

***"Equality of value doesn't exist in the domain market place, except that a fee is paid annually to retain it."***

Domain valuations vary according to perceived and actual potential for revenue. In this regard, thousands of businesses have registered or purchased aftermarket domains to remain competitive within the local online space. Many registrants have hedged their bets and obtained domains of value within competitive markets, either as a defensive strategy against their competitor, or supplementary routing agents to their main business website or as a future business brand. Either way, business owners invested significant amounts of money within a competitive namespace based on perceived Domain Valuation.

As a result of natural market forces within a strong economy; the com.au increased in value due to the rarity of premium keyword domain names resulting from the partial liberalisation of the namespace via the monetisation rule. Others have seen this partial liberalisation as an opportunistic mechanism to profit from a competing market via aftermarket transactions. Naturally that is expected, otherwise the namespace wouldn't succeed in the distribution of premium domain names within it.

Unless the PRP have found a better way to distribute valuable domain names within a competitive market without financial transactions to determine allocation (deepest wallet wins) then the aftermarket participants will always remain essential to its success.

### **The hypocrisy must stop.**

The panel has spoken about perceived evils within the namespace and their plans to deal with such evils like; monetisation, speculation, warehousing, and resale of domain names, whilst in the same breath, the Panel advocates its inclusion within the direct registration namespace.

**The Panel will recommend that Domain Monetisation be removed from the policies. Domain Monetisation should not be a basis to meet the close and substantial connection rule.**

- *Under the existing Domain Monetisation rules, some domain name licensees have been able to register and warehouse almost any domain name they desire, and to register domain names for the purpose of resale using Domain Monetisation rules as the cover.*

**As stated in the Interim Report to the auDA Board, the Panel proposes that .au would be an unbounded space.**

- *There should be no allocation rules or restrictions for domain names registered at the second level. For example, the name match rule and the close and substantial connection rule should not apply to domain names registered at the second level. The space should be an open space for all Australians*

**The Panel has received feedback that Domain Monetisation is detrimental to the .au name space.**

If detrimental to the namespace why allow it within direct registration? Have you investigated whether or not it is detrimental? What evidence do you have to support your belief that monetisation is detrimental to the namespace? Are you really going to base policy on feedback from ill-informed, uneducated groups of people?

**According to Internet Commerce Association:**

ICANN's prior examination of domain parking, the relevant language of the URS, and WIPO guidance for the UDRP all lead to the conclusion that non-infringing domain parking is not problematic for consumers, not indicative of bad faith use, and is permissible and consistent with the recognized rights or legitimate interests of a domain registrant.

Hence, there is no justification for any applicant evaluation criteria that equates domain parking with negative social consequences or costs.<sup>1</sup>

...domain names consisting of dictionary or common words or phrases support posted PPC links genuinely related to the generic meaning of the domain name at issue, this may be permissible and indeed consistent with recognized sources of rights or legitimate interests under the UDRP, provided there is no capitalization on trademark value<sup>2</sup>

Our starting point is our belief that a domain registrant, having paid the annual registration fee for a domain, is entitled to engage in any lawful activity with that domain – or to not use it at all. There is no scarcity of domains available for use under the present gTLD and ccTLD regime, and any allegations of scarcity will lose all credibility once dozens or hundreds of new gTLDs commence operation. Criticism of domain parking is generally misinformed, incorrectly equates parked pages with trademark infringement, and generally boils down to jealousy that a registrant has obtained valuable generic domains at a highly trafficked TLD before the critic realized the inherent value of such domains.

The maintenance of a large domain portfolio does not make any organization or individual a "hog." If it did then just about every major ICANN-accredited registrar would fall within that category, as they warehouse tens of millions of domains collectively and often join with our members in creating a liquid and dynamic secondary domain marketplace. Whether domains are "dark", "parked", developed, or resold on the secondary market at prices that buyers and sellers find mutually acceptable, all of these practices are legal and ethical so long as conducted in conformity with relevant law and policy.

