

REVIEW OF .AU DOMAIN NAME POLICY FRAMEWORK

2007 NAMES POLICY PANEL DRAFT RECOMMENDATIONS, SEPTEMBER 2007

1. BACKGROUND

1.1 In February 2007 the auDA Board established the 2007 Names Policy Panel to:

- review the policy framework underlying the allocation and use of domain names in the .au domain space*; and
- provide recommendations to the auDA board about what changes (if any) should be made to the policy framework.

1.2 The Panel is considering the following issues:

1. Should .au be opened up to direct registrations (eg. domainname.au)? If yes, should there be any policy rules, and if so what rules?
2. Should the policy rules for asn.au, com.au, id.au, net.au and org.au be changed? If yes, what changes should be made?

Relevant auDA Published Policies:

- Domain Name Eligibility and Allocation Policy Rules for the Open 2LDs (2005-01) at <http://www.auda.org.au/policies/auda-2005-01/>
- Guidelines for Accredited Registrars on the Interpretation of Policy Rules for the Open 2LDs (2005-02) at <http://www.auda.org.au/policies/auda-2005-02/>
- Reserved List Policy (2006-02) at <http://www.auda.org.au/policies/auda-2006-02/>
- Clarification of Close and Substantial Connection Rule – Domain Monetisation (2006-03) at <http://www.auda.org.au/policies/auda-2006-03/>
- Clarification of Domain Name Licence – Prohibition on Misspellings (2006-05) at <http://www.auda.org.au/policies/auda-2006-05/>

3. Should registrants be allowed to sell their .au domain names?

Relevant auDA Published Policies:

- Clarification of Domain Name Licence – Prohibition on Sale of Domain Name (2005-05) at <http://www.auda.org.au/policies/auda-2005-05/>
- Transfers (Change of Registrant) Policy (2004-03) at <http://www.auda.org.au/policies/auda-2004-03/>

* The following 2LDs are excluded from the Terms of Reference: csiro.au, edu.au, gov.au and the community geographic 2LDs (act.au, nsw.au, nt.au, sa.au, tas.au, vic.au, wa.au).

1.3 Full text of the Panel's Terms of Reference, a list of Panel members and minutes of Panel meetings to date, are available on the auDA website at <http://www.auda.org.au/2007npp/2007npp-index/>.

2. PUBLIC CONSULTATION

2.1 The Panel is required to undertake at least two rounds of public consultation, to ensure that its recommendations to the auDA Board have been properly canvassed with, and informed by, key stakeholders and the general community.

Issues paper, May 2007

2.2 The Panel released an Issues Paper in May 2007 which set out the current situation and invited comment on suggestions and options for change. The Panel received 48 submissions, which are archived on the auDA website at <http://www.auda.org.au/2007npp/2007npp-index/>.

Draft recommendations

2.3 This report contains the Panel's draft recommendations to the auDA Board on the issues under consideration. The draft recommendations have been formed as a result of the Panel's own deliberations and the public consultation in May.

2.4 With respect to the first two issues under consideration – direct registrations under .au and 2LD policy rules – the draft recommendations represent the clear consensus view of the Panel. The Panel has not yet reached a consensus view on the third issue under consideration, namely whether registrants should be allowed to sell their .au domain names.

2.5 The Panel is due to provide its final report to the auDA Board in November 2007.

3. SUBMISSIONS TO THE PANEL

3.1 If you would like to comment on the draft recommendations set out in this report, please send your submission to:

Jo Lim
Chief Policy Officer, auDA
email: jo.lim@auda.org.au
fax: 03 8341 4112

3.2 Electronic submissions are preferred. All submissions will be posted on the auDA website within 2 working days of receipt, unless clearly marked confidential.

