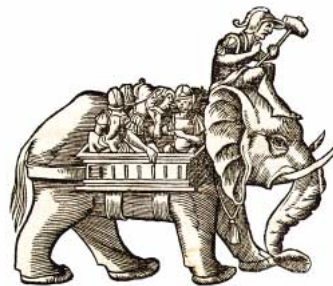


**Response by Caslon Analytics Pty Ltd
to
auDA Public Consultation Reports on**

Proposed Competition Model for the dot-au Domain Space

and

Changes to Domain Name Eligibility and Allocation Policies in the dot-au Second Level Domains



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15 March 01
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Executive Summary

This response by Caslon Analytics Pty Ltd responds to the reports of the auDA Competition Policy and Name Policy advisory panels.

Caslon commends the two panels in working towards a regime that reflects the realities of 2001 and beyond. Overall, both reports are endorsed and we look forward to timely implementation of an enhanced policy that embodies auDA's charter for a competitive, functional and self-regulated dot-au domain space.

Support for an enhanced regime

auDA has a clear mandate for early introduction of an enhanced regime that reflects individual and business expectations and that draws on overseas experience, in particular that of Canada, the UK and Belgium.

Benefits from introduction of competition in the provision of registration services include significantly reduced registration prices (considered by many Australians to be a substantial disincentive to going online) and the development of value-added services.

MelbourneIT's support for competition in dot-com, dot-net and dot-org registration services suggests that at a global level it fully acknowledges those benefits—which should accordingly apply to the dot-au space.

Competition

We support proposals for the introduction of multiple registrars in competition against each other (except for 'closed' domains such as 'gov' and 'edu'), with a single registry. Competition relates to registrars, not to registries.

Introduction of competition is inextricably associated with effective dispute resolution mechanisms, which should not be delayed or treated as an afterthought. Those mechanisms should reflect ICANN's UDRP and bodies such as the Telecommunications Industry Ombudsman; it is not necessary or practical to establish an idiosyncratic scheme that imposes inordinate costs, is not transparent or conflicts with global intellectual property developments .

Potential entrants into the industry (ie the registry operator and registrars) must demonstrate their capability and engage in pre-competition testing of systems. Viable industry self-regulation necessitates adequate staffing and funding of auDA and of dispute resolution bodies.

Names

We advise against the proliferation of 2LDs as contrary to the universality and transparency of the DNS. It also potentially conflicts with developments such as the dot-pro TLD.

Instead we urge auDA to adopt the Canadian model, opening up the dot-au space.

We do not endorse continued restrictions on generic or geographic names. Overseas practice suggests that the supposed advantages of generic names are significantly overstated; auDA should rely on the market rather than attempting to second-guess consumer, operator and investor preferences. Geographic restrictions implicitly penalise those businesses and individuals with 'geographic' names such as Appleby. Mechanisms to address 'passing off' are in existence and consumers already differentiate between dot-gov and other 2LDs.

Increasing consumer sophistication means that the idiosyncratic 'id' 2LD scheme has been a failure. We see no reason why individuals should not gain standard names. Similarly, the restriction to Australian entities is unnecessary; any concerns can be addressed through existing legal mechanisms, through dispute resolution arrangements and the warranty provisions proposed by auDA. In practice the 'first come first served' principle, underpinned by the UDRP model, offers the most advantages to Australia

auDA will inevitably face criticism whatever regime is instituted. It cannot please all parties; significant delay through further consultation or elaboration of what one representative described as "a distinctively Australian" regime is not appropriate.

Response by Caslon Analytics Pty Ltd to auDA Public Consultation Reports

This document responds to the request for comment on two auDA reports of February 2001, ie the

- *Proposed Competition Model for the .au Domain Space*
- *Changes to Domain Name Eligibility & Allocation Policies in .au Second Level Domains (2nd Public Consultation Report)*

The issues dealt with in those reports are interrelated and we have accordingly supplied a single response that addresses both documents. We recommend that in considering responses to the reports auDA aim for an integrated and forward-looking policy that embodies notions of international best practice and directly reflects:

- community and business expectations
- overseas experience.

It should not be determined by past practice or result in an idiosyncratic regime with a uniquely 'Australian' flavour at the expense of functionality or stability.

Introduction

Caslon commends the work of the auDA advisory panels. We are mindful of efforts to accommodate a range of often dissonant views and note that auDA has actively sought advice from the general community and those directly interested in administration of the dot-au space over a period of several months.

