

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

**Response by Momentous Australia to  
auDA Public Consultation Report of February 2001**

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## **:: executive summary ::**

Momentous Australia commends work by the auDA Names Policy Advisory Panel in articulating an enhanced names policy that aims to meet the needs of industry and gain the support of government, community groups and consumers.

Momentous welcomes the move to a names regime that reflects business and community expectations about administration of the .au domain space in an era when most businesses and individuals have gone online.

auDA has a strong mandate from government, business and the community to enhance existing policy and administrative arrangements. Those stakeholders expect that enhancement will take place in the immediate future. Delays in articulating and implementing policy that meets the demands of business and the community are unacceptable given the length and nature of public consultation which has taken place.

Australia has a window of opportunity to establish a world-class regime in competition with global benchmarks such as Canada and the UK. Acquisition by organisations and individuals of 'overseas' domains in response to perceived restrictions with the .au space will accelerate.

Momentous supports the Panel's emphasis on a names regime that reflects business and community expectations and that is consistent with ICANN principles.

Some Panel recommendations are inconsistent with auDA's objectives. Momentous draws attention to overseas 'best practice' models, in particular the .ca model.

The paper does not make a case for 'generic' or 'geographic' restrictions. Allocation of such names should be left to the market. Similarly, consumer interest in personal domains should be accommodated by opening up the domain space, rather than through a proliferation of 2LDs which provide no clear benefits and in practice will introduce 'noise' at all levels of name administration.

Coherent dispute resolution arrangements are an integral part of name administration, rather than an add-on, and should underpinned by community education through auDA, the registry and registrars (discussed in the separate response to the Competition Panel paper).

# **Changes to .au Second Level Domain Name Eligibility & Allocation Policies: Response by Momentous Australia to auDA Feb 2001 Consultation Report**

## **Introduction**

Momentous Australia commends the Advisory Panel's work in examining a wide range of international competition models and considering divergent advice during the consultation process.

It encourages early implementation of an enhanced domain name regime to meet the needs of the Australian community and position the nation as a leading regional player in the networked economy.

This document—

- offers a response to the Panel's report as a whole
- addresses specific issues, in particular the undesirability of artificial restrictions on name registrations and the interrelationship between registration and dispute resolution
- notes auDA's mandate from government and the community
- highlights the importance of moving forward in a competitive international environment that enables the most open naming regime possible

Essentially, the Panel's recommendations are correct. The test is now timely implementation of the new enhanced regime that meets the needs of stakeholders, that reflects auDA's mandate and is consistent with overseas 'best practice' models such as that in the .ca domain space. Effective dispute resolution arrangements are an integral part of that regime.

Particular recommendations by the Panel are inconsistent with auDA's charter and objectives. A less restrictive approach, modelled on that successfully implemented in Canada and the UK, will directly meet the needs of all participants with the domain name business.

## **The environment**

Interest in the domain name space is no longer a 'fringe' activity. The latest ABS report suggests that a majority of Australian households will be online by the end of this year. Most major corporations and a majority of businesses overall have an internet connection. Participation in the networked economy, at a national and international level, is increasing.

However, it is clear from auDA's consultations and independent studies that restrictions on names in the Australian domain space (including eligibility, costs and processing delays) have repressed demand.

The existing name policy reflects a different environment, when only the largest or specialist organisations sought a domain and few SMEs or individuals were aware of the internet's potential as a branding tool. That has changed. In response to those restrictions Australian organisations and individuals seeking domain names are actively moving 'offshore' to cheaper, less restrictive regimes such as .com and .net.

## **The charter**

As auDA is responsible for administering the .au domain space it must meet community expectations of a progressive names policy that—

- is transparent, intelligible and consistent, thus securing the commitment of all stakeholders
- does not impose inappropriate burdens in the form of costs or artificial constraints that would be inconceivable offline (eg restrictions on the number of phones used by a business)
- compares favourably with Australia's competitors in global markets
- creates opportunities for organisations and individuals
- is sufficiently forward-looking and flexible that there's no need for government intervention or ongoing systemic revisions
- is in step with international developments under the auspices of, for example, ICANN and WIPO.

Those expectations have been apparent in public consultation prior to release of the Panel's report. They are evident in statements by stakeholders and in the behaviour of organisations and individuals going online.

## **Market Opportunity**

Growth of the domain name industry—and more broadly the online sector—is a key measure of auDA's success in self-regulation of the Australian domain space.

auDA should facilitate that growth by moving in the immediate future to enhance the existing names and competition regime. That enhancement reflects significant market opportunities—

- demand by Australian SMEs, most of which have not yet built a web presence
- demand by larger organisations, many of which seek multiple domain names and see no rationale for current restrictions
- emerging demand by individuals, at the moment tacitly forced to go offshore

auDA has one chance to foster a domain space that—

- is competitive with com, org and net
- is competitive with Canada, the UK and nations that emulate those regimes

- is attractive to Australian organisations, Australian individuals and overseas entities
- complements Australia's international reputation as a nation with an advanced communications infrastructure, skilled population and world-class legal system.

