2010 NPP Meeting - 3 March 2011

Fifth Meeting
3 March 2011, 2.00-5.00pm
Maddocks, Melbourne

Present:
Philip Argy, Darrell Burkey, Lujia Chen, John Graham, Robert Gregory, Simon Johnson, Erhan Karabardak (left at 3.30pm), Amin Kroll, Lisa Lennon, Jo Lim, Kimberley Lowton, David Lye, Graham McDonald, Jamie Murphy, George Pongas, Helen Richards (left at 3.30pm), Nancye Stanelis, Derek Whitehead, Miguel Wood

Teleconference:
Tristan Kathage (DCBDE), David Lee (DCBDE)

Apologies:
David Goldstein, Lisa Jarrett, Haig Kayserian, Joshua Rowe

Actions:
• JL to circulate draft policy (incorporating monetisation rules) to Panel for consideration

• JL and LC to circulate draft recommendations for Panel consideration

Discussion:
1. Confirmation of 3 February minutes
The minutes were confirmed.

2. Public consultation outcomes
Panel members considered the remaining issues relating to Part 1C, Parts 3 and 4 of the discussion paper.

Issue 1C – Policy Enforcement

The Panel noted that a majority of the public comments received were unsure of what the current enforcement mechanisms are. There was a general preference for clearer objective rules. A number of people also suggested an independent review mechanism.

Jo Lim advised the Panel that, in January this year, auDA introduced the Registrant Review Panel. The review panel is to provide registrants whose domain names have been deleted for breach of auDA published policies an opportunity to have the decision independently reviewed. The fee for submitting an application is $750. Since the implementation in January, auDA has not received an application. Details about the Registrant Review Panel and relevant rules can be found at http://www.auda.org.au/policies/auda-2011-01/.

The Panel also noted that auDA currently has several active means to inform the public about its policies, eg. information published on auDA website, the introductory email received by registrants when first registering a domain name, and various publication materials.

The Panel pointed out that auDA's policy enforcement is complaint based, and relies on the registrant providing a warranty at the time of registration that they are eligible under policies to hold a .au domain name licence.

It was agreed by the Panel that the current auDA complaints handling process is reasonably effective. It was suggested to the Panel that a domain name be transferred to the complainant in the event that the complaint is upheld, but the Panel believed it would undermine the first come first served principle and would also put more pressure on auDA to uphold complaints. It was also believed that the auDRP process

already serves that purpose.

The Panel noted that auDA conducts audits as a supplementary policy enforcement measure. Jo Lim advised that auDA's target for periodic audit is currently at 2 audits per month, and is run on registrants who have attracted a number of complaints. As the domain name portfolio of these registrants is dynamic and thus difficult to monitor, it is very labour intensive and time consuming to run.

The Panel referred to several examples of authorities that run periodic audits, such as the ATO, and ACMA. The lists of offenders are often published as a means of deterrence. It was suggested that auDA also consider publishing its audit results.

The Panel noted that a more frequent audit program would be administratively burdensome and may result in increased costs to end users. In most cases, public "naming and shaming" and the threat of audit against problematic registrants may be a sufficient enforcement measure in itself.

PART 3 – DOMAIN MONETISATION POLICY (2008-10)

The Panel noted that the majority of the public comments indicated that they were unclear what domain monetisation means.

Derek Whitehead explained that the origin of the domain monetisation policy was a clarification of the close and substantial rule under the eligibility policy. Jo Lim and Derek Whitehead further explained that the policy sets up a connection between the registrant and the domain name where there is otherwise no connection available under the existing eligibility rules. The policy provides leeway for domainers who would otherwise not be eligible under the existing close and substantial connection rule.

Panel members acknowledged that if the close and substantial connection rule was to be removed for domainers, then it would have to be removed for all registrants – ie. all registrants would be allowed to register any domain name they wanted, on an open slather basis. Most Panel members supported retaining the current allocation criteria, reaffirming the long-standing policy principle in .au that there must be some kind of connection between a registrant and their domain name.

Panel members discussed how domain monetisation should be treated under auDA policy. Some Panel members stated that the role of auDA should be domain name regulation, not website content regulation. On the other hand, other Panel members argued that it is clearly auDA's role to define the close and substantial connection rule and how it is applied. It was also noted that most domainers would comply with the content restrictions for their own business reasons in any case, because a monetised website with irrelevant content will not attract internet traffic.

Whilst there was a range of views about the appropriate level of regulation, there was a consensus among Panel member that domainers should not be allowed to register entity, personal and brand names.

Panel members gave in principle agreement to a proposal that section 4 of the current domain monetisation policy should be incorporated into the Domain Name Eligibility and Allocation Policy Rules, and drafted in a manner which would state monetisation as a particular category of use without using terms such as "domain monetisation" and "domainer". It was felt that this would help to address concerns among domainers that they are being singled out for unfair treatment under auDA policy.

A draft policy will be sent to the Panel for consideration on the mailing list, and at another meeting in April if required.

PART 4 – PROHIBITION ON MISSPELLINGS POLICY (2008-09)

The Panel noted that a majority of the public comments received were in support of retaining the restriction on prohibited misspellings. The concerns were that while the policy affords some protection of brand name holders, it tends to benefit large organisations rather than medium to small organisations.

The Panel also noted that the prohibited misspellings list is continuously updated, once auDA has decided that there has been a breach. There are two steps involved in the process, one is automatic as auDA receives notification from the registry when a domain name on the list has been registered, and the other is complaint based.

Section 4.2 (h) under the policy also provides a certain degree of flexibility in determining what constitutes as a deliberate misspelling, having regard to the surrounding circumstances of a case.

The Panel agreed that it is not a bright-line test, but stated that the complainant also has other options available to them if they believe that their rights have been breached.

The Panel discussed the content of the list and whether it should be restricted to trademarks. It was noted that restricting the list would mostly serve to disadvantage small businesses.

The Panel agreed in general that the policy should remain as it is.

3. Draft Recommendations

The Panel considered the draft recommendations and made a few typological corrections to the report.

The draft recommendations will be published with an accompanying online survey.

The Panel agreed that the usual forms of publication should be used, eg. the auDA announcement list, media release, and other channels used by the industry and Panel members.

The usual 6-8 weeks will be allowed for public comments.

Next meetings:

Thursday 7 April 2011, 2-5pm

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For Registrars &
Resellers
Complaints & Disputes
Registrant Transfers

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Panels and Committees
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Reserved List policy:
Notice and FAQ
In Development: Second
Level .au Domains
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