SUBMISSION TO auDA NAME POLICY ADVISORY PANEL

by Southcorp Limited

in response to

SECOND PUBLIC CONSULTATION REPORT
(February 2001)

on the

Changes to Domain Name Eligibility and Allocation Policies in .au Second Level Domains

This submission does not address all of the proposals contained in the Second Report, it only addresses those areas where the company has had some experience, and has a view regarding the proposal.

3.1.2 All domain name licences should be subject to a renewal period, to be specified by auDA, or by the relevant 2LD administrator subject to ratification by auDA. The domain name licence holder should be required to provide evidence of continued eligibility to hold the licence at the time of renewal.

See comment below in relation to recommendation 3.1.3d.

3.1.3 In order to licence a domain name in the .au domain space, the following conditions should be satisfied.

a. …

c. There must be a declaration of a bona fide intention to use the domain name licence for the purpose envisaged by the relevant 2LD.

The nature of the "intention to use" of the domain name licence applicant should be stated on the application. This is not so much for the purposes of examination at the time of application, but to provide a reference point in the future. The stated bona fide intention should be examined against any actual use (or preparations for use) in the event of any UDRP-type challenge by the owner of a registered trade mark who believes that the use of the domain name is an infringing use.

d. A bona fide intention to use the domain name licence for the purpose envisaged by the relevant 2LD should be demonstrated in accordance with the rules applicable in that 2LD.

The Report states:

> "*The Panel notes that according to the requirement under Recommendation 4.1.2 to provide evidence of continued eligibility to hold the domain name licence, a domain name licence holder who relied on an application for a Registered Trade Mark to licence the domain name would need to show that the application had been approved when the domain name came up for renewal*.

This requirement needs an element of flexibility, depending on the length of time before renewal is required, as trade mark applications may take more than 24 months to proceed to registration.

The domain name licence holder should be able to renew the licence, provided it has continued to prosecute the trade mark application during the relevant period.

Lengthy application processes may arise because the Registrar of Trade Marks requires further information from the trade mark applicant, or because there is an objection to the registration of the trade mark.

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

If the 'derivation rule' is designed to "preserve the integrity of the .au domain space and guard against activities such as cybersquatting and domain name hoarding", as stated in the Report, then perhaps there should be some discretion for (or even a direction to) the registrar to refuse applications which appear to be just that.

For example, a person might register a business name such as "The National Coca-Cola Museum of Australia", then use this as the basis for an application for coca-cola.com.au. (There have been genuine examples of persons using this practice.)

4.3.1 Until an appropriate licence allocation method has been devised, the licensing of generic domain names should be prohibited and the following "reserved list" approach should be adopted…

It is not clear from the Report what happens if an applicant successfully challenges a domain name on the reserved list. For example, is the successful challenge entitled to that domain name licence?

The Report states that "*The Panel will consider possible allocation methods for generic domain names and the ways in which transition to a new policy may be managed, at its next meeting*". It is important that a list of previous applicants for generic names not be used as a quasi reservation system, as such a proposal would disadvantage persons who, mindful of the policy against generic names in the .au space, did not waste the registrar's time by attempting to obtain licences of such names.

4.3.2 Until an appropriate licence allocation method has been devised, the licensing of geographic domain names should be prohibited, using the same "reserved list" approach outlined in 4.3.1.

The same comments apply as in relation to 4.3.1.

Also, the Report expresses the desire for "*greater transparency*" and "*certainty and guidance to domain name licence applicants*". In this respect, the definition of what is a geographic name, and what is not, needs to be considered. For example, are all names of areas which bear postcodes prohibited from use? What about specialist geographic names, such as those declared to be 'registered geographical indications' for the purposes of the *Australian Wine and Brandy Corporation Act*?

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