

Secondary Market Working Group

Issues Paper, May 2011

INTRODUCTION

Secondary Market Working Group

auDA has convened the Secondary Market Working Group to:

- examine the operation of the .au secondary market and identify any points of market failure; and
- provide advice and recommendations to auDA on any actions that should be taken to address any identified market failures.

Working Group membership and minutes of meetings to date, are available on the auDA website at <http://www.auda.org.au/smwg/smwg-index/>.

Issues Paper

The secondary market in .au domain names is supported by two auDA Published Policies:

- Transfers (Change of Registrant) Policy (2008-08) at <http://www.auda.org.au/policies/auda-2008-08/>; and
- Domain Renewal, Expiry and Deletion Policy (2010-01) at <http://www.auda.org.au/policies/auda-2010-01/>.

This Working Group has examined the effect of these two policies on the .au domain name secondary market, and identified some issues for consideration from both consumer and industry perspectives. In some cases, the Working Group has put forward its preliminary suggestions and proposals for addressing the issues.

If you would like to comment on the issues and proposals raised in this paper, please send a written submission to:

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Electronic submissions are preferred. All submissions will be posted on the auDA website within 2 working days of receipt, unless clearly marked confidential.

The closing date for submissions is **Friday 1 July 2011**.

BACKGROUND

Transfers (Change of Registrant) Policy

The relaxation of the Transfers (Change of Registrant) Policy on 1 June 2008 opened up the secondary market for .au domain names by allowing a registrant to transfer their domain name to another eligible entity by any means and for any reason, subject to an initial 6 months transfer prohibition period.

Prior to these changes, the previous Transfers (Change of Registrant) Policy (2004-03) only allowed registrants to transfer their domain name licence under specific, limited circumstances such as where the registrant sold their business or assigned intellectual property rights.

In its Final Report to the auDA Board, the 2007 Names Policy Panel noted that the resale of .au domain names was the most contentious issue for the Panel on considering changes to the Transfers (Change of Registrant) Policy (2004-03).

Ultimately, the Panel recognised that there was already an effective “black market” in .au domain names, which favoured people who were “in the know” as against the general public. Whilst there was consensus among Panel members for relaxing the policy to allow everyone to have access to the secondary market, there was no consensus on the way in which the new policy should be implemented. Accordingly, the Panel agreed simply to recommend that the policy be relaxed to allow a registrant to transfer their domain name to another eligible party for any reason.

The Panel emphasised that the rationale for its recommendation was to give people access to domain names that would not otherwise be available, and allow the transfer of domain names to those who have best use for them. The Panel did not wish to create a secondary market for its own sake.

Domain Renewal, Expiry and Deletion Policy

In April 2010, auDA published a new Domain Renewal, Expiry and Deletion Policy. The purge time for expired and deleted domain names became fixed instead of a random purge time, and an official daily domain drop list is now published on auDA’s website, showing the exact date and time a .au domain name is due to be purged from the registry and becomes available again for registration.

The original intention of the random purge time as outlined under the previous Domain Renewal, Expiry and Deletion Policy (2006-07) was to make it harder for people to snap up expired domain names. Through auDA’s experience in handling complaints and enquiries from the public over the years, it had been recognised that the system had not been particularly effective and in fact may have advantaged people who are “in the know” as opposed to ordinary members of the public, in acquiring expired domain names. The fact that some industry players had started to produce unofficial domain drop lists added to the perception of “insider trading”.

In order to level the playing field and make the system more transparent, auDA introduced a fixed time for domain name purges, and commenced publishing an official and authoritative domain drop list,

which is updated daily on auDA's website. The list includes expired and deleted domain names that are due to be purged from the registry.

At the time, auDA believed that the publication of an official drop list would enable more registrars and other industry participants to offer drop catching services, which would in turn help to increase consumer awareness and choice in the operations of the domain name secondary market.

