted under the assumption that only well-known, trademarked brand names would be the target of a typosquatter, eg. Google, Yahoo, Microsoft, Telstra, Optus, Qantas, all the major banks. These make up the bulk of the names on the list of prohibited misspellings.

4.4 However, auDA has advised the Panel that over time, it has received an increasing number of complaints from SMEs and sole traders that their "brand name" has been infringed in

breach of the policy. In some cases auDA has determined that they do have a brand name, in some cases it has not. This raises the following issues:

- the subjective nature of the policy with respect to brand names
- whether it is appropriate for auDA to recognise brand names that are not recognised in law
- whether it is appropriate for auDA to protect brand names in the first place.

4.5 The Panel has considered whether obvious brand names could be blocked at the registry, however it is felt that blocking so-called “obvious” brand domain names would be subjective and unfair to other businesses who also may claim to have a brand.

4.6 The Panel also notes that most trademark owners have the resources to enforce their own rights and should not have access to a free enforcement mechanism via auDA. Panel members have suggested that companies that have issues with the misspelling of a domain name should be referred to auDRP or legal recourse instead.

4 QUESTIONS

a. Should the restriction on prohibited misspellings remain in place?

b. If so, what type of names should be protected?

c. How should a prohibition on misspellings be enforced?

**THE PANEL WELCOMES ANY OTHER COMMENTS OR SUGGESTIONS
IN RELATION TO THE POLICY ISSUES UNDER REVIEW.**

GLOSSARY

Term	Definition
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)
ABN	Australian Business Number
ACN	Australian Company Number
ARBN	Australian Registrable Body Number (ASIC identifier for foreign entities registered to trade in Australia)
auDA	.au Domain Administration Ltd
auDRP	.au Dispute Resolution Policy
ccTLD	Country Code Top Level Domain (eg. .au, .uk)
Domainer	An entity or individual that registers domain names for the purpose of domain monetisation
Domain monetisation	The practice of registering domain names in order to earn revenue from advertising
DNS	Domain Name System
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
SME	Small to medium enterprise
TLD	Top Level Domain (includes ccTLDs and gTLDs)
TM	Trade mark

EXTRACT FROM 2007 NAMES POLICY PANEL ISSUES PAPER, MAY 2007

<http://www.auda.org.au/pdf/2007npp-issues-paper.pdf>

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

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 ccTLDs⁹ 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 names¹⁰ compared with over 65 million .com domain names¹¹, 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.

⁹ Examples include Austria (.at), China (.cn), Japan (.jp), Korea (.kr), Singapore (.sg).

¹⁰ Refer to .au registry reports at <http://www.auda.org.au/ausregistry/reports/>.

¹¹ Refer to daily domain count statistics at <http://www.domaintools.com/internet-statistics/>.

- Assuming Option 1 above was adopted, direct registrations would reduce the size of the available namespace as well as the branding choice for 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.¹² Any special protective rules or procedures would have a high overhead, with the likelihood that costs would be passed onto consumers.

¹² For example, refer to www.euridsucks.eu.