3.3 The closing date for submissions is **Friday 19 October 2007**.

4. GLOSSARY

<i>Term</i>	<i>Definition</i>
2LD	Second level domain, ie. a name at the second level of the .au domain name hierarchy (eg. com.au)
3LD	Third level domain, ie. a name at the third level of the .au domain name hierarchy (eg. domainname.com.au)
auDA	.au Domain Administration Ltd
auDRP	.au Dispute Resolution Policy
ccTLD	Country Code Top Level Domain (eg. .au, .uk)
DNS	Domain Name System
Domain monetisation	The practice of registering a domain name for the purpose of earning revenue from advertising links on a webpage
gTLD	Generic (or Global) Top Level Domain (eg. .com, .biz)
Registrant	An entity or individual that holds a domain name licence
Registrar	An entity that registers domain names for registrants and is accredited by auDA
Registry operator	An entity that operates the central registry database of domain names
Reseller	An entity that acts as an agent for a registrar

5. 2LD HIERARCHY

<i>2LD</i>	<i>Purpose</i>
asn.au	For non-profit organisations, associations, clubs and special interest groups
com.au	For commercial entities and traders
csiro.au*	For the Commonwealth Scientific and Industrial Research Organisation (CSIRO)
edu.au*	For educational entities
id.au	For individuals
gov.au*	For government departments and agencies
net.au	For commercial entities and traders
org.au	For non-profit organisations, associations, clubs and special interest groups
act.au, qld.au, nsw.au, nt.au, sa.au, tas.au, vic.au, wa.au*	For local community groups. Only Australian place names may be registered – eg. ballarat.vic.au and wollongong.nsw.au

*These 2LDs are excluded from the Panel's Terms of Reference.

6. POLICY OBJECTIVES

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

1. To maintain the **Australian identity** of the .au domain space.
The Panel believes it is important that policy rules continue to require that .au registrants have an association or nexus with Australia, in order to differentiate the .au domain from other TLDs.

2. To enhance the **usability** of the .au domain space.
The Panel believes that the .au domain should be easy to navigate, simple to understand, not confusing, and responsive to user needs.
3. To preserve the **integrity** of the .au domain space.
The Panel believes that the .au policy framework should aim to minimise the risk of cybersquatting, scams and other misuse, and reduce conflicts and disputes. It should provide adequate protection for rights holders, and as far as possible be consistent with other regulatory regimes.
4. To facilitate **economic benefits** flowing from the .au domain space.
The Panel believes that the .au domain space should support the Australian online economy by promoting high .au domain name penetration rates. To this end, registering a .au domain name should be cost effective and attractive for Australian businesses, and there should be an efficient reuse of domain names.

6.2 These objectives are consistent with auDA's constitutional objects, available on the auDA website at <http://www.auda.org.au/about/constitution/>.

7. DRAFT RECOMMENDATIONS

Issue 1: Should .au be opened up to direct registrations (eg. domainname.au)? If yes, should there be any policy rules, and if so what rules?

Current situation

7.1 It has never been possible for people to register a domain name directly under .au (eg. domainname.au). Instead, the .au domain is structured into a number of second level domains (2LDs) and people must register their domain name as a third level domain (3LD) (eg. domainname.com.au, domainname.org.au and so on).

Submissions to Issues Paper, May 2007

7.2 The Panel notes that the majority of submissions focused on this issue alone, and most of them were opposed to allowing direct registrations in .au. People cited user confusion, domain name conflict and cost to small business as the main reasons why it would not be desirable to introduce direct registrations.

Views of the Panel

7.3 The Panel's view is that there is no groundswell of support among the general community for opening up .au to direct registrations, and even amongst those in favour of direct registrations, there is little likelihood of agreement on a method for implementation. For these reasons, the Panel has agreed to recommend that .au should not be opened up to direct registrations at this time.

Draft Recommendation 1:

The Panel recommends that .au should not be opened up to direct registrations at this time.

Issue 2: Should the policy rules for asn.au, com.au, id.au, net.au and org.au be changed? If yes, what changes should be made?

Current situation

7.4 The current policy rules for asn.au, com.au, id.au, net.au and org.au (known as the “open 2LDs”) have been in place, mostly unchanged, since 1 July 2002.

7.5 The Domain Name Eligibility and Allocation Policy Rules for Open 2LDs (2005-01) set out three types of rules:

- General policy rules that apply to all 2LDs, eg. “first come, first served” and a fixed 2 year licence period.
- Eligibility criteria that apply in each 2LD, eg. commercial entities are eligible for com.au and net.au, not-for-profit entities are eligible for asn.au and org.au, individuals are eligible for id.au.
- Allocation rules that apply in each 2LD, eg. exact match, abbreviation or acronym, or “close and substantial connection” rule.

