

**auDA PUBLISHED POLICY****Policy Title:** COMPLAINTS POLICY**Policy No:** 2007-03**Publication Date:** 19/10/2007**Status:** Replaced by 2010-04**1. BACKGROUND**

- 1.1 This document sets out auDA's policy on the handling of complaints made about domain names, registrars and resellers in the .au second level domains (2LDs). At the time of publication, the open 2LDs are asn.au, com.au, id.au, net.au and org.au.

**2. auDA'S JURISDICTION TO HANDLE COMPLAINTS**

- 2.1 auDA's jurisdiction to handle complaints is limited to matters relating to the .au domain space. There are two types of complaints that auDA handles:

- a) complaints about .au domain names and registrants ("domain complaints"); and
- b) complaints about .au domain name services provided by auDA accredited registrars and their resellers ("industry complaints").

The different types of complaints are explained in more detail in sections 4 and 5 below.

- 2.2 auDA does not have the jurisdiction to handle complaints about:

- a) generic Top Level Domains (eg. .com, .net, .biz, .info, etc) or other country code Top Level Domains (eg. .nz, .uk, .us, etc);
- b) web hosting, website management or website design services;
- c) Internet access or email services;
- d) illegal or malicious use of a domain name, such as spam or phishing;
- e) objectionable or offensive website content; or
- f) possible breaches of the Telecommunications Act 1997, the Broadcasting Services Act 1992, the Trade Practices Act 1974, the Trade Marks Act 1995, the Privacy Act 1988 or any other legislation. For complaints about these matters you should contact the relevant government authority, such as the Australian Communications and Media Authority (ACMA), the Telecommunications Industry Ombudsman (TIO), the Australian Competition and Consumer Commission (ACCC), a state or territory fair trading office, or the Office of the Privacy Commissioner.

- 2.3 auDA reserves the right not to acknowledge or investigate a complaint that is clearly frivolous, vexatious or abusive, or in auDA's opinion has been brought in bad faith.

### **3. auDA'S COMPLAINTS-HANDLING PROCESS**

- 3.1 Complaints may be submitted to auDA via the online form on auDA's website, by fax or by post. auDA will acknowledge receipt of your complaint (subject to paragraph 2.3) and indicate the timeframe that you can expect a response. auDA will endeavour to resolve your complaint as quickly as possible, but if your complaint is complex it may take several weeks to resolve. If this is the case, auDA will keep you informed of the progress of your complaint.
- 3.2 On receipt of your complaint, where appropriate, auDA will request a response from the registrant, registrar or reseller involved. auDA will investigate your complaint based on the facts provided by all parties involved in the matter. auDA may seek further information from any party to assist with its investigation. auDA may place a registry server lock on the domain name(s) in question, in order to preserve the status quo whilst the investigation is pending.
- 3.3 After conducting a full investigation, auDA will notify you in writing of the outcome of your complaint and, if relevant, of any other courses of action available to you.

### **4. DOMAIN COMPLAINTS**

- 4.1 "Domain complaints" include complaints about:
  - a) registrant eligibility, including the "close and substantial connection" rule;
  - b) prohibited misspellings;
  - c) offering a domain name for sale;
  - d) correct "ownership" of a domain name;
  - e) transfers (change of registrant); and
  - f) breaches of the domain name licence terms and conditions, or any auDA Published Policy.
- 4.2 auDA is the first point of contact for domain complaints. auDA will investigate your complaint on the basis of whether there has been a breach of auDA policy, not on the basis of whether you have a better claim to the domain name, or whether your rights in the domain name have been infringed. If your desired outcome is transfer of the domain name to you, then you should consider lodging a complaint under the .au Dispute Resolution Policy (auDRP) (2002-22) or taking legal action directly against the registrant.
- 4.3 If your complaint is upheld, auDA may take one or more of the following actions:
  - a) instruct the registrar of record to "policy delete" the domain name(s) in question (refer to the Domain Renewal, Expiry and Deletion Policy (2006-07));
  - b) instruct the registrar of record to correct the registrant details of the domain name(s) in question; or
  - c) in the case of an unauthorised transfer, instruct the registry to reverse the transfer (refer to the Transfers (Change of Registrant) Policy (2004-03)).

