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7 October 2004

**BY FACSIMILE & EMAIL** (03) 9349 5711 and 'jo.lim@auda.org.au'

.au Domain Administrators  
107 Faraday Street  
CARLTON VIC 3053

Dear Sirs

### **auDA Name Policy Review Panel - Draft Recommendations on Domain Name Policy Rules September 2004**

We refer to the Draft Recommendations on Domain Name Policy Rules released by auDA's Name Policy Review Panel ("the Panel") in September 2004.

Please find following our submissions:

#### Recommendation 1: Verification of registrant identity

The Panel has recommended that no change be made to the policy rules relating to the verification of registrant identity (other than those proposed in Recommendation 6 in relation to the eligibility criteria for org.au and asn.au).

We support this recommendation and agree with the rationale provided by the Panel.

#### Recommendation 2: Opening up .au to non-Australian registrants

The Panel has recommended that no change be made to the current rule that registrants must, with the three current exceptions, be Australian.

We support this recommendation and agree with the rationale provided by the Panel.

#### Recommendation 3: Domain name licence periods

The Panel has recommended, *inter alia*, that the licence period for .au domain names be fixed at 1, 2 or 3 years.

We support this recommendation. We agree that there are good reasons for imposing a ceiling on the length of registrations and that a longer licence period, such as 5 or 10 years, may cause problems including difficulties in keeping registrant data up to date and

the potential for cyber-squatters to hold domain names without use for long periods of time.

Recommendation 6: Eligibility criteria for org.au and asn.au

The Panel has recommended that the eligibility criteria for org.au and asn.au be combined and applied to both 2LDs. We note that the effect of this change would be to relax the eligibility criteria for the .org.au 2LD and consider that this may result in increased ineligible registrants and bad faith activity. In this regard, we note that the Panel has recommended that auDA strengthen the registrant warranty statement to make it easier to revoke a domain name licence for false warranty or bad faith. We generally support this specific recommendation and deal with this issue in further detail below.

Recommendation 7: Allocation criteria for domain names - exact match, abbreviation, acronym, close and substantial connection

The Panel has recommended that no change be made to the current allocation criteria and has recommended that:

- a) The different allocation criteria should be reorganised into two categories; and
- b) auDA strengthen the registrant warranty statement to make it easier to revoke a domain name licence for a false warranty or bad faith, including requiring registrants to provide more information in the case of a dispute.

We agree that registrants should only be permitted to register a domain name that is in some way connected to their name or their activities as is currently provided for by the rules.

As noted above, we support a recommendation to auDA that it strengthen the registrant warranty statement to make it easier to revoke a domain name licence for false warranty or bad faith. However, it should be noted that any change to the registrant warranty statement must be **enforced** for it be effective and to ensure compliance with the close and substantial connection rule.

Current policy and practice already involves a registrant warranty relating to the close and substantial connection rule, however, the problem lies more in the enforcement of the warranty rather than its mere wording.

As stated in our submissions to the Panel dated 30 August 2004 in relation to the "Domain Name Eligibility and Allocation Policy Rules for Open 2LDs Issues Paper August 2004" there needs to be much greater adherence and enforcement of the rule by registrars and auDA. A slight change in the wording of the registrant warranty, by itself, is not likely to have any significant effect on the number of false warranties made by registrants under the close and substantial connection rule.

We contemplate the possibility of a specific auDA policy or guideline relating to complaints made by third parties of possible non-compliance of the close and substantial connection rule by domain name holders. Such a policy or guideline might delineate the precise

process of lodging this type of complaint and set out the rights and duties of the registrant, the registrar and auDA.

Another way of improving the registrant warranty statement would be to require the registrant to provide a brief explanation or some documentary evidence to support their reliance on the close and substantial connection rule. Such evidence should illustrate a connection between the registrant's activities (or services, goods, etc) and their proposed domain name. From our own experience, registrants that incorporate registered trade marks into their domain names (which infringe the rights of the registered trade mark owner) often have no connection at all between their activities and the domain name. Requiring the registrant to provide even a brief explanation to demonstrate a connection would assist the registrar and auDA in investigating the matter if complaints regarding breaches of the rule are lodged by third parties.


We also note that the Panel has recommended that the allocation criteria be reorganised into two categories so that the domain name application form would list only two criteria as opposed to the current listing of approximately seven allocation criteria. We note that this does not amount to a change in allocation criteria, it is merely a reorganisation for implementation purposes. Further, registrars would still be required to check that the registrant meets the allocation criteria. In theory, this would simplify the implementation process, however, we anticipate the possibility of this making it, in fact, more difficult for registrars to check that the registrant meets the allocation criteria if the registrant relied on the close and substantial connection test.

In theory, we support Recommendation 7, however we consider that registrars and auDA should be placed under a greater burden to properly consider complaints regarding breaches of the rule. If it is clear that the registrant has made a false warranty under the close and substantial connection rule, auDA should be more willing to revoke the registrant's domain name licence. This will reduce use of 2LDs for trade mark and intellectual property infringement and bad faith activity and ensure the continued integrity of the .au domain space.

If you have any enquiries in relation to any of our submissions or comments please do not hesitate to contact the writer.

We look forward to the Panel's final recommendations to auDA.

Yours sincerely



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