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Australian Domain Names: The New Rules

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1. INTRODUCTION

.au Domain Administration Limited, or auDA, is a non-profit organisation that is the industry self-regulator for the .au Australian Internet domain names space. The .au suffix to an Internet domain name indicates that its origin is in Australia, under the umbrella of the .au country-code top level domain (ccTLD).

On 10 September 2001, auDA entered into a ccTLD Sponsorship Agreement with the Internet Corporation for Assigned Names and Numbers (ICANN). ICANN is the world body that provides technical coordination of the Internet, and in particular, Internet domain names. The ccTLD Sponsorship Agreement gives auDA the right to administer the .au ccTLD for the benefit of the Australian Internet community.

Before auDA assumed administrative control of the .au ccTLD, this name space was administered by Robert Elz, a network programmer with the University of Melbourne, on a voluntary basis.

Over the past two years, in anticipation of the re-delegation of administrative control of the .au ccTLD to auDA, auDA has established a number of panels to look into:

- a policy framework for the introduction of competition into the Australian domain names industry;
- rules which govern the registration of Australian domain names; and
- establishing complaints handling and dispute resolution processes in relation to grievances on matters relation to the administration of .au.

As part of the process for the introduction of competition into the .au ccTLD, in October 2001, auDA invited tenders for the provision of registry services* for a number of .au second-level domains (2LDs) including com.au, net.au, org.au, id.au and asn.au.

auDA awarded the registry services tender to AusRegistry Pty Ltd in December 2001. AusRegistry is currently (as at April 2002) conducting testing of its systems with a number of test-bed registrars, in anticipation of the new system going 'live' in June 2002.

When the system goes 'live' in June 2002, the new rules concerning the registration of .au domain names, as well as the new dispute resolution processes, will also be introduced.

* See paragraph 3 below for an explanation of the various participants in the domain names industry.

2. SUMMARY OF THIS DOCUMENT

This document sets out, briefly:

- the way the domain name system (DNS) works
- the hierarchy of control and regulation of the DNS,
- the history and reasons for the establishment of auDA,
- the new competitive regime in the .au name space,
- the new rules affecting .au domain names,
- the new .au Domain Names Dispute Resolution Policy (auDRP).

3. THE WORKING OF THE DOMAIN NAME SYSTEM (DNS)

First, a brief look into how the DNS work.

All computers connected to the Internet network of computers have an unique identifier, called the Internet Protocol number or address (IP address). For example, the network IP address for Maddocks is 203.147.239.25. IP addresses are used to locate a specific computer within the Internet.

It's obvious that this form of addressing is difficult to remember. To overcome this difficulty, Internet domain names (in the form of www.domainname.com) were introduced. Internet domain names are, in simple terms, an alphabetical representation of IP addresses. The domain name system, or DNS, is effectively a database that cross-references Internet domain names to IP addresses. For example, when you type www.maddocks.com.au, the DNS resolves that you are intending to access a computer connected to the network with the IP address of 203.147.239.25, and directs you to that computer accordingly.

The entity which maintains this database is called the 'registry'. The registry does not interact directly with a person who wishes to register a domain name (called a 'registrant'). A registrant will usually apply for a domain name through a 'registrar' who has direct access to the registry. A registrant can sometimes apply through a 'reseller', who acts as a reseller for a registrar.

4. HIERARACHY OF CONTROL FOR DNS

Most people are aware that the Internet is a legacy of the US defence system.

At the highest level, the DNS is coordinated and controlled by the US Government, through its Department of Commerce. The Department has delegated this function to the Internet Assigned Numbers Authority (IANA), which is now a part of ICANN.

ICANN is therefore the body responsible for the world-wide coordination of Internet domain names. It controls domain names at the generic top-level domain (gTLD) such as .com and .net, and is also responsible for the two-letter designation of country-code top-level domain (ccTLD) such as .au, .nz, .uk etc.

At each country's level, the administration of the country's ccTLD is carried out by a ccTLD Manager. ccTLD Managers can sometimes be the Government of the relevant country, but are more usually non-profit organisations who are committed to the administration of the ccTLD for the benefit of the local Internet community.

Since the signing of the ccTLD Sponsorship Agreement between auDA and ICANN in September 2001, auDA is now the ccTLD Manager for the .au namespace.

5. TO HISTORY OF auDA

As Internet domain names become more valuable and more an integral part of the nation's economy, the Australian Internet community considered that the responsibility for the administration of the .au ccTLD should move from a single person (that is, Robert Elz) to an organisation which is more accountable to the Australian community.

