July 8, 2026

Policy Advisory Panel
.au Licensing Rules Review 2025
c/o .au Domain Administration Ltd.
PO Box 18315
MELBOURNE VIC 3001

Dear Members of the Policy Advisory Panel:

Re: .au Licensing Rules Review 2025 – Policy Advisory Panel Draft Report (June 2026)

I write to you on behalf of the Internet Commerce Association. Founded in 2006, the Internet Commerce Association (the "ICA") is a non-profit trade organization headquartered in Washington, D.C. We represent the industry that has developed around the independent value of domain names, including domain name investors, secondary marketplaces, brokers, escrow service companies, registries, registrars, and related service providers. Our members are individuals and businesses located all over the world, and include Australian businesses and Australian domain name registrants who hold licences in the com.au, net.au and .au direct namespaces and who would be directly affected by the outcome of this Review.

The ICA participated in the prior review cycle, submitting detailed Comments to the 2017 Policy Review Panel (the "PRP") on April 9, 2019, and further Comments on April 23, 2019, concerning auDA Management's Response to the PRP's Final Report (the "2019 Management Response", available on auDA's website at https://files.auda.org.au/documents/2017prpauDA-Management-Report-PRP-Recommendations-Final.pdf). We appreciate the opportunity to participate once again in auDA's multi-stakeholder policy process. Our Comments are summarized as follows:

1. The ICA supports Recommendation 1, retaining the current approach to domain name monetisation, together with proportionate, risk-based audits and compliance checks directed at DNS Abuse;

2. On Recommendation 2, the ICA supports Option 1 as the primary and sufficient response, namely increased compliance checks under the current rules. To the extent the Panel considers any measure under Option 2, it should be limited to narrow, objective, prospective and presentation-based requirements directed at genuinely deceptive conduct;

3. The ICA strongly opposes Option 3, namely deletion of subparagraph 2.4.4(2)(f) from the .au Licensing Rules. Option 3 would achieve indirectly, through allocation, the prohibition on monetisation and investment that Recommendation 1 rightly declines to impose directly. It would also revive PRP Recommendation 9, a proposal auDA Management considered and rejected for the commercial namespaces in 2019;

4. The ICA strongly opposes any version of Option 2 that would operate in substance as Option 3 by excluding lawful referral, information, advertising, marketplace, parking or pay-per-click services from the "Services" definition; and

5. The ICA supports Recommendations 3, 6 and 7, and urges safeguards in respect of Recommendation 5.2.

A Threshold Observation: A Perception Problem, Not a Rule Failure

Before addressing the recommendations, the ICA offers a threshold observation. Much of the concern recorded in the Draft Report regarding monetisation and investor-held domain names appears to reflect a mismatch between public expectations and the current Licensing Rules, rather than a demonstrated failure of those Rules. That distinction matters. Under the current framework, a registrant that satisfies the applicable eligibility and allocation criteria may register a com.au or net.au domain name on the basis that the domain name is a match or synonym of the name of a service, goods or activity provided by the registrant. A referral or advertising page, including a parked or pay-per-click page, may constitute the relevant service where it otherwise satisfies the Rules. Holding the domain name for future transfer in accordance with the Rules, displaying advertising or referral links, and operating the domain name otherwise than as a conventional business website are not prohibited merely because the registrant is a domain name investor.

The concern, therefore, is not that the Rules silently prohibit a class of conduct that has gone unenforced. The concern is that some members of the public believe that a registrant operating in the secondary market is less entitled to a domain name than an operating business that later wants that name. The Draft Report recognises that concern, but the Rules do not adopt such a hierarchy. To the contrary, the .au framework proceeds from first come, first served, no proprietary rights in a domain name and no hierarchy of rights. A later-arriving applicant with a trademark, business name or preferred commercial use does not, by reason of that status alone, have a superior claim to a domain name already held by another eligible registrant.

This point is important to Recommendation 2. Recommendation 1 properly recognises that the current approach allowing domain name monetisation should not be substantially changed. Recommendation 2 should not be used to achieve indirectly, through the deletion of the relevant allocation pathway, the prohibition that Recommendation 1 rejects directly. Removing the ability to rely on a service, goods, activity, event or premises allocation pathway because some registrants use that pathway for monetised websites would go well beyond addressing misuse. It would alter the structure of com.au and net.au allocation more broadly, including for registrants whose use is entirely compliant.

