

auDA Dispute Resolution Working Group

PROPOSED .AU DOMAIN NAME APPLICATION APPEALS PROCESS

Report to auDA Board

October 2001

1. Background

In March 2001, the .au Domain Administration Ltd (auDA) established a Dispute Resolution Working Group (DRWG), including members of both auDA Advisory Panels, to develop a framework for handling disputes in the .au domain. Membership of the DRWG is at Appendix 1.

In August 2001, the auDA Board approved the DRWG's proposed .au Dispute Resolution Policy (auDRP) and Rules, based on the Uniform Domain Name Dispute Resolution Policy (UDRP) and Rules adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) for the global Top Level Domains (gTLDs).

The auDRP deals with disputes between registrants and parties with competing legal rights in the domain name. The DRWG was also asked to consider appropriate mechanisms for dealing with disputes between:

- a. registrants and registrars;
- b. registrars;
- c. registrars and the registry;
- d. registries (if there is more than one);
- e. any one of the parties listed above and auDA.

2. Disputes between registrants and registrars

The DRWG considers that disputes between registrants and registrars are most likely to arise in relation to:

- a. quality of service (including timeliness, billing, privacy, etc); and
- b. rejected applications for domain name registration or renewal.

The DRWG notes that auDA intends to impose minimum service levels and consumer safeguards under the terms and conditions of the Registrar Agreement, and that registrants will have recourse to auDA (and/or the Australian Competition and Consumer Commission) in case of breach of the Registrar Agreement.

The DRWG has therefore focused on the second type of dispute, that relating to the application of the eligibility and allocation rules governing the registration and renewal of domain names in the .au second level domains (2LDs). It is the DRWG's view that registrants (or would-be registrants) who are dissatisfied with a registrar's decision to reject their registration or renewal application should have access to an independent arbitrator to hear their complaint. In line with the principle of separation of policy and operations, it would not be appropriate for auDA to perform this role.

The DRWG has adapted the auDRP and Rules to apply to disputes about the correct application of the domain name eligibility and allocation rules – see Attachments A and B. The adapted policy has been termed an “Application Appeals Process” (AAP), which reflects the DRWG’s expectation that the process will be used as an independent review mechanism rather than an arbitration between two disputing parties.

3. Other disputes

The DRWG has considered the other types of disputes listed in section 1 (categories b-e) and concluded that these are best handled by the usual commercial arbitration processes, governed by the contractual arrangements between the parties. The DRWG considers that at this early stage in the development of the domain name industry in Australia, it is difficult to predict the types of disputes that may arise between industry participants and therefore not possible for a dispute resolution policy to cover the field.

The DRWG also believes that, at least initially, any dispute resolution policy adopted by auDA should be aimed at providing consumers with a speedy, cost-effective alternative to court action. The need to do the same with regard to industry participants is not compelling at present.

.au Domain Name Application Appeals Process
Policy Adopted: [date]
Implementation Documents Approved: [date]

Notes:

- 1. This policy is an adaptation of the .au Domain Name Dispute Resolution Policy. See <http://www.auda.org.au>**
- 2. This policy is intended to operate between the registrar and a domain name applicant. Thus, the policy uses "we" and "our" to refer to the registrar and it uses "you" and "your" to refer to the domain name applicant.**
- 3. This policy is intended to apply where an application to register or renew a domain name has been rejected by a registrar, and the applicant disputes the way in which the registrar has applied the relevant domain name policy rules.**

.au Domain Name Application Appeals Process

(As Approved by auDA on [date])

1. Purpose. This .au Domain Name Application Appeals Process (the "Process") has been adopted by .au Domain Administration Limited ("auDA"), is incorporated by reference into your Registration Application or Agreement, and sets forth the terms and conditions in connection with a dispute between you and us (the registrar) over our application of the domain name policy rules for [2LD] in relation to your application to register or renew a domain name. Proceedings under Paragraph 4 of this Policy will be conducted according to the Rules for the .au Domain Name Application Appeals Process (the "Rules of Procedure"), which are available at <URL>, and the selected administrative-dispute-resolution service provider's supplemental rules.

