



.au Policy Review Panel
Forum
2018

Agenda for today

- **10:00am: Introduction**
- **Until 11:15am:** Overview of Australian domain names and key policy elements & discussion
- **11:15am - 11:30am** - Morning Tea Break
- **11:30am – 12:30pm:** Expanding the namespace
 - Introduction to Direct Registration
 - Consumer Protection
 - International issues
- **12:30pm – 1:30pm** - Lunch
- **1:30pm – 2:45pm** - Registrant Discussion Paper – detailed discussion
- **2:45pm - 3:00pm** - Afternoon Tea Break
- **3:00pm – 4:00pm** - Direct Registration Discussion – detailed discussion

Today's panel

- John Swinson, Chair of 2017 Policy Review Panel, and Partner, King & Wood Mallesons
- Paul Zawa, ACCC
- Narelle Clark, ACCAN
- Brett Fenton, Melbourne IT

We are all members of the 2017 auDA Policy Review Panel.

Today's session

What are you hoping to achieve from today?

What are we hoping to achieve from today?

What is .au Domain Administration (auDA)

auDA is the administrator of, and self-regulatory policy body for the .au country code Top Level Domain (.au ccTLD) and its associated second level domains



What is .au Domain Administration (auDA) cont..

auDA administers the .au domain under agreements with the Australian Government and the Internet Corporation for Assigned Names and Numbers (ICANN) for the benefit of the Australian Community

The core functions of auDA include:

- managing and promoting the operational stability and utility of the .au ccTLD;
- establishing the policy framework for the development and administration of the .au ccTLD;
- creation of 2LDs;
- establishing the rules for the registration of domain names; and
- rules for access to the registry.

The 2017 Policy Review Panel

- Who is on the Policy Review Panel?
- What is our role?
- Who do we report to?
- What are we looking at and why?
- The importance of public consultation.

The 2017 Policy Review Panel

Key Objectives

- Development an implementation policy for direct registration
- Reform the current suite of auDA Published Policies into four policies
 - Direct Registration
 - Registrant
 - Registrar
 - Complaints

Timeframe for delivery – 31 August 2018

The Domain Name System

- The domain name system (DNS) is a hierarchical system.
- The hierarchy is reflected in all domain names and is read right to left.
For example:
 - yourname.com.au.
- ICANN is the global body responsible for management of all addressing
- They delegate the management responsibility of the domain space below the root (.) and the ccTLD (.au)

The .au space

Domains	Usage
gov.au	For Commonwealth, state, territory and local government bodies.
asn.au	For incorporated associations, political parties, trade unions, sporting and special interest clubs.
com.au	For commercial entities, such as companies and businesses.
edu.au	For educational institutions registered at Commonwealth or state/territory government level.
id.au	For individuals who are Australian citizens or residents.
net.au	For commercial entities, such as companies and businesses.
org.au	For charities and non-profit organisations.

.au Structure

Levels of domains in .au.

.au

Top Level Domain

org.au

Second Level Domain

yourname.org.au

Third Level Domain

yourname.vic.edu.au

Fourth Level Domain

yourname.justice.nsw.gov.au

Fifth Level Domain

Fundamental Principles

Three fundamental principles that underpin the .au Domain Name registration system:

- no proprietary rights in a domain name
- no hierarchy of rights
- first come, first served

The Changing policy environment

- Policy formed and reviewed by stakeholder panels (or expert panels for very technical items like ISS)
- Panels form with a clear scope and make recommendations to the auDA board
- Board can accept or reject recommendations made, though most have been endorsed
- Early policy was far more restrictive and onerous than what exists today
 - Names needed to exactly match a business name
 - Couldn't sell or transfer a domain name (registrant to registrant)
 - Couldn't register a dictionary (generic) word
 - Couldn't register a geographic word
- Over the past 15 years have increased flexibility in the space and removed red-tape and other burdens

The Changing policy environment

- There are many current auDA policies
- The policies are published
- The policies regulate all stages of the .au domain name lifecycle in open 2LD name spaces and State and Territory 2LD namespaces.
- They have been created and amended on an “as needs” basis over many years
- The existing policies are sometimes difficult to interpret
- There has not been a holistic review of the policies for many years

The Changing policy environment

- Registrant Policy
- Registrar Policy
- Complaints Policy
- Dispute Resolution Policy (auDRP)
- Implementation of Direct Registration Policy

auDA does not regulate the aftermarket, where domain name licences are transferred for an agreed price between parties, or drop list auctions

