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# 2012 IAP Meeting - 23 August 2012

**Fifth Meeting**  
**23 August 2012, 2.00-5.00pm**  
**auDA offices**

## MINUTES

### Present:

Stuart Benjamin, David Cranston (ACCC observer), James Deck, Brett Fenton, Paul Fong (via teleconference), Angelo Giuffrida, Robert Gregory, Erhan Karabardak, Jerry Leeson, Paul Levins (via teleconference), Bruce Matthews, Graham McDonald, Peter Nettlefold, Craig Ng (Chair), Ned O'Meara, George Pongas, Matthew Proctor, Bruce Tonkin, Dwayne Varey (via teleconference), Miguel Wood

Jo Lim, Paul Szyndler (auDA Staff)

Apologies:  
Holly Raiche

### Actions:

- auDA staff to re-draft Minutes of 26 July meeting to provide greater explanation and clarification of discussions and decisions in relation to registry selection.
- auDA staff to draft Minutes of 23 August meeting.
- auDA staff to develop a draft Recommendations paper, for discussion and agreement by the Panel via email, prior to release for public comment.

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### Discussion:

1. Welcome

Craig Ng opened the meeting, noting the Minutes of the Panel's previous meeting. The Chair restated his previous

comments to panellists regarding the participation of AusRegistry in panel discussions, particularly with respect to the first Term of Reference. He proposed to allow AusRegistry to contribute to general discussion at the meeting, but not to consensus-building around the development of draft recommendations on this ToR. He also reiterated his offer to ask AusRegistry to leave the meeting while this item was discussed, should any panellists express a strong desire for this to occur. No objections were noted.

## 2. Panel Terms of Reference – The status and regulation of resellers

Jo Lim summarised the public contributions received in response to the Panel's Issues Paper. The Panel noted the general consensus among respondents and the few topics on which views slightly diverged. Craig Ng introduced discussion of this Term of Reference by identifying three key issues:

- Reseller regulation and the structure of relationships between auDA, registrars and resellers;
- The desire expressed by resellers for “protection” in instances of registrar failure and whether the identification of resellers in Whois might afford them this protection; and
- The desirability of, and mechanisms for, the formal recognition and identification of resellers.

The Panel commenced discussions by considering whether maintaining the current reseller model and structures was desirable, noting its stable operation and widespread recognition across the industry. The Panel discussed the submission received from ISOC-AU that advocated the retention of current arrangements and the possible establishment of a “resellers’ association” which could develop its own Resellers Code of Practice that would address issues such as the definition of the term “reseller”. The Panel noted that the development of such a Code could be fostered, and ultimately approved by auDA. Panel members expressed doubt as to the likely formation of a reseller representative body. There was also some concern about having two, potentially conflicting, Codes of Practice operating in the industry.

The Panel agreed to recommend the retention of the current reseller model. Panel members also agreed to recommend that auDA develop a standardised agreement template for registrars to use in their reseller contracts (similar to the template Registrant Agreement contained in the Registrar Agreement).

On the topic of Whois listing of resellers, the Panel revisited preliminary discussions from its last meeting regarding the establishment of a dedicated, standardised reseller field in Whois. Specifically, the Panel noted that the addition of a reseller “contact object” in the registry database could provide the identification and portability that resellers seek. In order to provide appropriate identity verification and format standardisation, the Panel agreed that auDA should be responsible for issuing “reseller contact IDs”, on application by a reseller.

The Panel agreed to recommend that auDA develop and implement the discussed system for adding a reseller contact object to the registry database, including a reseller ID, name and email address. The Panel noted that the system could incur costs for registrars in modifying their own systems to accommodate reseller contact objects, that implementation is rightfully a business decision for each registrar and therefore should be developed as an “opt-in”, rather than mandatory model.

In arriving at this decision the Panel also noted that it would provide an opportunity for better engagement between auDA and resellers and both improved consumer education from resellers (in the form of mandatory pro-forma

consumer information) and education of resellers (through training etc). The Panel also noted that such a system would afford auDA some direct regulatory power over resellers – notably the ability to withdraw reseller contact IDs in case of breach of policy by a reseller – and agreed that this would be appropriate.

### 3. Panel Terms of Reference – The policy and process for registrar transfers.

Jo Lim once again summarised the public contributions received in response to the Panel's Issues Paper. The Panel noted the general consensus among respondents and the few topics on which views slightly diverged.

The Panel discussed the practice, by some registrars, of “forced renewals”. That is, the requirement for any registrant who transfers their domain name within 90 days of expiry to renew for a new two year period. The Panel agreed it had no objections to this practice provided the registrant was made aware of it at the time of transfer, and would not address it in its recommendations.

The Panel then discussed possible modifications to the current transfer authorisation process, whereby transfers are automatically processed by the registry after a 48 hour wait period unless the losing registrar approves the transfer earlier. The Panel considered whether losing registrars should be required to approve transfers more rapidly in cases where requested to do so by the registrant. On balance, the Panel agreed that imposing such a requirement would be unnecessary, noting that the current mechanisms are efficient, operate more rapidly than in other TLDs (most notably the 5 day delay in .com transfers), and strike an appropriate balance between efficacy and registrant protection.

