eDAC response

Issues Paper: Implementation of .au Domain Name Registrations (Direct Registration), February 2018

FINAL

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1   Introduction

1.1   The Role of eDAC

The .edu.au Domain Administration Committee (eDAC) monitors developments, contributes to major policy, and provides advice to key agencies on issues related to monitoring and regulating the edu.au domain space.

eDAC comprises of representation from:

- The State and Territory Government schools sector
- National Catholic Education Commission
- Independent Schools Council of Australia
- The Vocational Education and Training sector
- The Higher Education sector

For more information, please see auDA policy 2015-02 – Governance Arrangements for the edu.au 2LD. Additional information is available at the eDAC website maintained by the Registrar (ESA), located at https://www.domainname.edu.au.

1.2   General Considerations

In making this response to the Issues Paper distributed in January 2018, eDAC has given primary consideration to the role of the closed domains, and their requirements in a time of policy revision.

The objectives of eDAC are to ensure a stable edu.au domain space which operates efficiently, and meets the needs of its stakeholders. The scope of the Issues Paper appears to exclude consideration of the three closed 2LDs (paragraph 3 of the Issues Paper) and has a focus on policies for direct registration and policies for existing namespaces. The Issues Paper at times refers to "the existing 2LD namespaces" when it intends to exclude discussion of closed 2LDs, but also refers to "the open and restrictive 2LD namespaces" (paragraph 6), which may include closed 2LDs under the term "restrictive" but may not (see the table in paragraph 17, and paragraph 20).

eDAC suggests that closed 2LDs be explicitly excluded from the outcomes of this consultation, but notes that the policy issues raised in the paper will have an impact on their operation and future.

The Issues Paper highlights five issues which are, in brief (paragraph 6):

a) Direct registration
b) Names which cannot be registered
c) Rules for registering domain names
d) Licence conditions
e) Suspension or cancellation of domain names.

Each of these issues impacts edu.au:

a) Direct registration will be an option available to any Australian entity, including education and research entities. At present, in addition to edu.au, education and training bodies can register

domain names in gTLDs or other Australian 2LDs, and direct registrations will provide a further option.

b) Edu.au currently has its own distinct approach to which names may not be registered; this approach has evolved in the thirty years since the DNS began and is likely to be impacted by the introduction and use of direct registrations.

c) Rules applying to the edu.au 2LD are impacted by rules for open 2LDs, and this will continue

d) Licence conditions also have an impact.

e) Changes in the way that names are suspended or cancelled will create an impetus for edu.au to consider similar changes.

The eDAC submission argues for retaining the current 2LDs and the eligibility and allocation rules which currently relate to them. The submission also supports the current use of state and territory designations and extension of their use where appropriate. eDAC also strongly supports the reservation of names in the public interest and for other reasons, and in particular education and training names.

2   Questions and responses

2.1   .au Structure

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

Yes. The purpose will be subject to the policies of auDA and to the purposes being appropriate in the terms of those policies.

The 2015 Names Panel recommended that any entity which is eligible to register in one of the existing 2LD namespaces should by virtue of that fact be entitled to register a .au name. eDAC agrees with that conclusion, and that the new direct registration namespace should be for all Australians. This should apply regardless of which 2LD (open or closed) they are currently eligible to use. It should also apply whether or not the entity has in fact registered in one of those 2LDs.

The Issues Paper also raises the concept of Australian identity as a core eligibility requirement, and eDAC agrees with that approach too.

2.1.2   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?

No. The existence of two 2LDs with the same purpose and rules widens choice, and enables more than one entity to have the same substantive domain name. Since widening choice is a major goal of the proposed changes, it is important that current choices are retained, and that these are not narrowed. Although net.au duplicates the role of com.au, the name is widely used in other jurisdictions and its role as a 2LD in Australia is paralleled by its role as a TLD globally. Moreover, closing the domain creates a new problem unnecessarily – that is, what to do about existing net.au registrations. Many entities have long-standing net.au names and these have wide recognition. And finally, what if anything is lost by retaining net.au in its current role?