Given widely different perceptions of the DNS, of its broader significance and specific operational issues we believe that auDA will be criticised whatever policy is devised. That criticism should not deter the Board from moving quickly to articulate and implement a forward-looking policy. It is neither possible nor appropriate to please everyone; extensive additional consultation will not eliminate those criticisms

Does auDA have a strong charter for systemic enhancement of the existing regime? The answer is clearly yes. It is underpinned by last year's 'safety-net' legislation. Its Board has been openly elected. It has published consultation papers and sought community comment in seminars, the DNS discussion list and other fora. Individuals, businesses, industry bodies and potential providers of registration services assume that it will in the immediate future give effect to its charter by:

- introducing competition in the provision of registration services

- addressing criticisms of the existing policies and their operational application.

Those policies were created last decade. They reflect quite different community and business expectations about internet connectivity and about the identification of digital resources. Those expectations have changed and the policy must change accordingly. auDA's charter requires it develop and oversee implementation of an enhanced policy based on:

- understanding of overseas experience in DNS administration
- commercial interest in the internet and the evolution of mechanisms such as the UDRP to address concerns about intellectual property
- community demand for a regime that is stable, intelligible, equitable and low cost.

The charter does not encompass development of a "distinctively Australian" regime: the emphasis must be on functionality rather a space with a strong Aussie twang. Given community expectations auDA should aim for international best practice, reflecting Australia's participation in the global networked economy.

User Requirements

auDA is committed to the introduction of competition because that will result in tangible benefits for consumers of registrations services (ie individuals, businesses and other organisations).

It is clear that Australians seeking a dot-au name pay significantly more than their overseas counterparts. An enhanced regime will lower costs and remove this inequity.

Australia is a player in a global information economy. Australian organisations and individuals are increasingly aware of overseas developments regarding the DNS. We have not conducted extensive market studies in preparation of this response but it is clear from comments by individuals, businesses, nonprofit organisations and government officers in Canberra, rural New South Wales, Brisbane, Adelaide and Melbourne that:

- people are aware that domain registration outside the dot-au space is significantly cheaper
- there is real concern about the basis of the premium and agreement that it is a disincentive for SMEs and individuals
- the mechanics of gaining a dot-com in particular are less onerous
- many consumers are accordingly "going overseas" through acquisition on a non-au name
- there is interest among consumers and potential providers in a range of value-added services

Experience in Canada, the United Kingdom, New Zealand, Belgium and other name demonstrates that there is strong and growing demand among individuals and businesses for domain registration. It is no longer the case that a domain is only of interest to a few large businesses, professional organisations or expert individuals. While figures about registration demographics are contentious, it is clear that:

- businesses often wish to use more than one domain (and thus find existing dot-au restrictions inappropriate)
- individuals are beginning to move from 'walled gardens' such as AOL to their own domains

Demand is taking on the characteristics of the telephone market, with consumers expect that:

- they will be able to quickly obtain a domain for business, professional or personal purposes
- the process for obtaining the domain will be transparent, consistent, speedy and user friendly
- acquisition will be low-cost
- there will be equitable, transparent and low-cost mechanisms to address any disputes about ownership or about the performance of the service provider.

Competition Model

auDA should address those expectations through the timely introduction of competition between registrars.

We are agnostic about a requirement for a single versus multiple registries but overall lean towards a single registry for the dot-au space. Potential concerns about vertical integration mean that a single entity should not serve as registry and registrar.

MelbourneIT, the commercial body currently responsible for most registrations in the dot-au space, has cogently identified the benefits of competition within the dot-com, dot-net and dot-org spaces, demonstrating that there are advantages for business and consumers through significantly reduced costs and the provision of value-added services. We are convinced by MelbourneIT's arguments, reflected in recent debate about the relationship between VeriSign and ICANN. The Australian market is neither so special nor so immature that such competition should be deferred.

We accordingly endorse proposals for competing registrars (with the possible exclusion of the 'gov' and 'edu' spaces). The registrar market should be open to those bodies that:

- demonstrate a capability to delivery registration services (ie meet resource and performance tests)
- provide a warranty regarding any resellers
- agree to participate in industry dispute regulation arrangements.

Names

In addressing consumer expectations we encourage the auDA Board and Panels to bear in mind overseas experience, in particular regarding the dot-ca space.

We strongly endorse suggestions for the removal of restrictions on:

- the number of domains that can be owned by a commercial entity
- geographic names
- generic names.

The current restriction on 'geographical' names is inequitable and presupposes that consumers are not capable of differentiating between 'official' sites and those operated by nongovernment organisations and individuals. Consumer awareness has significantly increased and will continue to do so through experience and educational campaigns conducted by industry and government bodies. Existing trade practices law is also relevant. We see no substantive reason why Mr Appleby (or the Tumut Pub) should not gain appleby.com.au or appleby.au or tumut.au.

