Policies

Policy Reviews

Panels and Committees

2017 Policy Review Panel

auDRP

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Privacy Policy

Reserved List policy: Notice and FAQ

In Development: Second Level .au Domains

FAQ: Second Level .au Domains

Priority Allocation Process

Major Disaster Policy FAQ

ICAP Meeting - 5 June 2008

Second Meeting
5 June 2008, 2.00-5.00pm
Maddocks, Melbourne

Present: Jonathan Brake, Greg Crew, Chris Disspain, John Higgins, Cheryl Langdon-Orr, Jo Lim, Bruce Matthews, Craig Ng, Jacki O'Sullivan, George Pongas, Elspeth Ross, Anthony Saines, Mark Salkin, Dean Shannon, Kartic Srinivasan, Tony Steven, Alex Woerndle

Teleconference: Luke Dale, Amin Kroll, Jen Watson

Apologies: Teresa Corbin, Craig Moran, Melanie Rainey

Actions:

• JL to circulate draft Issues Paper for review and sign-off by Panel.
• JL to release Issues Paper for public comment by end June.

Discussion:

1. Draft Issues Paper

The Panel reviewed the draft Issues Paper and continued its discussion of the issues identified to date.

The aim is to release the Issues Paper by the end of June, with a 4-5 week public consultation period through July.

1. COMPETITION OBJECTIVES
The Panel noted that auDA has an overarching responsibility to ensure the security and stability of the .au DNS, and it also has certain constitutional obligations with respect to both supply and demand sides of the industry. Within this context, the Australian domain name industry structure and competition model should aim to achieve the following outcomes:
• continuity and certainty of DNS service provision
• level-playing field for domain name suppliers
• low pricing, at wholesale and retail levels
• customer choice.

The current industry structure is based on a three-step supply chain – registry, registrar and reseller – with competition occuring to varying degrees at each step. A consideration for the Panel is whether the costs of providing competition at each step outweight the public benefits to be gained.

2. REGISTRY

The Panel identified the following possible registry tenderers, and the challenges they would face in mounting a competitive bid against the incumbent:
• gTLD registry operators – it is likely that they would be deterred by the local presence requirements, the more restrictive .au policy environment and the comparatively low volume of registrations
• other ccTLD registry operators – not many ccTLD registry operators are commercial providers, and most focus exclusively on their own domain
• providers of other registry services (eg. Computershare) – may have trouble sourcing the requisite DNS expertise
• a purpose-built start-up operator – the capital costs of building a registry from scratch are likely to be prohibitive
• a registrar who wants to become a registry operator – the capital costs would still be a significant barrier, and also raises possible trade practices issues
• a registrar cooperative – raises possible trade practices issues, and concerns about the long term stability of an entity owned by competing registrars.

The Panel considered ways in which the next tender process could be made more competitive and/or more cost-effective, such as extending the licence period to allow a new operator more time to recover their costs, or charging the incumbent the same amount as it would cost a new operator to build a registry. It was also suggested that instead of conducting a tender process (or as a pre-cursor to the tender process) auDA could offer an extended licence to the incumbent, subject to negotiation on pricing and other key terms. Whilst this may be more cost-effective than holding a full tender process, it would also have the effect of further entrenching the incumbent.

The Panel noted that during the first registry term, there was a perception in the industry that the registry operator was making unseemly profits. This was largely addressed during the 2005 tender process, with the incumbent offering a substantial reduction in pricing. Registry pricing is now roughly on par with .com pricing, despite the vast difference in volume (ie. 75m .com domains compared with 1m .au domains). Despite lower pricing, the registry operator still makes healthy profits and that in itself provides an incentive for it to remain in good standing with auDA and the industry.

The Panel discussed abandoning the competitive tender process and changing to a model where auDA runs the registry. Panel members noted that auDA would need to raise extra revenue from the industry (eg. by increasing its domain name fee) in order to build its own registry. In addition, major changes would need to be made to auDA's corporate structure and constitution to allow it to operate a registry. It was suggested that auDA could outsource management of the registry, however there are often practical and legal problems that arise in the separation of ownership and operation, eg. in relation to who is responsible for implementing upgrades and improvements, and who owns any associated intellectual property.

3. REGISTRARS

a. Registrar fees

The Panel discussed whether registrar fees should be increased, as the current fees have not changed since 2002 ($2,200 application fee, $3,300 annual fee). It was noted that an increase in registrar fees may have the effect of protecting existing registrars from further market competition, and therefore Panel members who represent registrars have a conflict of interest on this issue.

The following arguments were raised:
• Many other types of fees are indexed, why shouldn't registrar fees be treated the same way? On the other hand, the registry and auDA domain name fees have been steadily decreasing over time, so why should registrar fees be different?
• Increasing registrar fees may discourage the practice of holding multiple accreditations to maximise connections to the registry, but it may also act as a barrier to natural market consolidation.
• Reducing registrar fees may lead to a large increase in the number of applications (as was the case when ACMA reduced telecommunications carrier application and licence fees), causing resourcing and regulatory problems for auDA.
• Reducing registrar fees may set the barrier to entry too low and result in reduced quality of service to customers and possible risks to the technical operation of the .au DNS.

It was agreed that the Panel's role is to recommend whether registrar fees should be increased or decreased, and perhaps the basis on which fees should be calculated; it would be up to auDA to set the actual amount.

b. Registrar services
The Panel considered whether it may be necessary to mandate that registrars must send domain name renewal notices to registrants, as opposed to relying on the current "best commercial endeavours" approach. Some Panel members thought that it is a reasonable expectation of consumers to receive a renewal notice. Other members raised concerns about the increased cost and liability for registrars, especially where the domain name was registered through a reseller.

c. Registrar penalties
The Panel discussed ways of dealing with serious breaches of the Registrar Agreement. auDA has issued approximately ten formal notices of breach to registrars since 2002; in some cases the notice was also made public, due to the circumstances of the breach.

d. Other registrar activities
The Panel noted that registrars have access to information about deleted or expiring domain names that may not be readily available to the general public, or even to other registrars. It was suggested that use of this knowledge to register domain names for activities like domain monetisation may be regarded as a form of "insider trading" (conceptually, not legally). The lack of market transparency could be addressed by, for example, publishing a list of deleted and expiring domain names.

4. RESELLERS
The Panel discussed a proposal for a voluntary "registered reseller program". Under the proposal, resellers would pay a fee to register with auDA and in return would receive the following benefits:
• listing in WHOIS
• use of an official reseller logo or certification mark
• direct contact with auDA, including access to education and training.

A suggested variation to the proposal was to have resellers sign onto the Code of Practice rather than registering with auDA.

Panel members thought that these proposals may help to address or improve:
• auDA's ability to handle complaints about resellers
• registrars' inability to control or restrict their resellers' activities
• resellers' ignorance of auDA's role, the Code of Practice and .au policies

• confusion among registrants about the identity of their supplier.

The Panel noted potential difficulties with regard to WHOIS listing and consequences for the transfers policy, as well as enforcement and resourcing challenges for auDA. However, it was agreed to include the proposals in the Issues Paper and invite public comment.

5. TRANSFERS
The Panel identified a couple of difficulties associated with the current transfer policy and process:
• although registrars are not permitted to charge a transfer-out fee, anecdotal evidence is that some registrars impose an effective transfer-out fee via other means (eg. by charging for password recovery)
• problems with password recovery can be a barrier to transfer, especially where a registrant is seeking to transfer multiple domain names. It was suggested that password recovery should be centralised through auDA/AusRegistry.

Next meeting:
Tuesday 7 August 2008, 2-5pm in Sydney

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