That does not mean that auDA should be indifferent to misuse. If a monetised page is used for DNS Abuse, misleading advertising, unlawful content or conduct otherwise contrary to the Rules, that is properly a compliance matter. The ICA supports effective compliance action against such misconduct. But the remedy for misuse is enforcement against misuse, not removal of a lawful allocation pathway relied on by compliant registrants. The Draft Report itself recognises the practical difficulty of unwinding a longstanding secondary market, the consistency of licence trading with market practice, and the absence of evidence that monetisation inherently undermines trust and confidence in com.au, net.au or .au direct.

Misunderstanding calls for clarity, not prohibition. Where complaints arise because a complainant believes that an investor-held name should be made available to a later-arriving business, auDA can address that misunderstanding through clearer public guidance, complaint-process communications and transparent reporting of compliance outcomes. Recasting lawful, longstanding conduct as non-compliant in order to align policy with a misperception would penalise registrants who have complied with the Rules, unsettle legitimate expectations created by auDA's own framework and still not resolve the underlying grievance of complainants whose real objection is that the name they want is already registered. For that reason, the perception concerns recorded in the Draft Report are best addressed through the compliance and communication measures reflected in Option 1 under Recommendation 2, not by deleting the allocation pathway on which compliant registrants rely.

<u>The ICA Supports Recommendation 1</u>

Domain name monetisation and investment are lawful, longstanding and internationally accepted commercial activities. As the Draft Report records (s 6.1), submissions explained that monetisation has existed since the early development of the internet, and the Panel acknowledged comparable practices in .com and in many ccTLD registries, including those of New Zealand, the United Kingdom, France, Germany, Italy and Spain. Domain investors risk their own capital, provide liquidity to an otherwise illiquid market, widen the choice of names available to businesses through the secondary market, and contribute to registration and renewal demand that supports auDA, the registry and registrar ecosystem, and auDA's broader public benefit initiatives. The ICA equally supports the compliance component of Recommendation 1: our members have no interest in monetised websites being used, deliberately or inadvertently, to facilitate DNS Abuse, and increased audits targeted at DNS Abuse address the actual harm identified in consultation, proportionately, without punishing lawful registrants.

<u>Option 3 Would Nullify Recommendation 1 and Revive a Proposal auDA Rejected in 2019</u>

The Panel found that "there is a lack of evidence that monetising a website inherently undermines trust and confidence" in the com.au, net.au or .au direct spaces, and that it is not convinced a blanket ban on registering a licence for future transfer or income generation would be effective (Draft Report, s 6.1). Recommendation 1 follows logically from those findings. What does not follow is Option 3. If monetisation is to remain permitted, it is incoherent to simultaneously remove the com.au and net.au allocation pathway through which monetisation-based registrations are lawfully made. A right to monetise that cannot be exercised because the underlying registration can no longer be allocated is no right at all. Option 3 is the blanket ban the Panel disclaims, achieved through the back door of eligibility rather than the front door of prohibition.

Nor is this proposal new. PRP Recommendation 9 (2019) proposed that monetisation no longer serve as a basis for allocation. auDA Management implemented that recommendation only for the non-commercial namespaces, abolished the monetisation restriction for com.au and net.au, and confirmed that a compliant registrant may use its licence for “any legitimate purpose, including domain name monetisation or domain name investment,” consistent with the approach of the .ca, .nz, .fr, .uk and .de registries (2019 Management Response, Recommendation 9). Management likewise found “no evidence that domain name flipping… is having a negative impact” on the utility of the .au domain or causing scarcity, and that the PRP had supplied no evidentiary material establishing the supposed warehousing problem (2019 Management Response, Recommendations 5–7). Nothing in the present Draft Report identifies any change in circumstances since 2019 that would justify reversing those considered conclusions. Indeed, the Panel’s own findings reaffirm them.

Deleting Subparagraph (f) Would Be Grossly Overbroad

Subparagraph (f) is not a special allowance for domain investors. It is the general goods-and-services allocation pathway for the com.au and net.au namespaces, relied upon by ordinary Australian businesses: it permits a commercial entity to register a name that is a match or synonym of a service it provides, goods it sells, an event it sponsors, an activity it facilitates, or premises it operates. A café registering a descriptive name matching the food it sells rather than its trading name, a retailer registering its product category, or a company operating an information or referral service may have to rely on (f), unless it also has a matching corporate name, business name, acronym, trademark or related-entity basis under subparagraphs (a) through (e). Because a registrant must remain eligible for the entire time it holds a licence, deleting (f) would place at risk existing, fully compliant registrations, unless grandfathered in perpetuity, which would merely freeze the secondary market and create a two-tier namespace.