**The Panel will also recommend that a registrant of a domain name must meet the "close and substantial connection" rule on the date of registration, or if that is not possible (for example, the relevant business is a start-up and yet to commence operations) within 6 months of first registration of the domain name, and then continuously from that date.**

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<sup>1</sup> [https://www.internetcommerce.org/ica\\_demands\\_deletion\\_of\\_anti-parking-policy/](https://www.internetcommerce.org/ica_demands_deletion_of_anti-parking-policy/)

<sup>2</sup> [https://www.internetcommerce.org/ica\\_demands\\_deletion\\_of\\_anti-parking-policy/](https://www.internetcommerce.org/ica_demands_deletion_of_anti-parking-policy/)

I see the plan, that is, to free up (make more premium domains available) in the 'com.au' namespace by forcing registrants to migrate to the new '.au' via strict policy enforcement within it. On the surface that may seem reasonable to those panellists that are not invested in the domain name market, but as we've already seen, the genie got released from the bottle via the monetisation rule. Now thousands of registrants control hundreds of thousands of domains worth millions of dollars using the monetisation rule as a premise. Taking away this rule without compensation or equivalent agency is wrong. The Monetisation Rule formed the basis of registration beyond the restrictions of the exact match rule.

You cannot artificially create consumer demand for direct registration by cooking the books through clawing back a policy that auDA should have monitored.

Also, you've said that 'com.au' registrants that do not meet the new policy must start a business and built a website within 6 months or lose their domain name, and yet, you also claim registrants will not be forced to migrate or give up their domain under such policies?

- *No existing domain name licensee should be required to give up or stop using their existing domain name because of the existence or implementation of direct registration.*
- *No existing domain name licensee should be forced to migrate to a new domain name or to take up a direct registration domain name.*

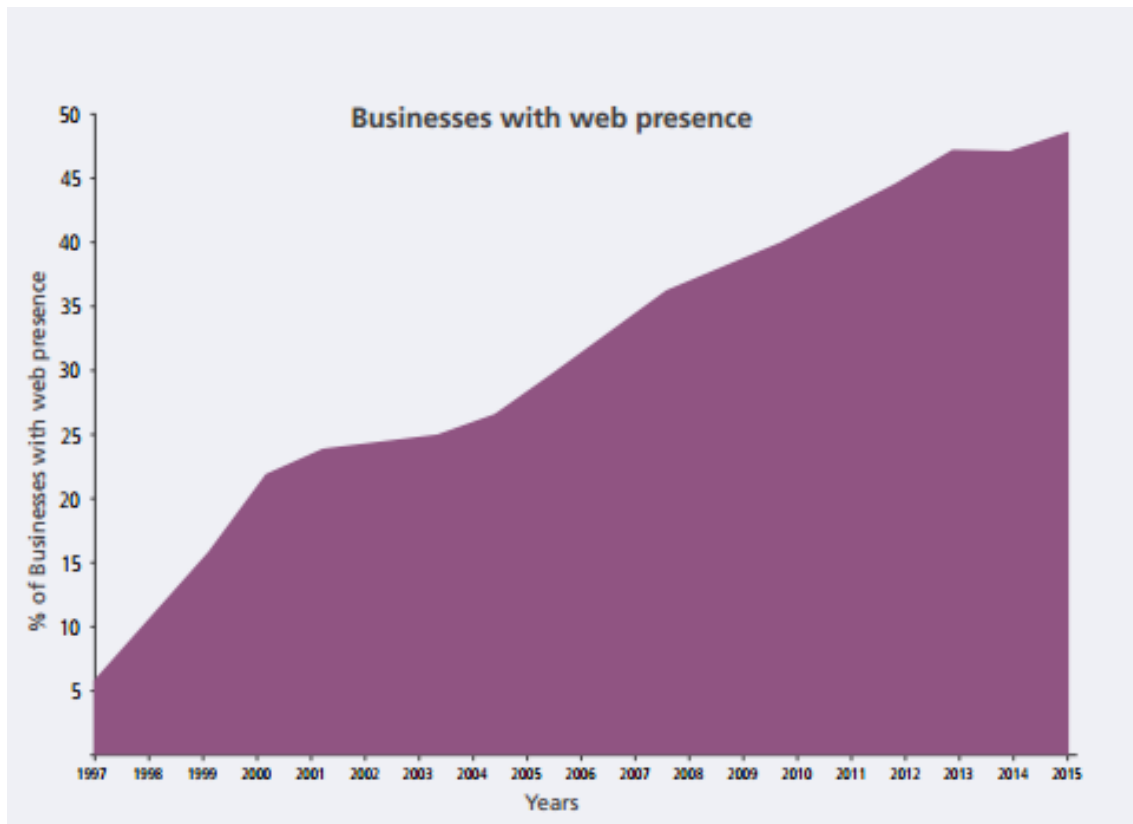
Did the PRP undertake a feasibility study in relation to *enforcement costs*?

