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auDA INDUSTRY COMPETITION ADVISORY PANEL

FINAL REPORT TO THE auDA BOARD

15 October 2008

SUMMARY

The Panel recommendations to the Board are summarised below, with explanatory text included in the body of the report.

The Panel recommends:-

Recommendation 1:

The Panel recommends that the existing competitive registry model should be retained with future licence terms to be increased from the current 4 year licence term to either a 6 or 8 year licence term.

Recommendation 2:

The Panel recommends that auDA negotiates with the current registry operator with a view to extending the current registry licence term by up to 4 years. Such an extension should be subject to agreement being reached on (a) a suitable pricing model and (b) the inclusion of all items that auDA would require in a new license.

Recommendation 3:

The Panel recommends that if auDA and the current registry operator cannot reach an agreement as per Recommendation 2, the registry licence should be opened for public tender for a new term commencing in July 2010 and for a period as determined in Recommendation 1.

Recommendation 4:

The Panel recommends that auDA should amend the requirements for registrar accreditation from a requirement to be registered for the Goods and Services Tax (GST) to a requirement that all overseas accredited registrars must (i) be an incorporated company in their own jurisdiction (ii) obtain an ARBN from ASIC and (iii) obtain an ABN from the ATO.

Recommendation 5:

The Panel recommends that auDA should work with the Australian Internet community to develop mechanisms to ensure registrars have fair and equitable access to the registry so that the ownership of a number of registrar accreditations does not create an unfair market advantage .

Recommendation 6:

The Panel recommends no changes to the structure of the application and yearly fees for registrar accreditation.

Recommendation 7:

The Panel recommends that auDA work with the Australian Internet community to compile a list of registrar functions that would be subject to regulation by auDA.

Recommendation 8:

The Panel recommends that subject to the introduction of an independent appeals process, auDA should develop with the Australian Internet community a formalised system of penalties for breaches by registrars.

1. BACKGROUND

In April 2008 the auDA Board established the Industry Competition Advisory Panel to:

- review auDA's competition model for the Australian domain name industry
- provide recommendations to the auDA board about what changes (if any) should be made to the competition model.

1.2 The Panel considered the following issues:

- the method of registry operator selection/appointment post-2010
- the policy and process for registrar accreditation
- the status and regulation of resellers
- the policy and process for transfers between registrars/resellers.

1.3 Full text of the Panel's Terms of Reference, a list of Panel members and minutes of Panel meetings to date, are available on the auDA website at <http://www.auda.org.au/icap/icap-index/>.

2. PUBLIC CONSULTATION

2.1 The Panel released an Issues Paper in June 2008 which set out the current situation and invited comment on suggestions and options for change. The Panel received five submissions, which are archived on the auDA website at <http://www.auda.org.au/icap/icap-index/>.

2.2 The Panel's draft recommendations to the auDA Board on the issues under

consideration were released for public consultation on 9 September 2008. Five submissions were received, which are archived on the auDA website at <http://www.auda.org.au/icap/icap-index/>.

The submissions received were generally supportive of the Panel's draft recommendations. The small number of public submissions suggests to the Panel that the Australian domain name community has few concerns about the current competition model, and that it is seen to be providing stability, security, plus reasonable user choice in areas of most interest to registrants. However, the Panel believes the utility of the DNS can be improved by a number of changes or modifications which address the ongoing development of the market. In recommending these changes, the Panel has been conscious of the heightened awareness and need for security and stability of the .au DN system.

3. GLOSSARY

<i>Term</i>	<i>Definition</i>
2LD	Second Level Domain, ie. a name at the second level of the .au domain name hierarchy (eg. com.au)
3LD	Third Level Domain, ie. a name at the third level of the .au domain name hierarchy (eg. domainname.com.au)
auDA	.au Domain Administration Ltd – the .au domain administrator
ccTLD	Country Code Top Level Domain (eg. .au, .uk)
Domain monetisation	Registering a domain name in order to earn revenue from click-through advertising
DNS	Domain Name System
ICANN	Internet Corporation for Assigned Names and Numbers – the global DNS administrator
gTLD	Generic (or Global) Top Level Domain (eg. .com, .biz)
GST	Goods and Services Tax
Registrant	An entity or individual that holds a domain name licence
Registrar	An entity that registers domain names for registrants and is accredited by auDA
Registry operator	An entity that maintains the authoritative 2LD nameservers and the database of domain name registrations
Reseller	An entity that acts as an agent for a registrar
RFT	Request For Tender
RLA	Registry Licence Agreement

4. DRAFT RECOMMENDATIONS

Issue 1: The method of registry operator selection/appointment post 2010

Current situation

4.1 The .au domain is divided into a number of different 2LDs (eg. com.au, org.au, gov.au etc). Whilst auDA has direct management and control of the .au TLD, the 2LDs are run by a separate, private registry operator. This is in contrast to the approach of many other ccTLDs, where the domain administrator and the registry operator are one and the same. In .au, it has been considered desirable to maintain a clear separation of policy and operations, to ensure that auDA's ability to act as an independent industry regulator is not compromised.