The reasons for closing the net.au 2LD to new registrations are limited in relevance, given that 9% of registrants find these names useful. Presumably one purpose of the proposal is to simplify the .au domain

space. However, given the need for likely continuation of net.au for existing registrants, this would not be achieved. It will be relevant to monitor the use of the net.au domain space following the introduction of direct registration, and determine whether the level of defensive registrations has reduced.

2.1.3 What should happen to the asn.au namespace? Should it be closed to new registrations or retained as a dedicated namespace for associations?

The points made above in relation to net.au largely apply in this case as well, although asn.au lacks the global recognition and the number of registrations of net.au. The Panel proposes that asn.au be "retained and strengthened … [as] … a dedicated namespace for associations …". It is not possible to determine whether this is a good idea or not until there is a more detailed proposal. eDAC supports the retention of asn.au on the grounds that a change would add little value.

2.1.4 Should the State and Territory namespaces be used for other purposes? If yes, why and what are the purposes for which domain names should be registered under these namespaces?

It is not clear from the Issues Paper whether the Panel proposes additional uses for the State and Territory namespaces, or alternative uses. That is are there current uses which the Panel proposes to discontinue? This would be undesirable.

The State and Territory namespaces are already used for other purposes in the closed 2LDs, as well as in the community geographic domain names (CGDNs) introduced in 2006. We strongly support the current uses of State and Territory namespaces, and we also support the additional uses proposed.

If it is proposed to use them in additional contexts, this would require a specific case to be made out, and this has not been done. The initial rationale for CGDNs remains valid, although take-up of the community names (in only 235 cases) has been limited. There is a strong case for auDA and the domain name community to enhance its community development work to promote community identity online through more active community development work. Educational institutions may be willing to assist with this, being important parts of their local communities.

Within edu.au and gov.au, State and Territory names are used extensively and are key elements in the structure of those 2LDs. The Panel proposes that these designations also be used in a limited number of cases of state and territory entities which are not part of the executive branch of Government. It is proposed that entities which are part of the judicial and legislative branches of government, together with the Crown, should use state and territory names but not be part of the gov.au 2LD. eDAC is supportive in principle.

2.2   Reserved Names

A reserved name is a domain name which may not be registered. Other than a name which has already been registered, the Panel lists four kinds of names which would be unavailable for registration because:

  a) Use is restricted under Australian law
  b) Use is not in the public interest
  c) The name is potentially a future 2LD namespace
  d) Use poses a risk to the operational stability and utility of the .au domain.

2.2.1 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?

The Issues Paper outlines some of the problems in reserved lists (lists of names which cannot be used), such as the possible use of composite names, and the large number of such names (the appended non-exhaustive list of names where use may be restricted by Australian law runs to eight pages).

There is also significant ambiguity in all four criteria, and it will not be possible to provide certainty in any of these categories of unavailability.

In the eDAC response to the Issues Paper of October 2017 this issue was discussed under sections 2.6 (reserved names not prohibited by law), 2.7 (confusing or misleading names) and 2.8 (deliberate misspelling).

At present eDAC's own allocation policies prohibit the use of certain kinds of names within edu.au, including generic education and training words. The use of these terms, whose use as domain names is not in the public interest, should continue to be prohibited (see below).

eDAC believes that there should continue to be a public reserved list, with a clear acknowledgement that such a list can never be exhaustive. In cancelling names which appear to be restricted under Australian law, auDA should first refer the proposed deletion to the registrant, and should consider permitting a right of appeal in the event that a name is deleted.

2.2.2 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?

The Issues Paper proposes a list of what categories of names should be reserved in the public interest (paragraph 55). These are misspellings, and names within seven categories. eDAC proposes an eighth category, which is consistent with the operation of edu.au, and this is (i) education and training. This is spelled out in greater detail below.

There are three further categories of names included in the text, which are (j) ccTLDs and gTLDs, (k) abbreviations of Australian States and Territories, and (l) Indigenous places or terms.