In 1997, an organisation called the Australian Domain Name Administration (ADNA) was formed to carry out this function. However, this initiative failed for a variety of reasons.

In 1999, the Australian Government (through its National Office for the Information Economy – NOIE) facilitated the establishment of auDA. It did so by initiating an industry-wide consultation process which included the local Internet community. This consultation process resulted in the recommendation for the creation of a new, non-profit body which has representation from a variety of stakeholders, to assume the responsibility for the management of .au.

Following its establishment, auDA submitted a comprehensive report to NOIE in October 2000, setting out its objectives for the management and administration of the .au ccTLD. By December 2000, the Australian Government had formally endorsed auDA as the appropriate organisation to manage the .au ccTLD.

On 28 May 2001, auDA formally requested IANA to re-delegate the .au ccTLD from Robert Elz to auDA. This process ended with a favourable response from IANA on 31 August 2001, and the execution of the .au ccTLD Sponsorship Agreement between auDA and ICANN in September 2001.

In anticipation of this re-delegation, and its assumption of self-regulatory responsibility for the administration of the .au ccTLD, auDA established a number of panels to advise it in relation to the future of .au:

- Competition Model Advisory Panel – to recommend a competition model for .au;
- Name Policy Advisory Panel – to review existing policies concerning an applicant's eligibility for domain names in .au, and additionally, domain names that can be allocated to eligible applicants;
- Dispute Resolution Working Group (DRWG) – to develop a framework for handling disputes in the .au domain.

The board of auDA has resolved to accept all the recommendations of the various panels.

6. THE NEW COMPETITIVE REGIME

auDA established the Competition Panel Advisory Panel (**Competitions Panel**) in September 2000. It handed down its final report to auDA in June 2001. Its recommendations were subsequently accepted by auDA in full.

The Competition Panel recommended that there be five levels of activity in the .au domain names industry, namely:

- Policy Authority
- Registries
- Registrars
- Resellers, and
- Registrants.

We will look at each of these levels of activity separately.

6.1 Policy Authority

At the highest level of the industry, the Competition Panel recommended that auDA operates as an accountable and independent Policy Authority in relation to the domain name services industry.

auDA is expected to separate its policies from its operations and to monitor the operation of the domain name services industry as a whole.

6.2 Registry

The registry is the operator of the domain names system, which maintains the database which cross-references Internet domain names to IP addresses. See paragraph 3 above.

The Competition Panel recommended an environment where multiple registries (where possible) are to operate under licence agreements with auDA. Provision of registry services are to be contestable through a tender process conducted by auDA.

The registry services operators are expected to provide customer service to registrar and to ensure the integrity and stability of the domain name system. They are expected to liaise with auDA in relation to technical standards and auDA is empowered to regulate these registries.

As a result of the tender process conducted by auDA in October 2001, AusRegistry Pty Ltd was awarded the tender to operate the following five open 2LDs: com.au, net.au, org.au, id.au and asn.au.

6.3 Registrars

The Competition Panel recommended that an accreditation process be set up for potential registrars. Subject to the entry into a Registrar Agreement with auDA, registrar services are to be fully contestable so that robust competition can be introduced at this level. Registrars are expected to provide customer sales and support services to registrants.

They will be expected to comply with auDA's minimum conditions (such as privacy conditions and compliance with industry code of practice) and they will ultimately be accountable to auDA.

As at April 2002, auDA has provisionally accredited 10 registrars, six of which are currently participating in a test-bed process to test AusRegistry's system, in anticipation of the system going 'live' in June 2002.

6.4 Resellers

Resellers are to act as intermediaries between registrars and registrants. They may be anyone from law firms and Internet service providers.

Resellers are also expected to provide customer service to registrants and are generally more than just the agents of the registrar. Registrars are accountable for their resellers.

6.5 Registrant

Registrants are individuals or other entities which hold a licence to use .au domain names.

The Competition Panel recommended that auDA ensure adequate consumer safeguards are in place through the supervision of registries and registrars. An important part of this role is the provision of a dispute resolution procedure available to registrants and the public.

Finally, the Competition Panel made recommendations in relation to funding auDA's operations. It recommended that a domain names fee be levied at the time of a domain name registration and renewals, and that registries and registrars pay licensing and accreditation fees.

7. THE NEW RULES ON .au NAMES

auDA established its Name Policy Advisory Panel (**Names Panel**) in June 2000. The Names Panel gave its recommendations to auDA in April 2001, which has subsequently been accepted in full by the auDA board.

