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auDA
107 Faraday Street
Carlton VIC 3053
AUSTRALIA
By email: jo.lim@auda.org.au

Attention Jo Lim, Chief Policy Officer

Dear Ms Lim

TELECOM CORPORATION OF NEW ZEALAND LIMITED
Submissions to auDA Name Policy Review Panel regarding domain name eligibility and allocation policy rules for open TLDs

Thank you for the opportunity to make submissions regarding this policy review.

Telecom Corporation of New Zealand Limited is the major telecommunications and internet service provider in New Zealand, and it has a significant presence in Australia through various subsidiaries including Telecom Corporation of New Zealand Australia Limited and AAPT Limited. Our business is multifaceted and includes telephone services, ISP services and IT services. We currently hold a large number of domain names in a variety of name spaces including .com, .net, .nz and .au.

Opening up .au to non-Australian registrants

In our view, entities with legitimate business interests in the Australian market should be able to register domain names in the **.au** space, regardless of their country of origin. The current policy does not adequately provide for this.

We challenge the view that internet users expect that the registrant of an **.au** domain is "Australian". The current exceptions to the general rule that registrants must be Australian already provide formalised reasons for internet users to doubt that an **.au** domain actually represents only an Australian entity. The registrant of an **.au** domain name may have no greater link to Australia than the fact that its products are available to Australian consumers. Internet users are familiar with the practice of brand owners holding corresponding domain names in various spaces of interest, regardless of the brand owner's country of origin, and they are also familiar with other ccTLDs which do not have rigid policy requirements relating to the country of origin of domain name registrants. We therefore submit that the view that the **.au** space is currently seen to indicate only Australian entities is incorrect.

Regardless of whether or not the **.au** space is seen to indicate that a domain name registrant is an Australian entity, we believe that the auDA Policy Review Panel should take this opportunity to dispense with the stated policy requirement that **.au** registrants be Australian, and formally open up the **.au** space to non-Australian registrants. All sorts of entities have legitimate business and other interests in Australia, and corresponding legitimate reasons for wanting to register and use **.au** domain names.

Verification of registrant identity

Opening up the **.au** space to non-Australian registrants need not negatively impact on the integrity of the data used to identify registrants. Perceived difficulties in verifying applicants' identities should not prevent the **.au** space from being formally opened up to non-Australian applicants.

Other countries have publicly available databases which may be used to verify registrants' details. Registries could identify suitable databases from which they will accept data, such as the official on-line databases of foreign companies' registries. Requiring registrars to check registrant's identification details against the authoritative database from the relevant jurisdiction would be no more onerous than checking the ASIC database, once the practice has been established. Where access is not available over the internet to such databases, registrants could be permitted to warrant their identity to the registrar, and be required to provide confirmatory documentation by a set deadline.

However, in our view the better alternative is to presume that a registrant's details are correct on application and that auDA adopt a complimentary power to sanction a registrant where this is not so. In the **.nz** space, there is a presumption that registrant details are accurate, and the Domain Name Commissioner can deregister **.nz** domain names and sanction the registrar where a registrant has failed to ensure that its registrar holds accurate registrant details. This approach allows for the identity of a **.nz** registrant to be queried, if the need arises putting the onus on registrants and registrars to ensure that they keep registrant details accurate and up to date. Registrars therefore need not independently verify

registrant details every time a new domain name is registered. We have queried contact and ownership information in relation to **.nz** domain names before and the Commissioner has been very effective in resolving our concerns. This open approach streamlines the registration process, reducing costs and the time taken to register **.nz** domain names, while providing an adequate and practical avenue for addressing instances of illegitimate domain name registration. We consider that the registrars and registrants in the **.au** space would be well served by adopting a similar approach.

Eligibility criteria

The question of opening up **.au** to non-Australian registrants is inextricably linked to issues relating to eligibility criteria for domain names. As noted above, we do not consider that the **.au** ccTLD indicates Australian registrants. We also consider that there are sound commercial reasons for **.au** domain names to be held by entities other than those eligible to hold **.au** domain names under the current policy.

For good practical reasons, many commercial entities use holding companies to manage ownership of trade marks, domain names, and other intellectual property. While **.au** domain names may not be "owned" by the registrant, for practical reasons they must be managed along with a company's other intellectual property. Where an IP holding company is not an Australian company, and is not eligible to register a business name in Australia or be registered as a foreign company trading in Australia, then the current **.au** eligibility policy creates difficulties. This is not only a problem for non-Australian entities. Australian entities may wish to structure their IP ownership in a similar way, using IP holding companies registered in other jurisdictions.

The fact that holding companies are often used to manage ownership of intellectual property, including domain names, casts doubt on the usefulness of adjusting the current policy to enable entities from countries with 'special' relationships with Australia, such as New Zealand, to register **.au** domain names. This suggestion would not assist an Australian (or New Zealand) company that chose to manage ownership of its intellectual property by way of a company registered in a third country which does not enjoy such a 'special' relationship. Further, this approach would fail to recognise that entities from many countries may have bona fide business interests in the Australian marketplace, and legitimate business reasons for registering and using **.au** domain names.