CURRENT SITUATION

Registrant Transfer Statistics

According to the statistical data provided by AusRegistry, there has been a total of 12526 registrant transfers since June 2008. Detailed number of registrant transfers is provided below:

Financial Year 2008/2009					
	Year Total	Q4	Q3	Q2	Q1
Registrant Transfer	5443	1373	1240	1836	994
Financial Year 2009/2010					
Registrant Transfer	7083	1999	1720	1643	1721

Judging from the increase in the number of transfers from financial year 2008/2009 to 2009/2010 as listed above, it is apparent that more people are becoming aware of the ability to sell (transfer) a .au domain name, and the various means domain names can be bought and sold on the secondary market.

Domain names transactions are carried out through:

- Direct sale agreements, where the registrant and prospective buyer enter into an agreement to transfer the domain name licence.
- Public listing on domain aftermarket websites, where the registrant places their domain name on websites and trading forums. The process follows the traditional offer and counter offer system.¹
- Registrar listings, where the registrant offers their domain name for sale through their registrar. The domain names are generally advertised as "premium domains".²
- Aftermarket auctions, which apply to domain names that have already been registered and the registrant has decided to sell. Domain names up for auction have a specified end date, and the highest bidder winning the domain name on this date becomes the new registrant.³

¹ See [Netfleet](#); [DNTrade Forum](#); [Domain Market Place](#)

² See [Enetica](#); [TPP Internet](#)

³ See [Netfleet](#); [Drop.com.au](#)

- Daily expired and deleted domain name auctions, which specifically cater for those who are interested in the expired and deleted domain names published on the official auDA domain drop list.

The two most notable operators in this industry are Drop.com.au and Netfleet. The two operators have an automated system in place to “catch” expired or deleted domain names by continuously checking the availability of domain names around the known drop cycle, which runs daily at 1.00pm AEST (including weekends and public holidays) and then registering the domain name to their customer. Where more than one customer is interested in a domain name, there is an online auction process to determine which customer gets the domain name.

- Back-orders, a service to place an order on domain names that have already been registered. Once a back-order is placed, the service provider will continually monitor the domain name, and will determine when the domain name is due to expire and attempt to register the domain name once it comes available. Generally, there can only be one person allocated for each domain name.

A number of registrars offer back-order services. Enetica offers Domain Sentry⁴ which is exclusive to resellers, while Melbourne IT has Names By Request⁵, which is available as a “register your interest” option. DDNS has plans to introduce a back-order service, but it is currently under construction.⁶

Please refer to the Attachment for more details of the domain name secondary market.

⁴ <http://www.domainsentry.com.au/>

⁵ <http://www.melbourneit.com.au/namesbyrequest.html>

⁶ <http://www.ddns.com.au/domains.php>

ISSUES

While changes to auDA policies have facilitated an open secondary market in .au domain names, the Working Group has identified a number of issues for consideration. These can be divided into consumer issues and industry issues.

Consumer issues

1. Registrant transfer process and fees

One of the stated purposes of relaxing the Transfers (Change of Registrant) Policy was to reduce the administrative burden on registrars and registrants. However, the Working Group notes that this has not necessarily had the desired effect across the entire industry.

The Working Group is aware that the registrant transfer process differs from registrar to registrar, which can be confusing and unnecessarily complicated for consumers. Some registrars have a streamlined and mostly automated process, while others use a manual process. In the absence of any mandatory standard, the process and fee is a business decision for each registrar, based on the volume of transfers they receive, and their desire to differentiate themselves in the market.

The Working Group's view is that many, if not most, registrants and purchasers believe that they have to process a registrant transfer through the current registrar of record, which acts as a limitation on competition and consumer choice. Given the level of fees charged by some registrars (around \$100 - \$300), some purchasers are reluctant to have the domain name transferred into their name at the time of purchase. This creates a potential risk for both the purchaser and the registrant, as it means that the registry database does not reflect the true owner of the domain name.

Working Group members see no reason why auDA should not advise people that it is permissible for a registrant to transfer their domain name to another registrar before processing the registrant transfer. It is also suggested that registrars who bundle the domain name licence fee with a transfer fee should be required to disclose the quantum of each fee.

Working Group members have also raised security concerns associated with registrant transfers, especially given that some domain name transactions are worth large amounts of money.