On the surface, I see a significant cost to the registrant in keeping premium keyword domain names. Also, the registrant may have multiple valuable domains, each requiring to comply with 'new business structures', 'website development' and "tangible products or labour services" instead of acting as an interface for relevant market participants.

Did the PRP consider - If a registrant is unable to afford the enforcement costs for compliance or unable to sell their domain at reasonable prices (cost recovery) then you have forced them into a Policy delete PD scenario using financial hardship as a means of hijacking their domain name. Its unethical, who financially benefits most from this exercise, the expired domain auctions (Netfleet & Drop) ...unless the domain name is returned to the public registration pool, then the gaining registrar and auDA receive the financial benefit.

***"The Panel is faced with the hypocrisy of suggesting, monetisation, speculation, warehousing, and resale of domain names are detrimental to the Australian namespace, whilst at the same time advocating for the liberalisation of direct registration which includes everything the PRP oppose."***

What makes the PRP believe the namespace requires a boost in web development when over 50% of businesses have already voluntarily developed a web presence?<sup>3</sup>



According to Sensis<sup>4</sup>, social media is the clear front runner of all business marketing activity done online. The stats are mind blowing; and, when taken into consideration these stats give us a very clear picture as to why the namespace is pacing itself with regard to developing a business website within the au namespace.

According to auDA registry stats Australian businesses continue to register '.com.au' for future and current use.<sup>5</sup> Whilst, *the proportion of businesses with a social media presence has reached the highest levels recorded*. Therefore, social media is not impacting domain name registration numbers.

- *More than half the small (51%) and medium businesses (58%) have a social media presence while for large businesses the incidence is 85%.*
- *12% of small businesses and 5% of medium businesses who don't have a social media presence say they intend obtaining one in the next year.*
- *Social media advertising has been seen as effective across all platforms used for the majority of businesses.*

<sup>3</sup> <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Previousproducts/8166.0Main%20Features42014-15?opendocument&tabname=Summary&prodno=8166.0&issue=2014-15&num=&view=>

<sup>4</sup> <https://www.sensis.com.au/about/our-reports/sensis-social-media-report>

<sup>5</sup> <https://www.auda.org.au/assets/Industry-Information/Registry/auDA-Registry-Monthly-Statistics-Feb-2019.pdf>

***At an international level, many ccTLDs when launching direct registration have granted existing domain name registrants' priority to register the matching SLD. However, there has not been a uniform approach to resolving competing claims. Each country has developed a process that reflects the size, history, usage and structure of their relevant domain name space and the socio-economic, political and legal environment. This has meant that the processes adopted in other countries may not be the most suitable for an Australian context.***

True, policy comparisons are very different from Australia, and success or failure should not be factored into our own. However, what is clear about other ccTLD direct registration allocation was that a hierarchy of priority for the new extension was created from the extension which had the highest commercial valuation. i.e. co.uk owner was allocated the .uk extension because that hierarchy of value was *fairly* established.

Just like in Australia, Consumer demand for the 'com.au' placed a higher valuation upon com.au than that of .net.au or any other extension, this was evident at the auDA 2002 domain auction whereby premium domains were sold for in excess of \$100,000.00 each.

### **9,900 applications received**

**Melbourne, 5 February 2002** - Applications for names on the generic name list closed on 31 January 2002. auDA has received 9,900 applications for 2,210 of the 3,000 names on the list.