7.6 In addition to the core domain name policy rules, two other auDA policies also govern the types of domain names that people can register in the open 2LDs:

- Reserved List Policy (2007-01) – prohibits the unauthorised registration of words and phrases restricted under Commonwealth legislation.
- Clarification of Domain Name Licence – Prohibition on Misspellings (2006-05) – prohibits the registration of misspellings of company and brand names.

Submissions to Issues Paper, May 2007

7.7 The Panel notes that less than half of submissions to the Issues Paper commented on the policy rules, and still fewer put forward any proposals for change. Proposals included:

- changes to address gaps and deficiencies in the existing 2LD taxonomy
- tightening or relaxing the close and substantial connection rule
- removing manual verification of registrant ID details (eg. ACN, ABN)
- changing the fixed 2 year licence period.

Views of the Panel

7.8 The Panel believes that, overall, the current 2LD policy rules strike an appropriate balance between allowing people to register the domain names they want whilst protecting the integrity and usability of the .au domain. However, the Panel has identified some ways in which the policy rules might be clarified or enhanced to ensure that they are workable and effective.

2a. Illegal and malicious use of a domain name

7.9 In the Issues Paper, the Panel proposed a change to address a perceived gap in the policy rules relating to illegal and malicious use of a domain name. The Panel has agreed to recommend that the .au domain name licence conditions should allow auDA to suspend a domain name without notice at the request of an Australian regulatory or law enforcement agency. The Panel notes that a number of regulatory and law enforcement agencies have jurisdiction over different types of illegal online activities (eg. spam, child pornography) and it is the responsibility of those agencies, and not auDA, to determine whether or not a domain name should be deleted for illegal use.

Draft Recommendation 2a:

The Panel recommends that the .au domain name licence conditions should allow auDA to suspend a domain name without notice at the request of an Australian regulatory or law enforcement agency

2b. 2LD taxonomy and eligibility criteria

7.10 The Panel notes that there are two options for accommodating more, or different types, of users within the .au 2LD taxonomy: change an existing 2LD; or create a new 2LD. The consensus view of the Panel is that the existing 2LDs should not be changed. The creation of new 2LDs is outside the Panel's remit; however, the Panel notes that info.au, an existing 2LD which is currently inactive, might be suitable for use as a "catch-all" 2LD for users who do not meet the eligibility criteria in the other 2LDs.

Draft Recommendation 2b:

The Panel recommends that the eligibility criteria for existing 2LDs should remain unchanged, but that auDA should consider re-launching info.au as a "catch-all" 2LD for users who do not fit within the current 2LD taxonomy.

2c. Verification of registrant eligibility details

7.11 The Panel has considered comments by registrars about their inability to automate checks of the ASIC database, and the resulting additional overhead and time delays in processing domain name registrations. Notwithstanding, the Panel feels that verification of registrant eligibility details at the time of registration is still necessary and desirable in order to preserve the accuracy and integrity of the .au registry database.

Draft Recommendation 2c:

The Panel recommends that registrars should continue to be required to verify registrant details at the time of registration, by automated check if possible but otherwise by manual check.

2d. Registrant warranty statement

7.12 The Panel believes that it would be prudent to strengthen the registrant warranty statement in relation to providing true and accurate eligibility details.

Draft Recommendation 2d:

The Panel recommends that the registrant warranty statement should be strengthened in relation to providing true and accurate eligibility details at the time of registration.

2e. Domain name licence periods

7.13 The Panel notes that the Name Policy Review Panel in 2004 recommended that registrants should be able to license domain names for 1, 2 or 3 years, but this was not implemented because of the current registry licence arrangements.

7.14 The Panel supports the previous Panel's recommendation, and has agreed to make the same recommendation but with the acknowledgement that implementation will have to be delayed until the new registry licence commences in 2010. The Panel notes that this will provide ample lead time for industry participants to make the necessary system changes, and for registrants to be informed of the changes.