To address these issues, the Working Group proposes that auDA should mandate a minimum standard for registrant transfer processes. It is suggested that the process mandated under the Transfers (Change of Registrar) Policy would be appropriate – it requires registrars to send a transfer confirmation request to the registrant contact email address, and receive a positive response before proceeding with the transfer. The Working Group believes that this would benefit consumers by providing for greater consistency and improved security across the industry.

THE WORKING GROUP INVITES COMMENTS ON THE REGISTRANT TRANSFER PROCESS AND FEES

2. Six month prohibition on transfers

Under the current Domain Name Eligibility and Allocation Policy Rules for Open 2LDs (2008-05), a registrant may not register a domain name for the sole purpose of resale. To enforce this policy rule, a registrant is not permitted to transfer their domain name licence within the first 6 months after registration of the domain name.

Under paragraph 4.2 of the Transfers Policy, a registrant may apply to auDA for authorisation to transfer their domain name within the first 6 months after registration of the domain name. The authorisation will be at auDA's discretion. Circumstances under which auDA may authorise a transfer are provided in the same paragraph.

The Working Group notes that it is relatively straightforward for a registrant to apply to auDA via their registrar when transferring their domain name within the first 6 months, however it is unclear whether registrants (and possibly some registrars) are aware of the application process and the circumstances under which an application would be approved.

The block on domain name transfers within the first 6 months of registration is intended to prevent illegitimate registrations. However, it has been suggested that the policy may not be effective given a registrant could hand over control of the domain name or redirect traffic to the purchaser until the 6 month period expires, and then transfer the domain name without going through auDA for approval.

Statistical data from AusRegistry shows the number of registrant transfers processed within the first 6 months, versus transfers at later dates.

Age of Domain Name	Number of Registrant Transfers
< 6 months	784
6-7 months	531
7-8 months	595
8-9 months	1,779
1-2 years	10,329
2-3 years	6,684
> 3 years	12,337

The Working Group notes that the statistics do not support the view that many registrants are waiting until the 6 month block expires before transferring their domain name. This would suggest that the incidence of registration for the sole purpose of resale is not high, and therefore the 6 month block is an unnecessary safeguard and should be removed.

An alternative interpretation of the statistics is that the 6 month block is not causing any problems, and therefore there is no reason to remove it. The comparatively high number of transfers within 6 months suggests that registrants who have a legitimate reason to transfer their domain name are able to do so.

The Working Group notes that a relevant consideration is the administrative overhead caused by the 6 month block, for auDA, industry and consumers alike.

The Working Group further notes that the policy is inconsistent, in that the 6 month block only applies to newly created domain names and not to transferred domain names (ie. there is nothing to stop someone buying a domain name on the secondary market and immediately offering it for sale).

THE WORKING GROUP INVITES COMMENTS ON THE SIX MONTH PROHIBITION ON TRANSFERS

3. Drop catching services

As more professional domainers become involved in the .au secondary market, a domain drop catching service would now appear to be essential for someone who is interested in acquiring an expired or deleted domain name, especially if it is a generic name or has an existing high level of internet traffic.

To level the playing field between industry experts and general members of the public, the Working Group believes that information about drop catching services should be made available to anyone who needs it. The Working Group acknowledges that some market participants provide information about drop catching services and the secondary market generally, however, its view is that this information is really only available to people who are already using those services.

The Working Group notes that, due to its role as an impartial regulator, auDA has felt constrained in providing any more than general advice on how to acquire an expired or deleted domain name (see auDA blog at <http://blog.auda.org.au/2010/11/08/domain-drops-and-the-process/>). Because not all registrars offer drop catching services, auDA has not listed the ones that do provide the service on its website, due to a concern that it may appear as though auDA is promoting some registrars over others. Currently auDA notes on its website that some registrars share registry connections for the purpose of operating drop catching services, but such information is limited in exposure and its meaning would not be understandable to everyone.

