

**Ms Jo Lim,  
Chief Policy Officer,  
.au Domain Administration,  
GPO Box 1545P  
MELBOURNE VICTORIA 3001**

Via email jo.lim@auda.org.au

Dear Ms Lim,

Re: Competition Panel - Second Report for Public Consultation

I make this submission on behalf of Connect West Pty Ltd, registry for the .asn.au domain and in response to the auDA Competition Panel's second report for public consultation.

This submission is primarily concerned with the operation of the registries and registrars, in particular, what their functions are and how they relate to each other and to auDA. In the first instance, let us examine only one 2LD.

A registry contains those functions that are non-contestable for a given 2LD. It is a core recommendation of this submission that this be strengthened further, so that a registry will **only** include those functions that **must** be non-contestable.

All other functions should reside in the registrars, which operate in an open and competitive environment.

This fundamental principle is consistent with the goal of providing a stable DNS system, to comply with competition law and to deliver the best service and price to consumers. It also has important repercussions for how the competition model must then be designed.

Registries handle the non-contestable functions, which are:

- collision control, ensuring that the same domain is not registered by more than one party; and
- generation of the zone file for a 2LD

These are the only components that must be non-contestable. It is possible that the generation of the zone file could be distributed, but more stable to simply include it in the registry.

All other functions should then be handled by registrars, including all service contact with the consumer, such as help desk, billing and marketing, and compliance checking.

The listed functions of the registry are fully automatable and require no human intervention for each individual application.

The registry is a technical function, which should be outsourced by auDA using a tender process, in precisely the same fashion as AUNIC has been outsourced. The tender requirements should mandate the protocol by which the registry will allow submissions from registrars, minimum response times and uptime guarantees, and other technical requirements. The tender should be issued on a three to five year term and assessed on:

- (a) ability to manage the technical functions as described;
- (b) network and component redundancy;
- (c) commercial and technical sustainability;
- (d) fault response times;
- (e) costs over the course of the tender;
- (f) ability to meet service level agreement(s) as defined by auDA;
- (g) disaster recovery and ability to scale operations as required;
- (h) requirements for statistical reporting to auDA;

- (i) privacy guarantees; and
- (j) an undertaking that the registry will not compete with registrars, directly or through any associated entity.

The registry does not bill the registrars. The registry is a technical function, which liaises only with auDA.

Registrars may be accredited by auDA, and should be billed by auDA. The amount billed by auDA would be determined on an annual basis, in a publicly open and accountable fashion, based on auDA’s budget requirements for the following year. The amount paid by each registrar may then be calculated on any basis which auDA determines to be fair and equitable. It is expected that this would be on a volume basis, such as a per domain basis or a flat about based on bands.