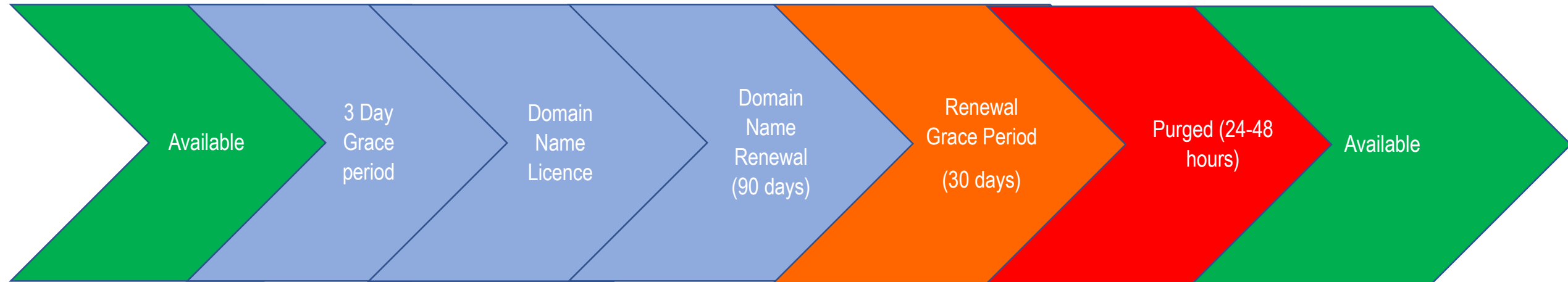
The Changing policy environment

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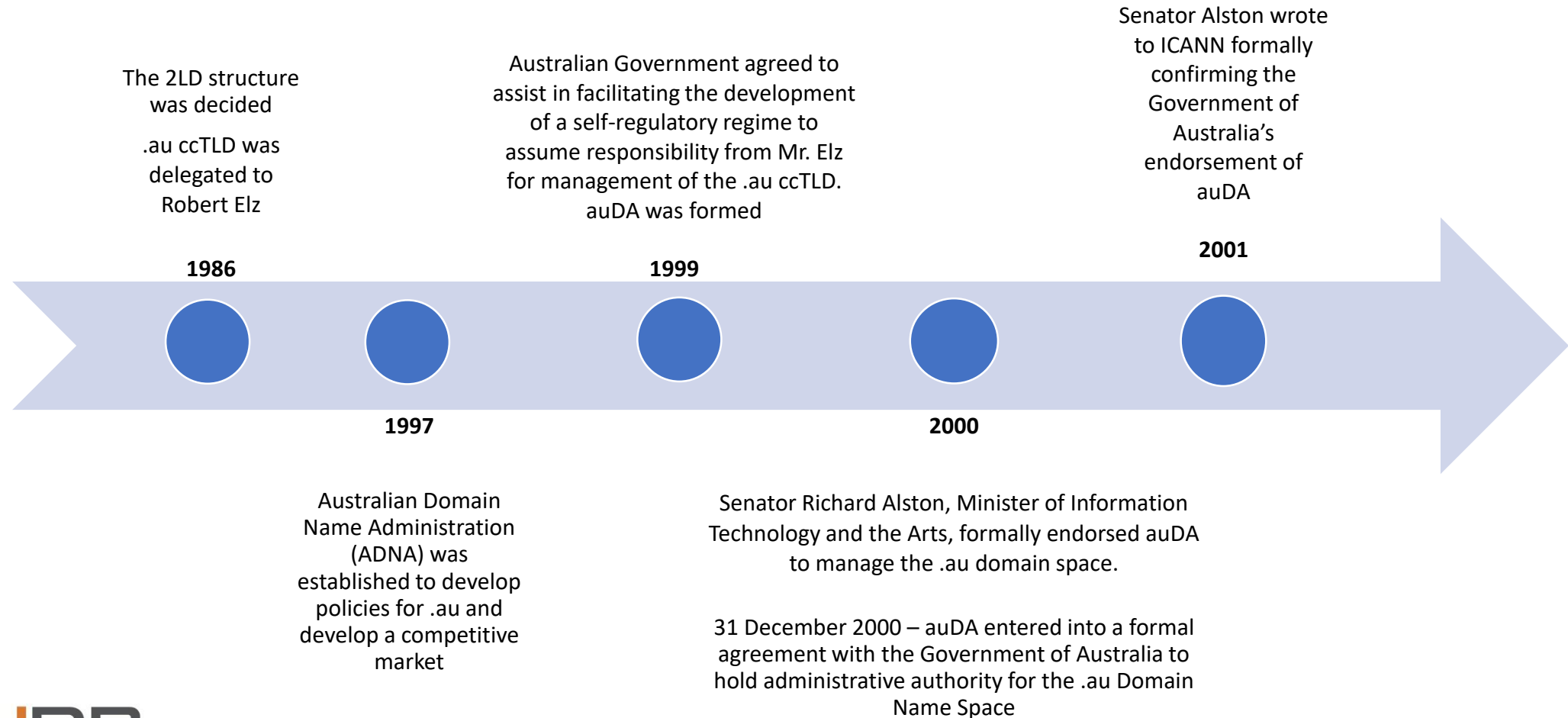
The Changing policy environment

- Registrant Policy
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Domain name life cycle



History of the Australian Domain Name System



History of the Australian Domain Name System cont...

- Robert was a computer scientist at Melbourne University
- KRE made the choice to (approximately) mirror the existing gTLD space in under the ccTLD. So the primary spaces were:
 - com.au, net.au, org.au, gov.au, edu.au
- We also had some additional spaces:
 - asn.au, id.au, oz.au, csiro.au, conf.au

Melbourne IT

The very early days

- Once the spaces were defined, KRE manually entered records in for all spaces from 1994-1996
- There were defined rules, though these were applied in a subjective and inconsistent way
- KRE delegated responsibility for the two commercial spaces in 1996 to:
 - com.au – MelbourneIT
 - net.au - Connect.com.au (AAPT)
- These entities operated as both Registry and Registrar
- Domain registrations in this time took between days and months (or never) to complete
- MelbourneIT spun off as a commercial project from Melbourne University. It listed on the ASX in 1999

Morning Tea Break



Expanding the namespace

1. Implementation of Direct Registration
2. International Issues
3. Consumer protection issues

Expanding the namespace

1. New namespaces & new TLDs
2. International domain names

Expanding the namespace

Issues

1. Why?
2. In what ways?
3. How?

What are the rationales for each of the name spaces?

