

Dear Policy Review Panel Members,

The following submission has been compiled in an attempt to create awareness and education around commonly referenced topics in other submissions, and to highlight some additional points which I would like to be taken into consideration by the panel.

1. **Domain Investors vs. Cybersquatters vs. Threat Actors/Scammers/UBU's**

The practices engaged by these three parties are distinctly different.

**“Domain Investors”**

Typically purchase generic, non-rights infringing, keyword rich domains to resell at a profit. All Domain Investors adopt a different business model in terms of level of capital investment, holding period, margin, level of development and ROI. There are a number of different ways Domain Investors choose to monetise or develop their domains – Pay Per Click Links (Domain Investor defined or User Browser generated), Banner Ads, Content with Affiliate Links, Product or Service Comparisons, Paid Lead Generation, Information Guides or Forums to name a few.

Whilst there are exceptions, asking price is usually determined and justified by comparative sales, brandability, industry type and size and scope for use. In most cases, dissent for Domain Investors arises from a Buyer's lack of willingness to pay more than its perceived \$20 registration cost. There is nil consideration for the thousands of hours of namespace education, pre-auction research, pre-purchase due diligence, private purchase negotiation time and costs, significant capital tied up, renewal fees (from 1-30yrs), business structure, compliance and other operational costs. As a country we've embraced unprecedented Bricks & Mortar Real Estate growth and profits, but not Digital Real Estate like the rest of the world.

For many potential domain purchasers who are “late to the party” and want a new domain or simply an upgrade, it is unfathomable that a domain might be worth multiples of what it was purchased for by a Domain Investor. As a Potential Domain Buyer it's a convenient position to take, and is potentially due to a lack of understanding of associated time and monetary costs and the value of an appreciating digital asset with a wide commercial scope for use.

**“Cybersquatters”**

Typically register non-generic and Trademark infringing domains in an effort to sell it for exorbitant profits to rights holders. The asking price is in no way aligned with the quality of the domain or comparative sales.

**“Threat Actors/Scammers/UBU's (Unauthorised Business Usage)”**

Typically register domains which look, sound, are spelt, or could be easily confused with another entity which they are trying to impersonate. Additionally, they can also just be a domain registered under another unrelated Entity's details. The business model is not built on reselling a domain for profit, it's using the domain to deliberately mislead others and for malicious purposes to cause financial, reputational or other damage.

## 2. Trust

The phrase “Trust in the namespace” has been used in various contexts throughout other submissions and the stakeholder feedback sessions. I believe there are two main elements of namespace trust which need to be elaborated on;

### **WHOIS record accuracy**

The single biggest achilles heel in establishing Trust in the Australian Namespace is the lack of reliability that the Registrant Entity on the WHOIS record is actually who registered the domain. From my experience, the majority of Registrars do not have an Identification or Verification process in place when a new account is created or when a new domain is registered or a Change of Registrant takes place.

Until ALL Registrars implement this, and a full audit is conducted on all existing registered domains, all other discussions around eligibility and allocation criteria are superfluous. As it stands, anyone can register a domain name using someone else’s eligibility details (ACN/ABN/TM). An effective Identification and Verification process would significantly reduce the number of Cybersquatting and Threat Actor/Scammer/UBU cases overnight due to traceability, accountability and the prospect of litigation and/or incarceration.

It’s also common knowledge within the industry and auDA that a number of Prominent Registrars who act as Brokers are not completing the COR process as part of their brokerage process (despite Sellers pleading for them to do so). This service breach fundamentally undermines trust in accurate WHOIS records.

### **Website Legitimacy/Intent**

One of the biggest concerns amongst Consumers and Businesses alike is “Am I interacting with the business that the website is purporting to be” and “what is the product or service being offered, and will I receive it”. It is particularly common for service-related industries (removalists, cleaning etc.) to operate a number of different websites in an attempt to make customers think they are different businesses operating the same service and providing independent quotes. I believe this to be one of the biggest sources of mistrust in the namespace.

A number of other submissions have made reference to Domain Investors “undermining the integrity” and “trust” of the namespace, I would argue it’s the opposite. It is clear to visitors that the domain itself is for sale via an overt banner, or, that goods, services or referrals related to the domain’s keywords are being offered.

## 3. Scarcity

A clear distinction needs to be made between “Scarcity” (almost all generic keyword domain names are already registered), and “the inability to acquire a domain name that is already registered”. Scarcity exists in every market where there is a finite and desirable resource (Real Estate, Shares, Antiques, Collectible Cars) and would exist in the Australian namespace with or without Domain Investors. It’s irrefutable that in every ccTLD and the majority of gTLD namespaces worldwide, that all high-quality domains are already registered. It is not unique to Australia.

