

Submission

1. Introduction

I am making this submission in response to the Secondary Market Working Group ('SMWG') Issues Paper dated May 2011.

2. Registrant transfer process and fees

The SMWG's proposal for auDA to mandate a minimum standard for registrant transfer processes is in principle a good suggestion. In this context, measures which enhance security and safety, when transferring domain names are encouraged, and should be examined. This should be done bearing in mind the following principles:

- The need to avoid over regulation, which will increase costs on consumers;
- The need to avoid regulation, which prevents and restricts competition and innovation, such as the online transfer process offered by some Registrars.

The suggestion made by SMWG with respect to advising registrants of the ability to transfer domain names to other registrars before affecting a transfer should be encouraged. This will promote competition among registrars and benefit consumers. Transparency in pricing, particularly in services or renewals bundled with transfers, should be encouraged.

3. Six month prohibition on transfers

The prohibition on transfers within the first six months of registration is illogical and without any sound basis.

The issues paper states: "*The block on domain name transfers within the first 6 months of registration is intended to prevent illegitimate registrations*". The term 'illegitimate registrations' is not defined, perhaps deliberately.

This restriction does not prevent bad faith registrations nor should it – it is the *Domain Name Eligibility and Allocation Policy Rules for Open 2LDS (2008-05)* ('Eligibility Policy') and auDRP which was developed to prevent 'illegitimate registrations' if that term is to mean 'bad faith' registrations. The idea that the *Transfers Policy* should prevent illegitimate registrations is ill conceived.

auDA has accepted that domain names may be bought and sold, yet this restriction is contrary to that position, it is also inconsistent with the fact that these restrictions do not apply to domains which are not new registrations.

The restriction on sales within 6 months of registration encourages domain names to be 'locked up' and kept out of use.

Among other things, this restriction is unnecessary regulation which:

- a) Causes confusion;
- b) Imposes unnecessary work load on auDA;
- c) Fails to achieve what it was intended to protect against;
- d) Locks up domain names;

It is my recommendation that auDA remove this restriction.

4. Drop catching services

To preface my submission on this point, the comments in the issues paper are predicated on the fact that there is not a level playing field in access to drop catching services. This proposition is false. Both Drop.com.au and Netfleet (and other registrars) widely market and promote their services, which are open to any member of the public upon payment of the joining fee.

With respect to the provision of information by auDA, this should be encouraged. auDA already publishes the daily drop list in a very prominent place on its website for interested members of the public to be aware of what domains are dropping. auDA may want to place a general notice on the drop list to advise people that if they seek to register any of these names they can do so by using registrars who offer domain catching services.

The issues paper suggests that there should be a formal process in place for approval of drop catching services, while I would support publishing a list of auDA Accredited registrars who offer domain catching or drop services, any additional regulation or approval processes are undesirable and pose barriers to competition.

5. Domain name sales listings

I agree with the SMWG suggestion that 'providers should bear responsibility for ensuring that domain name auction and sale listings are accurate'. Policy direction from auDA is not required to achieve this – the free market is capable of achieving this. It is in the interests of providers to ensure that sale listings are current and accurate.

6. Registry operations

Whilst I support the stability and integrity of the Registry, and measures to maintain this, the Registry has already put protective measures in place. auDA should support the Registry's operational policies.

7. Registrar connection sharing

I do not support limiting the number of EPP connections registrars may have. All registrars are subject to the same rules, that is, that they don't have any restriction on the number of EPP connections they may control or use. This in itself provides for a level playing field amongst registrars. Connection sharing enables smaller registrars to work together to compete against large registrars who offer drop services, this should be encouraged not prevented. Connection sharing and multiple EPP connections encourages innovation and investment on drop and catching services. It is worth noting that, in any case, the number of EPP connections is only one element of operating a successful domain drop services.

The concern about 'shell' registrars is without foundation in the .au space. The auDA Registrar Agreement and application process enables auDA to qualify parties seeking to obtain accreditation and also gives auDA substantial powers to terminate or suspend accreditation and audit registrars. By way of example clause 23 of the Registrar Agreement gives auDA power to terminate registrar accreditation.

8. Registrar competition

I refer to my submissions in point 7. In my view there is a level playing field among registrars to establish domain drop services. The registry also provides some basic operational policies, which ensure that the security and stability of the registry is maintained.

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