The scale of the disruption is apparent from the Panel’s own data (Draft Report, s 6.1): 3,386 registrants hold more than 50 Domain Name Licences each, together holding 582,895 names in com.au, net.au and .au direct. By any measure, that is a substantial portion of the namespace, and the Panel acknowledges that this 50-name proxy sweeps in registrants who are not investors at all, such as corporate brand protection portfolios. To these must be added ordinary business owners holding more than one domain (descriptive, campaign and defensive names), SEO and digital marketing firms, and the businesses built on the secondary market: marketplaces, brokerages, drop-catching services, registrars for whom aftermarket services are a material revenue stream, and brand protection providers. The impact would be especially acute for drop-catching services and their customers, because the ordinary function of those services is to return expired names to the market and permit eligible registrants to acquire them through transparent competition rather than through opaque private arrangements.

Finally, the Rules impose no general obligation to operate an active website, and rightly so. A compliant registrant may have legitimate commercial reasons to hold a licence pending development, protection, portfolio management or lawful transfer. Monetisation is, moreover, frequently a stage in a domain name’s lifecycle rather than its final use: many generic names that began as parked or monetised pages have since been developed into substantial operating businesses built on the name itself. No principled line dispossesses an investor of an unused name while sparing the unused portfolios of trademark holders. That is the very asymmetry auDA

Management warned “elevates the rights of trademark and other intellectual property owners over other licence holders” and may raise market power and anti-competitive concerns (2019 Management Response, Recommendation 5).

<u>Option 3 Fails the Panel’s Mandate and auDA’s Principles for Policy Development</u>

Option 3 fails at the threshold level required by the Panel’s own Terms of Reference. The Panel’s deliverable is not merely to identify possible policy preferences, but to provide recommendations for change supported by “information, evidence and/or submissions” obtained during the review process. A measure as disruptive as deleting subparagraph 2.4.4(2)(f) requires clear evidence of harm, a demonstrated causal link between the rule and that harm, and a reasoned assessment that less intrusive measures would be insufficient. The Draft Report does not provide that foundation. Option 3 also fails auDA’s Principles for policy development:

Principle 1 (case for action): The Draft Report itself establishes that no case of this severity exists. Objections centred on the perception created by pay-per-click pages; there was “one report of a monetised website providing advertisements linking to scam websites” during consultation, which auDA’s own complaints data did not corroborate (Draft Report, Executive Summary). Grievances that an investor registered a desirable name first and offers it at a market price are not evidence of harm: it is inherent in any first-come, first-served allocation system that a desired name may already be registered, whether the prior registrant is an investor, a competitor, or a dormant company.

Principles 2 and 3 (options, costs and net benefit): The Draft Report contains no assessment of Option 3’s costs: the registrations that would lose their allocation basis; the impact on registry and registrar revenues; the destruction of value in lawfully acquired portfolios; the legal exposure the Report itself records, in noting warnings that removal may prompt compensation claims from investors and businesses (Draft Report, s 6.1); or the displacement of registrants toward .com, .co, .io, .ai and other extensions beyond auDA’s stewardship. Australia already maintains one of the most restrictive licensing regimes among major namespaces, and the Panel itself notes that allocation rules of this kind are now uncommon among larger global ccTLDs (Draft Report, s 6.2). Option 3 would make the regime more restrictive still, reducing demand for and the value of .au domain names and weakening the very namespace this Review is meant to strengthen.

Principle 4 (competition): Option 3 would exclude or substantially impair an entire class of lawful market participants in com.au and net.au while leaving the large portfolios of trademark and brand owners largely untouched under subparagraphs (a) through (e); precisely the disproportionate targeting auDA Management identified in 2019 as raising market power and anti-competitive concerns. The asymmetry extends across namespaces as well. Rule 2.4.4(2) applies only to com.au and net.au; .au direct requires an Australian presence but imposes no equivalent allocation criteria, so a registrant may hold and monetise a .au direct name without any reliance on subparagraph (f). Option 3 would accordingly deny to com.au and net.au registrants the identical conduct that remains permissible in .au direct. Differential treatment of substitutable namespaces determined by suffix rather than by evidence of harm is not competitively neutral, and sits uneasily with the promotion of competition, fair trading and equitable access to .au domain names to which auDA’s Terms of Endorsement and the Panel’s Terms of Reference are directed.

