

Ms Jo Lim
Secretariat
auDA Name Policy Advisory Panel

Wednesday, 20 December 2000

RE: Review of Second Level Domain Name Policy.

Dear Ms Lim:

The following submission is being provided by the Australian Retailers Association, whose membership comprises over 11,000 retail businesses transacting an estimated \$105 billion pa (75% of the nation's retail sales) and employing approximately three quarters of the retail workforce. The Association is grateful of the opportunity to comment on this issue.

ARA members operate about 40,000 retail outlets across the nation. Approximately 10,000, or around 95%, of the Association's members are small businesses (i.e. employ less than 20 staff) operating only in one state, while the balance are either retailers larger than that but still operating in one state or 'national retailers' which are defined as retailers operating in two or more states. Some 140 members of ARA fall into the 'national retailer' category. It is estimated that these 'national retailers' transact close to 50% of Australia's retail sales.

ARA's membership profile and numbers make it one of the largest and most comprehensively representative industry associations in the nation. Importantly, the ARA's membership profile generally reflects the profile of the retail industry.

4.1.1 Eligibility to apply for a domain name licence

The ARA agrees with the proposals outlined in 4.1.1. It is important that those who wish to register a domain name for the purposes of gaining an on-line identity need to be "bona-fide" in their registration of the name. The ARA is supportive of the recent changes to domain registration policy, which allows the use of an ABN number to establish the "bona-fide" relationship.

4.1.2 One domain name licence per entity

The ARA is strongly in favour of the relaxation of this rule. Whilst there may be an argument to suggest that this should be limited in some way (eg 2, 3, or 4), the association believes that the number should not be restricted, as the other rules in place will allow a “natural” logical limit to individual business domains. From a retailer’s perspective, the more domains they register, the more administration, so they are unlikely to go “overboard” anyway. There is a bigger threat of confusion from the multiple domains that are appearing (.biz, .tv, etc) than there is from having too many .com.au domains.

Proposal 4.1.3:

a. There must be a connection between the domain name and the domain name licence holder.

b. A connection between the domain name and the domain name licence holder can be demonstrated by:

- I. an exact match between the domain name and the name or trade mark of the domain name licence holder; or**
- II. a direct semantic connection between the domain name and the name of the domain name licence holder.**

The ARA supports the recommendations on the basis that it makes obtaining a domain name easier. The process of derivation is over-restrictive and impractical, particularly for those businesses with longer business names.

There are both pros and cons for the further potential relaxation of domain registrations. On the plus side, the further relaxation of the requirements would be a motivator for small business to become a greater participant in domain registration. Small businesses generally see the current procedure as a “red tape” one (or simply don’t see the value in it). The Internet Service Providers (ISP’s) who submit to this review will undoubtedly push for a either a partial or a total relaxation of the restrictions in relation to business name relationship. It is obvious that this would mean more income for them (due to more registrations).

The negative aspect is, of course, the potential for cyber-squatting and the danger of the space becoming a more litigious one.

There is an aspect of this negative outlook which already exists in Australian business (particularly small business), and that is State based business names. The issue of “name squatting” has been around since before the advent of the Internet, and is merely exacerbated by domain registrations.

Domain registrations are, in effect, global, while trading names are not. If, for example, Mr X registers a business in Victoria, and has the trading name “Small Business Inc.” Mr Y can register a similar business name in New South Wales and trade under the same name. The Association had the experience early in 2000 with a Victorian member calling to ask if there was any way to stop a business from Interstate attending a trade show in Melbourne, because the interstate business used the same name as the Victorian business. The Victorian business argued that the interstate business was deliberately capitalising on the established name of the Victorian business and had no right to do so. Upon enquiries made by the Association, it was discovered that the Victorian business had no recourse.

This scenario, as mentioned before, existed before domain names became prevalent. However due to the fact that domain names are both unique and national (.com.au), the restriction of one name per entity, along with the difficulty and confusion associated with the registration process, has simply caused Australian small retailers to participate in low numbers.