2. Your Representations. By applying to register a domain name, or by asking us to maintain or renew a domain name registration, you hereby represent and warrant to us that (a) the statements that you made in your Registration or Renewal Application are complete and accurate, including those as to your eligibility for a domain name in [2LD].au; (b) to your knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party; (c) you are not registering the domain name for an unlawful purpose; and (d) you will not knowingly use the domain name in violation of any applicable laws or regulations. It is your responsibility to determine whether your domain name registration infringes or violates someone else's rights.

3. Cancellations, Transfers, and Changes. We will cancel, transfer or otherwise make changes to domain name registrations under the following circumstances:

- a. our receipt of an order from a court or arbitral tribunal, in each case of competent jurisdiction, requiring such action; and/or
- b. our receipt of a decision of an Administrative Panel requiring such action in any administrative proceeding to which you were a party and which was

conducted under this Policy or a later version of this Policy adopted by auDA, subject to Paragraph 4(f) and (h) below.

We may also cancel, transfer or otherwise make changes to a domain name registration in accordance with the terms of your Registration Agreement or other legal requirements.

4. Mandatory Administrative Proceeding.

This Paragraph sets forth the type of disputes for which we are required to submit to a mandatory administrative proceeding. These proceedings will be conducted before one of the administrative-dispute-resolution service providers listed at <URL> (each, a "Provider").

a. Applicable Disputes. We are required to submit to a mandatory administrative proceeding in the event that you assert to the applicable Provider, in compliance with the Rules of Procedure that:

(i) you are eligible under the rules of [2LD] in force at the time of your initial or renewal application in respect of the domain name you wish to register or renew; and

(ii) your application to register or renew a domain name has been improperly rejected by us.

In an administrative proceeding, you bear the onus of proof.

b. Selection of Provider. You must select the Provider from among those approved by auDA by submitting the complaint to that Provider. The selected Provider will administer the proceeding, except in cases of consolidation as described in Paragraph 4(d).

c. Initiation of Proceeding and Process and Appointment of Administrative Panel. The Rules of Procedure state the process for initiating and conducting a proceeding and for appointing the panel that will decide the dispute (the "Administrative Panel").

d. Consolidation. In the event of multiple disputes between you and us, either party may petition to consolidate the disputes before a single Administrative Panel. This petition shall be made to the first Administrative Panel appointed to hear a pending dispute between the parties. This Administrative Panel may consolidate before it any or all such disputes in its sole discretion, provided that the disputes being consolidated are governed by this Policy or a later version of this Policy adopted by auDA.

e. Fees. All fees charged by a Provider in connection with any dispute before an Administrative Panel pursuant to this Policy shall be paid by you, except in cases where we elect to expand the Administrative Panel from one to three panelists as provided in Paragraph 5(b)(iv) of the Rules of Procedure, in which case all fees will be borne evenly by you and us.

f. Remedies. The remedies available to you pursuant to any proceeding before an Administrative Panel shall be limited to requiring the registration or renewal of the domain name.

g. Notification and Publication. The Provider shall notify us of any decision made by an Administrative Panel with respect to a domain name you have applied to register or renew with us. All decisions under this Policy will be published in full over the Internet, except when an Administrative Panel determines in an exceptional case to redact portions of its decision.

h. Availability of Court Proceedings. The mandatory administrative proceeding requirements set forth in Paragraph 4 shall not prevent either you or us from submitting the dispute to a court of competent jurisdiction for independent resolution before such mandatory administrative proceeding is commenced or after such proceeding is concluded.

5. All Other Disputes and Litigation. All other disputes between you and any party other than us regarding your domain name registration that are not brought pursuant to the mandatory administrative proceeding provisions of Paragraph 4 shall be resolved between you and such other party through any court, arbitration or other proceeding that may be available.

6. Our Involvement in Disputes. We will not participate in any way in any dispute between you and any party other than us regarding the registration and use of your domain name. You shall not name us as a party or otherwise include us in any such proceeding. In the event that we are named as a party in any such proceeding, we reserve the right to raise any and all defenses deemed appropriate, and to take any other action necessary to defend ourselves.

7. Maintaining the Status Quo. We will not cancel, transfer, activate, deactivate, or otherwise change the status of any domain name registration under this Policy except as provided in Paragraph 3 above.