## Enhanced Regime

Momentous commends the Panel for responsiveness to the wide range of input during the consultation process. It supports the overall paper and comments on particular issues below.

### □ Eligibility

The rationale for restricting eligibility for registering .au names to Australian entities has not been demonstrated. That restriction is inconsistent with other aspects of the policy. It conflicts with practice in the .com, .net, .ca and other gTLDs. Any entity that passes other tests (eg is a bona fide user and agrees to be bound by auDA's dispute resolution procedure) should be permitted to secure an .au name.

Momentous particularly welcomes the removal of inappropriate restrictions on the number of names held by an entity.

### □ Process

In line with comments in the response to the Competition Panel's paper, Momentous strongly endorses auDA's emphasis on automated checking. This will lower costs, minimise disputes, reduce delays in allocation and more broadly increase the intelligibility of the allocation process and thereby encourage community commitment. Confusion about allocation principles and processes was a major feature of auDA's consultation and independent studies.

### □ Generic and Geographic Names

Momentous does not support the restriction on 'generic' names.

It is sometimes asserted that **generic** names offer an undue advantage. Overseas experience contradicts that assertion. Marketing, rather than names *per se*, appears to be the issue. One example is the recent abandonment by US consumer giant Proctor & Gamble of a slew of generic names after deciding that they did not offer significant value. The global 'books' brand for most consumers is Amazon.com, rather than books.com. Another is the failure of 'keyword' systems such as RealNames to achieve substantial market penetration.

auDA should not second-guess the market. Its task is to provide a coherent policy framework and regulate domain name services. It must let investors make decisions, correct or otherwise, about the value of a name.

Restrictions on **geographic** names are also inappropriate.

auDA's consultation has demonstrated concern about inconsistency in past practice and support for removal of this restriction.

In general names should be available on a first come, first served basis (subject to meeting tests of good faith, non-infringement of trademarks etc).

#### □ **New 2LDs**

The usefulness of further consultation about new 2LDs has not been established. Additional consultation has the potential to significantly complicate and delay introduction of the enhanced regime. In practice it is contrary to auDA's objectives.

In paragraph 5.1.2 the report points to a range of potential new 2LDs. The Panel's efforts in accommodating different perspectives are commended. However, in practice those 2LDs—

- perpetuate existing problems,
- offer no substantive advantages in the day to day allocation of names or identification by users of online resources,
- are inappropriately open-ended.

The notion of 'gateways' or subregional 2LDs is inconsistent with most studies of how users navigate online. It offers few advantages for name owners. It unnecessarily complicates the registration process.

Momentous considers that auDA's objectives would be best achieved by opening up the domain space on the .ca model. This offers simplicity for administrators, potential name owners and those seeking information online. It also offers the greatest possibility for growing the domain name market.

#### □ **Derivation**

There is growing interest among consumers for personal domains. The existing 'id' arrangements have not attracted support (one reason for wariness about some 2LD proposals). auDA is in a position to address that consumer interest by allowing personal registrations at the .au level, on a 'first come first served' basis.

Registration of 'personal' domains should not necessitate ownership of a business name or incorporation.

## **Dispute Resolution**

Implementation of effective dispute resolution arrangements in conjunction with introduction of competition is a prerequisite for auDA's success. It must

be underpinned by community education, a responsibility for auDA and registrars. It is integral, rather than peripheral.

Development of arrangements (or their introduction) after the commencement of competition among registrars will—

- increase confusion among those seeking domain names
- undermine confidence in the effectiveness of the regime
- discourage investment in registration services and more broadly in online activity.

Those arrangements should reflect the UDRP. They should be transparent and inexpensive, minimising recourse to the courts.

## **Conclusion**

Development by auDA of a progressive names policy for the .au domain space has a strong mandate from government, the internet industry, investors and the wider community. auDA should move forward to implement an enhanced regime that meets the needs of those stakeholders and positions Australia as a leading player in the networked economy.

In December 2000 the Commonwealth Minister for Communications, Information Technology & the Arts, Senator the Hon Richard Alston, formally endorsed auDA as delegate for administration of the domain space. That endorsement is consistent with statements by the Australian Competition & Consumer Commission. The Government has recognised the appointment of auDA's Chief Executive, election of the auDA Board and establishment of its office. It has underpinned that recognition through amendments to federal legislation. It looks forward to action.

That expectation is shared by the Australian online industries (sales of A\$34 billion pa and employing over 200,000 people), by local and overseas investors and by members of the public.

auDA has sought community comment about the administration of the .au domain space. That comment has included participation in the Advisory Panels, responses to the Panel reports and contributions to auDA's DNS discussion list.

Action in the immediate future to enhance the existing names regime is—

- expected by industry and investors in Australia and overseas
- demanded by the market
- desired by Australia's consumers

There is no convincing rationale for delayed implementation or inclusion of restrictive features.

## **Momentous Australia**

Momentous Australia is owned by an Ottawa-based internet services group that operates in Canada and intends to participate in the Australian market.

### **Contact**

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