



The Accreditation and Regulation of Domain Name Registries and Resellers in Australia

Submission to auDA Industry Advisory Panel



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About ACCAN

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards availability, accessibility and affordability of communications services for all Australians.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers, including small businesses, so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will activate its broad and diverse membership base to campaign to get a better deal for all communications consumers.

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Executive Summary

ACCAN is concerned to ensure that the consumers of domain name registry services are protected. Domain name owners have a reasonable expectation that their names will be secure, that registrars will be reliable, and that they are able to make an informed decision when choosing a registrar or reseller.

In order to achieve this ACCAN supports a number of measures, including:

- A full tender process for a top level registrar should be conducted no later than 2018.
- A single registry is acceptable in the short term but this should be regularly reviewed to ensure this monopoly does not cause consumer detriment. There is a need for enforcement measures to ensure compliance with the Code
- There is a need for a publicly accessible database of accredited registrars
- The registrar database should record the results of registrar assessments
- Overseas entities should be eligible to become accredited registrars provided that they are registered with ASIC and the ATO
- Registrants who inadvertently allow a domain name to lapse should have greater protection against opportunistic drop-catching and reselling. The registration processes for ABN, ACN and domain names should be linked.
- New registrars should be required to act as resellers for at least a year before being accredited, during which time their conduct should be evaluated.
- A mandatory security standard for registrars and resellers should be introduced
- Registrars should be required to undergo an annual security assessment as a condition of their accreditation.
- The status of resellers should be formalised through either accreditation or registration.
- The definition of reseller should be revised to ensure that any individual or organisation who holds itself out to be a reseller or offers to lease domain names to the public is captured and is subject to reseller policies.
- Resellers should be listed in WHOIS
- Resellers should maintain databases of domain name owners and registrars should have copies of these databases.
- Resellers should be required to provide summaries of critical information to inform consumers.



- Bulk transfers should be allowed provided that domain name owners are given ample warning and an opportunity to nominate their own desired registrar.
- Regular reviews of the Domain Name Suppliers' Code of Practice should be conducted
- Wide consultation with stakeholders and the public should be conducted as part of any Code review.
- There is a need for consumer education to avoid confusion about the domain registration process.



ACCAN welcomes the opportunity to comment on the 2012 Industry Advisory Panel Issues Paper.

ACCAN regards domain names as a public resource which should be provided for the benefit of the public, including registrants and the community generally.

2LD Registry operator selection and appointment

ACCAN is concerned that principles of consumer protection should be maintained. In the provision of domain name registration services, we are keen to ensure that that domain name registries provide services which are secure, reliable and of a high quality at a fair price.

Tendering

The tendering process, if carried out appropriately, can take advantage of market conditions and result in reduce costs for consumers. It is is therefore desirable in principle. ACCAN acknowledges that the market for domain name registration is currently in a state of transition and that this may not be the optimum time at which to engage in a full tender. However, we note that a full tender process has not been conducted for several years.

We understand that AusRegistry's performance to date has been satisfactory. In view of the transition costs involved in switching to another registry operator, ACCAN supports the Panel's suggestion that, in the short term, the contract with AusRegistry should be re-negotiated, provided that a full tender is conducted in 2018.

Criteria to be employed in the tendering process should include a variety of benchmarks beyond merely competitiveness and cost. Criteria such as technical competence, level of security and compliance with all relevant codes, policies and agreements are factors to be taken into account as part of a tender.

Should there be a single registry or multiple registries for top level domains?

ACCAN supports the principle of consumer choice. It may be appropriate to retain a single registry in the short term, particularly in view of the current changes taking place with regard to the variety of generic top level domains becoming available. However, the decision to have only one registry should be periodically reviewed and the possibility of allowing multiple registries at some point in the future should not be excluded.

Whether there continues to be a single registry or additional registries are introduced, there should be a consolidated database of registered domain names which is public and easy to access.

Recommendations:

1. A full tender process for a top level registrar should be conducted no later than 2018.
2. A single registry is acceptable in the short term but this should be regularly reviewed to ensure this monopoly does not cause consumer detriment.

Registrar Accreditation Process

The accreditation process should be as rigorous as possible.