The disparity between business name registration and domain name registration is an issue for small business. In the context of the review, the Association supports the relaxation of the direct derivation rule on the basis that it has only served as a barrier to small business domain registrations and the proposed changes will make it easier, despite the threat of “cyber-squatting” (which has been there anyway).

Proposal 4.1.5:

All domain name licences should be subject to a specified renewal period, and domain name licence holders should be required to provide evidence of continued eligibility to hold the licence at the time of renewal.

The ARA generally supports this initiative, however there is some concern as to the test for continued eligibility. The test would need to take into account the level of effect on the business if the domain registration was revoked, in terms of time and cost to the business.

Proposal 4.2.1:

Retain the current policy restricting the licensing of generic, geographic and objectionable domain names and apply it across all open 2LDs. Adopt the following 'reserved list' approach:

Proposal 4.2.2:

Relax the current policy and enable licensing of generic and geographic domain names using an appropriate licence allocation system, such as a market-based one.

The ARA agrees that a reserve list approach is a sensible one, and that there needs to be a mechanism in place for businesses to dispute the listing of a domain name on the reserve list, or to have the ability to argue for the release of a domain name from the list. This would be the case in circumstances where the domain name conformed with all other criteria apart from the reserve listing criteria, or there would be a potential detrimental effect on the business brought about by reserve listing.

The licensing of generic domain names would have significant advantages for Australian businesses, as currently they are disadvantaged by the allowance of such names in the top level domain space. It could be argued that Australian business loses exposure to overseas companies due to the easier search capabilities offered by these easy to remember, subjective domains. It could be argued that unfair advantage could be gained by registering generic names, however again there is the issue of where the generic name / geographical name fits all domain registration criteria for the related business other than its generic nature.

It may also be said that the release of generic names may also be avoided, due to the possibility of brand confusion with overseas businesses.

Proposal 4.4.1:

Domain names that begin with a number should be allowed, however domain name licence applicants should be made aware of potential problems.

The issue of old software potentially not coping with numbers at the start of domain names is really not a great issue at all. With the wide distribution of free versions of web technology, browsers, plugins, etc, the need to comply with old versions of software is becoming more and more minimal. There are substantial benefits to keeping up to date, such as speed, content and security. For example, old versions of browsers did not cope with partially typed domain names (eg without the www). For the newer browsers, this is not an issue.

Proposal 4.5.1:

Changes to domain name eligibility and allocation policies will not have retrospective effect for current domain name licence holders, and will only apply to existing domain name licences at the time of re-registration.

The ARA agrees with the proposal.

Dispute Resolution:

The Association agrees with the proposed outline of the dispute resolution procedure, however would be reserving its support of the procedure until further detail is released. The ARA would be keen to be involved in the development of these procedures, due to its strong representation in the emerging Small to Medium Enterprise (SME) market.

Comment:

The ARA believes that the small business sector stand to be major beneficiaries of these reforms. Therefore it is important that changes are approached with a view towards these less empowered businesses, and their emergence into the on-line space.

There are several reasons for the low penetration of domain registrations in the SME retail sector: -

1. It's confusing.
2. The domain registration contact point has traditionally been ISP's. This makes the small business assume they have to get connected to reserve a domain name, when this is of course, not the case. Due to the ISP's natural willingness to bundle domain registration into the greater connectivity deal (which has traditionally been out of the reach of the small business sector due to cost), small retailers particularly have simply not bothered. The need to reserve intellectual property in the form of your business' domain name has not been pushed by the ISP industry. The web hosting sites that offer "free addresses" such as www.domain.com.au/~name are also partially to blame for the miseducation of the SME sector in terms of on-line identity in Australia.
3. There is a fundamental lack of knowledge in the business community as to how the domain registrations work. Quite often the bulk of the information received by business in this area is in the form of advertising or media coverage. Advertising about domain registrations is very easily misleading. The ARA recently received a domain renewal notice from a company it had never heard of before. This notice will be reported to the ACCC as "blower", due to its misleading nature.

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