The Panel observed that consensus existed on the issue of allowing bulk registrar-to-registrar transfers in the case of mergers or acquisitions., The Panel agreed to recommend that bulk registrar transfers be allowed with consumer protections in the form of mandatory registrant notification and opportunity to transfer out. It was noted that registrar change of ownership must be approved by auDA under the Registrar Agreement, therefore a bulk registrar transfer could only ever occur with auDA's prior knowledge and authorisation.

On the issue of bulk transfers by resellers, the Panel noted that such a mechanism was sought by resellers and supported by public comments. The Panel agreed to recommend that bulk reseller transfers be allowed along the same lines as bulk registrar transfers, though with additional protections in place including:

- The need for auDA to approve all bulk reseller transfer requests
- The restriction of bulk reseller transfer requests to resellers who have been issued a reseller contact ID (as discussed and recommended in the previous Term of Reference)
- The establishment of losing registrar objection mechanisms and criteria (using ICANN's transfer policy as an implementation guideline)
- The requirement for registrant notification and ability to opt out / transfer

### 5. Panel Terms of Reference – The status and operation of the .au Domain Name Suppliers' Code of Practice

Jo Lim again provided a summary of public comments received.

The Panel discussed the two main options available regarding the future of the Code of Practice. On one hand, the Panel noted that the Code was successful in preventing the undesirable marketplace behaviour that it had been established to address. The Panel also noted that, currently, the Code sat outside of the auDA policy framework and was developed and “owned” by domain name suppliers. While a desirable arrangement, the Panel noted that the Code had not been revisited or redrafted since its adoption in 2002.

The Panel noted that bringing the Code within the auDA policy framework was the most efficient way to assure regular review and the ongoing currency of the Code. The Panel agreed to recommend this course of action, noting that auDA would maintain a largely administrative role, fostering and facilitating Code review, though the document would primarily remain a statement of industry stakeholders undertakings and commitments.

5. Minutes of previous meeting: r.e. Panel Terms of Reference – The method of 2LD registry operator selection/appointment post-2014.

The Chair noted comments to the Panel mailing list on the Minutes of the July meeting. These related to the discussion of the Term of Reference relating to registry selection and the accurate and thorough recording of these discussions. The Chair clarified that, given the significance of this particular issue, he was willing to re-open deliberations to allow all views to be heard and for the clarification of the Panel’s consensus recommendations.

Panellists who had offered these comments noted that they were not made with the explicit intent of reviewing and revising the Panel’s recommendation. Rather, they emphasised the need to provide sound, reasoned statements as to why the decision was taken to recommend a registry contract re-renegotiation and subsequent tender. The Panel noted this needed to take the form of a detailed, convincing justification for the recommendation in all public-facing documents, including Issues Papers, draft recommendations papers and Minutes of meetings.

Panellists also revisited the fundamental choice between a tender in 2014 and a renegotiation. The Panel noted that the decision regarding a preferred registry selection method must be based upon full consideration and analysis of all relevant factors, including openness, transparency and probity of processes, competition effects, cost pressures, service provision levels, technical requirements and costs-of-change.

The Panel noted that, irrespective of prevailing market conditions, a tender in 2014 may serve to “lock-in” the incumbent for a period of 6 to 8 years. The Panel also noted that auDA processes could come under criticism if a tender was not undertaken, and that both of these factors should be considered in determining which registry selection method is the most appropriate.

Fundamentally, it was agreed that it is the Panel’s responsibility to arrive at a recommendation that reflects the needs of Australian Internet users and that delivers the best possible value to these stakeholders at the current time.

With regard to the issue of the effect of ICANN’s new gTLD process, the Panel reconfirmed that a high level of uncertainty remains and, because of this, it is problematic to try to develop policy recommendations while pre-empting what this effect will be. In addition to its previous deliberations in July, the Panel discussed the likelihood of competition for the registry function increasing in 3-4 years’ time, when most new gTLD registry contracts, including more than 40 based in Australia, are likely to be renegotiated. The Panel also noted that the new gTLD process will provide a useful test for current and new registry operators, allowing some to establish market experience and track-

record, while others' business models may falter.

The Panel noted that allowing for "market stabilisation and consolidation" factored in the last industry panel's decision to proceed with re-negotiation rather than an RFT and recognised that similar outcomes from the current process may draw criticism regarding openness and transparency. However, most panellists agreed that the fluctuation, instability and potential for change from new gTLDs is a real and credible risk and uncertainty that must be accounted for in the Panel's decision-making process.

The Panel agreed to proceed with a recommendation for re-negotiation with AusRegistry (for a period of 2, 3 or 4 years), with a full RFT to be conducted should negotiations fail. The Panel also agreed to recommend that the auDA Board commit to holding a full RFT process at the end of the next registry licence agreement. The Panel restated the need for clarity and expansiveness in the recording and explanation of this decision.

## 6. Next steps

The Chair and auDA Secretariat outlined the next steps in the Panel's deliberations. auDA staff will amend the Minutes of the Panel's 26 July meeting to reflect panellists' comments and will circulate both the Minutes of the July and August meetings to the Panel mail list for approval.

The Secretariat will also commence work on a draft recommendations paper, which will also be circulated to panellists for intercessional approval.

Once confirmed, auDA will publish the Minutes and release the draft recommendations paper for a period of public comment. Given this consultation will be on-going, the Panel will not convene in September.

Next Meeting:

Thursday 25 October 2012, Melbourne

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