8. Policy Modifications. We reserve the right to modify this Policy at any time with the permission of auDA. We will post our revised Policy at <URL> at least thirty (30) calendar days before it becomes effective. Unless this Policy has already been invoked by the submission of a complaint to a Provider, in which event the version of the Policy in effect at the time it was invoked will apply to you until the dispute is over, all such changes will be binding upon you with respect to any domain name registration dispute, whether the dispute arose before, on or after the effective date of our change. In the event that you object to a change in this Policy, your sole remedy is to cancel your application for registration or renewal with us, provided that you will not be entitled to a refund of any fees you paid to us. The revised Policy will apply to you until you cancel your application for registration or renewal.

Adapted from the auDRP.

Rules for .au Domain Name Application Appeals Process
Policy Adopted: [date]
Implementation Documents Approved: [date]

Note: These rules are an adaptation of the Rules for .au Domain Name Dispute Resolution Policy. See <http://www.auda.org.au>

Rules for .au Domain Name Application Appeals Process (the "Rules")
(As Approved by auDA on [date])

Administrative proceedings for the resolution of disputes under the .au Domain Name Application Appeals Process adopted on [date] are governed by these Rules and also the Supplemental Rules of the Provider administering the proceedings, as posted on its web site.

1. Definitions

In these Rules:

Complainant means the party initiating a complaint concerning a domain name registration.

auDA refers to .au Domain Administration Limited.

Mutual Jurisdiction means a court jurisdiction at the location of either (a) the principal office of the Registrar (provided the domain-name holder has submitted in its Registration Agreement to that jurisdiction for court adjudication of disputes concerning or arising from the use of the domain name) or (b) the domain name holder's address as shown for the registration of the domain name in Registrar's Whois database at the time the complaint is submitted to the Provider.

Panel means an administrative panel appointed by a Provider to decide a complaint concerning a domain-name registration.

Panelist means an individual appointed by a Provider to be a member of a Panel.

Party means a Complainant or a Registrar.

Process means the auDA Domain Name Application Appeals Process that is incorporated by reference and made a part of the Registration Agreement.

Provider means a dispute-resolution service provider approved by auDA. A list of such Providers appears at <URL>.

Registrar means the entity with which the Complainant has applied to register or renew a domain name that is the subject of a complaint.

Registration Agreement means the agreement between a Registrar and a domain-name holder.

Registration Application means the application by a Complainant to register or renew a domain name.

Registry means the entity responsible for entering the domain name in the [2LD] database.

Supplemental Rules means the rules adopted by the Provider administering a proceeding to supplement these Rules. Supplemental Rules shall not be inconsistent with the Policy or these Rules and shall cover such topics as fees, word and page limits and guidelines, the means for communicating with the Provider and the Panel, and the form of cover sheets.

2. Communications

(a) When forwarding a complaint to the Registrar, it shall be the Provider's responsibility to employ reasonably available means calculated to achieve actual notice to the Registrar. Achieving actual notice, or employing the following measures to do so, shall discharge this responsibility:

(i) sending the complaint to all postal-mail, facsimile and email addresses shown for the Registrar on auDA's list of Accredited Registrars; and

(ii) sending the complaint to any address the Registrar has notified the Provider it prefers.

(b) Except as provided in Paragraph 2(a), any written communication to the Complainant or Registrar provided for under these Rules shall be made by the preferred means stated by the Complainant or Registrar, respectively (see Paragraphs 3(b)(iii) and 5(b)(iii)), or in the absence of such specification

(i) by telecopy or facsimile transmission, with a confirmation of transmission; or

(ii) by postal or courier service, postage pre-paid and return receipt requested; or

(iii) electronically via the Internet, provided a record of its transmission is available.

(c) Any communication to the Provider or the Panel shall be made by the means and in the manner (including number of copies) stated in the Provider's Supplemental Rules.

(d) Communications shall be made in the language prescribed in Paragraph 11. E-mail communications should, if practicable, be sent in plaintext.

(e) Either Party may update its contact details by notifying the Provider.

