

Management review of PRP panel recommendations and refinement of existing rules

April 2019



Principles

- Promote principles of competition, fair trading and consumer protection (DOCA ToE)
- Maintain and promote the operational stability and utility of the .au ccTLD (auDA const.)
- Minimise confusion from policy changes
- Minimise uncertainty during implementation
- Differentiate eligibility for .au from eligibility for .com.au
- Recognise that .com.au is a commercial space, which supports a range of business models to generate revenue – including domain monetisation
- auDA is not a website content regulator – that is the role of ACMA and ACCC
- Definitions of terms for auDA policies should reflect definitions from current Australian legislation
- Where possible existing policies should be simplified and modernised to reflect current Australian legislation



Domain name licence legal principles

- **No proprietary interest in a domain name**

- Means that an existing registrant does not have a right to a domain name label to the exclusion of all other registrants
- e.g. the holder of the label “abc” in abc.com.au does not have the automatic right to the label “abc” in the other namespaces abc.au, abc.net.au, abc.org.au, abc.asn.au, abc.id.au, abc.vic.au , abc.edu.au etc
- Domain name is not property

- **No hierarchy of rights**

- Means no one registrant has a greater entitlement to the domain name label than any other registrant with the same domain name label
- e.g. realestate.com.au has not greater entitlement than realestate.net.au to realestate.au



auDA response to PRP recommendations

Management implementation status of PRP recommendations

Recommendation	Implementation Status	Recommendation	Implementation Status
1	Implemented	14	Implemented
2	Implemented	15	Implemented
3	Implemented	16	Not implemented
4	Implemented	17	Not implemented
5	Implemented in part	18	Not implemented
6	Implemented in part	19	Not implemented
7	Implemented in part	20	Implemented
8	Implemented	21	Not implemented
9	Implemented in part	22	Implemented in part
10	Not implemented	23	Implemented
11	Implemented	24	Implemented
12	Implemented	25	Implemented
13	Implemented		



Resale and warehousing rules

Recommendations 5, 6, 7	PRP Recommendation	auDA recommendation
Resale and warehousing rules	Prohibit holding names for resale	<ul style="list-style-type: none">• Restrictions apply in edu.au, org.au, asn.au, id.au, vic.au.• No justification to restrict commercial activity in .com.au or .net.au, and not restricted in any other TLD.



Close and substantial connection rule

Recommendation 8, 9 and 10	PRP Recommendation	auDA recommendation
Close and substantial connection rule	<ul style="list-style-type: none">• Remove domain monetisation as a basis to hold a name in com.au and .net.au.• Give the registrant 6 months to demonstrate a close and substantial connection.	<ul style="list-style-type: none">• Restrictions apply in edu.au, org.au, asn.au, id.au, vic.au.• Continue to allow domain monetisation in .com.au and .net.au• Expand allowable connections to include electronic services, and Internet of Things• Remove test for website content – as auDA doesn't regulate website content – the domain name just needs to relate to the business of the registrant.• Require a registrant to demonstrate a connection at the time of registration. Registrants free to register in .au if they can't establish a connection in com.au/net.au at time of registration.



Trademarks

Issue	Change in panel report
Allowable names associated with a registered trademark or a trademark application	<ul style="list-style-type: none">• Only exact match• Must be a word mark (excludes images that contain letters)



Registrant transfers

Recommendation 12	PRP Recommendation	auDA recommendation
Obtaining the benefit of the remaining licence period when transferring a name between registrants	Allow a domain name transferee to receive the benefit of any remaining licence period	<ul style="list-style-type: none">• A person must novate their existing licence agreement on transfer and the transferee must enter in a new licence agreement with the Registrar under the new rules• A credit for the remaining period of the previous licence should apply to the new licence



Prohibited uses and suspension powers

Recommendation 13	auDA implementation
Prohibited use	<ul style="list-style-type: none">• Any conduct which is illegal, unlawful or fraudulent under Australian law
Suspension right	<ul style="list-style-type: none">• auDA can suspend a domain name if in the public interest• A law enforcement body may make a request under public interest and must provide an affidavit to auDA which sets out why the suspension is in the public interest



Misspelling policy

Recommendations 16, 17, 18, and 19	PRP Recommendation	auDA recommendation
Prohibition on misspellings	Retain misspelling policy and expand rules to require the prohibited misspellings list to be published, and reserved from registration unless separate approval from auDA.	<ul style="list-style-type: none">• Gets auDA involved in content decisions• Duplicates existing Australian legal mechanisms including common law passing off, trademark infringement, and misleading and deceptive conduct• Duplicates existing auDRP policy to deal with trademark issues• Permanent block on a misspelt name gives brand owners a free defensive registration• Prevent names in .au that are deceptively similar to names of current second level names space (ie prevent .co.au to avoid confusion with .com.au)



