

COMPLAINTS (REGISTRANT ELIGIBILITY) POLICY

1. BACKGROUND

- 1.1 This document sets out auDA's policy on the handling of complaints about the eligibility of a registrant to hold their domain name licence under the policy rules for the open 2LDs. At the time of publication, the open 2LDs are asn.au, com.au, id.au, net.au and org.au.

2. DOMAIN NAME ELIGIBILITY CRITERIA

- 2.1 The eligibility criteria for each open 2LD is set out in the Domain Name Eligibility and Allocation Policy Rules for Open 2LDs (Policy No 2002-07). The eligibility criteria ensure that the registrant has the correct status to license a domain name in the requested 2LD. For example, if the registrant want to license a domain name in com.au, they must provide identification details such as Australian registered company name and Australian Company Number.
- 2.2 It is the responsibility of the registrant to ensure that they are eligible to hold the domain name licence, both at the time of registration and during the licence period. In order to renew their domain name licence, the registrant must confirm that their eligibility details are still current. If the registrant is no longer eligible to hold the domain name licence, then the licence cannot be renewed.
- 2.3 auDA recognises that many registrants invest significant time and resources in using their domain name to maintain an Internet presence. Even if registrants do not have an active website, they may use their domain name for email purposes. Therefore, it is auDA policy that a registrant must be given a reasonable opportunity to update their eligibility details before the licence will be cancelled.

3. COMPLAINTS-HANDLING PROCESS

- 3.1 Where a person believes that a registrant is not eligible to hold their domain name licence, that person should contact the registrar of record for the domain name (disclosed on the WHOIS service).
- 3.2 On receipt of a complaint about the eligibility of a registrant, the registrar must reconfirm the eligibility details of the registrant (for example, check that the registrant's business name registration is still current). If the eligibility details are current, the registrar is not required to take any further action.
- 3.3 If the eligibility details are not current, the registrar must contact the registrant to request that they update their eligibility details within 14 calendar days. The registrar must use reasonable commercial endeavours to contact the registrant (for example, if an email bounces, the registrar should attempt to contact the registrant by phone or fax).

- 3.4 If the registrant updates their eligibility details within the 14 day period, the registrar must enter the new information in the registry database as a correction to registrant details.
- 3.5 If the registrant does not update their eligibility details within the 14 day period, or does not respond to the registrar's request, the registrar must delete the domain name. The domain name will enter "pending delete" status for 14 calendar days. While the domain name is in pending delete, the registrant may contact the registrar to update their eligibility details. The registrar must request the registry to remove the domain name from pending delete, and then enter the new information in the registry database as a correction to registrant details.
- 3.6 If the registrant does not update their eligibility details while the domain name is in pending delete, then the domain name will be randomly dropped from the registry database within the next 7 calendar days. It will then become available for registration by any eligible applicant on a 'first come, first served' basis. The domain name will not be transferred to the complainant, or reserved for the complainant. If the complainant wants to license the domain name, they must apply for it using the normal application process.

4. UPDATING REGISTRANT ELIGIBILITY DETAILS

- 4.1 The registrant may update their eligibility details either by resurrecting the original basis for their domain name registration, or by providing new identification details. The registrant does not have to use the same eligibility criteria that they originally used to support their domain name registration. The cases where this is most likely to occur are:
- a) *Where a business name registration has lapsed.* If the registrant is able to re-register the same business name, then the registrar must simply verify that the re-registration has taken place. They do not need to perform any further policy compliance checks, because the registrant's name has not changed.
 - b) *Where a company has been de-registered or a business name has been removed.* The registrant is unable to resurrect the original basis for their domain name registration, so they must provide new eligibility details (eg. a new company or business name registration, or a trade mark registration). The registrar must perform full policy compliance checks, because the registrant's new eligibility details may no longer have any connection with the domain name.
 - c) *Where an application for an Australian Registered Trade Mark has not been accepted for registration, or a registered trade mark has been removed.* The registrant is unable to resurrect the original basis for their domain name registration, so they must provide new eligibility details (eg. a new trade mark registration, or a company or business name registration). The registrar must perform full policy compliance checks, because the registrant's new eligibility details may no longer have any connection with the domain name.

5. OTHER COMPLAINTS

- 5.1 This policy deals with complaints about the *eligibility* of a registrant, ie. whether the registrant's identification details are current. This policy does not deal with complaints about:

- a) the underlying validity of the registrant's eligibility (eg. whether the registrant is actually carrying on a business under their registered business name);
 - b) a registrar's interpretation of the allocation criteria (ie. whether a domain name is an exact match, abbreviation, acronym or close and substantial connection); or
 - c) a registrant's use of their domain name (ie. whether the domain name violates or infringes on the rights of another party, such as trade mark rights).
- 5.2 Complaints under paragraph 5.1a) should be taken up with the relevant government authority, such as the Australian Securities and Investment Commission (ASIC) or the state/territory registrar of business names.
- 5.3 Complaints under paragraph 5.1b) are handled under auDA's Complaints Policy (Policy No 2002-21). Complaints under paragraph 5.1c) may be handled under the .au Dispute Resolution Policy (auDRP) (Policy No 2002-22), or alternatively the complainant should seek legal advice.