ACCAN endorses the notion that the standard for new registrars should be as high as possible. However, high fees may not be the best method for achieving high entry standards and performance.

It would be more appropriate to raise standards by setting down requirements which registrars would be obliged to satisfy and which would benefit consumers. Examples of such requirements are adequate insurance and satisfactory security measures.

With regard to both accreditation and compliance with the .au Domain Name Suppliers' Code of Practice (the Code), there is a need for stronger enforcement. One of the most effective enforcement mechanisms is the suspension or withdrawal of accreditation in the event of non-compliance.

Consumers need a mechanism to assess and compare the quality and reliability of different domain name registrars. Such a mechanism would enable consumers to make an informed choice when choosing a registrar. There is currently no way for consumers to examine the background of a registrar before proceeding to utilise its services. A public database of accredited registrars, which provides information regarding each registrar's most recent assessment, would assist potential customers in deciding which registrar to deal with.

Overseas based registrars

It is in the interest of competition to allow overseas entities to be accredited to act as registrars in Australia, but we agree that they must be required to register with ASIC and the Australian Tax Office as a condition of their accreditation. Without this requirement, overseas based could exploit their non-Australian status to avoid obligations to Australian consumers. Australian domain name holders should have the protection of local jurisdictions in the event of such entities failing or seeking to avoid their obligations.

“Drop-catching”

Small businesses are particularly vulnerable to the practice of drop-catching, where a domain name owner inadvertently allows a domain name to lapse and that domain name is then re-registered by another party with the intent of re-selling it.

Domain names are closely connected with a business's goodwill and reputation, and are often related to a trade name or to intellectual property.

ACCAN regards “drop-catching” in these circumstances as a practice which is not in the public interest or the interests of consumers and should be discouraged. Registrants should have greater protections against opportunistic practices in order to avoid scenarios where a small business has to repurchase its inadvertently lapsed domain name, adopt a less desirable domain name, or take legal action against the new registrant.

A business's commercial success or failure often depends upon the security of their domain name. In order to minimise the risk of inadvertent lapsing of domain names, the possibility of coupling the domain registration process and the registration processes for trademarks, ABN, and ACN should be considered. Ideally, the registration of business names and domain names should be integrated.

New registrars to act as resellers



ACCAN agrees that applicants should act as resellers for a period prior to becoming registrars. However, the period of six months seems too short a length of time for potential registrars to ensure that their systems are working effectively and that staff are adequately trained. A longer lead time would provide an opportunity to effectively evaluate a service's quality and reliability through the conduct of audits, thereby establishing a more rigorous accreditation process.

Recommendations:

1. There is a need for enforcement measures to ensure compliance with the Code
2. There is a need for a publicly accessible database of accredited registrars
3. Registrar database should report on registrar assessments
4. Overseas entities should be eligible to become accredited registrars provided that they are registered with ASIC and the ATO.
5. Registrants who inadvertently allow a domain name to lapse should have greater protection against opportunistic drop-catching and reselling. The registration processes for ABN, ACN and domain names should be integrated.
6. New registrars should be required to act as resellers for at least a year before being accredited, during which time their conduct should be evaluated.

Registrar Security

ACCAN supports the proposed introduction of a mandatory security standard. This will contribute to greater confidence in registrars.

Registrars should not be entitled to retain their accreditation unless they undergo an annual assessment. The outcome of that assessment should be publicly available, together with a certificate of currency for each registrar's accreditation.

The level of security required in order for a registrar to retain their accreditation should be equivalent to industry best practice. Periodic auditing should be conducted to ensure that this is maintained. We note that DNSSEC has not been widely adopted, and encourage the employment of DNSSEC as part of any security regime.

Recommendations:

1. A mandatory security standard for registrars and resellers should be introduced
2. Registrars should be required to undergo an annual security assessment as a condition of their accreditation.

Reseller regulation

With only 36 registrars and approximately 4,750 resellers, it is far more likely that registrants will deal with resellers when registering or renewing domain names.

ACCAN is concerned to ensure that registrants, including both small businesses and general consumers, receive adequate protection. We note that resellers are required to comply with



auDA policies and with the Code, but have concerns that this requirement may not be sufficient to protect consumers, particularly in instances where resellers go out of business. As with registrars, a rigorous accreditation scheme would contribute to greater protection for domain name owners.