Principle 8 (proportionality): The harms actually identified (confusing pay-per-click pages, inactive links and rare abusive content) are directly addressable through the increased audits the Panel has already recommended and enforcement of the existing DNS Abuse and prohibited-use provisions. Deleting the entire goods-and-services allocation pathway to address a presentation problem on a subset of parked pages is the opposite of proportional.

Scams, Reliance and Legal Risk

To the extent Option 3 is motivated by scam concerns, it is misdirected. Allocation rules do not deter criminals: as the NASC submission summarized in the Draft Report shows (s 6.7.2), scammers exploit expired domains and misuse ABNs, and a bad actor willing to commit fraud can often seek to satisfy subparagraph (a) by registering or misusing a matching business name, without ever engaging (f). The registrants Option 3 would actually affect are the law-abiding ones. The Panel has already charted the correct course on scams in Recommendation 7, by retaining the current approach under the .au Licensing Rules and recommending that auDA work with the NASC to refine scam identification and takedown processes. That targeted approach should not be displaced by a blunt allocation-rule change that would primarily burden compliant registrants.

Registrants have also invested substantial capital in full compliance with the Rules as they have stood since 2021, in reliance on auDA's considered rejection of these very proposals in 2019. On contested names, the Panel rightly reasons that parties have been paying for years on the basis of clearly stated rules, and that changing the rules now would be unfair (Draft Report, s 6.3). That logic applies here with greater force, where the reliance interests span very large numbers of registrations. The Report itself records the practical problem of unwinding a secondary market well established over many years and consistent with international practice (s 6.1). The ICA urges the Panel to give these observations decisive weight.

If, contrary to the ICA's submission, auDA were to consider any material change affecting the allocation basis for existing registrations, such change should not apply retroactively. At minimum, existing compliant registrations should be protected for renewal, ordinary portfolio management and lawful transfer. A rule that merely allows existing registrants to renew but prevents ordinary resale or transfer would not be a meaningful grandfathering measure; it would freeze lawfully acquired value and impair the very secondary market that the Draft Report recognises as long-established and consistent with international practice.

Option 2 Requires Great Caution; Option 1 Is the Correct Outcome

The ICA does not oppose clarity, nor narrow, objective, prospective and presentation-based measures directed at genuinely deceptive conduct, such as the Draft Report's suggestion (s 6.2) that pages offering a name for sale state that fact clearly and provide contact details. Honest disclosure of a lawful offer for sale is something our members already practice. But a redrafted 'Services' definition excluding referral, information, advertising, marketplace, parking or pay-per-click services would not be clarification; it would be Option 3 by other means. The definition of 'Service' in the current Rules expressly includes a service providing information or a referral to another provider (Draft Report, s 6.2), and registrants have relied on that express language. That treatment accords with international classification practice: pay-per-click advertising is a recognised advertising service in Class 35 of the WIPO Nice Classification (basic number

350113), the classification system applied by IP Australia, and auDA-accredited registrars themselves market domain parking and monetisation services to Australian registrants. A practice recognised as a service under trademark classification, and offered through the accredited registrar channel itself, cannot coherently be treated as presumptively illegitimate when adopted by registrants. The 2017–2019 cycle also stands as a cautionary tale about subjective, indicator-based administrative rules, which auDA Management rejected as costly, burdensome and disproportionate (2019 Management Response, Recommendations 6–7). Any Option 2 measure must be objective rather than subjective (consistent with object (e) of the Rules), prospective only, directed at conduct rather than the registrant's business model, and exposed to further consultation in draft form.

Option 1 is the primary and sufficient response to the concerns identified in the Draft Report, and the only one of the three options fully consistent with Recommendation 1, the Panel's evidentiary findings, the 2019 Management Response, the experience of comparable ccTLDs, and auDA's Principles. It addresses the identified harms at their source, using enforcement machinery that already exists, without collateral damage to lawful registrants or to the value and liquidity of the namespace. The experience of the gTLD space, though governed by a separate regime with no application to .au, is nonetheless instructive as comparative practice: when parking and pay-per-click raised policy questions there, ICANN's Policy Issue Brief on Domain Name Monetization (June 2008) treated them as established monetisation methods, recorded that they had not generated the concerns associated with abusive practices such as domain tasting, and directed regulatory attention at the abuse rather than at monetisation itself.