Direct Registration

In reviewing the existing suite of policies, the Panel has identified a key area for reform to accommodate the opening of the .au domain namespace (direct registration).

“Something more”

“for all Australians”

“general purpose”

“mixed use space”

Expanding the namespace

Direct Registration

yourname.au

Direct Registration

The Process So Far

- 2015 Names Panel
- May 2016 – decision by auDA Board
- 2017 – this Policy Review Panel constituted to consider implementation
- October 2017 – Issues Paper released
- 51 public submissions received
- Policy Review Panel considered all submissions

Direct Registration

- You will not lose your existing domain name because of direct registration
- You do not have to register a .au domain name if you don't want to
- The auDRP policy will apply to .au domain names
- To register a .au domain name, you must satisfy the Australian presence test (discussed after lunch)
- The Launch Date for direct registration likely will be sometime within a year from now – this is a decision for the auDA Board.



Basic Principles of Consumer Protection under the Australian Consumer Law

Paul Zawa

General Manager

Enforcement Victoria and Tasmania

Enforcement Division

Paul.Zawa@acc.gov.au

acc.gov.au

The Australian Consumer Law

- Took effect 1 January 2011
- A schedule to the Competition and Consumer Act 2010 which replaced the Trade Practices Act
- Replaced existing State and Territory consumer laws with one national law
- Administered by the ACCC and State and Territory consumer law agencies

Misleading and deceptive conduct - s.18 ACL

A person shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

False and misleading representations - s29(1)(g) ACL

A person must not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services:

(g) make a false or misleading representation that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits.

The Australian Consumer Law – Enforcement Powers

- Unfair contract terms
- Civil pecuniary penalties
- Disqualification orders
- Infringement notices
- Non-party consumer redress
- Substantiation notices
- Public warning powers

Penalties

- Penalty of \$1.1M for corporations
- Penalty of \$220K for individuals
- Criminal fines of equal amounts available under s75AZC
- Infringement Notices

Australian Consumer Law – Disqualification Orders

- On application of the ACCC the Court may disqualify a person from managing corporation for a period the Court considers appropriate.
- Disqualification orders will be a valuable tool to address those repeat or serious offenders who contravene consumer protection laws.

Infringement Notices

If the Commission has reasonable grounds that a contravention has occurred:

- One per contravention
- Must be issued within 12 months of contravention
- Penalties
 - \$12,600 for a corporation (\$126,000 for a listed corporation)
 - \$2,520 for individuals
- Payment, generally within 28 days
- Payment is not an admission
- If paid, cannot issue proceedings for conduct

Other remedies

- Non-party redress
- Substantiation notices
- Public warnings

Case example:

ACCC v Yellow Page Marketing BV & Anor (No.2)

[2011] FCA 352

- Between May 2010 and November 2010, two overseas companies, Yellow Page Marketing BV (YPM) and Yellow Publishing Limited (YPL), sent faxes and invoices to thousands of Australian businesses in an attempt to obtain subscriptions to their online business directories.
- The companies had registered the following domain names as part of the scam
 - www.yellowpage-nsw.com;
 - www.yellowpage-sydney.com;
 - www.yellowpage-queensland.com;
 - www.yellowpage-victoria.com;
 - www.yellowpage-melbourne.com;
 - www.yellowpage-southaustralia.com;
 - www.yellowpage-adelaide.com;
 - www.yellowpage-westernaustralia.com;
 - www.yellowpage-perth.com;
 - www.yellowpage-tasmania.com
- The invoices contained the words 'Yellow Page' and a 'Walking Fingers' logo.



YellowPage-Victoria.com
 now with free submission to www.google.com.au

Please fax the completed form back to:

1-800-191-300 – Toll-free fax nr.

Deadline: May 28, 2010

Companies registered with YellowPage-Victoria.com are now additionally submitted to the search engine google.com to reach more people that search for products & companies. This submission to Google is without extra charges and represents another service provided by Yellow Publishing Ltd. for its customers. This is not an offer from Google Inc. and the free Google submission service provided by Yellow Publishing Ltd. does not represent a contractual agreement between Yellow Publishing Ltd. and Google Inc. Submission can also be performed by the customer themselves. Providing complete customer information is critical for maximum exposure within the directory itself and within search results:

BASIC DATA:

Please correct and add any additional information to your record.

ID: YP-821269043

Company Name

Street

Address

City

ZIP

Telephone Number

Fax Number

Email Address

Website

Please provide us with the search words & key industry phrases to help people locate your company: (i.e. branch designations, products & label names, trademarks)

Check here to be removed from our fax list.

ORDER

The company listed above gives approval for the above given data and orders registration at YellowPage-Victoria.com by Yellow Publishing Ltd. Additional submission to www.google.com.au is a free extra-service for registered customers of Yellow Publishing Ltd. Yellow Publishing Ltd. is not responsible for any errors, omissions or other erroneous data appearing in the customers directory listing. All errors are the sole responsibility of the customer. This agreement can be cancelled at any time prior to effective registration at YellowPage-Victoria.com. Registration in the directory is for a term of two years at a cost of \$125 per month payable one year in advance with 14 day payment terms. Payment is still required for the agreement term in the event that the customer chooses to remove their record from the directory.

