



Dr Jenny Ng LLB (Hons) LLM (IP/IT & eCommerce) SJD GDLP GCTLHE
Lecturer in Law
SCHOOL OF LAW
FACULTY OF LAW, EDUCATION, BUSINESS AND ARTS



Dr Jenny Ng
Executive Board Member

30 May 2015.

Dear Ms Jo Lim

Response to the 2015 Names Policy Panel Issues Paper

Thank you for the opportunity to address the issues raised in the 2015 Names Policy Panel Issues Paper. I make this submission in my personal capacity. Hence, these views are my own views, and are not necessarily the views of the organisations or institutions that I belong to.

Direct registrations under .au

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

There are already several ccTLDs in other countries that have opened up to direct registrations. Australia should do so if there is a need for it. Where domain names are concerned, there is an issue of *artificial scarcity*.¹ Competing interests in domain names arise not because there are not enough domain names for one to register. Technically, the engineers are able to create thousands and thousands of domain names. However, this is not good enough for the users as there may be competing interests where users are interested in only certain domain names. Therefore, the problem of scarcity (in its artificial sense) occurs as domain names have semantic and syntactic properties which are useful for purposes such as branding. There are a few ways to deal with this issue, and opening up for direct registration is one of them, as it makes more domain names available when similar names may not be available in other domains (such as .com.au). However, proper safeguards will need to be put in place to minimise abusive domain name registrations as well as defensive registrations.

¹ See *Jenny Ng*, *The Domain Name Registration System: Liberalisation, Consumer Protection & Growth*; Routledge, Taylor & Francis (UK), 2012; Chapter 6.

Do the new gTLDs pose a threat to the .au brand?

I do not think the new gTLDs will pose a threat to the .au brand if the .au ccTLD registration system and its rules are not too cumbersome for the users, is secure and serves the many varied purposes of registrants today. There are case studies of domain name registration systems that are threatened by gTLDs or other less restrictive ccTLDs, and these case studies reveal that the root of the problem is usually the ccTLD's registration system in itself which may be too restrictive for its users or may appear to be less attractive to the users.

A good example is the old Swedish domain name registration system.² The Swedish system was initially a restrictive registration system (which has many eligibility rules and restrictions). This registration system was not popular with the registrants as they found it to be too restrictive. As a consequence, the number of registrations diminished as potential registrants switched to Generic Top-Level Domains (gTLDs) or open Country Code Top Level-Domains (ccTLDs) of a coral island in the Asia Pacific called Niue. Niue's .nu ccTLD was popular amongst the Swedish registrants as it was unrestrictive and was a catchy vanity domain names for advertising purposes. The unrestrictive registration system in Niue made it easier for the registrants to register their domain names. It was also popular as the syllable 'nu' translates to 'now' in Swedish, Danish and Norwegian and this was very catchy for advertising purposes. For example, a Swedish parachutist club registered the Swedish version of 'getupandjump.now', and Vicks Vaporub registered the Swedish version of 'wakeup.now'.³ Prior to the reforms, two thirds of all domain names held by Swedish registrants were registered under a TLD other than Sweden's .se. The Swedish system was reformed into an unrestrictive registration system (where there is less eligibility rules) in 2003 to regain a larger number of domain name registrations.⁴ The new Swedish system has regained a larger number of domain name registrations after the reforms were made.⁵

Prior to the reforms in 2003, Sweden conducted an evaluation of its old system in 17 September, 1998. The final report entitled 'se?'⁶ reported that the restrictive registration system resulted in very little domain name disputes and cybersquatting problems. However, it was also found that the restrictive registration system led to a smaller number of domain name registrations, a costly and time-consuming process and confusing sub-domains. The domain names were usually very long and not user-

² See *Jenny Ng*, *The Domain Name Registration System: Liberalisation, Consumer Protection & Growth*; Routledge, Taylor & Francis (UK), 2012; Chapter 1 and Chapter 3.

³ Rhoads C, "On a Tiny Island, Catchy Web Name Sparks a Battle", *The Wall Street Journal* (March 29, 2006).

⁴ Mietzel, J. G. and Groening, B (2003). "'Freedom is Nothing Else but a Chance to be Better': .se as an Example for the Liberalised ccTLD." *Entertainment Law Review* 14 (6): 138-143.

