



TELSTRA CORPORATION LIMITED

**.au Policy Review Panel –
.au Domain Administration Ltd**

**Registrant Policy: *Enabling Australia's Digital
Economy and Society***

Response to Issues Paper

5 March 2018



1. Introduction

Telstra Corporation Limited (**'Telstra'**) welcomes the opportunity to respond to the .au Policy Review Panel (**'Panel'**) on its *Registrant Policy: Enabling Australia's Digital Economy and Society Issues Paper* (**'Issues Paper'**).

While Telstra supports some of the reforms proposed by the Panel in the Issues Paper, we do not agree with measures which would unfairly dilute domain holders' rights, the goodwill they have built in their domains, or undermine user confidence in the .au namespace. As a leading Australian trade mark owner, we're also concerned to ensure that trade mark owner's rights are not prejudiced by any changes to the .au Domain namespace. In particular, we support clear, transparent mechanisms to prevent infringement, dilution and cybersquatting, and to protect consumers from misleading and deceptive practices.

2. Response to the Issues Paper

This response only addresses those aspects of the Issues Paper that are of particular interest or concern to Telstra and our customers.

QUESTION 1:

Should the .au Domain namespace be a 'general purpose' domain for all Australians allowing use for any purpose?

Telstra is in favour of measures to open up the .au domain namespace for direct registration in a way which maintains the trust and integrity that the .au DNS currently enjoys, but that does not erode the rights and goodwill that businesses, organisations and individuals have built up in existing domain names in second level domains (**2LDs**). Changes to the .au DNS should not impose additional costs on trade mark owners to protect their marks, and the domain name application process should include an informational and educational component to assist domain name applicants to understand the potential conflicts between domain names and trade marks.

QUESTION 2:

Should the net.au namespace be closed to new registrations? If so, should existing net.au registrants be permitted to continue to renew their domain name indefinitely

There are hundreds of thousands of Telstra customers that use email addresses using bigpond.net.au. Telstra is opposed to shutting down the net.au namespace entirely, as this would impact many Telstra customers who have been using these email addresses for many years.



Telstra opposes shutting down the net.au namespace at the same time as direct registrations in .au are proposed to be opened up, on the basis that there should be consistency in management of any domain in the .au space. Telstra is of the view that it would be more appropriate to examine the future of the net.au domain once the rules for the population of the 2LD domains have been fully detailed, covering issues such as defensive registrations across the new set of 2LD domains. Also, it is not obvious to Telstra at this time what the potential value of closing net.au is, given that the technical and governance aspects of net.au are well established. We note the comment under paragraph 80 of the Issues Paper regarding the perceived scarcity of .au domain names and we are of the view that it is premature to shut down a source of .au names before new 2LDs are created.

If the net.au namespace were to be closed to new registrations, any existing net.au registrants must be permitted to continue to renew their domain names indefinitely.

QUESTION 5:

Should auDA continue to maintain a public reserved list? Should the public reserved list be published? What process or steps should auDA take before deleting a restricted or prohibited name?

Telstra understands the Panel's reasonable concerns with maintaining a definitive published list. We believe it is important to have transparent and verifiable rules published about reserved names, but we acknowledge that it is not necessary to publish the list itself.

QUESTION 6:

Should auDA be able to reserve names in the public interest? How should the public interest be defined? What names should be reserved in the .au domain namespace? Should the public interest test replace the Prohibition on Misspellings Policy?

Telstra supports the concept of introducing a right for auDA to reserve names in the 'public interest'. However, we are unable to make specific comments in relation to the public interest test without more information about how the test will be formulated and applied. For instance, who is the 'public' for the purposes of this test? Is it the general public, internet users, domain name holders, trade mark owners, or a mixture of all groups? Reserved domain names should not include registered trade marks.

Telstra strongly opposes removing the Prohibition on Misspellings Policy and replacing it with a public interest test alone. In our view, a public interest test without the Prohibition on Misspellings Policy may not be sufficient to address both consumer and trade mark owner concerns, in particular, with the misspelling of brand names as domain names.