Yellow Publishing Ltd. reserves the right to pass all contractual

and all controversies arising hereunder, shall be governed by the applicable statutory and common law of the United Kingdom. Submission to Jurisdiction. The parties hereto irrevocably and unconditionally (a) agree that any suit, action, or other legal proceeding arising out of or relating to this Agreement or any other agreement, document or instrument delivered pursuant to, or in connection with this Agreement shall be brought and maintained in the Supreme, Civil or District Courts of London; (b) consent to the jurisdiction of each such court in any such suit, action or proceeding; and (c) waive any objection which it or they may have to the laying of venue of any such suit, action, or proceeding in any of such courts. **Attorneys and Collection Fees.** Customer agrees that it will be responsible for any collection costs and/or attorneys fees incurred by Yellow Publishing Ltd. in enforcement of customer's obligation hereunder. The customer registration

ACCC v Yellow Page Marketing BV & Anor (No.2)

[2011] FCA 352

- The court declared that YPM and YPL had contravened sections 52 and 53 of the Trade Practices Act 1974 (now ss. 18 and 29 of the ACL) as neither of the companies were in any way affiliated with Sensis Pty Ltd's Yellow Pages®.
- The court also ordered the following:
 - Refunds
 - Injunctions restraining YPM and YPL from registering domain names including the words "yellow page/s" in combination with ".au" or the name of a city, state or other location in Australia
 - All Australian online directory contracts with YPM and YPL were declared void, with no further amounts payable, unless specifically requested by a business to remain in force
 - Cheques subpoenaed from the Commissioner of Police of Western Australia to be delivered to the ACCC. The ACCC returned those cheques to the relevant businesses
 - YPM and YPL to pay the ACCC's costs.
 - The companies pay penalties totaling \$2.7 million

Conclusion

Further information can be obtained from the ACCC:

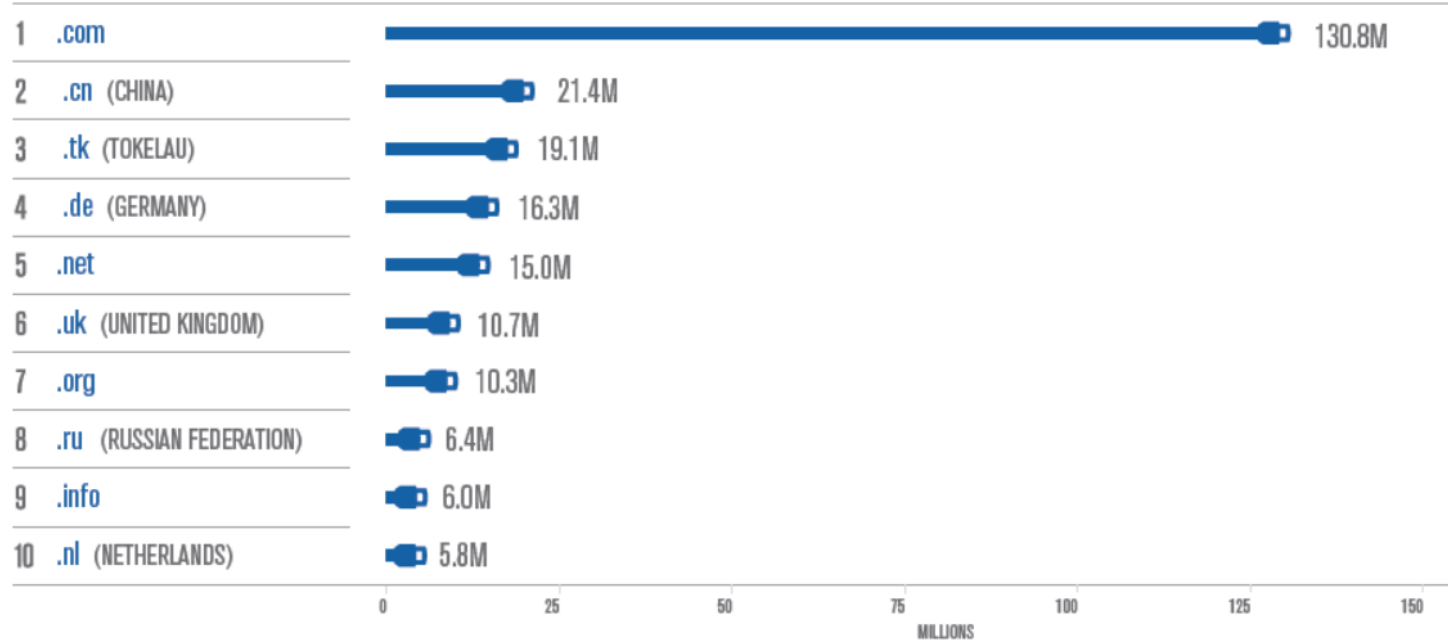
- www.accc.gov.au
- Publications of particular interest:
 - The Little Black Book of Scams
 - Business Scams – Information for Businesses
- Information centre on 1300 302 502

What's happening around the world?

