

## AUSTRALIAN COMMUNICATIONS AUTHORITY

### SUBMISSION TO REVIEW OF POLICIES IN .AU SECOND LEVEL DOMAINS

#### 1. Introduction

The ACA supports a self-regulatory environment for the administration of domain names in Australia. In this context, it recognises that the majority of the issues raised in the discussion paper are intended to gather industry's response. The ACA provides comments on a small number of issues in order to assist this process.

The ACA's submission comments on:

- Proposal 4.1.1(d) relating to the eligibility to apply for a domain name licence;
- Proposal 4.1.2 relating to the question of one domain licence per entity;
- Proposal 4.1.5 relating to the renewal period for domain name licences;
- Proposal 4.2.2 relating to licensing of generic and/or geographic names; and,
- Proposal 4.3.2 relating to introduction of a system of gateways.

The ACA supports the Panel's ten 'desirable attributes' of good domain name policy, but recognises that balancing these attributes may prove challenging. The ACA also notes the Panel's need to work with the Competition Panel to ensure it does not commit itself to any decisions that would limit the Competition Panel's ability to develop policy.

By way of background, the ACA is currently investigating the feasibility of introducing market-based allocation of valuable local rate (13) and freephone (180) telephone numbers. This week, the ACA has released a public discussion paper on this topic *A New Allocation System for Valuable Telephone Numbers?* Some issues associated with the allocation of domain names appear to have similarities with those currently under consideration by the ACA for the allocation of valuable telephone numbers. The submission comments on these issues where appropriate.

#### ***Proposal 4.1.1(d) It is not considered bona fide to license a domain name for the sole purpose of selling it***

The ACA understands the intention of this proposal but notes that monitoring and enforcing compliance would be difficult.

As part of its study into mechanisms for allocating valuable telephone numbers, the ACA examines the implications of allowing trading of these numbers. It concludes that vanity squatting, whereby a company or person acquires a valuable telephone number (or an Internet domain name) and seeks to profit from trading, is likely to adversely affect the efficient use of the scarce numbering (or naming) resource.

However, this scenario is most likely when the resource is allocated in a 'first-come, first-served' fashion. If domain names are allocated via market-based means (for example, an auction), vanity squatting will be less likely to occur because the

allocation process will identify the entity that values the domain name most highly, at that time.

Under these circumstances, a secondary trading market could assist in ensuring that the name or number continues to be held by the party that values it most highly, whilst minimising undue windfall gains.

Any proposal to allow trading in domain names in future could usefully be considered by auDA Competition Model Advisory Panel's assessment of requirements for competitive registries.

***Proposal 4.1.2 One domain licence per entity***

The ACA notes that the current limit of one domain name licence per entity operates, in part, as a rationing mechanism. Such a mechanism appears to be difficult to enforce and represents an inferior approach to a market-based allocation system (see comments on proposal 4.2.2 below). If a 'first-in, first-served' allocation system remains in place, this restriction may have a role as an interim rationing measure when new domain names are made available (eg. when a new second level domain is opened).

***Proposal 4.1.5 The renewal period for domain name licences***

The ACA supports the proposal that domain name licences be subject to a specified renewal period, and that licence holders be required to provide evidence of continued eligibility to hold the licence.

The ACA's experience is that ongoing charges result in a more efficient use of finite resources by requiring ongoing assessment of the holder's need for the resource held. The ACA notes that the proposal is not dissimilar to the justification for annual numbering charges currently imposed on the holders of telephone numbers.

***Proposal 4.2.2 Licensing of generic and/or geographic names***

The ACA supports the further exploration of the proposal to enable licensing of generic and geographic domain names using an appropriate licence allocation system, such as a market-based one.

It agrees that allocation of generic and geographic domain names can bestow significant advantages on the holder of that domain name. The ACA notes that there are clear implications for competition policy as well as possible public interest considerations that should be taken into account.

The ACA sees similarities between policies to allocate new sought-after domain names and its own proposals to allocate previously unavailable ranges of desirable telephone numbers. While the potential space for domain names and telephone numbers is very large, only a relatively small proportion of it is likely to be valuable to users. In particular, easily memorable names and numbers are eagerly sought. These valuable numbers and names clearly include numerous generic and geographic phone words and domain names.

In its assessment of valuable telephone numbers, the ACA identifies a number of possible allocation mechanisms. It finds that:

- first-in, first-served mechanisms reward the fortunate and are likely to lead to vanity squatting and an inefficient use of the numbering space;
- attempts to recognise that value exists in particular numbers via fixed prices are likely to under-value some numbers (thus creating an incentive for the holder to profit from trading) and over-value others (leading to unused resources);
- use of qualitative tenders are likely to be resource intensive and subjective; and
- use of lotteries (without qualifying criteria) are likely to encourage entry by participants who do not value a particular number highly and are therefore also likely to create an incentive for the winner to profit from trading.

The ACA's paper concludes that market-based methods of allocation allow use of the pricing mechanism to identify the party that values the use of the number most highly, leading to an allocatively efficient use of the number.

Following consideration of submissions received in response to these views, the ACA intends to conduct a cost-benefit study in the first half of 2001 to determine whether market-based allocation of valuable telephone numbers is of net benefit. The ACA would be happy to share the results of this study with auDA.

The ACA acknowledges that if domain names are to be allocated via market-based means, issues such as eligibility to allocate and bid for domain names and the destination of any additional revenue would need to be addressed, in close consultation with the Competition Panel.

The ACA also gives brief consideration in its discussion paper to using lotteries with qualifying criteria as an allocative mechanism. In the case of telephone numbers, it concludes that such criteria would be difficult to set. However, in the case of Internet domain names, the ACA observes that a useful set of qualifying criteria may be generated by the discussions about the appropriateness of names to entities (section 4.1 of the Name Policy Advisory Panel Public Consultation Report). Lotteries could be open to eligible participants and made self-funding by the use of entry fees.

***Proposal 4.3.2 Introduction of a system of gateways.***

If auDA does not wish to consider a market-based method of allocation or lotteries, the ACA is of the view that a gateway structure merits further consideration. Such a structure would act as a means of sharing generic and geographic names, and it would enable consumers to exercise choice in how to access information and resources. Gateways could also be utilised to provide funding for the administrative costs associated with the development and management of such a structure.

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