

# Board Minutes - 8 October 2001

Public Version

Meeting of the .au Domain Administration Board

8 October 2001 - 1.00pm

.au Domain Administration Limited. Level 7, 50 Queen Street. Melbourne VIC 3000

Present:

Chris Chaundy, Patrick Corliss, Greg Crew, Kim Davies, Chris Disspain, Kim Heitman, David Keegel, Jo Lim, Iain Morrison, Erica Roberts, Tony Staley, Greg Watson, Liz Williams

Teleconference:

David Thompson

Observers:

Donna Austin (NOIE), Paul Szyndler (NOIE), Craig Ng (Maddock Lonie & Chisholm) and John Higgins (Hayes Knight)

Apologies:

Michael Malone

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## 1. Continuous Disclosure

PC advised that he has resigned as Alternate Chair of the DNSO General Assembly.

## 2. Confirmation of Minutes

The minutes of the August meeting were approved, subject to one change requested by ER.

The board agreed that minutes will be approved via email, after a 10 day comment period. The draft minutes will indicate which sections (if any) will be changed for publication. Once approved, the public version of the minutes will be posted on the auDA web site. Any subsequent issues with the minutes can be addressed by the board in the minutes of the next meeting.

## 3. Corporate Governance

CN advised that there are two important issues in relation to conflict of interest:

whether a director with a material interest is in a position to advantage themselves or someone else; and  
whether there is a perception that a director with a material interest is in a position to advantage themselves or someone else.

In the case of an industry self-regulatory body like auDA, the perception of conflict is just as important as actual conflict. CN advised that auDA should err on the side of caution to ensure that its integrity is not compromised. Decisions about whether a director is conflicted or not should be made by non-conflicted directors.

Directors declared any interests relevant to consideration of the Registry RFT and Licence Agreement:

DK is a director and employee of Cybersource, which provides system administration services for AUNIC. DK advised that Cybersource will not respond to the RFT.

GW is an employee of Monash University, which drafted the Registry Technical Specification.

PC is a director of the Top Level Domain Association, and may be interested in responding to any future tenders for new 2LD registries.

KH's employment with iinet was terminated in June and he is currently serving a notice period. Based on his own legal advice, KH conceded that there may be a perception of conflict of interest.

LW consults to Momentous Canada, which may respond to the RFT.

IM is a director of Melbourne IT, which may respond to the RFT.

ER consults to Melbourne IT, which may respond to the RFT.

CC is an employee of Connect.com.au. CC was not able to obtain written confirmation before the meeting from Connect.com.au that it will not respond to the RFT.

Conflict of interest does not arise in relation to the Registrar Agreement, as it is a public document.

#### 4. Registry Technical Specification

The board agreed that IM be permitted to submit late comments on the Registry Technical Specification.

The CEO advised that the contract with Monash University to draft the Registry Technical Specification was negotiated pursuant to the board's approval of the Implementation Plan at the August meeting.

The board agreed that there is a need to clarify the operating processes to be followed by auDA.

Action: CEO to advise which delegations of authority are currently in place, and board to discuss at the next meeting.

Action: GC and JL to draft operating manual, referred to in clause 21.7 of auDA's Constitution.

#### 5. Registrar Agreement

The draft Registrar Agreement was published on 1 October and a public meeting to discuss the Agreement was held on 5 October, attended by approximately 30 people. A few written comments have been received to date. The original closing date for comments was 8 October, and has since been extended to 12 October. The board noted that it is critical that industry have adequate opportunity to respond to such an important document, and therefore agreed to further extend the public comment period to 19 October.

Some directors expressed concern that the draft Agreement is heavily weighted in favour of auDA, and is therefore less balanced than ICANN's registrar agreement. This could result in it being a barrier to entry. The CEO and CN explained that the Agreement has been drafted to ensure that auDA has the legal power it needs to regulate the industry effectively. For example, the limitation of liability provisions in clause 20 are aimed at preventing a big registrar from crippling auDA by suing it for damages.

CN further explained that the Agreement is to be read in conjunction with auDA's Published Policies. It is intended that most issues will be dealt with in the Published Policies, thereby removing the need to change the Agreement every time auDA changes policy. This is so that auDA can respond quickly to policy issues as they arise.