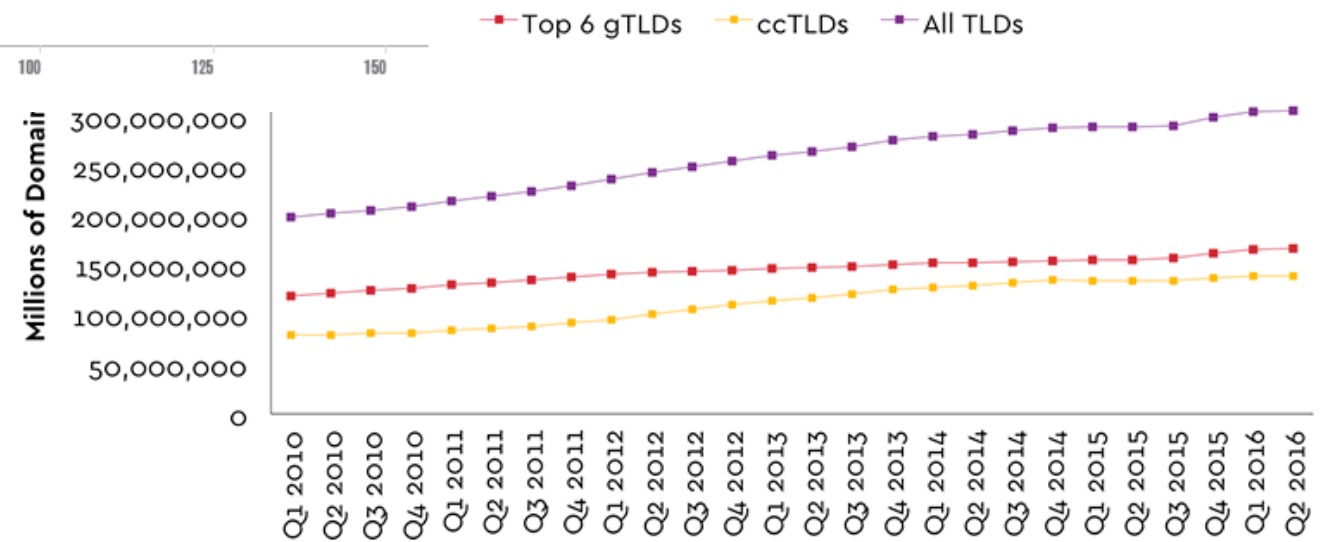
The top issues in the international arena for domain names

- Continuing increase in number of gTLDs
- Concern over rights for names eg .Amazon controversy
- Increased attention on privacy via GDPR
- Internet governance pressure from governments
- Security, law enforcement across jurisdictions

