Ms Jo Lim,
Secretariat,
auDA Name Policy Advisory Panel,
Australian Domain Administration Limited,
GPO Box 1545P,
MELBOURNE VICTORIA 3001

Via email jo.lim@auda.org.au

Dear Ms Lim,

Re: Submission to Name Policy Advisory Panel

Further to the Second Public Consultation Report released by the Name Advisory Panel, (online at http://www.auda.org.au/panel/name/papers/publicreport2.html), Electronic Frontiers Australia Incorporated (www.efa.org.au) ("EFA") makes the following submission.

Generally, EFA supports the recommendations of the Panel, particularly in view of the process of consultation involving a number of industry participants, Internet associations and end-users. However, EFA is concerned that commercial and regulatory interests should not overshadow the aspirations of end users to have their choice of domain name. To this end, EFA would oppose the following recommendations:

(a) Recommendation 3.1.3(e)(i) does not distinguish between two different types of speculation in domain names – in our view there is an important distinction to be made between applying for a name with the intention of on-selling it to a particular owner (e.g. woolworths.com.au) and to a potential class of owner (e.g. widgets.com.au). The former may be considered an intrusion on the rights of a true owner, the latter is by no means fraudulent and should be permitted. As the WIPO panel ruled in *John Fairfax Publications Pty Ltd v Domain Names 4U* (http://arbiter.wipo.int/domains/decisions/html/2000/d2000-1403.html) "registering generic names, even with the sole intent of reselling them, is a legitimate business activity".

(b) Recommendation 4.3.3 is absurd, given that vulgarity is no longer unlawful (following a series of leading cases in several States). This recommendation shows both social and generational bias, and ignores that certain "objectionable" names may nonetheless have an appropriate context. In any event, there is no community consensus as to whether there is a list of "objectionable" words and if so what permutations and variations on these should be prohibited. This recommendation is flawed insofar as it adds a validation process for registrations without giving a criterion that is unambiguous and supported across existing 2LDs. While the report opines that "the use of objectionable terms is regulated in other social contexts", it does not acknowledge that modern criminal law does not regulate mere words, and even the Australian Broadcasting Authority's controls over Internet Content does not seek to place so-called "objectionable" words behind any Restricted Access System.

To clarify this point, the Office of Film and Literature Classification has provided guidelines for classification of material (including Internet Content) which is online at http://www.oflc.gov.au/PDFs/FilmVid_Guidelines.pdf :

"(i) Coarse language:

At G level, this might include 'bloody' or 'bugger'.

At PG level, it might include 'shit'.

At M, it includes 'fuck'."

(c) The proposed identification requirements for the id.au registry are unduly onerous, requiring proof of identity by collateral evidence rather than simply a declaration. This contrasts unfavourably with the requirements for registration of .com.au names, which may be done on the production of an ABN number. Accordingly, EFA would submit that declaration without the need for collateral evidence should be permitted for registrations within id.au.

Finally, while EFA accepts that adherence to a Uniform Dispute Resolution Policy is preferable to resorting to traditional legal causes of action in domain name disputes, such a policy should not give commercial interests primacy over personal interests. EFA would support a UDRP provided that the basis for decision was bona fides rather than existence of commercial registration.

Yours faithfully,
Kimberley Heitman,
Chairman, Electronic Frontiers Australia Inc,
www.efa.org.au
21st March, 2001