5. Topics for Discussion

5.1 Reform of Existing Policies

1. ### 5.1.1 Eligibility and Allocation – the Australian presence requirement

For all domain names ending in .au, it is proposed that the registrant must be an Australian citizen or permanent resident or entity established under Australian law. It is recommended that where an applicant is relying on a trade mark registration or application to establish an Australian connection, the trade mark must be an exact match to the domain name.

- What are your views on the recommendation to introduce a single, simple Australian presence test for all domain name registrations in the .au name space (i.e. at the second and third levels of .au)?
- This is not required at all, Australia has 26 million people in the country, the UK has over 60 million and have only just gone to the .UK Canada and New Zealand have gone down that road as well, none of those have been successful this can only be seen as a cash grab and it will just lead to confusion in the market
- Should the ground of satisfying the Australian connection requirement be retained for holders of Australian trade mark registrations and applications that may be held by legal persons outside of Australia?
- Yes it should
- If so, should this ground be limited to instances where the domain name is an exact match to the trade mark registration or application (e.g. Nike Innovate CV could hold a trade mark for the word Nike and register nike.com.au, but not be allowed to register runningshoes.com.au that does not match their trade mark)?
- They should only be able to own their trademarked domain
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2. ### 5.1.2 Resale and warehousing

It is proposed that stricter controls be put in place to ensure that domain names are not being registered solely for the purpose of resale or warehousing (ie. holding a large collection of domain licences for future resale when they become more valuable).

- What are your views on the recommendation to retain and strengthen the resale and warehousing prohibition rule?
- If any changes are made it cannot be retrospectively you cannot change the rules of the game at half time then adjust the scores. If you do change the rules it can only apply to new registrations.
- What are your views on the proposal to strengthen this prohibition by introducing a list of factors indicating that a domain name is likely to have been registered primarily for resale or warehousing, thereby shifting the onus to the registrant to demonstrate that is not in fact the case? What factors should the Panel recommend be used?
- As answered above
- Domain monetisation is a legitimate use of a domain name under your own rules if this is altered it can only be to new registrations.
- If you change the rules and take people domains off them that have been registered within your own rules expect lots and large class actions, if you remove peoples domain names they should be compensated at market value
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3. ### 5.1.3 Eligibility and Allocation – "Close and Substantial Connection" Rule

The "close and substantial connection" rule means the domain licence must be:

- **a product that the licence holder manufactures or sells; or**

- **a service that the licence holder provides; or**
- **an event that the licence holder organises or sponsors; or**
- **an activity that the licence holder facilitates, teaches or trains; or**
- **a venue that the licence holder operates or a profession that the licence**

  holder's employees practise.

  It is proposed that this rule be expanded to recognise online directories (e.g. lawyer.com.au) and informational services that specifically relate to the subject matter denoted by the domain name.

  Nothing needs to be changed here

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It is also proposed that Domain Monetisation (ie. the use of a website which is automatically generated with paid advertising matching the subject of a domain licence e.g. books.com.au) no longer be a basis to meet the allocation criteria to register a domain name.

- Should the close and substantial connection rule be retained?
- It should stay as it is now
- What are your views on the recommendation to replace the current Domain Monetisation test as a basis for establishing a close and substantial connection with a narrower test (recognising online directories and informational services that specifically and predominately relate to the subject matter signified by the domain name)?
- That is fine
- Should it be permissible to register a domain name under the close and substantial connection rule for the purpose of Domain Monetisation?
- Yes it should be allowed at least for the domain names already registered, wht change the rules at half time

4. 5.1.4 Eligibility and allocation – Grandfathering considerations

   It is proposed that grandfathering provisions be introduced for existing licence holders.

   - What are your views on the recommendation to grandfather, or apply new policies from the point in time when the domain licence is renewed, rather than applying them with immediate effect?
   - How can you introduce new rules and make them retrospective, you will have lots of class actions, lots of people have invested large sums of money complying with the existing rules if you change the rules it can only be for new registrations
   - Should another grandfathering approach be used, and if so, why?
   - There is no fair grandfather clause that works here

5. 5.1.5 Licence conditions – licence transfer

   It is proposed that if a domain licence is sold, the new licence holder should receive the benefit of the remaining licence period. (Currently, when a licence is sold a new licence period is created for one, two, three, four or five years and any remaining licence period is lost.)

• What are your views on the recommendation to allow new licence holders to receive the benefit of the remaining licence period when a domain name is transferred?

Yes they should receive the remaining period, this can only be seen as double dipping

6. 5.1.6 Licence conditions – licence suspension and cancellation

It is proposed that a process be developed to allow for the suspension of a domain name licence, rather than cancellation of a domain name licence, where there is a breach of a policy.