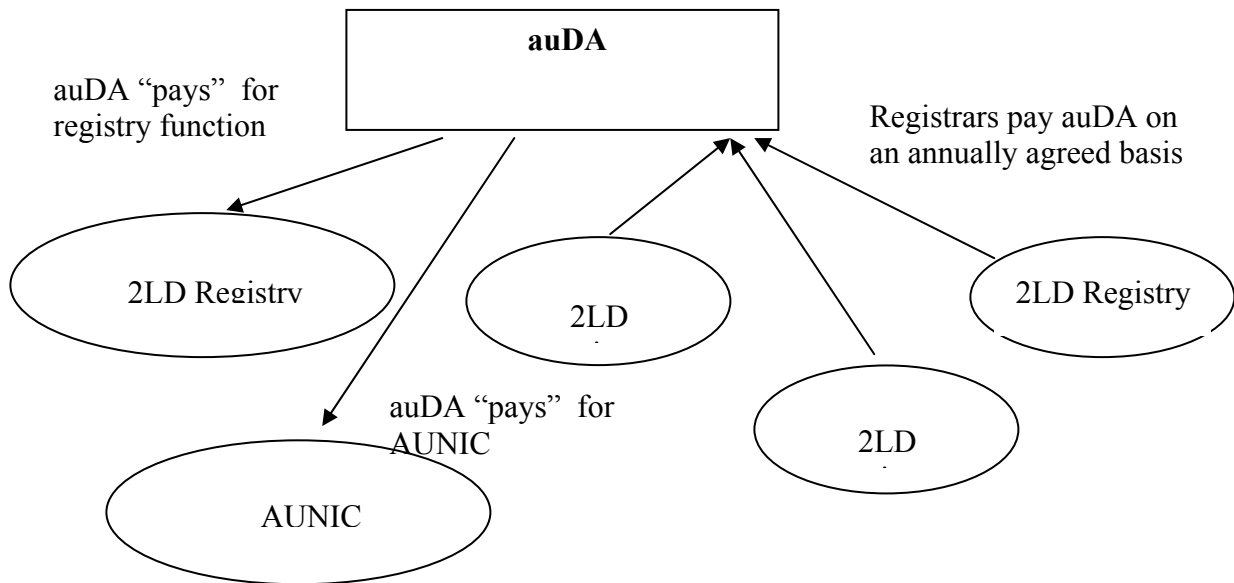


Fig 1: Flow of Cash

The key opposition to the plan outlined above will be that policy control should be at the registry. This assertion should be wholeheartedly rejected. It makes the registry “fat”, moving the larger cost of applying for a domain name into the only non-contestable part of the equation.

The registrar is the best party to handle compliance control, where cost will become most efficient under a competitive model. More practically, the customer wants to talk to the person who made the decision, which will add yet more costs to the monopoly registry.

Ensuring consistent application of policy is an issue, and it will be an issue under any proposed model. A key objective of the names panel is to produce guidelines that should be clear and easily understood by both the applicant and the registrar. The registrars are accredited, and a registrar who fails to follow policy may have their accreditation withdrawn.

Protecting consumers and the rights of name holders is still an important issue. It is recommended that all new domain names be subject to a 30-day exposure period. Domain names that have been issued in the previous 30 days will be made available publicly by auDA. During that time, any party may submit a claim to auDA's dispute resolution panel that the domain name was not issued within the guidelines for that 2LD. This service should be widely publicised by auDA and must be freely available to all interested parties.

It is also recommended that all applicants assert their right to a domain name under the stated policies (including good faith), and acknowledge that the domain name will be revoked if any of this is determined to be incorrect. In the basest interpretation, this pushes the majority of the risk and responsibility back to the applicant.

auDA is responsible for disputes relating to whether or not a registrant should be eligible for a domain name. Disputes between (potential) registrants, disputes between a registrant and a registrar, or between registrars on this matter should be handled by auDA's dispute resolution process. It is not expected that commercial disputes (such as billing issues) should be handled by this process, but that question is left open whoever is framing the terms of the dispute resolution process.

Disputes between registrars and registries should only occur on the basis that the registry fails to meet the requirements of the tender. For example, response times are too slow, or

the registry is now acting as a registrar. This is a commercial enforcement matter between auDA and the registry and should be dealt with as such.

The *raison d'être* of the "Reseller" entity in the Panel's second report is somewhat puzzling. How registrars interact with the public is a matter for the registrar and not interesting to auDA. In the final analysis, the behaviour of such a reseller is the behaviour of the registrar from auDA's point of view.

Thus far, this submission has not addressed the question of whether or not there should be multiple registries. Each 2LD registry must be a monopoly function within that 2LD, but a registry could serve more than one 2LD. 2LD's do not compete with each other. This has been asserted before, but it is a nonsense. Entities will attempt to apply for all 2LD's in which they can qualify and which they can afford.

The question of whether a registry handles one or multiple 2LD's is best decided as the commercial outcome of the tendering process for the registry provider(s). auDA's tender could request that tenderers state whether they wish to handle a single 2LD or several. In reality, anyone that is willing to do com.au will see most other 2LD's as a negligible addition and so offers to take them on for a very low cost. However, it may be that some party wishes to provide a tender only for one of the smaller 2LD's and offers to provide superior and personal service levels. Alternatively, in future years, auDA could determine that the registry function is best handled by one entity for simplicity and fault tolerance. It's a commercial question, and if the matter is determined by a fair and open competitive tender, the outcome will deliver the best result for the community. It is therefore regarded as an uninteresting question for the competition panel and should be directed to auDA's executive.

In summary, the key recommendations of this submission are:

- the function of the registry be limited to those functions which are otherwise uncontestable;
- auDA to outsource the registry function for 2LD's by competitive tender;

- registrars to pay auDA for accreditation with prices determined annually based on auDA's reasonable budgets;
- registrars to handle all contestable functions and all direct dealings with registrants;
- protocols for interaction between registrar and registry to be mandated universally by auDA;
- policy to be enforced by accreditation, applicant warranties and public exposure of applications;
- name disputes to be handled by auDA's dispute resolution process.

On behalf of Connect West Pty Ltd, I congratulate the Panel on its deliberations and the substantive recommendations; and look forward to the final report in due course.

Yours faithfully,

**Michael Malone**  
**For Connect West Pty Ltd**

6<sup>th</sup> June, 2001