Snippets from around the world

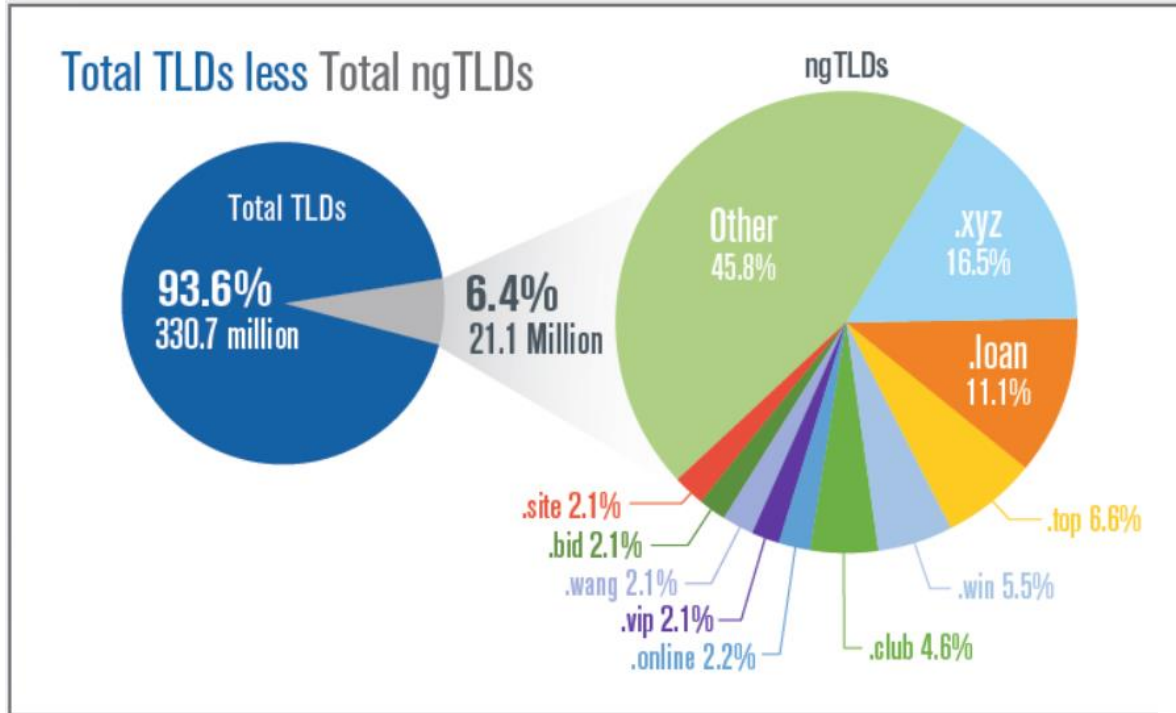


Source: Zook data, as cited in Verisign Domain Name Report Dec 2017

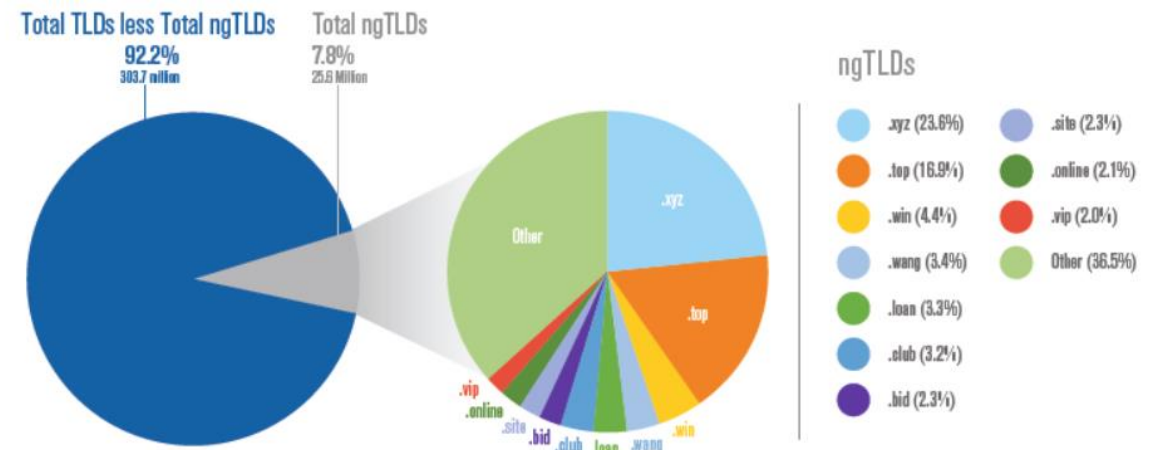


Source: Zook data, as cited in CIRA Internet Factbook 2016

New gTLDs are evolving



Source: Zook data, as cited in
Verisign Domain Name Report
Dec 2017



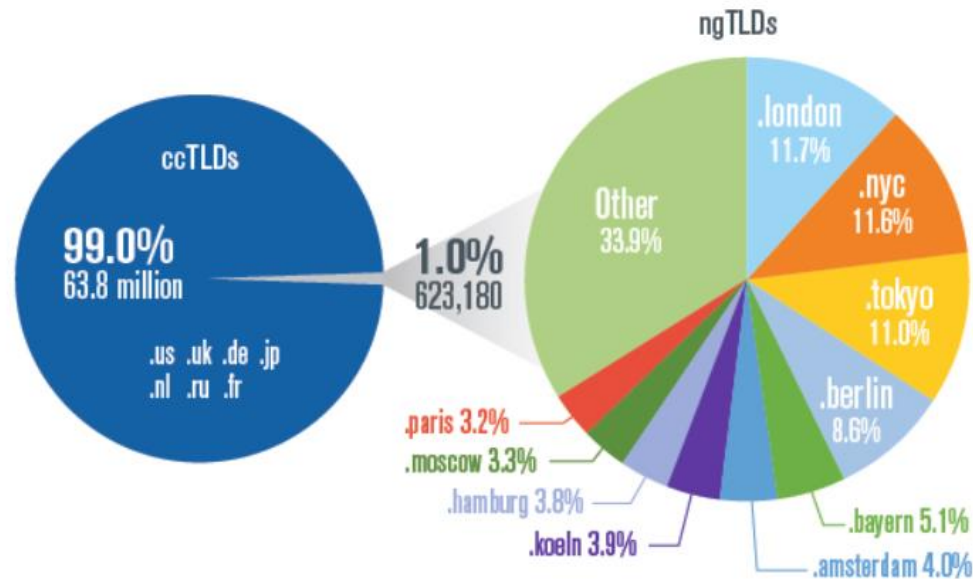
Source: Zook data, as cited in Verisign Domain Name Report Dec 2016

Snippets from around the world



Source: Zook data, as cited in Verisign Domain Name Report Dec 2017

Australia rates in the top 10 ccTLDs



Emerging new geographic based gTLDs

.sydney?

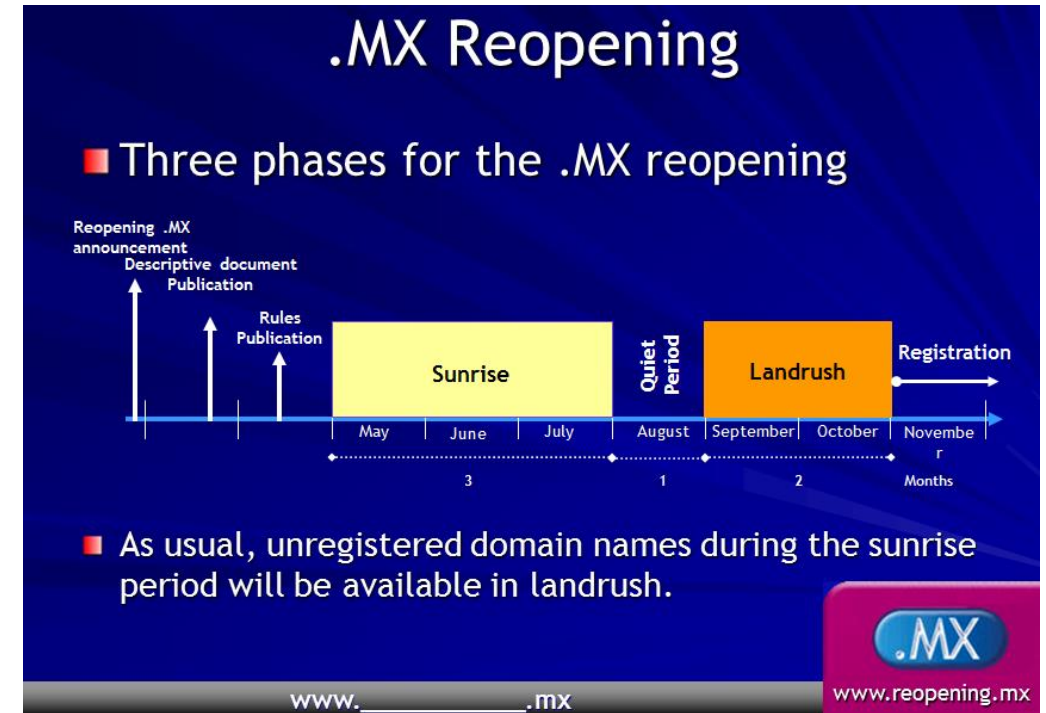
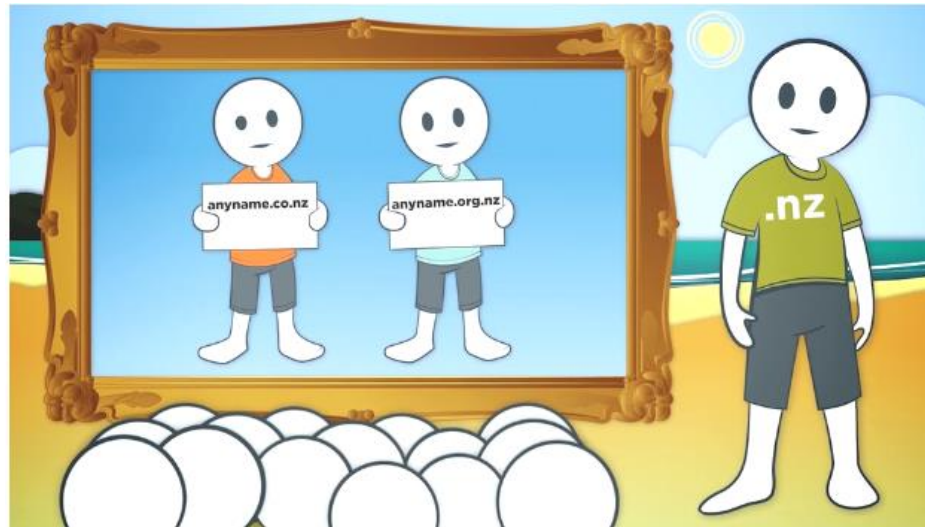
.melbourne?