### **5. INDUSTRY COMPLAINTS**

- 5.1 "Industry complaints" include complaints about:
  - a) domain name registration and domain name management services of a registrar or reseller;

- b) transfers (change of registrar of record); and
  - c) breaches of the Registrar Agreement, .au Domain Name Suppliers' Code of Practice, or any auDA Published Policy.
- 5.2 Under Federal Government policy, the Australian domain name industry is self-regulatory. This means that industry participants are themselves responsible for determining appropriate responses to any problems that arise within the industry. In accordance with this self-regulatory approach, auDA is an office of last resort with regard to making a complaint about a registrar or reseller. Before auDA will investigate a complaint, you must have first attempted to resolve the complaint with the registrar or reseller involved. Under the .au Domain Name Suppliers' Code of Practice, all registrars and resellers must have adequate complaints-handling policies and procedures in place.
- 5.3 Before making a complaint to auDA, you must allow a reasonable period of time for the registrar or reseller to respond to your complaint. auDA will not investigate your complaint unless you have done so. You should also collect any relevant supporting documentation, such as registration agreements, policies, emails and other correspondence with the registrar or reseller. Failure to do so may mean that auDA is unable to investigate your complaint for lack of evidence.
- 5.4 If your complaint is upheld, auDA may take one or more of the following actions:
- a) request the registrar or reseller to issue you with a full explanation and apology;
  - b) request the registrar or reseller to remedy their error and/or refund any payment for services not received;
  - c) in the case of an unauthorised transfer, instruct the registry to reverse the transfer (refer to the Transfers (Change of Registrar of Record) Policy 2003-03));
  - d) request the registrar or reseller to amend the practice or procedure that led to your complaint;
  - e) notify the registrar or reseller that they are in breach of the Registrar Agreement, the .au Domain Name Suppliers' Code of Practice or an auDA Published Policy, and request them to remedy the breach; or
  - f) refer your complaint to the relevant government authority.

Please Note: auDA is not a government agency or statutory authority, therefore it does not have legislative power to impose fines or other penalties on a registrar or reseller.

- 5.5 If the registrar or reseller involved does not comply with auDA's request pursuant to paragraph 5.8 a)-d), auDA may take the following action:
- a) in the case of a reseller of a registrar, auDA may direct the registrar not to accept any services from that reseller, and to terminate any reseller licence in existence between the registrar and that reseller; or
  - b) in the case of a registrar, auDA may suspend or terminate the registrar's accreditation.

## **6. OTHER COMPLAINTS AND DISPUTES**

- 6.1 The Complaints (Registrant Eligibility) Policy (2004-01) sets out the process for making a complaint about invalid registrant eligibility details as displayed on WHOIS, eg. where the WHOIS record shows a deregistered company, a removed

business name or a cancelled ABN. Complaints must be lodged with the registrar of record for the domain name.

- 6.2 The .au Dispute Resolution Policy (auDRP) (2002-22) provides for independent arbitration of disputes between a registrant and another party with competing rights in the domain name. Proceedings must be lodged with one of the approved auDRP Providers listed on auDA's website.
- 6.3 auDA will not mediate or resolve disputes between a registrant and another party over a domain name. auDA may, at the request of the parties or at its own discretion, place a registry server lock on the domain name pending resolution of the dispute by the parties themselves. Resolution of the dispute must be evidenced by a Deed of Settlement or an order of a competent arbitrator, tribunal, court or legislative body.
- 6.4 auDA will not mediate or resolve commercial disputes between registrars and their own resellers, except insofar as the dispute involves a breach or possible breach of the Registrar Agreement, .au Domain Name Suppliers' Code of Practice, or any auDA Published Policy.