From: Heidi Richards
To: LRreview
Subject: [EXTERNAL] - Submission on Licensing Rules Review
Date: Monday, 9 March 2026 10:23:51 PM

Submission on Licensing Rules Review

I am offering some comments below based on my experience as a former regulator, with registering two domains (.com.au and .au) as well as managing websites on behalf of non-profit community organisations.

Question 1:
In my view, the .au Rules should not be attempting to enforce business naming alignment or require any match with business names and .com.au names. This creates unnecessary friction and should be left to existing legal frameworks. Generally ASIC rules require that a business name that is not the corporate entity name be registered, and businesses also have the option to seek trademark registration, which gives them additional legal remedies. It is not auDA's role to enforce these laws.

There may be valid reasons for a website name to be different from the incorporated name or a registered trading name (for example, a business name that has not yet been registered, a secondary marketing or internal site or a future, planned event or activity). These requirements create unnecessary restrictions on business and community activities.

In addition, the current restrictive rules cause problems for entities such as incorporated or unincorporated non-ACNC community associations, which in practice are required to use a ".com.au" domain even though they may be a declared non-profit organisation. The strict rules around .org and .com cause difficulties for small businesses that may move between multiple corporate forms, or between incorporated and unincorporated associations. Changing corporate form should not lead to an immediate loss of a longstanding website domain.

The only exception in my view would be for .gov.au domains (where there is potential for significant community harm if consumers are misled that they are accessing an actual government website) and potentially also .edu.au (although the definition of an educational institution is not clear-cut and should potentially be left to be interpreted flexibly).

Question 2:
Rather than applying restrictions in particular domains, a more effective and potentially simpler approach to monetisation and trading of domains would be to apply time limits to non-functional ownership (such as 3 years).

Question 3:
The cases provided illustrate the potential need for a more effective mediation/resolution

process for contested domain names generally. There should be a clear, efficient and legally binding process. What is international best practice?

Question 4:
Reserved names that have been determined to be fraudulent or otherwise pose a risk to the community should not be published by auDA.

Question 5:
It is unclear what sort of audits and complaints are in question here. If the issue is registrars disputing outcomes of compliance audits of their operations, then those issues should be dealt with by an appeals process, not a complaints process. Other regulators and self-regulatory organisations have processes for appeals of examination/audit findings which could serve as a guide.

The complaints section of the Rules should be compared with the processes published by ombudsman services such as AFCA and TIO., and industry self-regulatory codes. Their rules and websites set out clearly who has standing to make complaints, about whom and what types of issues they can and can't adjudicate. The Registrar agreement should set out how disagreements about audit outcomes with auDA are to be handled.

Question 6:
Australian rules should align to international standards unless there is a very good justification as to why local conditions require a different approach. Alignment to international rules and practices reduces costs and complexity for participants operating in multiple jurisdictions and generally allows us to leverage relevant global research and policy developments.

Sincerely,

Heidi Richards
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