NPRP Meeting - 27 July 2004

Minter Ellison
Aurora Place, 88 Phillip St
Sydney

Present: Philip Argy, Bruce Arnold, Brett Fenton, Tony Hill, Mark Hughes, Keith Inman, Erhan Karabardak, Amin Kroll, Jo Lim, Pete Marcus, Gary Munitz, Bennett Oprysa, Steven Rice (observer), Karl Schaffarczyk, Alex Struve (for Odette Gourley), Derek Whitehead

Teleconference: Tony Blackie, Alan Davidson, Chad Gates, Jan Webster, Michael Wolnizer

Apologies: Odette Gourley, Sara Kerum

Actions:

- JL to draft minutes.
- DW and JL to draft public consultation paper, for discussion on the Panel mail list.

Discussion:

1. Welcome and Roundtable Introductions

Panel members introduced themselves and gave a brief outline of their interest and role in relation to the Australian DNS.

2. Panel Operations

The Panel noted and agreed the following operating procedures:

- Proxies: Panel members are permitted to send proxies to meetings, but the proxy should be sufficiently briefed to ensure continuity of Panel proceedings. Members cannot replace themselves by proxies on an ongoing basis; if a member cannot continue their position they should resign from the Panel.

- Confidentiality: Panel proceedings are confidential. Members are free to canvass, discuss and debate the issues outside Panel meetings (eg. on public mail lists or with their constituencies) but not to disclose the proceedings of the Panel - ie. what is actually said and by whom. To do so is likely to inhibit free discussion and work against an outcome.

- Minutes, papers and submissions: Panel minutes will be published on the auDA web site as soon as possible after each meeting. The minutes will record the Panel's discussion, but will not attribute comments to individual members unless expressly requested by the member. Panel papers are confidential until published on the auDA web site. Papers will ordinarily be published unless the Panel decides that a paper should remain confidential, in which case the minutes will record the existence of the paper. All submissions to the Panel will be published on the auDA web site unless clearly marked confidential.

- Reporting and publicity: The Panel chair will report to the auDA Board at each Board meeting. The Panel is independent of the Board in its deliberations, but the Board has the final say on what actually happens. The only official statements made on behalf of the Panel will be made by the chair. Panel members are free to speak about the work of the Panel, but should make it clear that they are not speaking on behalf of the Panel.

- Meetings: Participation in meetings should be as equitable as possible, given that some members will be attending in person and some by telephone. The majority of Panel members are located in Sydney, therefore most meetings will be held in Sydney in order to maximise attendance and participation. The Panel will meet as often as necessary in order to complete the Terms of Reference. Meetings of the full Panel may be supplemented by teleconferences or meetings of sub-groups if required.
- Consensus: Consensus has been defined by auDA as a 2/3 majority, although whether this means a 2/3 majority of members as a whole or 2/3 majority of members who are present at a meeting is yet to be determined. In the past, Panels have mostly been able to reach consensus without needing to call a formal vote on issues. There is an expectation that the Panel will provide a single recommendation to the auDA Board, however a significant minority opinion could also be presented to the Board as part of the Panel's final report.
- Conflict of interest: All Panel members have a conflict of interest and in most cases the nature of that conflict will be clear. However, if any members feel that they need to clarify their interests in relation to particular issues under consideration, then they should do so.
- Panel resources: auDA will provide secretariat support to the Panel. auDA will consider any reasonable request for additional resources that the Panel believes it requires in order to complete the Terms of Reference. Any such request should be made to auDA by the Panel chair.

3. Panel Terms of Reference

The Panel noted the scope of the Terms of Reference. The Panel may discuss issues that are outside scope, however it cannot include those issues in its report to the auDA Board without seeking the Board's prior approval.

One of the issues that is expressly outside the scope of the Panel is consideration of whether or not to introduce a "flat" structure - ie. allow registrations directly under .au. The Board's view, based on the recommendation of the first Name Panel, is that it would be too difficult and cause too much disruption to the Australian DNS to introduce a flat structure given the long-standing existence and use of the 2LD hierarchy.

The other issue that is expressly outside the scope of the Panel is the restriction on geographic names in com.au and net.au. The Panel was reminded that auDA is currently undertaking public consultation on this issue and members were invited to send comments to auDA before the 30 July deadline.

The Panel noted that its role is to provide recommendations to the auDA Board. If accepted by the Board, the Panel's recommendations will then be translated into auDA published policies by auDA staff. It is not the role of the Panel to draft auDA policies.

4. Discussion of Issues

Panel members expressed their views on the current eligibility and allocation policy rules and raised issues that they would like to see considered as part of the review.

There was general agreement that the current policy rules are working fairly well, as demonstrated by statistical evidence of an increase in the number of domain registrations and a low number of auDRP disputes. The feeling among most members was that significant policy changes are probably not required at this stage, however there are some areas of the policy that could be improved, fine-tuned or clarified in order to enhance the efficiency and robustness of the Australian DNS.

It was suggested that a comparative study of recent policy developments in some other ccTLDs would help to inform the Panel's deliberations.

The Panel discussed the following issues, with a view to including them in the first public consultation report:

- Eligibility criteria for org.au.

The eligibility criteria for org.au are currently more restrictive than for asn.au. In order to register an org.au domain name, registrants must be incorporated or at the very least have an ABN whereas registrants in asn.au are not required to provide an official identifier.

The reason for the different eligibility criteria is that the 2LDs have different purposes. As stated in the policy, org.au is for non-profit organisations and registered charities, so the eligibility rules require the applicant to provide an official identifier to verify their status. However, asn.au is for sporting clubs, special interest groups etc which by their nature do not usually have formal legal status and are therefore unable to provide an official identifier.