Comparing operations

ccTLD	de	uk	ru	nl	br	eu	au	fr	ca	mx	nz
Number	16.3m	10.7m	6.4m	5.8m	3.9m	3.7m	3.1m	3.1m	2.7m	0.9m	0.7m
Direct?	Yes	In progress	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
Local presence requirement?	Yes, but allows proxies	Only in .ltd.uk and other closed 2LDs	No	No	Yes	Yes (EU)	Yes	Yes, but allows proxies	Yes	No	No
IDN	Yes	No	No	No	Portugese	No	No	French	Allows accents	No	Maori
2LDs	No	15 classes some restricted	Many geographic 9 classes some restricted	Private 2LDs + deprec individual	66 being reduced	No	7 classes some restricted	>15 sector managed + classes	14 geographic + classes some restricted	~ 7 classes	16 classes some restricted

Other ccTLDs have introduced direct registrations

- New Zealand
- Canada
- Mexico
- UK



International developments

Internationalised Domain Names are becoming common around the world

谢谢.au
café.au

**Should there be a trial of internationalised domain names
at the second level?**

Discussion & Questions?

Lunch Break



Registrant Discussion Paper



The different open name spaces

com.au

net.au

org.au

asn.au

id.au

The different open name spaces

com.au

net.au

org.au

asn.au

id.au

The different open name spaces

com.au

net.au

org.au

asn.au

id.au

Issues 2 & 3

Should net.au be closed to new registrations?

What should happen to asn.au?

Generally, should each name space have a purpose?

Licencing System

Eligibility Rules

Allocation Rules

Eligibility & Allocation Rules

Eligibility: Australian Presence

- The current eligibility and allocation rules set out the Australian presence requirement for each 2LD namespace.
- Legal entity person wishing to register a domain name must have an Australian presence.

Eligibility & Allocations Rules

The Importance of an Australian Presence

All domain names registered in the .au domain require a registrant to have an Australian presence. This ensures that consumers and businesses can trust in .au as they are dealing with an Australian entity subject to Australian laws.

Issue 9: How should the Australian presence requirements be defined?

Eligibility & Allocations Rules

Allocation Rules

- Current allocation rules for .com.au
 - Match
 - Close & substantial connection rule
 - Domain monetisation
- Three proposed models in Issues Paper

Eligibility & Allocations Rules

The three models proposed in the paper are:

Model A

- Existing 2LD namespace eligibility and allocation rules remain unchanged.
- These rules should apply to the registration of a domain name at the second level (direct registration)
- The existing eligibility rules would continue to apply to the respective 2LD namespaces and to the .au domain namespace

Eligibility & Allocations Rules

Model B

- Based on eligibility rules only.
- No mandated relationship between the registrant and the domain name.
- The existing eligibility rules would continue to apply to the respective 2LD namespaces and to the .au domain namespace
- Registrants would have the freedom to register any domain name in the namespaces for which they are eligible.

Eligibility & Allocations Rules

Model C

- The general eligibility criteria would be the Australian presence requirements.
- An additional set of eligibility criteria must be satisfied by all potential registrants, based upon the namespace.
- Allocation criteria to restrict the domain names that could registered

Eligibility & Allocations Rules

Proposed Eligibility and allocation rules for .au namespaces (Model C)

Rules	.au	com.au/net.au	org.au	asn.au	id.au
Australian Presence Requirement	√	√	√	√	√
Additional eligibility criteria	x	√ (must be a commercial entity)	√ (Must be a not for profit)	√ (Must be an incorporated or unincorporated association)	√ (Must be a natural person)
Allocation criteria	x	√ Name must be an exact match or abbreviation of the company or business name or trademark	√ Name must be an exact match or abbreviation of the company or business name or trademark	√ Name must be an exact match or abbreviation of the association's name or business name or trademark	√ Name must be the part of the person's legal name or a nickname.