It would be useful to include a broader definition of what is meant by the public interest, rather than a simple elaboration of categories. It is clear that the suggested 11 categories need a great deal of further development, and eDAC proposes that this be the subject of a more detailed policy paper.

If this provision replaces the list of prohibited misspellings, there would still be a need to include a list of the most common misspellings. The current list is not a list of those most worthy of protection, but a list of those most likely to be misspelled with the intention of deceiving.

In responding to the Issues Paper of October 2017, eDAC set out a strong case for certain names to be reserved in the public interest. It suggested that direct registration of some names would undermine the sustainability of the edu.au domain. The eDAC viewpoint was also stated clearly in a submission to the 2015 Names Policy Panel. We said:

eDAC would object to the granting of any direct registration that involved the use of generic words relating to education and training, such as 'education', 'pre-schools', 'colleges', 'RTO' and 'training'. The establishment of such direct registrations in a domain space that did not have tight eligibility and allocation rules applied in the edu.au domain is likely to pose a competitive threat to the edu.au domain

and ultimately its long-term sustainability particularly if they are used as a vehicle for fraudulent or sharp business practices that adversely reflect on the education and training sector.

Current edu.au domain name allocation policy (Schedule 2 to the edu.au Registration Policy) prohibits the registration of domain names that are:

Generic education and training words (e.g. school; university; elearning; workskills; TAFE; business, science; training) or combinations of generic education and training words. This includes instances where:

- *Generic education and training course names are proposed as the basis for a domain name; or*
- *Types of education and training are proposed as the basis for a domain name.*

eDAC proposes that policy for .au direct registration prohibit the registration of domain names that involve generic education and training words. The policy should include a list of generic education and training words covered, but with a mechanism for eDAC to advise auDA of other generic words that should be added to the list. The initial list would include words such as:

- *School*
- *TAFE*
- *Education*
- *RTO*
- *Training; and*
- *Colleges*
- *University*

eDAC is also aware of the risk, in education and training as well as in other spheres, of the emergence of de facto (private or unofficial) registries based on new second level domains.

2.2.3 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?

eDAC responded to question 2.5 in the Issues Paper released in October 2017. eDAC does not believe that any additional names need to be reserved for the use of the education and training sector.

eDAC also believes that should there be proposals or plans for a new 2LD impacting on the education and training sector, then eDAC would be consulted as part of the process and its approval obtained for any such plans. eDAC's terms of reference have this within their scope.

Outside the education and training sector, eDAC agrees that certain names could be reserved as potential future 2LD namespaces. The consultative process for approval of new 2LDs as set out in the current policy should be retained. Experience indicates that the creation of new 2LDs is rare, and the trend is towards consolidation. auDA has indicated that it will not create new closed 2LDs. The list of suggestions in paragraph 59 might be limited to the judiciary and the legislature.

2.2.4 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?

There is a value in publishing such a list, along with other lists. The term "operational stability and utility of the .au domain" would benefit from a definition.

It would also be useful for auDA to issue a consolidated list of reserved names (names which may not be used) since there are overlaps between the different categories above – the term "police", for example, appears on more than one.

2.3   Eligibility and allocation rules

2.3.1   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?

The requirements should be relatively strict, so as to enhance consumer confidence in .au. Therefore, eDAC supports the proposal that a domain name registered by a foreign entity or foreign national that holds an Australian trademark registration or has a pending Australian trademark registration should be limited, in registering a domain name, to an exact match to their Australian trademark.

2.3.2   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?

It is eDAC's view that of the three proposed models, Model C sits best with the role of eDAC and the edu.au domain, but it is too inflexible. Aspects of Model A are also relevant, and the model is not well-described in the Issues Paper. eDAC believes that the eligibility and allocation rules applying in the current open and closed 2LDs should remain the same as they are now, and eligibility and allocation rules for .au could be largely removed, other than the requirement for an Australian presence.