In the context of **.au** domain names, the current policy puts us in a position where we must choose to either establish an Australian IP holding company specifically for **.au** domain names, or file trade mark applications in the name of an otherwise ineligible IP holding company on which eligibility to register corresponding domain names can then be based. The former approach defeats the purpose of having a single consolidated IP ownership structure, and has tax implications. The latter option is costly, and results in uncertainty. For example, when a trade mark application is ultimately unsuccessful, or the resulting trade mark registration is susceptible to challenge and revocation, the corresponding domain name registration may become invalid. In today's business environment, that is an unacceptable risk.

The current eligibility policy has caused us to review our own internal policies regarding **.au** domain names, and has actually deterred us from registering **.au** domain names in some instances. We expect

that other Australian, and non-Australian, entities with legitimate commercial interests in the Australian market have been similarly affected. If the current policy was amended to allow **.au** domain names to be registered by any entity with a legitimate business interest in the Australian marketplace, regardless of the entity's country of origin, then this would make the space more appealing from a commercial perspective. This approach would not dilute the "Australian" nature of the **.au** space any more than it has been diluted by the exceptions already provided for in the current policy.

Allocation criteria for domain names

We support the consolidation of the different 'close and substantial connection' types, and the 'exact match, abbreviation and acronym' criteria, in to a single 'general connection or good faith desire to use' warranty that the domain name is connected to the registrant in some way, or that the registrant has a genuine desire to use.

In some instances, difficulties in interpreting the present allocation criteria have resulted in the registration of unnecessary business names and trade marks, solely to eliminate the risk that the allocation rules have not been met. Permitting **.au** domain name registration on the basis of a 'general connection or good faith intention to use' warranty will allow for certainty and reduce business costs without necessarily impacting on the integrity of the **.au** space. The .nz space does not even require such a warranty, and it appears to work relatively well.

Domain name licence periods

We support synchronising the expiry dates of multiple domain names as it will greatly enhance our ability to manage domain name renewals, thereby minimising risk.

Domain name licence transfers

We take this opportunity to comment on the recent changes to the policy on transfer of domain name licences. Our understanding is that the limitations on the free transfer of **.au** domain name licences are to ensure that **.au** domain names are not registered for the purpose of re-sale, as this is likely to result in squatting-type situations which add cost and inconvenience to legitimate would-be registrants. Our concern is that limitations on the free transfer of **.au** domain name licences have the unintended consequence of prohibiting transfers that may be required for legitimate business reasons. The recent policy changes broaden the range of circumstances in which domain name licences may be transferred, and better reflect the fact that there may be various legitimate business reasons for wishing to transfer **.au** domain name licences. However, we do not think that they go far enough in liberalising the **.au** domain name transfer regime.

Ideally, we would like the policy on domain name transfers to be further liberalised to enable the free transfer of domain name licences between entities with legitimate business interests in the transfer of the licence. We do not believe that this would give rise to an increase in squatting-type situations. Squatters would be precluded from validly registering **.au** domain names because they would not qualify under the eligibility and allocation criteria as discussed above, and this would become apparent when challenged.

For legitimate commercial reasons, it may sometimes be necessary for domain name licences to be transferred between parties in circumstances which do not clearly fall within the current transfer criteria. For example, where a party registers a **.au** domain name for its own legitimate purposes, but the domain name is incorrectly registered in the name of a staff member, distributor, licensee or agency. There are many other fact situations that could arise which are difficult to anticipate in advance, but which would not fall clearly within any specified transfer criteria.

The current transfer policy encourages parties to engineer 'disputes', so as to allow for Deeds of Settlement to be drawn up; or to prepare sales of other 'assets', so that **.au** domain name licences can be included and transferred as part of the sale. These contrivances allow for domain name licences to be transferred, but add to the cost and inconvenience of doing so. Freeing-up the transfer policy will enable increased efficiency in this area.

Conclusion

- There are sound commercial reasons for **.au** domain names to be held by entities other than those eligible to hold **.au** domain names under the current policy.

- Allowing **.au** domain names to be registered by any entity with a legitimate business interest in the Australian marketplace will make the **.au** space more appealing from a commercial perspective, as would moving to a single 'general connection or good faith desire to use' warranty.

- Options exist for addressing perceived difficulties in verifying applicants' identities, so these perceived difficulties should not prevent the opening up of the .au space to non-Australian registrants.

- The domain name transfer policy should be further liberalised to enable the free transfer of domain name licences between entities with legitimate business interests in the transfer of the licence. The current policy leads entities with legitimate commercial interests in the transfer of domain names to revert to contrivances if the circumstances do not clearly fall within the policy criteria.

- Enabling domain name licence renewal dates to be synchronised will allow entities with large domain name portfolios to manage their renewals more efficiently.

We will be pleased to discuss any of these points further, if required.

Yours faithfully

Linda Cox
Company Secretary
Telecom Corporation of New Zealand Limited