

auDA Licensing Review Panel

Decision in accordance with section 3.8 of the .au Domain Administration Rules: Licensing (Licensing Rules)

Terms defined in the Licensing Rules have the same meaning when used in this decision.

Decision dated: 24 July 2024

Applicant: [REDACTED]

Domain name: superannuation.com.au

A. Decision

I am a member of the Licence Review Panel, and I was appointed on 16 July 2024, in accordance with section 3.8.17 of the Licensing Rules, to undertake this external review.

The decision which is the subject of this review is the decision of auDA's internal reviewer made on 3 July 2024 that the Registrar, Drop.com.au (**Drop**), was able to correct Registry Data by updating the Registrant information for the domain name superannuation.com.au in accordance with section 2.18.3 of the Licensing Rules (**Internal Review Decision**).

The Internal Review Decision is set aside. The following decision is made in substitution for the Internal Review Decision:

*The Registrar, Drop.com.au (**Drop**), on first becoming aware that the Registry Data for the domain name superannuation.com.au did not correctly record the name of the Registrant as a result of an error made by Drop by way of providing data to the Registry, was entitled to update the Registry Data by providing to the Registry the correct Registrant details. That action of the Registrar did not breach the .au Domain Administration Rules: Licensing.*

B. Information considered

In accordance with section 3.8.18 of the Licensing Rules, I am required to undertake a review only on the basis of the material before me and may not take into consideration any information or document that was not provided to .au Domain Administration Limited (**auDA**) at the time it made the decision under sections 3.6 and 3.7 of the Licensing Rules that is the subject of this review.

I have been provided with the following material by auDA and have applied section 3.8.18 of the Licensing Rules in my review of this material:

- Application made by [REDACTED] in accordance with section 3.8.5, as provided by auDA by email on 16 July 2024 (**Application**).
- Material provided by auDA by email on 16 July 2024, being the information (other than the submissions made by [REDACTED], as contained in the Application) that was taken into consideration by auDA in making the Internal Review Decision.

C. Reasons

Factual background

1. For the purposes of undertaking this review I have relied on the following facts, based on the information I am permitted to take into consideration, as referred to in Part B of this decision:
 - (a) On 6 June 2024 Drop undertook an auction of the domain name `superannuation.com.au`. That auction finished at approximately 11.30 am.¹ That domain name was available for purchase because the current registration was to expire that day and the current holder had not renewed its registration, meaning it would “drop” from the Registry and be available for a new Registrant.
 - (b) ██████ participated in that auction and was initially stated on the Drop website to be the winner of the auction with a bid of \$█████.
 - (c) Very shortly after completion of the auction, an employee of Drop contacted the principal of ██████ by telephone. There is no common understanding between the employee of Drop and the principal of ██████ regarding the content of that call other than that no agreement between ██████ and Drops was reached on that telephone call regarding the domain name. Following that telephone call, Drop changed the information on its website to remove ██████ as the winner of the auction, evidencing that Drop would not enter into a Licence Agreement with ██████ for the domain name `superannuation.com.au`.
 - (d) After the call referred to in subparagraph 1(c) above, and before the domain name was due to drop from the Registry and become available for registration to a new Registrant, Drop notified the underbidder in the auction (**Underbidder**) that, if the Underbidder still wished to licence the domain name, Drop would secure that for the Underbidder at a specified price. The Underbidder agreed with Drop to obtain a licence for that domain name at the specified price.
 - (e) As a result of an administrative error by Drop in not updating its own database information, the Person who was listed in the Registry Data (that is, the data held in the Registry, being the centralised database for the domain names) as the “Registrant” of `superannuation.com.au` when that domain name dropped was ██████, and that information was publicly accessible on WHOIS at 1.30 pm on 6 June 2024.
 - (f) Within 7 minutes of realising that the Registry Data for the domain name was incorrect, Drop provided an update to the Registry with the correct details of the Underbidder as the Registrant of `superannuation.com.au`.

Scope of the review: Nature of the complaint

2. Section 3 of the Licensing Rules sets out the regime for dealing with Complaints.
3. **Complaint** is defined in section 1.4.1 of the Licensing Rules as (noting “.auDA rules” means the Licensing Rules):

¹ All references to time are to Australian Eastern Standard Time (AEST).