The Working Group proposes that there should be a formal approval process for registrars that want to provide drop catching services. This would allow auDA to publish an official list of registrars that are approved drop catching service providers, along with authoritative and competition-neutral information for consumers.

The Working Group notes that mandatory approval would be difficult to enforce, given the ability of registrars to participate in the drop on a one-off or ad hoc basis. Therefore, any approval process would have to be voluntary. The Working Group believes that registrars would volunteer to be approved for marketing reasons, ie. official recognition by auDA and referrals from auDA's website.

THE WORKING GROUP INVITES COMMENTS ON DROP CATCHING SERVICES

4. Domain name sale listings

One of the ways that a registrant can sell their domain name is to list it on an aftermarket sale and/or auction website.

The Working Group is aware that such listings can be out-of-date. Sometimes a registrant will list their domain name for sale, but then let the domain name expire when it fails to sell, without removing the listing. This can cause problems when someone who has purchased a domain name is unaware that the domain name is still listed for sale.

The Working Group believes that providers should bear responsibility for ensuring that domain name auction and sale listings are accurate. It has been suggested that providers should be required to include a disclaimer notice to the effect that prospective buyers should conduct their own due diligence. However, Working Group members note that there is a limit to auDA's jurisdiction, and it would not be possible to enforce any such requirements on providers outside the .au industry (eg. Sedo, eBay).

THE WORKING GROUP INVITES COMMENTS ON DOMAIN NAME SALE LISTINGS

Industry issues

1. Registry operations

Registrars who provide drop catching services typically attempt to catch a particular domain name by sending multiple EPP Create commands to the registry when the domain name is due to purge. This activity creates an additional load on the registry, over and above the normal transaction rate. The registry has taken steps to minimise the impact by requiring registrars to ensure that all EPP Create commands are preceded by an indication from the Domain Name Registry System that the domain name requested is available. This indication must have been received from the Domain Name Registry System within the 10 minute period prior to the corresponding EPP Create command. Registrars who breach this policy are blocked from EPP Create commands for 15 minutes before and 15 minutes after the Purge Cycle; first occasion penalty is being blocked for one day, second occasion penalty is 7 days, third occasion penalty is 30 days.

Whilst the current level of activity is manageable, clearly the impact on the registry increases each time a new registrar starts to provide drop catching services. The registry system was not designed to support this behaviour, and as more registrars start to participate in drop catching, the risk to the stability of the registry system increases, as does the cost of ensuring that ongoing stability is maintained. The risk to the registry is exacerbated when some registrars do not have the technical competence to operate their drop catching software in a way that does not breach registry usage limits (see point 3 below).

The Working Group notes that if an extra 3-4 registrars started to provide drop catching services, then further action would need to be taken to minimise the impact on the registry. The impact would not be on the registry per se, but on AusRegistry's SLAs. In order to meet SLAs, AusRegistry might be forced to impose other restrictions (eg. rate limits) which would affect all registrars, not just those who participate in the drop.

The Working Group notes that additional activity can also affect the time taken for the drop to process. Where there is no load on the registry, the drop takes 30-60 seconds. The more load on the registry, the longer the drop time; in recent instances, the drop has taken more than 15 minutes. Whilst this is not a concern for the registry, it may cause problems for registrars and other industry participants.

THE WORKING GROUP INVITES COMMENTS ON REGISTRY OPERATIONS

2. Registrar connection sharing

The way that drop catching works means that, generally speaking, the more connections a registrar has to the registry, the greater their chance of catching domain names. Each registrar has five EPP connections to the registry. Currently some registrars share registry connections, either within the same related entity group or with unrelated entities, thereby allowing them to use more than their allocated five EPP connections for drop catching purposes.

As the .au market grows, the Working Group notes that more registrars may decide that they need to increase their connections to the registry, either by entering into agreements with other registrars, or by applying to auDA to accredit new registrar entities. In either case, connection sharing raises potential security and privacy implications for both registrars and registrants. The Working Group is also concerned about the risk that the .au market will become flooded with “shell” registrars which exist only for their EPP connections (as has already occurred in the gTLD market).