In spite of the costs involved, it would be appropriate to formalise the status of resellers, whether through accreditation or some other mechanism (such as registration or authorisation to act as a reseller). While formalisation might not of itself provide protection to consumers, failure to obtain such accreditation or authorisation could act as a flag warning consumers that a reseller may not be secure, well established or reliable and that they should be cautious in their dealings with that reseller.

Under the current definition there may be doubt on the part of the resellers themselves as to whether or not their activities fall within the definition. It is important that the definition ensure consistency and clarity as to what activity constitutes reselling. The current definition of “reseller” should be revised to remove the requirement to be “appointed” by a registrar.

The definition should also be widened to capture all reseller-related activity. There may be a need to establish different categories, to ensure that activities which are not strictly “reselling” are nonetheless subject to the appropriate regulatory mechanisms. The definition should not rely on resellers self-identifying or being deemed by auDA to be resellers.

Any entity that holds itself out as a reseller and offers to lease domain names to the public should be included within the definition and be subject to reseller policies. Any definition should distinguish between engaging in activities related to reselling and being accredited or authorised to act as a reseller.

Any listing in WHOIS should include the names of the registrar and reseller, with a clear indication of their respective roles. Resellers should be required to maintain a database with names of the individuals, businesses or organisations which own the domain names, and registrars should hold up to date copies of these databases.

In order to assist consumers to make informed decisions when selecting a reseller, resellers should be required to provide summaries of critical information, which outline the respective rights and obligations of customers and resellers, in addition to information about the service being provided and the associated costs.

Registrar transfers

Domain name holders should be able to change registrars easily and quickly. There also need to be safeguards to ensure that domain names cannot be transferred without the owner’s authorisation.

The proposed requirement to obtain the approval of a losing registrar prior to executing a transfer risks the losing registrar blocking or delaying the transfer. In the case of individual transfers, it is the authorisation of the domain name holder that is critical.

ACCAN supports the Panel’s proposal to allow bulk transfers in certain circumstances, provided those circumstances are precisely and narrowly defined. A domain name should not be transferred to a new registrar without ample warning and opportunity for registrants to



nominate their own desired registrar. Where domain names are transferred to a new registrar without the consent of the domain name owner, the owner should be given an opportunity to transfer to the registrar of their choice without penalty or cost within a reasonable timeframe.

Chapter 7 of the recently registered Telecommunications Consumer Protection Code deals with the transfer process in relation to telephone and internet connections. The principles set down in the TCP Code may assist in developing appropriate protocols for dealing with transfers of domain names, particularly where a registrar has gone out of business or seeks to sell their registrations to another registrar.

As noted above, there is a connection between ABN, ACN and domain name registration and this should be recognised in the transfer process.

Recommendations:

1. The status of resellers should be formalised through either accreditation or registration.
2. The definition of reseller should be revised to ensure that any individual or organisation who holds itself out to be a reseller or offers to lease domain names to the public is captured and is subject to reseller policies.
3. Resellers should be listed in WHOIS
4. Resellers should maintain databases of domain name owners and registrars should have copies of these databases.
5. Resellers should be required to provide summaries of critical information to inform consumers.
6. Bulk transfers should be allowed provided that domain name owners are given ample warning and an opportunity to nominate their own desired registrar.

.au Domain Name Suppliers' Code of Practice

As noted above, there is a need for strong enforcement measures in order for industry codes to be effective. Suspension or withdrawal of accreditation is one possible way of dealing with non-compliance.

Regardless of which body holds the primary responsibility for the Code, it is important that regular reviews of the Code be conducted, including wide consultation with stakeholders and the general public.

auDA may also wish to consider working with the ACMA to decide whether it would be appropriate for the Code to be registered.

Recommendations:

1. Regular reviews of the Domain Name Suppliers' Code of Practice should be conducted



2. Wide consultation with stakeholders and the public should be conducted as part of any Code review.

Conclusion

ACCAN encourages auDA to increase safeguards for consumers of domain name registry services, by ensuring that registrars and resellers are secure, reliable and accountable.

ACCAN also notes that there is a need for consumer education to avoid confusion about the domain registration process.