(f) Except as otherwise provided in these Rules, or decided by a Panel, all communications provided for under these Rules shall be deemed to have been made:

(i) if delivered by telecopy or facsimile transmission, on the date shown on the confirmation of transmission; or

(ii) if by postal or courier service, on the date marked on the receipt; or

(iii) if via the Internet, on the date that the communication was transmitted, provided that the date of transmission is verifiable.

(g) Except as otherwise provided in these Rules, all time periods calculated under these Rules to begin when a communication is made shall begin to run on the earliest date that the communication is deemed to have been made in accordance with Paragraph 2(f).

(h) Any communication by

(i) a Panel to any Party shall be copied to the Provider and to the other Party;

(ii) the Provider to any Party shall be copied to the other Party; and

(iii) a Party shall be copied to the other Party, the Panel and the Provider, as the case may be.

(i) It shall be the responsibility of the sender to retain records of the fact and circumstances of sending, which shall be available for inspection by affected parties and for reporting purposes.

(j) In the event a Party sending a communication receives notification of non-delivery of the communication, the Party shall promptly notify the Panel (or, if no Panel is yet appointed, the Provider) of the circumstances of the notification. Further proceedings concerning the communication and any response shall be as directed by the Panel (or the Provider).

3. The Complaint

(a) Any person or entity may initiate an administrative proceeding by submitting a complaint in accordance with the Process and these Rules to any Provider approved by auDA (Due to capacity constraints or for other reasons, a Provider's ability to accept complaints may be suspended at times. In that event, the Provider shall refuse the submission. The person or entity may submit the complaint to another Provider.)

(b) The complaint shall be submitted in hard copy and (except to the extent not available for annexes) in electronic form and shall:

(i) Request that the complaint be submitted for decision in accordance with the Policy and these Rules;

(ii) Provide the name, postal and e-mail addresses, and the telephone and fax numbers of the Complainant and of any representative authorized to act for the Complainant in the administrative proceeding;

(iii) Specify a preferred method for communications directed to the Complainant in the administrative proceeding (including person to be contacted, medium, and address information) for each of (A) electronic-only material and (B) material including hard copy;

(iv) Designate whether the Complainant elects to have the dispute decided by a single-member or a three-member Panel and, in the event the Complainant elects a three-member Panel, provide the names and contact details of three candidates to serve as one of the Panelists (these candidates may be drawn from any auDA-approved Provider's list of panelists);

(v) Specify the domain name(s) that is/are the subject of the complaint;

(vi) Identify the Registrar(s) to whom the Complainant applied to have the domain name(s) registered or renewed;

(vii) Describe, in accordance with the Process, the grounds on which the complaint is made. (The description should discuss any aspects of the Process that are applicable. The description shall comply with any word or page limit set forth in the Provider's Supplemental Rules.);

(viii) Specify, in accordance with the Process, the remedies sought;

(ix) Identify any other legal proceedings that have been commenced or terminated in connection with or relating to any of the domain name(s) that are the subject of the complaint;

(x) State whether a copy of the complaint, together with the cover sheet as prescribed by the Provider's Supplemental Rules, has been sent or transmitted to the Registrar, in accordance with [Paragraph 2\(b\)](#);

(xi) State that the Complainant will submit, with respect to any challenges to a decision in the administrative proceeding canceling or transferring the domain name, to the jurisdiction of the courts in at least one specified Mutual Jurisdiction;

(xiii) Conclude with the following statement followed by the signature of the Complainant or its authorized representative:

"Complainant agrees that its claims and remedies concerning the registration of the domain name, the dispute, or the dispute's resolution shall be solely against the Registrar and waives all such claims and remedies against (a) the dispute-resolution provider and panelists, except in the case of deliberate wrongdoing, (b) the registrar, (c) the registry operator, and (d) the .au Domain

Administration Limited, as well as their directors, officers, employees, and agents."

(xiv) Annex any documentary or other evidence, including a copy of the policy applicable to the domain name(s) in dispute and any name, trademark or service mark registration upon which the complaint relies, together with a schedule indexing such evidence.

(c) The complaint may relate to more than one domain name, provided that the domain names have been applied to be registered or renewed by the same domain name holder.