Draft Recommendation 2e:

The Panel recommends that registrants should be able to license domain names for 1, 2 or 3 year periods, but that implementation be delayed until the new registry licence commences in 2010.

2f. Close and substantial connection rule – domain monetisation policy

7.15 The consensus view of the Panel is against an "open slather" approach to domain name registrations in .au. Equally, the Panel does not support the proposition that the policy rules should be made more restrictive. On that basis, the Panel believes that the close and substantial connection rule should remain unchanged.

7.16 However, the Panel notes that in the case of domain monetisation under the close and substantial connection rule, there are some gaps in the current policy relating to the protection of brand names where they are included in compound domain names (eg. domain names like telstraphones.com.au or safewaysupermarket.com.au would not be covered under the current policy). The Panel has agreed to recommend that the Clarification of Close and Substantial Connection Rule – Domain Monetisation (2006-03) should be strengthened to provide additional protection to brand names and other names of significance.

Draft Recommendation 2f:

The Panel recommends that the close and substantial connection rule should remain unchanged, but the clarification policy relating to domain monetisation should be strengthened to provide additional protection to brand names.

Issue 3: Should registrants be allowed to sell their .au domain names?

Current situation

7.17 A domain name is not a property asset; the registrant does not "own" the domain name, they hold a licence to use it. For this reason, the .au domain name licence conditions (also known as the Registrant Agreement) prohibit a registrant from transferring, or purporting to transfer, a proprietary right in a domain name registration; ie. registrants are not allowed to sell their .au domain name. Under auDA's Clarification of Domain Name Licence – Prohibition on Sale of Domain Name (2005-05) policy, registrants who offer their domain name for sale risk having their domain name deleted for breach of policy.

7.18 auDA's Transfers (Change of Registrant) Policy (2004-03) permits domain name licence transfers for legitimate commercial or legal reasons, but stops short of sanctioning a secondary market in .au domain name licences. The policy allows registrants to transfer their domain name licence to another eligible party, but only under the following specific circumstances:

- where the registrant sells all or part of their business operations or assets to the other party

- where the registrant assigns their intellectual property rights to the other party
- where the registrant enters into administration or liquidation, and the administrator or liquidator authorises the transfer to the other party
- where the registrant and the other party are related corporate entities
- where the registrant originally registered the domain name as agent for the other party
- where the registrant dies or becomes insane, and the executor or power of attorney authorises the transfer to the other party
- where a competent authority (eg. a court or auDRP arbitrator) orders the transfer to the other party
- where the registrant transfers the domain name to the third party in settlement of a dispute.

Submissions to Issues Paper, May 2007

7.19 The Panel notes that there was no clear consensus of opinion on allowing registrants to sell their .au domain names, and proponents on both sides of the argument appear to hold their views very strongly.

Views of the Panel

7.20 Reflecting public submissions, there are two opposing principles held by Panel members. Some Panel members believe that domain names are a public resource and domain name licences should not be regarded as a tradeable commodity, whilst other Panel members contend that an open market is the norm and domain name licences should be as tradeable as any other form of licence. Arguments on both sides of the debate were included in the Panel's Issues Paper, and have not been repeated here.

7.21 Although the Panel is divided along policy principle lines, there is common agreement on the following points:

- all transfers should be subject to normal policy rules, ie. regardless of the reason why a domain name licence is transferred, the prospective new registrant (or buyer) must satisfy the applicable eligibility criteria as if they were registering the domain name for the first time
- the transfer process should be streamlined to reduce the administrative burden and cost on registrars and registrants.

7.22 There is also general acknowledgement that the current policy is too restrictive and needs to accommodate a broader range of legitimate transfers. The Panel has identified some examples where a registrant may want to transfer their domain name licence in circumstances that are not allowed under the current policy (refer to Attachment A). The contentious issue is *how the transfer comes about* – ie. whether the policy should permit private transactions only, or whether there should be a more open secondary market in .au domain name licences.