***Complaint** means an expression of dissatisfaction made to a Registrar by a Person in relation to its application of these .auDA Rules, where a response or resolution is explicitly or implicitly expected by that Person.*

4. Section 3 provides that, initially, the Complaint must be made to the relevant Registrar. As set out in section 3.4.1(2), as relevant here and reinforcing the definition of Complaint as set out above, the Complaint must relate to the responsibilities or obligations of the Registrar under the Licensing Rules.
5. If a Person is not satisfied with the outcome of their Complaint to the Registrar, they may complain to auDA under section 3.5 and if, in turn, they are not satisfied with that review process, that Person may seek an internal review by auDA under sections 3.6 and 3.7 of the Licensing Rules.
6. In accordance with section 3.8 of the Licensing Rules, a Person affected by an internal review decision made by auDA under sections 3.6 and 3.7 of the Licensing Rules may apply for an external review of that decision.
7. The Application is an application by [REDACTED] for an external review of an internal review decision under sections 3.6 and 3.7 of the Licensing Rules. The Application canvasses a number of complaints in relation to the actions of both Drop (as the Registrar) and auDA. However, I am only able to undertake the review of the Internal Review Decision, as set out in section 3.8. This means that I may only consider the complaints by [REDACTED] in the Application insofar as they relate to the responsibilities and obligations of the Registrar, Drop, under the Licensing Rules.
8. Considering the issues here and in the context of the definition of Complaint and the terms of section 3, this review considers the complaints made by [REDACTED] regarding the actions of Drop in updating the Registry Data to record the Underbidder, rather than [REDACTED], as the Registrant of superannuation.com.au ([REDACTED] Complaints).
9. I have considered the other matters in respect of which complaints have been made in the Application. Those other complaints fall within three broad categories:
 - (a) complaints regarding the auction process undertaken by Drop and the decision made by Drop not to enter into a Licence Agreement for the domain name, superannuation.com.au, with [REDACTED] and to instead to enter into a Licence Agreement with the Underbidder in relation to superannuation.com.au;
 - (b) complaints generally in relation to Drop and its related entities and their business practices; and
 - (c) complaints in relation to auDA, its engagement with Drop and its related entities and the actions taken by specific auDA employees.
10. This decision cannot assess whether [REDACTED] has rights of recourse in relation to the matters listed in paragraph 9 above, as those are not matters that are able to be considered in this review. Those matters are not within the regime in section 3 of the Licensing Rules because they are not matters that relate to the responsibilities or obligations of the Registrar under the Licensing Rules.

Was [REDACTED] the Registrant?

11. The first issue to consider in reviewing the Application is whether [REDACTED] was at any time the Registrant of the domain name, superannuation.com.au.
12. The Application proceeds on the basis that [REDACTED] was the Registrant because it was shown as the Registrant on the WHOIS data available to the public at 1.30 pm on 6 June 2024.
13. The definition of Registrant as set out in section 1.4.1 of the Licensing Rules is as follows:

Registrant means a Person who is issued a Licence to use the DNS with a unique identifier (Domain Name) and is recorded as the 'Registrant' in the Registry Data.

14. This definition makes clear that two requirements must be satisfied for a Person (the definition of which for the purposes of the Licensing Rules includes a company registered under the Corporations Act 2001 (Cth), which includes [REDACTED]) to be a Registrant. In other words, the Person must:
 - (a) be issued a Licence; and
 - (b) be recorded as the "Registrant".
15. The first requirement of the definition of Registrant is not satisfied here. As a result of the telephone call with the principal of [REDACTED] and the removal from the Drop website of the statement that [REDACTED] was the successful winner of the auction of the domain name superannuation.com.au, Drop indicated that it would not enter into a Licence Agreement for that domain name with [REDACTED]. Section 2.3.1 of the Licensing Rules provides that auDA will only issue a licence to a Person where the Registrar is satisfied of certain matters. Here, Drop as the Registrar could not be said to be satisfied in relation to the matters in section 2.3.1 because it was not willing to enter into a Licence Agreement with [REDACTED] in relation to superannuation.com.au. Therefore, there was no basis for a Licence to be issued by auDA under section 2.3.1 to [REDACTED] in relation to superannuation.com.au.
16. Therefore, while for a short period of time [REDACTED] was recorded as the "Registrant" of the domain name superannuation.com.au in the Registry Data, that was insufficient for [REDACTED] to meet the requirements to be a Registrant for the purposes of the Licensing Rules as it did not hold a Licence of the domain name.