If a domain is held by a Domain Investor, it will be available to acquire (after all, the business model is buying and selling). If a domain is already owned by another Industry Participant or Competitor, it is highly unlikely that the domain will ever be available to acquire.

In today's market, Domain Investors inadvertently create greater end user ownership distribution of domains by making the barrier to entry (acquisition price per domain) too large for most end users to acquire large numbers of domains (10's to 100's) in the niche or industry they operate – which they would otherwise do (and did in the early stages of the internet) if registration was only ~\$20/domain.

Progressive SMB's and High Profile ASX-listed Companies have long adopted the above strategy to prevent competitors from operating on high-quality "Category Killer" domains, or benefitting from the funneled traffic of additional keyword domains.

Many laggards and new businesses are now seeking to acquire the best possible domain(s) for their industry or niche that aren't already owned by established Industry Participants. Expired Domain Auctions, Aftermarket domain name marketplaces and direct purchases through Domain Investors are the only way to achieve this.

It is categorically in the namespace's best interest to increase the number of developed domains, utility and competition through greater end user ownership distribution of domains. Domain Investors play an essential role in achieving this.

#### 4. Utility/Level of Development

In a perfect utilitarian world, every Entity would only own one domain and maximise its utility through unique development with value-adding content and engaging user experience – we don't live in a perfect world.

Utility, and in this case "the value that a domain adds to a namespace" will be varied. As a Domain Investor, or any Registrant holding multiple domains, it is impossible to offer a level of utility that will satisfy every Stakeholder. Pay Per Click advertising allows any Registrant to commercially resolve and manage domains at scale, whilst still providing a level of utility through Owner-defined or Browser-generated product and service referrals.

A large number of SMB's and Corporations own hundreds and thousands of domains each, the majority being non-resolving websites (not even PPC links). When considering the removal of PPC or domain monetisation as a means for Domain Investors to meet the Allocation Criteria, the same level of scrutiny must be placed upon every other Registrant holding a domain in the namespace which is not resolving or developed to a satisfactory level of utility. Additionally, this scrutiny must also extend to the hundreds of thousands of domains which resolve to "This Domain is parked at XXXXXX Registrar" where the domain is not meeting Allocation criteria.

Provided that a subsidy, grant or taxpayer support is not being accepted and that all conduct is legal, I'm not aware of any other industry where Stakeholders or Regulatory Authorities position themselves as content moderators or dictate what commercial model a business can or can't adopt.

Additionally, I'm not aware of any other namespace in the world that has Allocation Criteria on top of Eligibility Criteria. A number of both founding and relatively new ccTLD's don't even have Eligibility Criteria and still operate with a commonly acknowledged acceptable level of trust.

## 5. International Namespaces/Domain Investment

Domain Investment;

- All other namespaces subject to Eligibility Criteria, not Allocation Criteria
- PPC has been acknowledged as a bona-fide business practice in multiple WIPO cases by impartial and Independent Panels over many years and across many different domain extensions
- Generates Total Transaction value in the 100's of millions each year
- Is the subject of many long-running forums and news sites with very large readership eg. DNJournal.com, DomainInvesting.com, DomainNameWire.com
- Conferences are conducted Annually across the world (some where ccTLD's operating with PPC are even auctioned live)
- Supports many Domain Monetisation Services across the World (predominantly USA and Germany)

## 6. Summary

As a summary to points raised within the above submission, I'd like to recommend that the Panel considers the following;

### **Policy Level**

- Align with the rest of the world's namespaces and Remove All Allocation Criteria (Eligibility details provide the identity, traceability and accountability for malicious use if the below Registrar Level process is implemented).

### **Registrar Level**

- Implementing an Identification and Verification process for All Existing Accounts and New Accounts

### **WHOIS Level**

- Remove Registrant & Tech Email Addresses (anonymize, but still contactable)
- Remove Eligibility Criteria field (Retain Registrant/Registrant ID field)

Implementing the above would bring Australia into alignment with the Eligibility Criteria of namespaces across the world, eliminate all ambiguity around who is and isn't eligible to hold a domain and what level of development is constituted as "sufficient". There are established, formal and relatively economical dispute resolution processes in place (WIPO etc.) where an aggrieved party is able to put their case forward. If the Registrar-Level recommendation above is implemented, it would bring a significantly higher trust level to the namespace and significantly reduce the cases of inappropriate conduct.