⁵ Nilsson, H. and Runsten, J. (2004). "'Sweden: Domain Names under .se - Liberalisation and Dispute Resolution." *World Internet Law Report* 5(6).

⁶ 'se?' (SOU 2000:30). See also Nilsson, H. and Runsten, J. (2004). "'Sweden: Domain Names under .se - Liberalisation and Dispute Resolution." *World Internet Law Report* 5(6); Mietzel, J. G. and Groening, B (2003). "'Freedom is Nothing Else but a Chance to be Better': .se as an Example for the Liberalised ccTLD." *Entertainment Law Review* 14 (6): 138-143.

friendly enough for consumers transacting online as they preferred shorter domain names which they could easily remember.

Is there evidence of any market demand for direct registrations?

I am not aware of any evidence of market demand for direct registrations.

What types of registrants/ users would benefit from direct registrations?

In relation to the .au ccTLD, it would appear that the direct registrations may be useful to individual registrants (because the .id.au is unpopular) and businesses which seem to have issues of competing legitimate interests.

I myself have a domain name licence in my individual capacity and have used the .me (which is a gTLD) instead of the .id.au because the .id.au just does not sound very attractive at all. Given the nature of domain names today where domain names have semantic and syntactic properties which are useful for purposes such as branding, it is important that the domain name sounds catchy and attractive. The .id.au simply does not sound attractive at all and may not be able to get much (positive) attention, especially when used internationally.

The other group of users that may benefit from direct registrations would be businesses that have issues of competing legitimate interests.

What policy rules should apply to direct registrations?

Much depends on what the direct registrations will be used for. If it is used for individuals, then the policy rules for the .id.au should be transferred over. Furthermore, if there is any room for improvement, it would be a good time to make some amendments to these rules. Similarly, if the direct registrations are used for businesses instead, then the same rules that currently apply for businesses in other domains such as the .com.au should be transferred over. If there is room for improvement, it would be a good time to make some amendments to these rules as well.

Furthermore, it would be important to have rules that would prevent defensive registrations. There is no real benefit in opening up for direct registrations if it only results in businesses registering domain names for defensive reasons.

What issues would need to be taken into account as part of the implementation process?

This may be a very broad question which is beyond the scope of this submission. Some implementation methods to consider may include sunrise mechanisms and other similar mechanisms. Furthermore, while the arbitration system (auDRP) is fast and efficient, the arbitration system may need improvements as a higher burden will be placed on it because there may be higher case loads due to the increase in the types of domain names, as well as the increase in domain name registrations.

2LD eligibility and allocation policy rules

Variable domain name terms may be useful to cater for the users' different needs. Some users may need it for a short term only (e.g. one year), whilst other users may need it for a long term (e.g. more than two years, etc). The principles of 'first come, first served' and 'no hierarchy of rights' should be maintained as these are generally the main rules on domain name registration. The 'close and substantial connection' rule is useful as it gives the Australian domain name registration system more flexibility. It is also practical as it prevents the Australian domain name registration system from being unnecessarily and overly cumbersome for the registrants to register domain names. However, in some cases, it may not always be clear as to what amounts to a 'close and substantial connection'. Hence, the 'close and substantial connection' rule may need some improvements so that the rule is made clearer. Furthermore, the prohibition on misspellings policy is also useful as it helps minimise typosquatting issues.

Thank you, and I hope my comments were helpful. Please feel free to contact me if you have any enquiries.

Kind Regards

Dr Jenny Ng
Lecturer (Charles Darwin University) & Executive Board Member (Electronic Frontiers Australia).

BIBLIOGRAPHY

Monograph

Jenny Ng, *The Domain Name Registration System: Liberalisation, Consumer Protection & Growth*; Routledge, Taylor & Francis (UK), 2012.

Articles

Rhoads C, "On a Tiny Island, Catchy Web Name Sparks a Battle", *The Wall Street Journal* (March 29, 2006).

Mietzel, J. G. and Groening, B (2003). "'Freedom is Nothing Else but a Chance to be Better': .se as an Example for the Liberalised ccTLD." *Entertainment Law Review* 14 (6): 138-143.

Nilsson, H. and Runsten, J. (2004). "'Sweden: Domain Names under .se - Liberalisation and Dispute Resolution.'" *World Internet Law Report* 5(6).

‘.se?’ (SOU 2000:30)