- What are your views on the recommendation to clarify the definition of "law enforcement agency"?
- No idea what you are talking about here
- What are your views on the recommendation to create a procedure to allow auDA to suspend a domain name licence (as an alternative to cancellation)?
- This is a good idea
- Should the maximum period of suspension be set and, if so, should it be capped at one month or some other period of time (and should it be renewable)?
- I think one month is plenty of time

7. 5.1.7 Prohibition on Misspellings

It is proposed that the Prohibition on Misspelling List be retained. This is important to prevent typosquatting – the deliberate registration of a domain name that is a misspelling of a brand name, entity or person for the purpose of misleading users of the misspelt domain name.

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Such names can be monitored for compliance with the registration rules or blocked from registration.

- Should the Prohibited Misspellings List be retained?
- Yes this list should be retained
- What details should be published on the Prohibited Misspellings List? Should they include the date it was blocked, the identity of the complainant, and the rights that the complainant relied upon?
- Yes they should
- What are the processes that auDA should be implementing to ensure that the Prohibited Misspellings List remains current, including dealing with complaints and requests to unblock a name on the list?
- If someone has registered a business name with the different spelling they should be able to have the domain name.

5.1.8 Reserved names

It is proposed that the Reserved Names List be retained, and revised to include additional categories. Currently, the list contains words and phrases restricted under Commonwealth legislation (e.g. ANZAC) that are blocked from registration at the central registry.

- What are your views on the recommendation to retain and publish the Reserved Names List?
- The list should be published
- Do you agree that the Reserved Names List should be expanded to include words and phrases that are restricted under State and Territory laws?
- No. They have the .gov extension
- Is it appropriate that the onus should be on the relevant government department or agency to notify auDA of any words or phrases that are restricted by law and should be added to the list?
- As above they have the .gov extension

5.2 Implementation of Direct Registration

1. ### 5.2.1 Priority Allocation Period

It is proposed that the holder of a domain licence at the third level of .au (e.g. telstra.com.au) will have priority to register the corresponding domain name at the second level of .au (e.g. telstra.au) for a six-month period from the Launch Date. There may be registrants at the third level with corresponding domain names.

- Is it appropriate to have a priority allocation period for the registration of new second level domain names to give priority to the registrants of existing domain names in .au?
- The .au extension is not required. If making money is the only for doing so, if so yes there needs to be priority given to the current owners
- Is a six-month priority allocation period fair to both existing registrants and potential new registrants?
- I think the period need to be at least 2 years, but as stated earlier the .au is not required

2. ### 5.2.2 Conflict Resolution Process

It is proposed that if more than one corresponding domain name exists at the third level, it would be reserved or locked down from registration. For example, bsmc.com.au is used by a group of entrepreneurs and bsmc.net.au is used by a medical practice in Woodend, Victoria. In this scenario, the matching .au domain name (bsmc.au) would be locked down and both parties would receive a token. Token holders could negotiate with each other for the release of the .au domain name. If agreement could not be reached, then the .au domain name would remain reserved indefinitely and would not be made available for registration.

- Is the lock down process a fair process to resolve conflicts when there are competing claims at a contestable level?
- I think so
- Will you be harmed by the lock down process and, if so, how?
- Im not sure
- Should the lock down period be: a) six months b) one year c) two years d) indefinite?
- Indefinite
- If the lock down period is finite, what should happen to resolve any outstanding conflicts at the end of the lock down period?
- Both parties should put in their maximum bid with the losing party to receive the money less the registration fee

3. ### 5.2.3 Cut-off Date

A cut-off date of 4 February 2018 is proposed, as this is when the Panel began its public consultation.

- Is 4 February 2018 a fair and reasonable cut-off date for eligibility to participate in the conflict resolution process and the lock down process?
- No
- If not, why?
- This date can only be from the date it is introduced but as stated before it is not required to happen
- And if not, what date would you suggest and why?
- It can only be from the date its introduced

4. 5.2.4 Contestable Levels

It is proposed that holders of domain licences stored in the central .au registry at the third level (e.g. ato.gov.au) and fourth level (e.g. dpc.nsw.gov.au) can participate in priority allocation and conflict resolution for direct registration (e.g. ato.au and dpc.au). The Tasmanian and Northern Territory Governments regulate their own domain names, which sit outside the central .au registry.

- Is it appropriate to exclude domain names registered at the fifth level from participation in the priority allocation process and the lock down process (e.g. images.dpc.nsw.gov.au)?
- No they have the .gov that is restricted for only for them
- Is it appropriate to exclude domain names registered at the fourth level that are not registered in the central .au registry from participation in the priority allocation process and the lock down process (e.g. justice.tas.gov.au)?
- As above they have .gov

5. 5.2.5 The Draft Policy

See the proposed Draft Policy attached as Annexure E to this Discussion Paper.

- Is the wording of the draft Direct Registration Policy clear and understandable?
- No some things I have no idea what you are on about, some in guessing
- Does the draft Direct Registration Policy correctly reflect the intent set out in this paper?
- The intent is only to bring in .au as a money grab that is not required, you just need to look at the population and the amount of registered domains, I think the preasure on auDA is probably being pushed by the registrars
- Do you believe that you will benefit from Direct Registrations if implemented in accordance with the Direct Registration Policy?
- No. Only auDA and the registrars will benefit. The rest of the world will only be confused.