The Names Panel was set up to develop rules in relation to the registration of domain names in the .au domain. They made the following key recommendations in relation to the .au domain:

- *No restrictions on how many licences per entity.* Previously, a person or company could hold only one domain name. This restriction was deemed unnecessary and removed.
- *All licences are subject to a renewal period.* All domain name licences are now subject to a renewal period. Commercial domain names must be renewed every two years.

- *Licence eligibility.* New rules were recommended concerning the manner in which a person may establish their entitlement to hold the licence in respect of a particular domain name. These rules include, for example:
 - permitting domain names which has a 'substantial and close connection' with the domain name licence holder. [Previously, only direct derivative of the domain name licence holder's name is permitted].
 - domain name applicants must make a declaration of 'good faith' in relation to the use of the domain name (that is, not licensing a domain name for the sole purpose of selling it, not deliberately misspelling another entity's name to pass-off on the other entity's reputation, not passively holding a domain name to prevent its registration by another person),
- *Domain names which start with a number permitted.* Previously, domain names which started with a number could not be registered. This restriction has now been lifted.
- *Names cannot match a TLD.* For the avoidance of confusion amongst Internet users, domain names which contain a TLD, such as ".au.com.au", are not permitted.
- *Reserved list.* The Names Panel recommended the development of a "reserved list" of names which cannot be registered.
- *No retrospective effect.* The new policy does not have retrospective effect.
- *Generic and Geographic Names.* The Names Panel recommended that the current restriction on registration of generic domain names be lifted. This matter was referred to auDA who decided upon an auction of generic and geographic domain names. The issue relating to geographic names will be subject to the recommendation of another advisory panel, to be established shortly.

These changes will be introduced when the system goes 'live' in June 2002. The auction of the generic domain names are currently in progress, and is expected to be completed prior to the system going 'live'.

8. THE NEW DOMAIN NAMES DISPUTE RESOLUTION POLICIES

The auDA Dispute Resolution Working Group (**DRWG**) was responsible for the development of rules and policy for an alternative dispute resolution process, in relation to the domain name services industry.

This policy was restricted in application to disputes between registrants and parties with competing claims. It is based on ICANN's Uniform Domain Names Dispute Resolution Procedure (UDRP), but the working group sought to tailor the UDRP policy to the Australian conditions. The Australian version of this dispute resolution policy is called the .au Dispute Resolution Policy, or auDRP.

The following are the recommendations of the DRWG:

- *Main features.* It is a mandatory administrative proceeding whereby the complainant must prove sufficient grounds for making the complaint. The registrant then has an opportunity to justify their entitlement to the name. This process is conducted "on the papers", there being no in-person hearings. auDA not involved and instead the investigation of complaints is conducted by an auDA approved ADR provider.
- *Procedure.* One panellist is appointed to each dispute, the associated fees being paid by the complainant. The respondent (registrant) may elect to have three panellists, in which case the fees are shared equally between the complainant and the respondent. A complaint is submitted to the respondent, who then has 20 days to reply. The panel/panellist then makes a decision within 14 days and forwards this decision to the ADR Provider. The provider then forwards decision to the parties within three days.
- *What must be proved to justify complaint.*
 - That the respondent has registered or used a domain name in bad faith (Unlike the UDRP, which requires the complainant to show that the respondent used **and** registered a name in bad faith)
 - That the respondent's domain name is identical or confusingly similar to a name, trademark or service in which the Complainant has rights (Unlike the UDRP, which permits the complainant to challenge the use of the domain name solely on the basis of it being the complainant's registered trademark)
 - That the respondent has no rights or legitimate interests in domain name.

8.1 How do you demonstrate bad faith?

The following are examples of registration in bad faith:

- the respondent registered a name with intent to sell to another person;
- the respondent registered a name in order to prevent the owner of the name or trademark from reflecting that name in a domain name;
- the respondent registered the name to disrupt the complainant's activities;
- the respondent registered the name in order to redirect users to another website.

8.2 Response to an allegation of bad faith

A respondent may reply by proving:

- that the use of the domain name was/is bona fide (this resolves an ambiguity in the UDRP which allowed respondent to prove that it was bona fide selling goods and services as opposed to using the domain name bona fide);
- that the respondent is commonly known by the domain name, even if it does not have any trademark or service rights;
- that the respondent is making legitimate non-commercial or fair use of the domain name, without intent of diverting customers from the complainant;

It should be noted that a respondent will not be able to show good faith if it registered the domain name solely to sell, rent or transfer it.

The auDRP will also commence operation when the system goes 'live' in June 2002.