2007 NAMES POLICY PANEL

Second Meeting
10 April 2007, 2.00-5.00pm
Maddocks Lawyers, Sydney

MINUTES

Present:
Philip Argy, Bruce Arnold, Darrell Burkey, Grace Chu Te, Simon Delzoppo, Brett Fenton, Peter Firminger, Sally Foreman, David Goldstein, Graham Ingram, Jo Lim, Andrew McCullough, Jamie Murphy, Bennett Oprysa, Holly Raiche, Larry Reed (proxy for Michael Bouy), Dean Shannon (proxy for Jeff Marr), Tony Steven, Derek Whitehead, Alex Woerndle

Teleconference:
George Pongas, Bruce Tonkin, Paul Szyndler

Apologies:
Kim Heitman, Amin Kroll

Actions:

- DW and JL to draft Issues Paper.
- Panel members to email any proposals for change to current policy rules in open 2LDs (question 2 of Terms of Reference).

Discussion:

1. Action items from last meeting

a. Research questions

The Panel noted the various research items sent to the mail list, including a compilation of responses from fourteen ccTLDs on the issue of direct registrations. The majority of ccTLDs that allow direct registrations reported positive outcomes with minimal problems, however it was noted that their historical development and domestic markets may be very different from Australia.

b. Initial survey results

The Panel noted an interim report from Nexus Research regarding the three types of survey being conducted:
1. General public survey – conducted with 800 members of the general public who use the Internet at least weekly
2. Website survey – linked from the auDA website
3. Registrants survey – direct mailed to a random sample of 9,900 registrants.

Initial results from the surveys are inconclusive. The Panel discussed whether or not respondents to the surveys have adequate knowledge of the .au domain. It was agreed that the surveys are merely one input to the Panel's deliberations, and will

need to be weighed against other input gained from public consultations and other sources.

2. General discussion

The Panel identified the following policy objectives for the .au domain (in no particular order):

- Australian identity – registrants must have an association or nexus with Australia.
- Usability – an effective 2LD hierarchy, easy to navigate, simple to understand, not confusing, meets user needs.
- Integrity – low risk of cybersquatting, scams and other misuse, reduced conflicts and disputes, protection for rights holders, consistency with other regulatory regimes.
- Economic benefits – cost effective, attractive for Australian business, efficient reuse of domain names, high domain penetration rates, supporting the Australian online economy.

a. Direct registrations in .au

The Panel discussed whether .au should be opened up to direct registrations, assuming the existing 2LDs remain in place.

Arguments in favour of direct registrations include:

- Domain names would be shorter and more memorable, and there would be four less characters for people to type.
- A "flat" structure is much simpler to understand and navigate than a hierarchical structure.
- .au domain names would more readily and effectively identify the registrant as Australian (compared with com.au, org.au etc).
- There would be more choice for registrants.
- It may enable new registrants to have access to desirable and valuable domain names that have already been taken in the 2LDs.
- It may encourage Australian entities who have registered in .com to register in .au.
- It may be easier for international users, who are more familiar with direct registrations in other TLDs, to navigate the .au domain.
- There would be a commercial gain for the Australian domain name industry.
- A new operator may be selected to run the .au registry, leading to improved competition, lower costs and more choice for registrars.
- Other ccTLDs have managed it successfully, and their experience shows that there is strong consumer demand once direct registrations become available.

Arguments against direct registrations include:

- The existing 2LD hierarchy works well and there is high market recognition of the com.au and org.au brands especially.
- The existing 2LDs are not exhausted in terms of desirable and valuable domain names.
- Existing domain names may be devalued.
- There is no clear benefit for the broader user community, and may lead to user confusion.
- It may lead to increased complaints and disputes.
- It may give rise to an increased risk of phishing and other scams.

- Existing registrants may be forced into defensive registration or legal action to protect their brands, both of which may be costly especially for small business.
- There may be significant rebranding and advertising costs for existing registrants.
- It would reduce the branding choice for registrants, ie. they would not be able to differentiate themselves as commercial (com.au) or not-for-profit (org.au).
- Any special protective rules would have a high overhead.
- Increased revenue for the domain name industry is not in itself a sufficient business case for making a change.
- Experience with new TLDs such as .biz and .eu suggest there would be a high risk of implementation problems and people trying to game the system.
- Unlike new TLDs, this is not a greenfields scenario and it is not possible to discount the rights and expectations of existing registrants.

The Panel also noted the following implementation options and issues:
- Direct registrations would not necessarily have the same policy rules as the 2LDs; for example, it would be possible to have special rules to minimise trade mark infringements and potential conflicts with existing 2LD registrants.
- It was suggested that the simplest implementation method would be to replicate existing com.au domain names into .au and give the com.au registrants first right of refusal.
- There would need to be an extensive education campaign to inform the community about the change.
- The change would need to be closely monitored and strongly policed by auDA, at least in the initial period.

b. Policy rules in open 2LDs

There was general consensus that the current 2LD hierarchy is appropriate, and the policy rules are effective in maintaining a meaningful segregation between different types of registrants.

The following suggestions were made:
- net.au and id.au are not very popular and perhaps the policy rules could be changed to encourage more growth
- the close and substantial connection rule is confusing for many users and could be simplified or removed
- registrations under the close and substantial connection rule should be made more transparent, to make it easier for prospective complainants to understand the basis on which the registrant claims a right to the domain name
- the domain monetisation and prohibited misspellings policies are effective in dealing with bad faith registrations
- the rules should provide a clear process and authority for registrars to delete a domain name for illegal or malicious use
- there is a need to improve user education, and to simplify the application process.

Panel members were asked to send written proposals for change to the mail list for consideration before the next meeting.

c. Secondary market

The Panel discussed whether registrants should be allowed to sell their domain names, assuming the current eligibility rules remain in place.

Arguments in favour of a secondary market include:
- Businesses often build up high value in their domain names and should be allowed to realise that value, as is the case with other business assets.
- It is already possible for registrants to get around the current prohibition by transferring their domain name under one of the acceptable circumstances in the Transfers (Change of Registrant) Policy.
- auDA's complaints-handling process allows the registrant to withdraw their domain name from sale, which does not provide effective protection for trade mark and other rights holders.
- The 2002 generic domain names auction and 2005 geographic domain names ballot conducted by auDA demonstrated that people are prepared to buy desirable domain names at a market price which is higher than the current range of prices offered by registrars.
- A secondary market would increase the options available to both registrants and prospective registrants, and would facilitate the efficient reuse of domain names.
- There has been an active secondary market in .com and other TLDs for many years, with few problems.
- Other policies (eg. auDRP, domain monetisation, prohibition on misspellings) can deal with trade mark infringement and other bad faith behaviour.
- Eligibility rules would ensure that domain names could only be sold to another eligible registrant, thereby reducing the risk of domain speculation and warehousing.

Arguments against a secondary market include:
- Domain names are a public resource, and if a registrant no longer has use for their domain name they should return it to the general pool.
- There is a risk of legitimising a business model based on cybersquatting or domain speculation.
- It may artificially increase demand, leading to higher prices and disadvantaging small business in particular.
- Given that transfers are allowed under current policy, what is the need for a more extensive secondary market and what problem would it solve?
- What is the public benefit or value to the community?

The Panel will continue discussion of this issue at the next meeting.

Next meeting:
Tuesday 8 May, 2-5pm in Melbourne