

**Submission on the
AuDA Registrars' Code of Practice Public
Consultation Submission**

July 2002

ACA

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About the Australian Consumers' Association

The Australian Consumers' Association (ACA) is an independent not-for-profit, non-party-political organisation established in 1959 to provide consumers with information and advice on goods, services, health and personal finances, and to help maintain and enhance the quality of life for consumers. Independent from government and industry, it lobbies and campaigns on behalf of consumers to advance their interests.

ACA provides consumer education, conducts surveys into consumer attitudes, lobbies for improved conditions for consumers and distributes unbiased consumer advice. These activities are more than fund-raisers, they also form the basis of our work for consumers.

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The Code of Practice for Domain Name Registrar's and their affiliated Resellers is fine as far as it goes. However, from a consumer perspective of business conduct, there are several areas that are not addressed adequately. It is our contention that this Code of Practice should set a higher bar and incorporate better practices that address consumer concerns in transactions to be undertaken in the licensing of domain names.

The following items are not addressed in the code of practice, despite the continued attempts of our representative on the working group to draw attention to these matters and request the legal advisors to the group to include language to cover these areas. It has been unfortunate that the agendas seemed to run out of time for group discussion of these areas in order to get the industry involvement in resolving the omissions. Hopefully the public submission process will make up for this situation over the course of the panel meetings.

The specific areas ignored to date are:

1. The form and communication of the contract and Terms & Conditions with the customer, including having any datestamps for contractual documents specifically with the customer, not dates of when a particular document was posted to a website. This is merely a request that Registrars must provide a written contractual document, that is in hard copy sent to the consumer OR printable as a single transaction record with the individual consumer, with a date of record on the document and their associated terms and conditions of the contract. This code of practice is silent on contractual documentation and terms and conditions stability over the duration of the contract. It would be our preference that code complying agencies be required to desist from T&C changes during the period of the contract of the domain name license to provide certainty to the consumer of the associated rules.
2. Warranty issues as regards the licensed product, in this case a domain name. It was made clear during discussions with the AuDA representatives on the working party that AuDA is not asserting any intellectual property protections when licenses are issued. However, the Registrar may or may not take on that assistance as part of their 'service package'. It is important that any warranty to customers that is implicit or explicit is advised in the contract and on any advertising materials presented. If there is implied warranty of the name, then any liability for trademark or other intellectual infringement should be identified in the contract. Besides stating what the Registrar will do, it is often equally important to state what they will not do if it would be reasonable for the consumer to assume that such actions would be taken or product suitability provided.
3. Code Enforcement Section (13) - what consequence does terminating the accreditation of the registrar have - if it forces them out of business, what about all the customers they have? If not, what use is it as a sanction?
4. Service level agreements are not mentioned in this code. What is the registrar going to do for the consumer? In what period of time? This code addresses general business practices and complaints handling, but there is no mention in the Service Offerings that service level agreements must be part of the contract or advertising materials, for aspects not covered in this particular code.
5. Contact times: Must publish standard office hours and indicate time zone in Australia, not just assume East Coast. This will be important for any non-Australian customer.

6. Billing practices: Alerts of pricing changes? Probably more critical in parts of the industry where transactions are more frequent, but still there are possibilities of increases in fees/charges over the period of a year or two. How much in advance of change? Suggest 30 days notice in advance of renewals.
7. What about refunds? When would a refund ever be appropriate in domain name registration? What is the 'money' track with AuDA? If the name choice is found 'unclean' or unregistrable, will the customer get all their money back?
8. Payment pursuit practices: At what stage will payment be expected in the process? What is acceptable practice to get payments? Will collection agencies be acceptable as is practice in some industries? What controls will the Registrars place on such contracted agencies? Proposed language: resellers and registrants will refrain from unreasonable payment pursuit practices such as overly frequent emailing, threatening letters not substantiated by the law [e.g. the cease and desist type], others?
9. Renewal timing: At what stage would a name be withdrawn from the registry if not renewed? Section 4.5 says: "Domain name providers must only renew an expired domain name at the request of a domain name registrant (see also 4.3 above). The Registry will automatically delete domain names that have not been renewed, 14 days after the expiry date." This is misplaced information and does nothing to address the issue of what happens if a consumer loses access to their domain name as a result of delayed practices by the Registrar or the Registry for that matter. How will mistakes be rectified?
10. Customers overseas: What about location of the customer? Will there be differences for registering names for people who don't live in Australia? Differences in prices? What about currency exchange issues? What about complaint resolution procedures if the person lives in Bolivia?
11. Customer identity and contractual restrictions: What level of customer identity will be required to let the registrar know the person has the authority to register on behalf of a business or other agency?
12. What about minors? Minors are generally not allowed to enter into legal contracts on their own. The code should state handling of these arrangements. How will age be determined? If 'minors' are not allowed to register a name in their own name, can they get parental consent of some sort or would the parent then be the registrant?
13. Duration of the contractual relationship: What about the end of the contract period? What will happen to close down the relationship?
14. Code management: How will this code itself be monitored and revised into the future? This is buried in point 15.5 and should be pulled out to a major section point on its own.
15. Identification of registrars/resellers - access to the database by customers: How does the consumer find out who is an AuDA authorised Registrar or their affiliated reseller allowed to do this business and therefore receive my money? Can they actually register the name? Will there be a registry of AuDA Accredited Registrars that will indicate they are abiding by this code? Language: AuDA Accredited Registrars, resellers and others who subscribe to the codes provisions will be identified on a registry administered by AuDA at [URL].
16. It is important that the consumer/customer be able to go to a single source of governance information and not be expected to hash through the Registrar's agreement as well as this document. The Code of Practice should incorporate the 'rules' that will be reflected in whatever Consumer Guidelines result later.

17. Section 16.16 - insistence on genuinely disputed amounts is quirky - who gets to say what is genuine?
18. Section 16.17 and generally - does AuDA have a role in monitoring and reviewing the data collected for systemic issues, and if not who other than the code signatories does so? If no one, then this is a problem. What role does the TIO have in relation to this Scheme?
19. "4.3 Domain name providers must not register or renew domain names in advance of a request from a registrant for the purpose of restricting a competitor from registering the domain name on behalf of a registrant, or for the purpose of later offering this domain name to the registrant." This does not set a policy that Registrars will not register domain names for consumers knowingly that the consumer intends to warehouse addresses and resell them later. What controls that type of behaviour? Or is that allowed?

These 19 points are issues that are in need of addressing in this Code of Practice. For clarity to those who will be licensing the domain names, that is the consumer, and those who will be issuing the licenses, that is the Registrars and their representatives. We reiterate that it is essential that information about the 'rules of transaction behaviour' be:

- Clear
- Complete
- In common language
- Enforceable
- Consistent across the various points, that is not at odds for implementation, and
- Transparent

The initial code draft is a beginning, but additional attention must be taken to the items listed above to be a better code of practice and explanation to the customers and general consumers impacted by domain licensure.

Yours sincerely,

Charles Britton
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