4.2 The current .au industry model provides for competition at the registry level in two ways:

- competition in the selection of registry operator(s), through an open tender process
- competition between multiple 2LD registry operators (eg. the registry operator for com.au competing for domain name registration sales against the registry operator for net.au).

4.3 Whilst the model provides for multiple 2LD registry operators, the registry tender processes held in 2001 and 2005 demonstrated that a single registry for all 2LDs was the most efficient option given market conditions at the time.

4.4 The current registry operator, AusRegistry Pty Ltd, holds a four year Registry Licence Agreement (RLA) with auDA, due to expire on 30 June 2010. Under the RLA, AusRegistry:

- charges a per domain name fee to registrars which varies according to 2LD and includes a reducing sliding scale based on cumulative number of domain names registered in each 2LD
- paid a one-off "sign-on" fee on being awarded the licence, and also pays an annual registry licence fee to auDA calculated according to the number of domain names registered in each 2LD.

4.5 Domain name registrations in .au have been growing by an average of 21% per annum since 2002. Registry prices have steadily reduced in line with the increasing volume of registrations. Since 2002, the registry price of com.au domain names has reduced from \$112.00 to \$20.35 (for a two year registration), which is now roughly on par with .com pricing (USD7.00 for a one year registration) despite the vast difference in volume (ie. 75m .com domains compared with 1m .au domains).

Submissions to the Issues Paper and draft recommendations

4.6 The Panel notes that there is general support for the retention of the current competitive registry model (periodic open tenders), and an extension of the current

term (4 years) of the registry licence which should result in improved efficiency and stability, and reduce registry costs. The Panel also notes a general acceptance that a change in the registry operator is likely to result in a significant cost burden on registrars.

Views of the Panel

4.7 The Panel's view is that making auDA the registry operator is not justified given that the current model has resulted in significant growth in and reducing prices for .au domain names. The Panel endorses the fundamental principle of the separation of policy and operations.

4.8 The Panel believes that there would be significant security and stability benefits and an increased likelihood of further price reductions if the current licence term of 4 years were increased to a period of either 6 or 8 years with the inclusion of regular software and technology refresh reviews during the licence period.

4.9 Given that the current version of the registry has only been operational for 12 months the Panel's view is that it would be appropriate for auDA and AusRegistry to renegotiate the current registry licence with a view to extending the term by up to 4 years subject to agreement being reached on a pricing model and the inclusion of all items that auDA would require in a new, longer period licence. The Panel does not consider that an extended period to the present licence should necessarily match the period of future licences.

4.10 In the event that an agreement cannot be reached with AusRegistry. The Panel believes that auDA should go to tender for a new 6 or 8 year registry licence commencing in July 2010.

Recommendation 1:

The Panel recommends that the existing competitive registry model should be retained with future licence terms to be increased from the current 4 year licence term to either a 6 or 8 year licence term.

Recommendation 2:

The Panel recommends that auDA negotiates with the current registry operator with a view to extending the current registry licence term by up to 4 years. Such an extension should be subject to agreement being reached on (a) a suitable pricing model and (b) the inclusion of all items that auDA would require in a new license.

Recommendation 3:

The Panel recommends that if auDA and the current registry operator cannot reach an agreement as per Recommendation 2, the registry licence should be opened for public tender for a new term commencing in July 2010 and for a period as determined in Recommendation 1.

Issue 2: The accreditation and regulation of registrars

Current situation

4.11 The current .au industry model allows for multiple registrars who have a direct technical connection to the registry and compete in the marketplace to provide customer sales and support services to registrants. Registrars are accredited by auDA and operate under a Registrar Agreement which requires compliance with auDA policies and an industry Code of Practice. The purpose of the accreditation process is to ensure that registrars are able to perform policy compliance checks on domain name applications and provide adequate customer support services, as well as being able to connect technically with the registry.

4.12 Accredited registrars pay an annual fee to auDA of \$3,300 and there is also a \$2,200 non-refundable accreditation application fee. Registrars are free to set their own domain name fees to resellers and retail customers; as at April 2008, the registrar retail price of a two year com.au domain name registration ranged from \$27.95 to \$140.00.

4.13 There are currently 27 accredited registrars, and the top four registrars hold a combined market share of approximately 60%. In 2006-2007, auDA received 48 formal complaints about accredited registrars (of which 16 complaints were under auDA's jurisdiction).