7.23 The Panel has not yet reached a consensus view on this issue, and therefore does not have a draft recommendation to put forward in this report. Instead, the Panel is seeking public comment on three alternative proposals. The first and second proposals represent the two ends of the policy spectrum, while the third proposal offers a compromise model.

Proposal 3a. Transfer by private transaction

7.24 The first alternative proposal is for the transfers policy to be modified to allow additional transfer circumstances such as those listed in Attachment A, but only in a

private transaction. This is where the registrant and buyer already know each other, or find each other through private means. Such means might include:

- where the buyer approaches the registrant using contact details on WHOIS or the registrant's website
- where the buyer makes inquiries through the registrar of record
- where the registrant approaches someone with the same name, or in the same business, or with a similar domain name (eg. the .com version of a com.au domain name).

7.25 Under this proposal, the current prohibition on offering or advertising a domain name for sale would remain in place. This means that auDA would reserve the right to delete a domain name where the registrant offers or advertises their domain name for sale.

Proposal 3b. Transfer by open secondary market

7.26 The second alternative proposal is for the policy to be relaxed to allow transfer for any reason, in an open secondary market with multiple commercial providers – the same as the .com secondary market.

7.27 Under this proposal, there would be no restriction on the ability of registrants to sell or transfer their domain name licence (apart from the requirement that the buyer must satisfy the applicable eligibility criteria). Registrants would be able to transfer their domain name licence in a private transaction, and they would also be free to advertise their domain name licence for sale using their own method of choice (eg. listing for sale on eBay, placing an ad in the newspaper, etc).

Proposal 3c. Transfer by centralised secondary market

7.28 The third alternative proposal is a compromise model, intended to facilitate implementation of a secondary market in a way that addresses concerns about equity and access, domain name speculation and warehousing, and other potential negative effects. Note that the details of the model are subject to further consideration by the Panel.

7.29 Under this proposal, registrants would be able to transfer their domain name licence in a private transaction (as described in 7.24 above), or through a centralised market. A centralised market would provide a level of regulation and price transparency. The centralised market would operate along the following lines:

- all sales must be listed on a centralised, public website
- domain names must be listed on the website for 30 days before sale, to allow time for any objections from trademark holders or other complainants
- the registrant must advertise a fixed upfront price
- a transfer fee would be payable to auDA, to cover the cost of monitoring the market
- the sale price must be published on the website and notified to auDA.

7.30 In addition, the following conditions would be imposed on registrants, aimed at discouraging domain name speculation and warehousing:

- there would be a block on transferring domain name licences in the first 6 months of registration
- there would be a cap on the number of domain name licences that a registrant can transfer per annum.

7.31 There would be a built-in six month review mechanism, at which time the model could be adjusted to take account of market experience to date.

The Panel has not yet formed a draft recommendation on this issue.

The Panel invites comment on the three alternative proposals put forward in this report.

Proposal 3a: Transfer by private transaction

Proposal 3b: Transfer by open secondary market

Proposal 3c: Transfer by centralised secondary market

**EXAMPLES OF LEGITIMATE TRANSFERS
THAT ARE NOT PERMITTED UNDER CURRENT POLICY**

The following scenarios are not permitted under current policy because the only thing being “sold” is the domain name, without any associated business assets or operations.

Example 1: “Pernell’s Plumbing” registers pernell.com.au and after some time decides they no longer need the domain name for their business. “Pernell’s Mercedes” car dealership would like to purchase the domain name.

Example 2: A registrant fails to renew their domain name and when it expires it is registered by another party. The new registrant is willing to give the domain name back to the old registrant .

Example 3: A business partnership dissolves with an agreement that the domain name will be transferred to one of the parties from the partnership using a new registrant entity.

Example 4: A small business has two domain names, one that matches their business name and a generic domain name that relates to their business. The small business doesn't feel it is getting the full value from the generic domain name but is not prepared to cancel the name as the small business does get enough traffic from the name to justify its renewal cost. Another small business would like to purchase the generic domain name.

Example 5: A company registers a “memorable” domain name with the intention to create a new brand/business, but things don't work out. The company continues to hold onto the domain name and decides to monetise it. Another company notices the domain name is not being “used” and wants to purchase it for a new brand/business.