Working Group members suggest that this issue may be addressed via the registrar accreditation process. For example, auDA could make it harder and/or more expensive for an entity to accredit second and subsequent registrars.

Another approach may be to limit the number of EPP connections across a registrar group, thereby negating or at least minimising any competitive advantage associated with owning multiple registrars. This could be done by giving a group of registrars the same number of connections as a single registrar. Alternatively, the number of connections for each registrar in a group might be limited, eg. the first registrar gets five connections, the second one gets three connections, etc.

Finally, the Working Group suggests that auDA could publish a policy which specifically prohibits connection sharing between unrelated registrars, to address security and privacy concerns.

THE WORKING GROUP INVITES COMMENTS ON REGISTRAR CONNECTION SHARING

3. Registrar competition

Drop catching has become an important aspect of industry competition, because it provides registrars with an opportunity to offer additional customer services and differentiate themselves against their competitors.

Registrars who want to offer drop catching services must develop their own proprietary systems and software. Whilst this encourages technical innovation in the industry, it does constitute a barrier to

entry, especially for smaller registrars. Drop catching falls outside the standard suite of registrar services, which means that AusRegistry is not required to provide any development or testing assistance. In any case, AusRegistry would most likely be in breach of its licence obligation to treat all registrars fairly if it did provide any assistance to individual registrars.

The Working Group sees two problems with the current situation. Not only does a lack of access to technical advice and assistance make it difficult for registrars to enter the drop catching market, as noted in Industry Issue 1 above, it can also pose a risk to the stability of the registry when registrars do not have the technical competence to operate their drop catching software in a way that does not breach registry usage limits.

Working Group members note that whilst an approval process for drop catching, as proposed under Consumer Issue 3 above, would not place any additional technical requirements on registrars, it would at least provide an opportunity for formal notification/reiteration of the Registry Usage Policy.

THE WORKING GROUP INVITES COMMENTS ON REGISTRAR COMPETITION

ATTACHMENT

Domain name secondary market costs

Both Drop.com.au and Netfleet charge a membership fee for placing bids on a domain name.

Netfleet charges \$9.95 for a 48 hour subscription fee and \$109.95 for an annual subscription to participate in the Domain Snapper auction.⁷

The starting bid for Domain Snapper auction is \$10. According to Netfleet, once the bidder has chosen their subscription option, they need to pay the winning bid amount and the standard domain name registration cost of \$44.95. If however, the bidder has won the auction with the highest bid and Netfleet fails to register the domain name on their behalf, then Netfleet will not charge any fees.

There is no cost to participate as a buyer in one of Netfleet's aftermarket auctions, and every domain name has a starting bidding price of \$100. If a domain name sells, the highest bidder must pay the amount of their winning bid to the seller. The buyer must also pay the registrar (of their choosing) the change of registrant fees, which varies between registrars. Netfleet receives an 8% commission on the final sale price when the domain name is sold.

For their domain backorder services, Netfleet charges \$99.95 for 2 years and \$109.95 for 5 years. Again, a registration fee applies when a registrant successfully registers the domain name through the back-ordering service.

In addition to the above mentioned services, Netfleet also provides premium listing services. The service fee is from \$0.06 per day, per domain.⁸

Drop.com.au requires a membership fee of \$29.95, which has been significantly reduced from \$250 when such service was initially offered. The joining fee according to Drop Auction Rules is not refundable subject to the successful "catch" of a domain name.⁹ In any case, if the bid is unsuccessful then the bidder isn't required to pay anything.

The minimum starting bid at Drop.com.au is \$1. Drop.com.au states that they let market demand determine their auction prices.¹⁰ The auction prices exclude the 2 year domain name licence fee of \$49.95.

According to Drop.com.au's website, they are currently overhauling their secondary market auction platform.¹¹

Domain Market Place (operated by DDNS) does not charge commissions or listing fees, but there is a \$100 fee for DDNS to act as an escrow agent for the seller or buyer.