<u>Requested Disposition of Recommendation 2</u>

The ICA respectfully submits that the Final Report should recommend as follows:

(a) Option 1 should be adopted as the appropriate response to the concerns identified in the Draft Report;

(b) Option 3 should be expressly rejected;

(c) subparagraph 2.4.4(2)(f) should be retained;

(d) the definition of "Service" should continue to include bona fide information, referral, advertising-supported, marketplace, parking, affiliate, lead-generation and pay-per-click services;

(e) portfolio size, a for-sale notice, a parking page, pay-per-click links, or the absence of an immediately operating business website should not be treated as evidence of non-compliance; and

(f) enforcement should be directed at DNS Abuse, scams, fraud, impersonation, false affiliation and materially misleading conduct, rather than at lawful domain name investment or monetisation.

Other Recommendations

Recommendation 3 (contested .au direct names): Supported. The Panel's reasoning, based on settled rules, years of reliance, the absence of any more deserving class of contestant, and the principle of no hierarchy of rights, is sound. We invite the Panel to apply that same reasoning consistently to Recommendation 2.

Recommendation 5.2 (broadened 'affected person' standing): The ICA urges caution. As one submission cited in the Draft Report warned (s 6.5.2), broadened standing risks turning the complaints regime into a secondary acquisition channel rather than a genuine compliance mechanism. Our members' experience across many jurisdictions is that open-standing complaint processes are misused by parties who covet a registered name and seek to obtain through complaint what they will not obtain through purchase. At minimum, any broadened standing should be accompanied by safeguards, including: a requirement that the complainant demonstrate a genuine and particularized interest beyond a desire to acquire the domain name; summary dismissal of complaints that are speculative, repetitive, abusive or primarily acquisitive; consideration of whether the complainant has attempted to purchase the name before complaining; and written reasons where a complaint proceeds despite an apparent acquisition motive.

Recommendation 6 (domain lifecycle alignment): Supported. Aligning the renewal window, cooling-off, redemption and pending delete periods with common international practice benefits registrants and registrars alike and extends protection against inadvertent loss of names. The same comparative, international lens, applied to allocation and monetisation, points firmly to Option 1.

Recommendation 7 (scams): Supported, for the reasons set out above.

A Note on Process: Notice to Affected Registrants

Finally, the ICA raises a matter of process. It does not appear that existing registrants have been individually notified, directly or through their registrars, that this Review is on foot or that its proposals could affect their licences and the businesses built upon them. Consultation through auDA's website, public events and written submissions reaches engaged stakeholders; it does not reach the great majority of ordinary registrants. Where proposals under consideration, Option 3 in particular, could diminish the value of existing licences, procedural fairness and auDA's commitment to transparent, accountable and consultative administration counsel that those most affected receive clear notice and a genuine opportunity to be heard. The ICA respectfully suggests that, before any change affecting existing registrations is adopted, auDA ask registrars to give existing registrants direct notice of the Review and its potential effects, and extend the consultation accordingly.

Conclusion

In Recommendation 1, the Panel has correctly resisted calls to prohibit domain name monetisation and investment. Those calls were made, considered, and rejected on the evidence in the 2017–2019 review cycle. The ICA urges the Panel to carry that conclusion through to its Final Report by adopting Option 1 and expressly rejecting Option 3, which would prohibit through allocation what Recommendation 1 preserves in principle; strip the allocation basis from large numbers of compliant com.au and net.au registrations held by investors and ordinary businesses alike, while undermining confidence in the stability and commercial value of the .au namespace more broadly; restrict competition and depress the value and liquidity of the namespace; and provide no meaningful protection against scams. It would do all of this without the case for action that the Panel's Terms of Reference and auDA's own Principles require. The supposed harms are largely perceptual and already addressable through the compliance measures the Panel has recommended; the actual harm Option 3 would create, if adopted, would be deep and widespread.

The ICA thanks the Panel for the opportunity to comment and would be pleased to provide any further information that may assist in preparing the Final Report.

Yours truly,
INTERNET COMMERCE ASSOCIATION

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