Eligibility & Allocations Rules

Questions

- Issue 9: What eligibility and allocation rules should apply to .au and the open 2LD namespaces, and why?
- Should allocation criteria be removed, and the focus be on registrant eligibility?
- Issue 10: Should the close and substantial connection rule be retained and why?
- Issue 10: Should domain monetisation be permitted in the com.au and net.au 2LD and at the second level? How should interests of those involved in domain monetisation be balanced against the needs of the broader Australian Internet Community?

Privacy

Whois response for lawyer.com.au:

Domain Name	lawyer.com.au
Last Modified	15-Nov-2017 13:31:23 UTC
Status	clientDeleteProhibited
Status	clientUpdateProhibited
Registrar Name	GoDaddy.com, LLC
Registrant	SCHWARTZ, JERRY LESLIE
Registrant ID	ABN 70 308 921 282
Eligibility Type	Sole Trader
Registrant Contact ID	CR296838424
Registrant Contact Name	Sohum Raut
Registrant Contact Email	sohumraut@gmail.com
Tech Contact ID	CR296838425
Tech Contact Name	Sohum Raut
Tech Contact Email	sohumraut@gmail.com
Name Server	dns2.zippykid.com
Name Server	dns3.zippykid.com
Name Server	209.15.20.218
DNSSEC	unsigned

Privacy

Issue 15: For what purposes should auDA be allowed to collect, use and disclose registrant data?

Issue 16: What should be included in public WHOIS records

Licence Conditions

Issue 12

Should sub-licensing of a domain name licence be allowed, and if so, on what conditions.

Reserved Names

- Current reserved list policy – where restricted under Commonwealth Law
- Going forward:
 - Restricted under Australian law
 - Not in the public interest
 - Use for potential 2LD namespace
 - Risk to operational stability and utility of the system

Reserved Names

- Issue 5: Should there be a published reserved list?
- Issue 6: How should the public interest be defined?
- Issue 7: What names should be reserved for future 2LDs?
- Issue 8: Exceptions to names being published?

Licencing Conditions

The Policy Review Panel is considering whether the auDA CEO should be able to suspend a domain name, rather than deletion, for breach of policy

Examples include:

- a) where a registrant fails to provide complete registrant information or fails to update the registrant information, the domain name should be suspended until it is rectified; and
- b) where the auDA CEO is satisfied that there are reasonable grounds to suspend a domain name licence where it is alleged that the domain name is being used to facilitate or engage in criminal activity, such as phishing sites.

Licence Conditions

Issue 14: Should auDA be given the power to suspend a domain name licence? When should auDA suspend rather than cancel a domain name licence? What should be the maximum suspension period before a domain name licence is cancelled?

Afternoon Tea Break



Direct Registration



Direct Registration

- What is direct registration?

yourname.au

- How is direct registration to be implemented?

Direct Registration

- You will not lose your existing domain name because of direct registration
- You do not have to register a **.au** namespace domain name if you don't want to do so
- The auDRP policy will apply to **.au** namespace domain names
- To register a **.au** domain name, you must satisfy the Australian presence test (discussed earlier)
- The Launch Date for direct registration will likely be sometime within a year from now – this is a decision for the auDA Board.

Direct Registration

What is the purpose of the .au domain name space?

Should there be specific additional eligibility criteria?

Should the .au domain namespace be a 'general purpose' domain for all Australians allowing use for any purpose? (Issue 1)

Direct Registration

Implementation of Direct Registration

The Panel has some preliminary views

Direct Registration

Priority Registration

- The licence holder of a 3LD will have a priority registration period.
- The priority registration period is 6 months from the launch date.
- Thus, the owner of yourname.com.au has priority registration for yourname.au for 6 months.
- 97% of 2LD registrants will be able to register in .au immediately.

If there is no corresponding 3LD

- The SLD can be registered immediately on the launch date, on first come, first served basis

Direct Registration

Resolving Conflicts

- What if there is *yourname.com.au* and *yourname.net.au*
- This applies to about 3% of domain names
- Who should be entitled to *yourname.au* in these circumstances?

Direct Registration

Resolving Conflicts

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Direct Registration

Resolving Conflicts – Different Models

- Longest registrant
- Longest registration
- Set a specific order of priority
- Negotiation, mediation and agreement
- Lottery
- Others

Direct Registration

The Panel's current thinking for contested domains:

- Six month period to decide to participate – purchase of ticket
- If only one ticket purchased for a SLD, that person can register the SLD.
- If more than one ticket purchased for a SLD, a 3 month period to see if the interested parties can reach agreement
- If no agreement reached, then lottery used to decide who can register the SLD.

Direct Registration

Issues regarding priority registration process

- How long should the whole process take?
- What is the cut-off date for eligibility?
- Who should be able to participate: 3LDs only, or also 4LDs and 5LDs

Direct Registration

The Panel's current thinking:

- How long should the whole process take? – **less than a year**
- What is the cut-off date for eligibility? – **see next slide**
- Who should be able to participate: 3LDs only, or also 4LDs and 5LDs – **More consultation needed**

Direct Registration

Cut-off date for eligibility to participate where contested domains:

- A desire to prevent manipulation and gaming
- Need to consider normal business practices – sale of a business and establishment of new business
- Having a cut-off date may give preference to older registrations over newer registrations

Direct Registration

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18 April 2016

Direct Registration

Discussion

Conclusion

Next steps