Increased consumer awareness means that the restriction on generic names is inappropriate. Significant declines in the notional value of generic names in the US is consistent with studies suggesting that marketing, rather than a name *per se*, is important. Proctor & Gamble for example has moved to write off investment in a swag of generics after finding that ownership of names did not equate to significant traffic and thus tangible value. auDA should not second-guess the market in the absence of authoritative studies.

In line with comments below regarding dispute resolution we welcome the Panel's emphasis on a warranty on the part of domain licensees and other measures to minimise 'bad faith' uses. Overall, we endorse the 'first come first served' principle.

We urge caution in proposals for the proliferation of 'walled gardens', ie 2LDs such as biz-au or pro-au or the example given at the recent IIA conference of doubleglazing-au. There are insufficient empirical studies to determine whether those who operate sites and those who visit them require a significant number of additional 2LDs. Some studies suggest that consumers increasingly do not regard the DNS as the only/primary directory but instead rely on links, offline pointers such business cards and television or print advertising, and search engines or portals. We caution against

balkanisation of the net, particularly through measures that conflict with initiatives such as the dot-pro TLD (eg proposals for a biz-com-au or biz-au, law-au or legal-au).

The dot-id-dot-au scheme for personal domains in Australia was a useful experiment. It has proved unsuccessful. The Panel has not made a case for quarantining personal sites and if the rationale is accepted one might ask why not a separate space for pet cats, dogs and other livestock (eg the ten thousand plus pet rat sites supposedly identified by one US researcher).

We commend the dot-ca model and urge auDA to open up the dot-au space so that any legitimate entity (eg one that passes the 'good faith' test) can gain a domain. Emphasis on 'opening up' rather than on balkanisation' will facilitate both community understanding and clear decisionmaking by registrars, in turn encouraging support for the regime.

We do not support the 'Australian ownership' restriction. It is inconsistent with overseas practice. Residence or citizenship should not be a test; it is a restrictive way of addressing concerns more appropriately dealt with elsewhere in the policy.

Dispute Resolution and Awareness

Establishment of an effective dispute resolution mechanism is an integral part of any enhancement of management of the dot-au space.

We consider that mechanism should be in place from 'day one', ie should not be introduced after competition commences.

Australia should align itself with the UDRP established by ICANN. Despite criticism the UDRP does offer a relatively low cost (and increasingly intelligible) way of addressing the concerns of intellectual property owners, a prerequisite for business and community support of Australia's regime.

The mechanism should include an industry-funded body to deal with disagreements between registrars, resellers and consumers. One model is that of the Telecommunication Industry Ombudsman.

Overseas experiences suggests that community understanding of the regime is a prerequisite for its success and ultimately a measure of auDA's effectiveness in building self-regulation. It is important that auDA works with bodies such as the Internet Industry Association and that more broadly it, any dispute resolution bodies and registrars, actively encourage awareness of the enhanced regime.

Governance

Self-regulation presupposes that auDA has both the commitment and the resources for establishment and maintenance of that regime.

It is not appropriate that auDA (and any associate body such as a registration industry ombudsman) should be dependent on funding by government or any one business. We note ICANN's sometimes painful history and criticisms of auDA's relationship with MelbourneIT. It is not appropriate that auDA should be dependent on membership fees: we assume that introduction of competition will involve funding by industry participant prior to 'day one' to ensure appropriate testing of systems, community education and establishment of arbitration bodies.

The two reports, understandably, have not addressed questions of community and industry support for auDA and for the Australian DNS regime. auDA should seek to gain the commitment of the community at large through effective implementation of its policies and through measures to increase community awareness of its activity. We note developments in New Zealand and Canada where domain owners are being encouraged to participate in administration of the regime.

Caslon Analytics

Caslon Analytics Pty Ltd (www.caslon.com.au) is an internet research and strategies consultancy. Details of Caslon's operation are available on its website at www.caslon.com.au.

Caslon's clients include Commonwealth and state government agencies, information technology start-ups, Australian and overseas connectivity businesses, and individuals.

Caslon is a member of auDA, the Internet Industry Association, ISOC-AU and industry/professional bodies.

This document reflects awareness of Australian and overseas developments, including user navigation studies, the UDRP and the registration industry. It draws on consultation with Caslon's clients and contacts. The views expressed are, however, those of the author and do not necessarily express the views of Caslon's clients.

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