The board noted that Clause 19 of the Agreement lists the general obligations of auDA, including being open and transparent and ensuring that registrars have adequate opportunity to contribute to auDA's policies. It was agreed that this could be highlighted more prominently in the Agreement, to address the perception that auDA has unconstrained power in relation to registrars.

The board agreed that the development of an industry code of practice is an essential element of industry self-regulation. It was agreed that the code development process would commence during the test-bed period.

Once the Registrar Agreement is finalised, following public comment, auDA will issue an Expression of Interest for registrars to participate in the test-bed with the new registry (or registries). The number of test-bed registrars will be limited. Test-bed registrars will be the first auDA Accredited Registrars to "go live".

The board agreed the need to ensure that due process is followed in providing a final sign-off for the Registrar Agreement.

Action: auDA staff to prepare explanatory documentation that sets out the key documents and timelines for the introduction of competition.

Action: GW, DT and KD to consider the revised Registrar Agreement, to determine whether the changes are substantial enough to warrant a second round of public comment. If so, then the Agreement will be released for public comment for a short period, before being issued as part of the EOI for test-bed registrars.

## 6. Registry RFT and Licence Agreement

CC, KH, IM, ER and LW left the room for this discussion.

The CEO advised that once the Registry Technical Specification (RTS) is finalised, the RFT will be ready for release. The RFT will be open for 3 weeks.

The RFT evaluation panel will comprise 3 people from Deloitte Touche Tohmatsu and 1 from Monash University, each of whom will consider proposals according to their own area of expertise. JL and CN will provide advice to the panel. The panel will provide a full report to the board. Only those directors who are non-conflicted at the time of evaluation will be able to consider the report.

Motion (proposed GC, seconded GW): That the board approve the Registry RFT and Licence Agreement, to be issued by auDA as soon as the RTS is finalised. Carried.

The board agreed the need to ensure that due process is followed in providing a final sign-off for the RFT.

Action: GC and DK to consider the revised RTS, to determine whether the changes are substantial enough to warrant a second round of public comment. If so, then the RTS will be released for public comment for a short period, before being issued as part of the RFT.

## 7. CEO Report

The re-delegation agreement with ICANN has not yet been signed, and no fees have been paid to ICANN. auDA has made it clear to ICANN that although we will sign the agreement, we will continue to participate in ccTLD constituency negotiations with ICANN.

DK will attend the ICANN meeting in Marina del Rey in November.

auDA will move offices at the end of October to 107 Faraday Street, Carlton.

## 8. Finance Report

The board accepted the August and September monthly accounts.

The CEO advised that the funding issue with Melbourne IT had been resolved, and payment from Melbourne IT had been received. There will probably be one more payment due from Melbourne IT before competition is introduced (any extra will be refunded to Melbourne IT as auDA's cash flow permits).

Directors were reminded to submit their expense claims in a timely manner.

## 9. Dispute Resolution Working Group report

JL advised that the DRWG has adapted the auDRP to provide an appeals process for a complainant whose domain name application is rejected by a registrar for failure to meet the policy rules.

The board accepted the report, subject to a change to clause 8 of Attachment A to qualify the right of registrars to modify the policy with auDA's permission..

The board thanked PA and the group for its efforts.

#### 10. AUNIC

Action: CN to send letter to NetRegistry notifying termination of the contract. CEO to issue media release when appropriate.

#### 11. Membership

The members listed below were accepted in the classes indicated.

Business Park Pty Ltd (supply)

Two Purple Plums Internet (supply)

Aussie Web Hosting (supply)

Ian Johnston (demand)

Motile Pty Ltd (demand)

Adrian Kloeden (demand)

Matt Narayen (demand)

Theo Hranakis (demand)

Elizabeth Rizzi (demand)

Scott Arbuthnot (demand)

Guye Engel (demand)

#### 12. AGM

The AGM will be held on Monday 26 November 2001, at 12pm. No more members will be approved before the AGM.

The following directors will be standing down: DK (supply), KD and DT (demand), IM (representative), ER (general).

There are no proposed changes to the Constitution.

#### 13. DNS list

The board discussed recent problems with the DNS list (eg. some people using the list to make personal attacks).

It was suggested that auDA discontinue its association with the DNS list and set up a new list for members.

Action: auDA staff to report to the board on options for running a mail list, including liability issues if auDA takes over hosting the DNS list from inet (or if auDA sets up a new list).

#### 14. Next Meeting

The next board meeting will be held on Monday 26 November, following the AGM.