Telstra supports the views of the 2015 Names Policy Panel when they reported to the auDA Board¹ that:

The Panel believes that [the Prohibition on Misspellings Policy] serves a useful consumer protection purpose by discouraging typosquatting and misleading and deceptive behaviour.

This behaviour not only impacts consumers, but also the legitimate rights of trade mark owners. Common misspellings of brand names as domain names are often used for illicit purposes, and not only dilute valuable marks, but can (deliberately) deceive or cause confusion.

QUESTION 7:

Should the names identified in the discussion paper be reserved as future 2LD namespaces? Are there other names that should be reserved for use as future 2LD namespaces and why?

Telstra supports auDA's general proposal that some words may need to be reserved for future 2LD namespaces, such as those of the kind suggested in paragraph 59 of the Issues Paper. However, Telstra does not comment on whether the particular proposed list in that paragraph is complete or appropriate.

QUESTION 8:

Should there be a requirement for auDA to publish a list of names that are reserved for use by the registry and names that pose a risk to the operational stability and utility of the .au domain? Should there be any exceptions to the publication of names?

Telstra supports auDA's proposal to reserve names that might pose a risk to the operational safety and utility of the .au domain. However, the list should be published so that registrants and potential registrants are aware of what names are not permitted to be registered. We also recommend a policy where names proposed to be added to the reserved list may be opposed on certain grounds for a set period, for instance, that the proposed reserved name is the same as a registered trade mark.

¹ <https://auda.org.au/assets/pdf/2015npp-final-report.pdf>



QUESTION 9:

How should the Australian presence requirements be defined? Should trademark applicants and registrants only be allowed to register a domain name that is an exact match to their Australian trademark application or registration when relying on the trademark application or registration to establish an Australian connection?

Telstra is in favour of the proposal similar to the Canadian Requirements for Registrants² for the .au domain namespace. Foreign trade mark applicants or registrants without an Australian physical presence should only be able to register a domain which is an exact match of their Australian trade mark (or the word component of their trade mark). If a trade mark applicant or registrant has no Australian connection, it seems reasonable and logical that the extent of that entity's protection should be restricted to that entity's trade mark rights.

QUESTION 10:

What eligibility and allocation rules should apply to the .au domain namespace (direct registration) and the open 2LD namespaces, and why? Should the close and substantial connection rule be retained and why? Should allocation criteria be removed, and the focus be on registrant eligibility? Should domain monetisation continue to be permitted in the com.au and net.au 2LD and at the second level? How should domain monetisers interests be balanced against the needs of the broader Australian Internet Community?

Telstra is of the view that maintaining consistency in the eligibility and allocation rules for the .au domain namespace is paramount – eligibility and allocation for direct registration must be consistent with the existing 2LD namespace requirements. Telstra supports some changes to the eligibility and allocation rules (see response to question 9 above), but this support is on the basis that direct .au registrations and 2LD namespaces are treated equally.

Telstra supports retaining the 'close and substantial' rules.

We are of the view that domain monetisation is not in the interests of most internet users, including commercial operators holding domains, and internet users seeking trustworthy domains that they can visit

² Cira, *Canadian Presence Requirements for Registrants Version 1.3* <https://cira.ca/canadian-presencerequirements-registrants>.



with confidence. Domain monetisation is also not in the interests of legitimate trade mark owners. Domain name monetisation undermines the integrity of the entire .au domain, including 2LDs.

QUESTION 12:

Should a registrant be able to sublease the domain name to an unrelated party? If yes, in what circumstances should this be permitted?

Telstra submits that if sub-letting of domain names is permitted, both parties to the licence agreement should be subject to the eligibility and allocation rules. The end-user of the domain should have contact details of both sub-licensor and sub-licensee available on whois.

QUESTION 13:

Where a domain name licence is transferred between registrants, should the transferee receive the benefit of the remainder of the licence period?

Telstra supports this proposal, as it would bring the .au domain namespace in line with the operation of other TLDs.

QUESTION 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?

Telstra supports the suspension of domains for minor errors, so that a registrant may have an opportunity to remediate issues before their domain name registration is cancelled.