Reserved List

Recommendation 21	PRP Recommendation	auDA recommendation
Publication of reserved list	Publish reserved list and require Government Departments to advise auDA of changes	<p>Don't publish reserved list as:</p> <ul style="list-style-type: none">• Creates expectation that it is an exhaustive list of all names protected by law• Creates the perception that auDA has responsibility to police the use of names protected under legislation• Holds auDA to a higher standard than other government agencies – e.g. ASIC and business names registry• Cost to auDA to maintain a list given volume of new legislation that is introduced, amended, or sunsetted across all Australian jurisdictions



Other changes from auDA's clean-up and modernisation of policies

Names in .au similar to existing 2nd level names

Issue	Change
Registration of new second level names that may allow phishing attacks	<ul style="list-style-type: none">• For .au, you won't be able to register names that are deceptively similar to existing second level domains• For example:<ul style="list-style-type: none">• co.au (similar to com.au)• Mygov.au (similar to my.gov.au)



Internationalised Domain Names (IDNs)

Issue	Change
Allow limited set of internationalised domain names in .au only	<ul style="list-style-type: none">• Allow names related to major written language groups in Australia and major trading partners:<ul style="list-style-type: none">• Chinese (Simplified)• Korean• Japanese• Arabic• Vietnamese



Restriction on sub-licence

Issue	Change
Ability to sublicense a domain name to a party that does not meet Australian presence or close and substantial connection criteria	<ul style="list-style-type: none">• Prohibition on rent, lease or sub-licence to a third party unless a related body corporate with an Australian presence



90 day renewal restriction

Issue	Change
Registrant's can't renew their licence unless it is within 90 days of the expiry date	<ul style="list-style-type: none">• Bring .au into line with all other TLDs, and allow a registrant to renew at a time of their choosing



Complaints process

Issue	Escalation levels
Escalation process for complaints	<ol style="list-style-type: none">1. Must first bring complaint to registrar of record2. Review of registrar decision by auDA compliance team3. Review by auDA executive4. Review by external review panel5. May pursue any other action under Australian Law



.au direct registration implementation

PRP Recommendation – Priority registration

4 Feb 2018

1 Oct 2019

31 Mar 2020

6 months
Priority Application Period

Indefinite
Conflict resolution period

Cut-Off
Date

Launch
Day

End of
Priority
Application
Period

All existing
names locked in
.au, but any new
name can be
registered

Any locked
name with no
application is
released to the
general market

Only registrants
with names
created before
the cut-off date
can participate in
conflict
resolution



Key implementation decisions

- auDA supports the recommendations of the PDP panel with respect to their implementation model for direct registration
- Key material decisions for the Board are:
 - Length of application period – 6 months
 - Length of contention resolution period – indefinite, with 6 monthly review of outcomes
 - Cut-off date – 4 Feb 2018, as the date when PRP first proposed the .au implementation model



Cut off-date

- Priority is generally based on creation date.
- If there is more than one party that applies for a name, where the creation date is prior to the Cut-off Date – than those parties must reach agreement on who will be able to register forexample.au.



Use Cases – Cut-off date 4 Feb 2018

- Use cases consider various combinations of Parties A, B, C, and D applying for forexample.au during the Priority Application Period.
- Parties A and B have domain names created prior to the cut-off date.

Party	A	B	C	D	Result
Domain name	forexample.com.au	forexample.net.au	forexample.org.au	forexample.id.au	
Creation Date	Jan-2005	Feb-2010	Mar-2018	Aug-2018	
Case 1	Applied	Applied	Applied	Applied	A & B go into conflict resolution
Case 2		Applied	Applied	Applied	B gets forexample.au
Case 3			Applied	Applied	C gets forexample.au, as creation date of forexample.org.au is before forexample.id.au
Case 4				Applied	D gets forexample.au



Competition considerations

- Providing an indefinite period for conflict resolution allows current registrants to prevent new registrants from using the same name in .au
 - E.g. if realestate.com.au and realestate.net.au can't reach agreement, then no new registrant gets to register realestate.au
 - E.g. likewise if abc.net.au and abc.id.au (Alistair Benjamin Cook) can't reach agreement
- May undermine the utility of .au by preventing new registrants from getting names in .au to compete with existing registrants
- Undermines principle of no hierarchy of rights if existing holders of names at the second level can restrict new registrants in .au
- Alternatives include first-come first served (pure competition model), or a restricted negotiation period (e.g. 4 months) and then first-come, first served



Cost considerations

- The .au implementation model includes an “application fee” to apply for a corresponding name in .au (i.e. if the registrant of forexample.com.au chooses to apply for forexample.au)
 - Question 1 – where there are multiple parties that have applied for names that have creation dates prior to the cut-off date, and haven’t reached agreement after a year – should they be required to pay an annual application fee to maintain their reservation?
 - Question 2 – where multiple parties apply for forexample.au, and the name is allocated to one of those parties, or tied up in conflict resolution amongst some of those parties, should the other parties receive a partial refund of their application fee?