Consideration of section 2.13 of the Licensing Rules

17. [REDACTED] complains in the Application that the domain name superannuation.com.au was transferred without [REDACTED] consent, in breach of section 2.13 of the Licensing Rules. Therefore, the next issue to consider is whether, by taking the action to update the Registry Data to record the Underbidder as the Registrant, Drop breached that section.
18. Section 2.13 sets out the circumstances in which a Registrant may transfer their Licence and a Registrar must register that transfer. Section 2.13.1 provides as follows:

2.13.1A Registrant may transfer their Licence through a Registrar to a Person provided that:

- (1) *the Registrant is eligible to hold the Licence at the date of Transfer;*

- (2) *the Person meets the Australian Presence requirement and any applicable eligibility and allocation criteria;*
- (3) *the Transfer request by the Registrant is in Writing to the Registrar;*
- (4) *the Licence is not subject to any Complaint process under these auDA Rules, dispute resolution or court proceedings; and*
- (5) *the Licence term has not expired.*

19. Given the finding that [REDACTED] was not the Registrant for the domain name superannuation.com.au, it had no rights under section 2.13 to transfer of the domain name or to object to a transfer occurring not contemplated by section 2.13. Therefore, there is no breach of section 2.13 in relation to the [REDACTED] Complaints.

Consideration of section 2.18 of the Licensing Rules

20. It is also necessary to consider sections 2.18.2 to 2.18.4 (as contained in section 2.18, which is headed "Accessing Registry Data"). These sections provide:

By the Registrant

Correction of Registrant Information

2.18.2 *A Registrant may request that a Registrar correct information relating to the Person recorded as the Registrant in the Registry Data.*

2.18.3 *A Registrant may only request such a correction where:*

- (1) *the inaccuracy has arisen through a genuine error made in good faith by the Registrant in supplying information to the Registrar; or*
- (2) *the inaccuracy has arisen through a genuine error made in good faith by the Registrar in recording the Registrant information;*

and only in the following circumstances:

- (3) *the Registrant submitted or through error the Registrar recorded, inaccurate data at the time of registration;*
- (4) *the Licence was incorrectly registered by the Registrar to the wrong party;*
- (5) *the Licence was incorrectly registered by the Registrar in the name of the reseller or other agent who arranged the registration; or*
- (6) *where otherwise authorised by .au Domain Administration.*

2.18.4 *Any request must be made within 14 calendar days of the Licence being recorded in the Registry Data.*

21. As is clear from a plain reading of these sections, these sections deal only with the circumstances in which a Registrant has an entitlement to make a request that a Registrar correct information relating to the Person recorded as the Registrant in the Registry Data. It does not say that a Registrar may not correct Registry Data in other circumstances. That is, section 2.18 does not limit the circumstances in which a Registrar is able to correct errors in

data submitted by it. The Registrar has an obligation to ensure that all data submitted by it to the Registry is accurate so that all Registry Data is accurate and therefore it has a right, and obligation, to correct its errors.

22. To adopt any other interpretation would be inconsistent with the objects of the Licensing Rules. Those objects are to establish a licensing system which, amongst other matters, is:
 - (a) transparent, responsive, accountable, accessible and efficient;
 - (b) promotes consumer protection, fair trading and competition; and
 - (c) provides those protections necessary to maintain the integrity, stability, utility and public confidence in, the .au ccTLD.
23. Further, the Licensing Rules make several references to the importance of the Registry Data being accurate.²
24. The objects of the Licensing Rules, and the regime for registration, would not be promoted if a Registrar was unable to correct errors that it had made in relation to data submitted by it to the Registry. Limiting the Licensing Rules to allow errors in the Registry Data to *only* be corrected in the circumstances set out in section 2.18 would not provide for a transparent, responsive, accountable, accessible and efficient licensing regime as it would result in circumstances where Registry Data was not accurate.
25. In light of the above, it is unnecessary to consider the application of sections 2.18.2 to 2.18.4 in the context of the ██████████ Complaints. Drop has advised auDA that it entered into a Licence Agreement with the Underbidder and as a result of an inadvertent error the Registry Data did not reflect that the Underbidder had the Licence of the domain name superannuation.com.au. Drop then corrected the Registry Data, as it should do, irrespective of whether it had received a request from the Underbidder. Drop was entitled, and in fact obliged, to correct that error to ensure that the Registry Data was correct and reflected the grant of the Licence of superannuation.com.au to the Underbidder. Not only was Drop's ability to do so not restricted by sections 2.18.2 to 2.18.4 but taking that action was consistent with the objects of the Licensing Rules.
26. For the reasons set out in this Part C, the Internal Review Decision is set aside and a decision in substitution is made as set out in Part A of this decision.

A Flannery

Angela Flannery
Licence Review Panel
24 July 2024

² See for example sections 2.9.1(2) and (3); 2.10.1(1), 2.11.8, 2.11.9 and 2.15.5(3).