Our understanding of the proposed models is set out in the Table at the end of this section. eDAC proposes a Model D, which includes both exact match and close and substantial connection for the open 2LDs.

Moreover, it is not the case that Model A would mean a simple replication of the current system in the new direct registration option, since we assume that registrants would not be required to register for both an existing 2LD and a new .au registration, but could also choose either. We assume that registrants in .au could apply any of the eligibility criteria used across the system at present. There would be a tendency for the simplest eligibility criterion to be used. In practice, eligibility for .au would be based on the core requirement for Australian presence, and no other criterion need apply.

The Panel has also raised the option that the close and substantial connection rule no longer apply in 2LDs. eDAC is opposed to this change, on the grounds set out in the Issues Paper – there is a need for confidence and this would erode trust in the system, and create "consumer confusion and loss of confidence in the .au namespaces". The severe tightening of allocation rules in 2LDs by the application of "strict allocation rules" in the 2LD namespace would have the effect of forcing entities into the .au namespace for its greater flexibility. It would raise the issue of grandfathering on a very large scale, which is to be avoided if possible. It would effectively be a reversion to the rigid and inflexible domain name system which existed through the 1980s and 1990s until the freeing up of the DNS rules in 2001. Predicting the effects of this change is very difficult, except that one could be confident that there would be plenty of unintended consequences.

Table: Eligibility and Allocation: Proposed Models

Rules	Model A		Model B		Model C		eDAC's proposed model	
	.au	2LDs	.au	2LDs	.au	2LDs	.au	2LDs
Australian presence required	Y	Y	Y	Y	Y	Y	Y	Y
Eligibility: additional criteria		Y		Y		Y		Y
Eligibility: no additional criteria	Y		Y		Y		Y	
Allocation criteria: exact match only						Y		
Allocation criteria: close and substantial connection	Y	Y						Y
Allocation criteria: none			Y	Y	Y		Y	

This submission proposes a further model, as noted above.

The Panel also discusses the issue of domain monetisation. Because this currently applies only in the commercial 2LDs, there is no direct consequence for edu.au. One of the reasons for introduction of the current rules was that there was widespread evasion of the rules by enterprising domain name owners. It would be useful, before further considering this issue, to investigate practice in other jurisdictions. eDAC does not have a position on this issue at present.

2.3.3 Should internationalised domain names be trialled at the second level, and under what conditions?

eDAC supports the implementation of internationalised (non-roman script) domain names in Australia. Because Australia is not a pioneer in this area. eDAC's view is that any trial should take place within .au, assuming that there are limited allocation rules applying there.

2.4   Licence conditions

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

Yes, this should be permissible, subject to conditions. The conditions proposed in the Issues Paper are appropriate, and it is important that all domain name holders, whether the primary registrant or a lessee, should comply with the same rules as other holders.

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

Yes. It is important to increase flexibility for the licence term in the open 2LDs and direct registrations, and it follows that a transferee should benefit from enhanced flexibility.

2.4.3 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?

eDAC believes that it is important that auDA has flexibility in managing the operation of the Australian DNS. This should include the ability to either suspend or cancel a domain name registration, depending on the circumstances. The circumstances in which suspension or cancellation occur should be spelled out clearly and in more detail in an amended policy, and any action taken should reference the section of the policy which applies.

eDAC agrees with the Panel that key terms need to be defined, including "law enforcement agency" and "government requirement". This would have the beneficial result of enhancing auDA's accountability for any action in suspending or cancelling a domain name licence.

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

The Panel should develop a formal statement relating to the use of registrant data and consult with auDA members and stakeholders over the text of the statement.

2.4.5 Are there any concerns with the current level of information included in the public WHOIS service? Should the technical contact field be utilised for agent and lessee details?

eDAC agrees that the WHOIS policy should be clarified to ensure that information is relevant and includes information about agents and any sub-leasing arrangement. It notes that the content of WHOIS services is currently under discussion more widely, in other jurisdictions and at ICANN.