4. Notification of Complaint

(a) The Provider shall review the complaint for administrative compliance with the Process and these Rules and, if in compliance, shall forward the complaint (together with the explanatory cover sheet prescribed by the Provider's Supplemental Rules) to the Registrar, in the manner prescribed by Paragraph 2(a), within three (3) calendar days following receipt of the fees to be paid by the Complainant in accordance with Paragraph 19.

(b) If the Provider finds the complaint to be administratively deficient, it shall promptly notify the Complainant and the Registrar of the nature of the deficiencies identified. The Complainant shall have five (5) calendar days within which to correct any such deficiencies, after which the administrative proceeding will be deemed withdrawn without prejudice to submission of a different complaint by the Complainant.

(c) The date of commencement of the administrative proceeding shall be the date on which the Provider completes its responsibilities under Paragraph 2(a) in connection with forwarding the Complaint to the Registrar.

(d) The Provider shall immediately notify the Complainant, the Registrar, the Registry and auDA of the date of commencement of the administrative proceeding.

5. The Response

(a) No later than twenty (20) days after the date upon which notice is given or deemed to have been given under Paragraph 2 the Registrar may submit a response to the Provider.

(b) The response shall be submitted in hard copy and (except to the extent not available for annexes) in electronic form and shall:

(i) Respond specifically to the statements and allegations contained in the complaint and include any and all bases for the Registrar to refuse registration or renewal of the disputed domain name (This portion of the response shall comply with any word or page limit set forth in the Provider's Supplemental Rules.);

(ii) Provide the name, postal and e-mail addresses, and the telephone and telefax numbers of the Registrar and of any representative authorized to act for the Registrar in the administrative proceeding;

(iii) Specify a preferred method for communications directed to the Registrar in the administrative proceeding (including person to be contacted, medium, and address information) for each of (A) electronic-only material and (B) material including hard copy;

(iv) If the Complainant has elected a single-member panel in the Complaint (see Paragraph 3(b)(iv)), state whether the Registrar elects instead to have the dispute decided by a three-member panel;

(v) If either the Complainant or Registrar elects a three-member Panel, provide the names and contact details of three candidates to serve as one of the Panelists (these candidates may be drawn from any auDA-approved Provider's list of panelists);

(vi) Identify any other legal proceedings that have been commenced or terminated in connection with or relating to any of the domain name(s) that are the subject of the complaint;

(vii) State that a copy of the response has been sent or transmitted to the Complainant, in accordance with Paragraph 2(b); and

(viii) Annex any documentary or other evidence upon which the Registrar relies, together with a schedule indexing such documents.

(c) If the Complainant has elected to have the dispute decided by a single-member Panel and the Registrar elects a three-member Panel, the Registrar shall be required to pay one-half of the applicable fee for a three-member Panel as set forth in the Provider's Supplemental Rules. This payment shall be made together with the submission of the response to the Provider. In the event that the required payment is not made, the dispute shall be decided by a single-member Panel.

(d) At the request of the Registrar, the Provider may, in exceptional cases, extend the period of time for the filing of the response. The period may also be extended by written stipulation between the Parties, provided the stipulation is approved by the Provider.

(e) If a Registrar does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint.

6. Appointment of the Panel and Timing of Decision

(a) Each Provider shall maintain and publish a publicly available list of panelists and their qualifications.

(b) If neither the Complainant nor the Registrar has elected a three-member Panel (Paragraphs 3(b)(iv) and 5(b)(iv)), the Provider shall appoint, within five (5)

calendar days following receipt of the response by the Provider, or the lapse of the time period for the submission thereof, a single Panelist from its list of panelists. The fees for a single-member Panel shall be paid entirely by the Complainant.

(c) If either the Complainant or the Registrar elects to have the dispute decided by a three-member Panel, the Provider shall appoint three Panelists in accordance with the procedures identified in Paragraph 6(e). The fees for a three-member Panel shall be paid in their entirety by the Complainant, except where the election for a three-member Panel was made by the Registrar, in which case the applicable fees shall be shared equally between the Parties.

