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By email: jo.lim@auda.org.au

Dear Ms Lim

RE .au DOMAIN NAME SUPPLIERS' CODE OF PRACTICE

Thank you for the opportunity of commenting on the *.au Domain Name Suppliers Code of Practice* (the Code). The ACA has reviewed the current version of the Code, and offers the comments outlined below. The comments predominantly relate to editing and enforceability issues in relation to the code.

In order to assist you I have provided some general comments in relation to the Code as well as comments on specific clauses in the Code. My comments are provided under the headings below.

General comments

The Code does not appear to state the purpose or application of the use of '*Examples*' and '*Guidelines*' throughout the Code. It is not entirely clear what the difference is between an example and a guideline or how these provisions should be interpreted. The content found in some guidelines may be better re-written as rules for inclusion in the Code.

Further, the Code would appear to have a significant number of typographical errors and in some instances uses the same word in different ways. For example, time frames are variously prescribed as either *working days*, *calendar days* or *just days*—sometimes within the same clause. Defined terms do not always appear in capitals as suggested by the Code. Acts of Parliament do not have the year of promulgation. Sometimes slightly different language is used when discussing what appears to be the same term—for example, what is the difference between *Preferred Products* and *Preferred services* in clause 9.3? Neither term is defined even though they appear in capitals.

Specific comments

Clauses 9.3 and 9.4 – there may be some concern that section 9.3 and 9.4 contradict one another, with section 9.4 providing a loophole out of compliance with section 9.3. Further, as noted above, terms appearing in capitals are not defined.

Clause 10.1 – should the term *legal* be changed to *registered*?

Clause 10.2 – it is suggested that a timeframe could be inserted into the requirement to inform registrants. For example, a Domain Name Supplier must inform registrants of any significant changes in 30 calendar days, or provide an update to customers once every 6 months on changes to policy which may affect them. This could be

easily achieved via email. Also, why does the term *Domain Name Policy* appear in capitals?

Clause 13.1 – Should the Code be described as an *incentive* when compliance is mandatory?

Clause 13.4 – *Trade Practices Act 1974*

Clause 14 – *Complaint* appears in lower case.

Clause 15.5 – seems unnecessary as the details in this section are expanded on in clause 15.9. This may be best outlined as a principle rather than a rule.

Clause 15.7 – seems unnecessary as the details in this section are expanded upon in clause 15.8

Clause 15.9 – the final sentence could be deleted as it repeats details about people with disabilities or from non-English speaking backgrounds as detailed in clause 15.8

Clause 15.10 – Should this be a '*Guideline*' and rather than an '*Example*'?

Clause 15.11 – Should this be a '*Guideline*' and rather than an '*Example*'?

Clause 15.12 (e) – should consider this section to be a '*Guideline*' to section 15.12(d). The clause does not specify a rule as such, but rather describes a circumstance that could lead to a complaint taking greater than 30 days to resolve as outlined in 15.12(d).

Clause 15.12 (f) – appears to repeats what has been detailed in 15.12 (d)

Clause 15.12 (i),(j), and (k) – the ACA holds concerns regarding any further charges that may be imposed on a customer pursuing a complaint with a Domain Name Supplier. Charges such as those outlined in these clauses may restrict a customer's ability to further pursue a complaint. It would seem unreasonable to force a customer that may be involved with a billing dispute with a Domain Name Supplier, to pay further monies to the Domain Name Supplier to have their complaint resolved. Such charges should only be imposed in exceptional circumstances. Further, the Code does not explicitly require any information on the basis on which charges are imposed to be supplied to the complainant.

Clause 15.13 – why is it not mandatory for a Domain Name Supplier to have an escalation process? This clause could be amended by removing the words "*Where appropriate*" to require all Domain Name Suppliers to have an escalation process in place. This would mean clause 15.13(b) could also be removed.

Clauses 15.14 and 15.16 – these clauses could be expanded to include some formal parameters for the recording of complaints data by registrars, which would then be used for regulatory and self regulatory reporting processes. For example, parameters such as complaints received in < 2 days, < 10 days, < 30 days, > 30 days could be

used. Further categories for the types of complaints could be developed in association with NOIE.

Please contact me on 03 9963 6854 if you wish to discuss these comments further.

Yours Sincerely

Rowan Pulford
Policy analyst
Numbering Team

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