Submissions to the Issues Paper and draft recommendations

4.14 The Panel notes that there is consensus amongst the submissions in respect to some of the issues for consideration and significant disagreement in respect to others. The Panel has carefully considered each of the issues and taken into account the submissions along with input from the registrar members of the Panel.

Views of the Panel

Accreditation of non-Australian registrars

4.15 The Panel's believes that it would not be appropriate to restrict registrar accreditation to Australian entities. However, the Panel's view is that overseas entities should be required to register with ASIC and the ATO to trade in Australia. This would have the effect of making them subject to Australian laws and regulations including the requirement to collect and remit GST subject to turnover.

Recommendation 4:

The Panel recommends that auDA should amend the requirements for registrar accreditation from a requirement to be registered for the Goods and Services Tax (GST) to a requirement that all overseas accredited registrars must (i) be an incorporated company in their own jurisdiction (ii) obtain an ARBN from ASIC and (iii) obtain an ABN from the ATO.

Multiple registrar accreditations

4.16 The Panel believes that in order to ensure fair competition among registrars there should be restrictions to prevent accredited registrars controlled by the same person or entity from having multiple access channels to the registry.

Recommendation 5:

The Panel recommends that auDA should work with the Australian Internet community to develop mechanisms to ensure registrars have fair and equitable access to the registry so that the ownership of a number of registrar accreditations does not create an unfair market advantage .

Registrar fees

4.17 The Panel's view is that it is not necessary at this stage to make changes to the registrar accreditation fee structure.

Recommendation 6:

The Panel recommends no changes to the structure of the application and yearly fees for registrar accreditation.

Registrar services

4.18 The Panel believes that there should be a defined list of registrar services and functions and that the provision of those should be subject to the registrar agreement or specific policy. The Panel's view is that the provision of a renewal notice is clearly one such service and that registrars should be required to meet a minimum standard in respect thereof.

Recommendation 7:

The Panel recommends that auDA work with the Australian Internet community to compile a list of registrar functions that would be subject to regulation by auDA.

Registrar penalties

4.19 The Panel notes that auDA is currently working on an independent appeals process under which registrars would be able to seek a review of certain decisions made by auDA. The panel believes that subject to such a process it is appropriate for auDA to have the power to impose penalties for breaches of the registrar agreement, policy or code of conduct.

Recommendation 8:

The Panel recommends that subject to the introduction of an independent appeals process, auDA should develop with the Australian Internet community a formalised system of penalties for breaches by registrars.

Other registrar activities

4.20 The Panel believes that the current policy on the registration of domain names by registrars on their own behalf is satisfactory. The Panel believes that auDA should work to ensure fairness and transparency in the provision of registrar services and access to information that may provide a market advantage however makes no formal recommendation.

Issue 3: The status and regulation of resellers

Current situation

4.21 Many registrars use sales agents known as resellers. Resellers are not accredited by auDA and do not have a direct technical connection to the registry. Under the Registrar Agreement, registrars must notify auDA when they appoint a reseller, and must ensure that their resellers comply with auDA policies and the industry Code of Practice. There are currently approximately 2,900 resellers notified to auDA.

4.22 auDA's process for handling complaints about resellers is to deal with the reseller via their registrar, ie. the registrar is responsible for ensuring that the reseller responds to the complaint and takes any necessary corrective action. In 2006-2007, auDA received 43 formal complaints about resellers (of which 26 complaints were under auDA's jurisdiction) (refer to Attachment B).

4.23 When the current industry model was introduced in 2002, registrars were required to pay a \$250 fee for every reseller they notified to auDA. The fee placed an administrative burden on auDA and registrars, and acted as a deterrent to notifying auDA of reseller appointments. The fee was abolished in 2003 following a public policy review.

Submissions to the Issues Paper and draft recommendations

4.24 The Panel notes general agreement to the principle of working to increase the involvement and recognition of resellers. There are differing views to the question of including reseller information in whois.

Views of the Panel

4.25 The Panel does not believe that a formalisation of the relationship between resellers and auDA is necessary.

The Panel encourages auDA and registrars to put in place mechanisms to ensure that resellers are aware of the role of auDA and have access to information that will enable them to provide accurate advice to their customers.

Issue 4: The policy and process for transfers between registrars/resellers

Current situation

4.26 The ability of registrants to transfer the management of their domain name from one registrar to another is a key component of a competitive market. The Transfers (Change of Registrar of Record) Policy (2004-03) stipulates that a registrant may transfer their domain name at any time, and the losing registrar must not charge a transfer fee or otherwise impede the transfer process. Refer to <http://www.ada.org.au/policies/ada-2003-03/>.

Submissions to the Issues Paper and draft recommendations

4.27 The Panel notes that there is general agreement to maintain the status quo.

View of the Panel

4.28 The Panel makes no recommendation regarding changes to the transfer policy or the password recovery process.