It was suggested that the eligibility criteria for org.au should be the same for asn.au. This would amount to aligning the purposes of the two 2LDs, in the same way that com.au and net.au are aligned.

The main argument put forward in support of this change is that, according to statistical and anecdotal evidence, asn.au is not popular among users. Registrars advised that their non-commercial customers have a strong preference for org.au; if the customer can't satisfy the eligibility requirements for org.au then they will register a .org gTLD rather than an asn.au domain name.

A counter argument is that, as with com.au and net.au, Australian users expect registrants within the org.au domain to be proper legal entities with verifiable identifiers. This may be especially significant in the case of fund-raising organisations; allowing non-registered or unincorporated entities to operate in org.au could increase the risk of online scam activity in Australia.

- Verification of registrant identity.

Under the eligibility rules for com.au, net.au and org.au it is currently not possible to register a domain name without providing an official identifier, eg. ABN. Registrars are required to check the registrant's identification details against the relevant authoritative database, eg. ASIC or ABR.

There was general agreement that verification of registrant identity has resulted in good data integrity in the .au registry compared with the gTLDs and other ccTLDs. From a law enforcement perspective, this means that action to shut down online scammers can be taken relatively quickly and easily. Australian users in general also benefit from being able to rely on WHOIS data to check the identity of a registrant.

There was no support among the Panel for removing the requirement to verify registrant identity at the time of registration. It was suggested that address verification could be used to check the identity of a registrant who does not have an official identifier. Some registrars already use address verification, and it was suggested that auDA could broker access to relevant databases on behalf of all registrars. It was pointed out that address verification merely confirms that an address exists, it does not necessarily mean that the registrant resides at that address.

auDA and AusRegistry currently attempt to verify registrant email addresses at the time of registration, and statistics show an error/bounce rate of approximately 30%.

- Opening up .au to non-Australian registrants.

Under current policy there are two exceptions to the general rule that registrants must be Australian: owners of an Australian Registered Trade Mark (permitted to register in com.au and net.au), and foreign embassies and consulates (permitted to register in org.au). It has been suggested that .au should be opened up to non-Australian registrants more generally.

Some Panel members expressed concerns that allowing non-Australian entities and individuals would increase the risk of online scams and fraud in the Australian DNS. Although it was proposed that non-Australian registrants would be subject to similar identity verification checks as Australian registrants, questions were raised about how such checks would be carried out by registrars. Not all countries have company/business registration procedures and publicly searchable databases. It was suggested that access to .au domain names could be limited to certain countries that enjoy a special relationship with Australia, eg. New Zealand. If so, then consideration should be given to whether Australian registrants are able to register domain names in that country, ie. whether there would be mutual access arrangements.

It was noted that the principal beneficiaries of this policy change would be foreign companies that want to protect their brand in the Australian marketplace. Some Panel members questioned whether there would be any benefit to the Australian community and pointed out the potential for conflict between Australian registrants and non-Australian registrants of the same name. It was also noted that ".au" represents " Australia" and users would therefore expect that the registrant of a .au domain name is Australian, resides in Australia or is registered with Australian authorities.

- Company/business names v domain names.

auDA regularly receives complaints from people whose company or business name is being used as a domain name by a third party. These complainants believe that .au policy rules should give precedence to company and business owners in the use of the corresponding domain name - eg. by linking the ASIC and domain name registry databases for one-on-one name matching.

The Panel noted that one-on-one matching between domain names and company/business names is impractical and also not desirable for many registrants who do not want to use their full company/business name as a domain name.

It was noted that confusion between trademarks and domain names is also very common, and the Advisory Council on Intellectual Property is currently looking at ways of addressing this problem.

Panel members agreed that this is more of a consumer education issue than a policy issue.

- Close and substantial connection rule.

The policy rules define "close and substantial connection" with reference to a number of types - eg. product sold by the registrant, service provided by the registrant, etc. Registrants must select the appropriate claim type when they submit their application to a registrar. Registrars are not required to verify close and substantial connection claims, the registrant is required to warrant that the claim is true.

auDA reserves the right to revoke a domain name licence if the registrant's warranty proves to be false; to date, this has happened on only 2-3 occasions. Complaints about false warranty (ie. bad faith) can also be handled under the auDRP.

Advice from registrars is that registrants do not make a real choice when submitting their application and often use the default claim in a drop-down box, or whatever claim they

think will get their application approved. In effect, this means that many registrants are making false warranties although not necessarily in bad faith because they do have a genuine claim to the domain name. Registrars have suggested that the different close and substantial connection types could be replaced with a general "connection warranty" that the domain name is connected to the registrant in some way. It was further suggested that *all* allocation criteria (including exact match, abbreviation and acronym) be replaced with a general connection warranty.

It was agreed that if the allocation criteria are relaxed/removed, then there may be a need to strengthen the grounds and process for auDA to revoke domain name licences for false warranty. It was noted that the more information supplied by the registrant at the time of registration, the easier it is to demonstrate that the information is false.

5. First Public Consultation

The Panel agreed to canvass the issues discussed under agenda item 4 in its first public consultation report. The aim is to issue the report in August, and consider the outcomes of public consultation in early September.

The first public consultation report will be a general, high-level discussion of issues. The Panel's second public consultation will seek feedback on the specific recommendations that the Panel proposes to submit to the auDA Board.

6. Next Meeting

The next Panel meeting will be held in Sydney during the first week of September - details to be confirmed on the Panel mail list.