(d) Unless it has already elected a three-member Panel, the Complainant shall submit to the Provider, within five (5) calendar days of communication of a response in which the Registrar elects a three-member Panel, the names and contact details of three candidates to serve as one of the Panelists. These candidates may be drawn from any auDA-approved Provider's list of panelists.

(e) In the event that either the Complainant or the Registrar elects a three-member Panel, the Provider shall endeavor to appoint one Panelist from the list of candidates provided by each of the Complainant and the Registrar. In the event the Provider is unable within five (5) calendar days to secure the appointment of a Panelist on its customary terms from either Party's list of candidates, the Provider shall make that appointment from its list of panelists. The third Panelist shall be appointed by the Provider from a list of five candidates submitted by the Provider to the Parties, the Provider's selection from among the five being made in a manner that reasonably balances the preferences of both Parties, as they may specify to the Provider within five (5) calendar days of the Provider's submission of the five-candidate list to the Parties.

(f) Once the entire Panel is appointed, the Provider shall notify the Parties of the Panelists appointed and the date by which, absent exceptional circumstances, the Panel shall forward its decision on the complaint to the Provider.

7. Impartiality and Independence

A Panelist shall be impartial and independent and shall have, before accepting appointment, disclosed to the Provider any circumstances giving rise to justifiable doubt as to the Panelist's impartiality or independence. If, at any stage during the administrative proceeding, new circumstances arise that could give rise to justifiable doubt as to the impartiality or independence of the Panelist, that Panelist shall promptly disclose such circumstances to the Provider. In such event, the Provider shall have the discretion to appoint a substitute Panelist.

8. Communication Between Parties and the Panel

No Party or anyone acting on its behalf may have any unilateral communication with the Panel. All communications between a Party and the Panel or the Provider shall be made to a case administrator appointed by the Provider in the manner prescribed in the Provider's Supplemental Rules.

9. Transmission of the File to the Panel

The Provider shall forward the file to the Panel as soon as the Panelist is appointed in the case of a Panel consisting of a single member, or as soon as the last Panelist is appointed in the case of a three-member Panel.

10. General Powers of the Panel

(a) The Panel shall conduct the administrative proceeding in such manner as it considers appropriate in accordance with the Process and these Rules.

(b) In all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case.

(c) The Panel shall ensure that the administrative proceeding takes place with due expedition. It may, at the request of a Party or on its own motion, extend, in exceptional cases, a period of time fixed by these Rules or by the Panel.

(d) The Panel shall determine the admissibility, relevance, materiality and weight of the evidence.

(e) A Panel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Process and these Rules.

11. Language of Proceedings

(a) Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Application and Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

(b) The Panel may order that any documents submitted in languages other than the language of the administrative proceeding be accompanied by a translation in whole or in part into the language of the administrative proceeding.

12. Further Statements

In addition to the complaint and the response, the Panel may request or permit, in its sole discretion, further statements or documents from either of the Parties.

13. In-Person Hearings

There shall be no in-person hearings (including hearings by teleconference, videoconference, and web conference), unless the Panel determines, in its sole discretion and as an exceptional matter, that such a hearing is necessary for deciding the complaint.

14. Default

(a) In the event that a Party, in the absence of exceptional circumstances, does not comply with any of the time periods established by these Rules or the Panel, the Panel shall proceed to a decision on the complaint.

(b) If a Party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, these Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

15. Panel Decisions

(a) A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Process, these Rules and any rules and principles of law that it deems applicable.

(b) In the absence of exceptional circumstances, the Panel shall forward its decision on the complaint to the Provider within fourteen (14) days of its appointment pursuant to Paragraph 6.

(c) In the case of a three-member Panel, the Panel's decision shall be made by a majority.

(d) The Panel's decision shall be in writing, provide the reasons on which it is based, indicate the date on which it was rendered and identify the name(s) of the Panelist(s).

(e) Panel decisions and dissenting opinions shall normally comply with the guidelines as to length set forth in the Provider's Supplemental Rules. Any dissenting opinion shall accompany the majority decision. If the Panel concludes that the dispute is not within the scope of Paragraph 4(a) of the Policy, it shall so state. If after considering the submissions the Panel finds that the complaint was brought in bad faith, for example was brought primarily to harass the Registrar, the Panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.