⁷ <http://www.netfleet.com.au/expiring-domains>

⁸ <http://www.netfleet.com.au/index.php?a=features>

⁹ https://www.drop.com.au/my_account/knowledgebase.php?action=displayarticle&id=9

¹⁰ https://www.drop.com.au/my_account/knowledgebase.php?action=displayarticle&id=36

¹¹ <http://www.drop.com.au/auction/>

Melbourne IT charges 30% commission of the total purchase price if a domain name is sold,¹² while TPP Internet charges 15% commission of the purchase price.¹³

Given the high fees charged by registrar for registrant transfer, some people have queried whether it would be better to delete their domain name, so the potential buyer can wait for it to drop then manually register the domain name.

Even though Domain Shed has no domain names listed for sale at the moment, their website states that they do not charge any commission on domain name sales.¹⁴ They do however offer optional advertising services which a “feature ad” costs \$200 for 30 days; an “ad bolding” costs \$50 for 30 days; and a “better placement” costs \$120 for 30 days.

Sedo¹⁵ provides appraisal services from US\$29, and showcase listings at US\$39 per month. They charge 10% commission of the purchase price for every domain name sold, and provide brokerage services at US\$69. The domain names listed are mainly gTLD and other international ccTLDs.

Presently, Netfleet and Drop.com.au dominate the market with respect to expired/deleted domain names.

Value of aftermarket domain names

There are many methods and key indicators the aftermarket domain industry uses to value a domain name, such as:

- length of characters (shorter and more memorable the better)
- extension (com.au more popular than net.au)
- hyphenations (hyphenated words are less valuable)
- spelling (correctly spelled more valuable)
- word count (less words the better)
- generic or common word (ie. can it be associated with a product or service)
- popularity (ie. search engine counts, links on developed sites)
- marketability (ie. how profitable is it, how large the market it is targeting)

The highest price paid in a Domain Snapper Auction on Netfleet was \$30,933 for electricity.com.au.¹⁶

The top domain name sale listed on Drop.com.au is \$33,333 for hardware.com.au.¹⁷

The highest price paid for a domain name on Domain Market Place is \$14,300 for reid.com.au.¹⁸

¹² <http://www.melbourneit.com.au/successbox/2008/05/22/important-dotau-land-boom-starts-1-june-2008/>

¹³ <http://www.tppinternet.com.au/domains/information-on-domain-selling.php>

¹⁴ <http://www.domainshed.com.au/index.php?a=2&b=1334>

¹⁵ <http://www.sedo.com/search/searchresult.php4?language=us>

¹⁶ <http://www.netfleet.com.au/domain-sales>

¹⁷ <https://www.drop.com.au/>

¹⁸ <http://www.domainmarketplace.com.au/aftermarket-sales/page-3/>

Some online sources¹⁹ have reported that domain names such as jobs.com.au has been sold for record prices of over \$200,000, tennis.com.au for around \$60,000 - \$80,000 and freestuff.com.au for \$18,500.²⁰

Domain auctions such as the one held at TRAFFIC Down Under in November 2008 was reported to have sold jeweller.com.au for \$14,747 and history.com.au for \$13,644. The lowest price paid was for adopt.com.au, which was sold for \$642.²¹

Generic domain names have also been bought by large corporations for undisclosed amounts. To name a few, BankWest bought happybanking.com.au, St George Bank Ltd bought bestbank.com.au, National Australia Bank Ltd bought smartbanking.com.au, ING Bank (Australia) Ltd bought mortgage.com.au²², Fuji Xerox Australia Pty Ltd bought photocopier.com.au²³, and 3M Australia Pty Ltd bought scotch.com.au.²⁴ It is unclear when these transactions have taken place.

¹⁹ <http://www.pr.com/press-release/96609>

²⁰ Note that the sales of <jobs.com.au> and <freestuff.com.au> took place prior to relaxation of the Transfers Policy.

²¹ <http://www.netfleet.com.au/index.php?a=news&id=14>

²² It has been speculated that the amount paid for mortgage.com.au was AU\$235,000.

²³ The speculated price paid for photocopier.com.au was AU\$137,000.

²⁴ <http://forums.digitalpoint.com/showthread.php?p=11680720>