The most popular name is 'computers.com.au' with 76 applications and the top 10 names applied for are;

1. computers.com.au
2. design.com.au
3. computer.com.au
4. software.com.au
5. finance.com.au
6. health.com.au
7. web.com.au
8. marketing.com.au
9. internet.com.au
10. security.com.au

The process raised approximately **\$2,611,000 in total**.<sup>6</sup>

You cannot expect to create real value for direct registration by imposing financial compliance pressure upon current registrants in order to force uptake and migration to it. Blackmailing your customers by using "ransomware policy" is not a good way to implement a new domain name extension.

Therefore, if the PRP sprouted a conscience you would ask yourselves; how can auDA fairly compensate thousands of 'com.au' holders that spent the lions share in making this premium namespace valuable and available to all Australians?

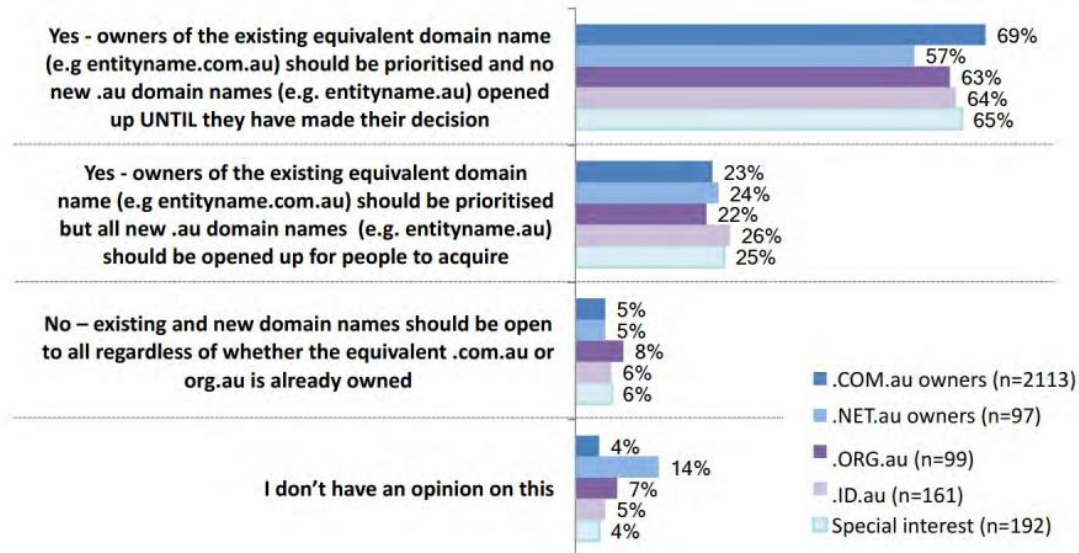
I suggest, you do what every other ccTLD managers did, compensate the higher valued extension as priority for allocation. As per the 2017 survey - majority consensus agreed.

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<sup>6</sup> <https://www.auda.org.au/news/auda-publishes-list-of-unallocated-com-au-generic-names/>

## Widespread support for existing domain owners to be prioritised in the allocation of new .au domain names.

Q. Do you believe any groups of domain name owners should have priority in registering a .au domain name under the new policy?



Base: Total survey sample

44

### **Resale, Speculation and warehousing**

#### ***GUIDELINES ON THE INTERPRETATION OF POLICY RULES FOR OPEN 2LDS***

***10.8 Schedule A of the Domain Name Eligibility and Allocation Policy Rules for all Open 2LDs contains a prohibition on registering domain names for the sole purpose of resale. Therefore, it is not acceptable for registrants to use the close and substantial connection rule to engage in domain name speculation or warehousing.***

After all these years auDA simply allowed this practice to continue? auDA never 'warned' or 'educated' the public against this practice. Registrars never warned registrants or educated their customers about it, and none introduced surveillance to monitor and enforce this interpretation before it broke out of the cage and beyond control.

I suspect the reason auDA didn't consider it a problematic interpretation is because monetisation liberated the namespace and it gave everyone "First come, First serve" opportunity. I think auDA still believes in that principle.

**Regards,**

*Scott Long*

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