16. Communication of Decision to Parties

(a) Within three (3) calendar days after receiving the decision from the Panel, the Provider shall communicate the full text of the decision to each Party, the Registry, and auDA. The concerned Registrar shall immediately communicate to the Complainant, the Provider, and auDA the date for the implementation of the decision in accordance with the Policy.

(b) Except if the Panel determines otherwise (see Paragraph 4(g) of the Process), the Provider shall publish the full decision and the date of its implementation on a publicly accessible web site. In any event, the portion of any decision determining a complaint to have been brought in bad faith (see Paragraph 15(e) of these Rules) shall be published.

17. Settlement or Other Grounds for Termination

(a) If, before the Panel's decision, the Parties agree on a settlement, the Panel shall terminate the administrative proceeding.

(b) If, before the Panel's decision is made, it becomes unnecessary or impossible to continue the administrative proceeding for any reason, the Panel shall terminate the administrative proceeding, unless a Party raises justifiable grounds for objection within a period of time to be determined by the Panel.

18. Effect of Court Proceedings

(a) In the event of any legal proceedings initiated prior to or during an administrative proceeding in respect of a domain name dispute that is the subject of the complaint, the Panel shall have the discretion to decide whether to suspend or terminate the administrative proceeding, or to proceed to a decision.

(b) In the event that a Party initiates any legal proceedings during the pendency of an administrative proceeding in respect of a domain name dispute that is the subject of the complaint, it shall promptly notify the Panel and the Provider. See Paragraph 8 above.

19. Fees

(a) The Complainant shall pay to the Provider an initial fixed fee, in accordance with the Provider's Supplemental Rules, within the time and in the amount required. A Registrar electing under Paragraph 5(b)(iv) to have the dispute decided by a three-member Panel, rather than the single-member Panel elected by the Complainant, shall pay the Provider one-half the fixed fee for a three-member Panel. See Paragraph 5(c). In all other cases, the Complainant shall bear all of the Provider's fees, except as prescribed under Paragraph 19(d). Upon appointment of the Panel, the Provider shall refund the appropriate portion, if any, of the initial fee to the Complainant, as specified in the Provider's Supplemental Rules.

(b) No action shall be taken by the Provider on a complaint until it has received from Complainant the initial fee in accordance with Paragraph 19(a).

(c) If the Provider has not received the fee within ten (10) calendar days of receiving the complaint, the complaint shall be deemed withdrawn and the administrative proceeding terminated.

(d) In exceptional circumstances, for example in the event an in-person hearing is held, the Provider shall request the Parties for the payment of additional fees, which shall be established in agreement with the Parties and the Panel.

20. Exclusion of Liability

Except in the case of deliberate wrongdoing, neither the Provider nor a Panelist shall be liable to a Party for any act or omission in connection with any administrative proceeding under these Rules.

21. Amendments

The version of these Rules in effect at the time of the submission of the complaint to the Provider shall apply to the administrative proceeding commenced thereby. These Rules may not be amended without the express written approval of auDA.

Adapted from the auDRP.

auDA Dispute Resolution Working Group
Membership

Chair

Philip Argy
Senior Partner
Mallesons Stephen Jaques
(Member, auDA Name Policy Advisory Panel and auDA Competition Model Advisory Panel)

Members

Ewan Brown
Executive Director
Small Enterprise Telecommunications Centre Ltd

Alan Chalmers
Numbering Team
Australian Communications Authority
(Member, auDA Name Policy Advisory Panel and auDA Competition Model Advisory Panel)

Patrick Fair Partner Baker & McKenzie	<i>proxy: Robert Walker Partner Baker & McKenzie</i>
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Peter Knight
Partner
Clayton Utz

David Lieberman
Special Counsel
Blake Dawson Waldron
(Co-Chair, auDA Competition Model Advisory Panel)

Craig Ng
Partner
Maddock Lonie & Chisholm
(Legal Adviser to auDA)

Daniel Rechtman
Consultant Solicitor to Melbourne IT
(Member, auDA Name Policy Advisory Panel)

Derek Whitehead
Director, Information Resources
Swinburne University of Technology
(Chair, auDA Name Policy Advisory Panel)