

Submission to the Policy Review Panel



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Australian Business Number: 74561448644

100% Australian owned and operated

This document contains my own personal opinions and does not necessarily reflect the views of businesses or organisations that I engage with or have ownership in.

Dear Mr Swinson,

For the 2017 Policy Review Panel's consideration, please find enclosed my submission on the development of an implementation policy for direct registration.

In addition to addressing the questions outlined in the Issues Paper, this submission also outlines my concerns with the proposed introduction of direct registration more broadly.

As the questions outlined in the Issues Paper are limited in scope and in some cases ambiguous, I was pleased to note that submissions are not confined to those questions: *"Stakeholders are invited to make submissions on any of the material contained in this discussion paper, including background material and analysis"*.

I would be happy to participate in any further consultations to be undertaken by the 2017 Policy Review Panel. I can be contacted using the details in my email providing this submission, dated 8 November 2017.

If submissions to the 2017 Policy Review Panel are to be made public, then I give my consent for the publication of this document.

Best regards,

Luke Summers

The Lucky Country

eBranding.com.au | Australian domain name marketplace

Proposed introduction of direct registration in Australia

Imposing further costs on Australian businesses

The proposed introduction of direct registration (e.g. theluckycountry.au) will impose cost burdens on the Australian internet community. These burdens will be most acutely felt by small businesses.

The Treasury ¹ and the Australian Bureau of Statistics ² report that over 97 percent of all Australian businesses are small businesses, including sole traders.

Existing registrants, if they are even aware of these significant changes proposed for the Australian namespace, will be compelled to register the equivalents of their existing registrations (e.g. .com.au and .net.au) in the new direct registration option. They will do so in order to protect their brands and intellectual property.

Direct registration will not deliver additional value to the Australian namespace, it will simply increase the registration costs borne by registrants. A large proportion of direct registrations will be registrants trying to prevent any damage to the brand equity that they have built.

Risking the integrity and reputation of the Australian namespace

Further to the cost burdens imposed, the introduction of direct registration will have broader negative impacts on a large number of stakeholders in the Australian internet community.

The introduction of a third possible extension for business use (.au in addition to the existing .com.au and .net.au options), will fragment the Australian namespace and create significant confusion for both consumers and businesses.

This will introduce a number of serious integrity issues for the Australian namespace, including:

¹ Small Business Data Card: <https://treasury.gov.au/publication/small-business-data-card/>

² Counts of Australian Businesses, including Entries and Exits: <http://www.abs.gov.au/ausstats/abs@.nsf/mf/8165.0>

- greatly increased risks of intellectual property infringements (e.g. passing off as a business or its brands);
- increases in phishing attacks (e.g. a nefarious .au registrant imitating an existing business website hosted on a .com.au domain name); and
- misdirected emails potentially leading to the release of commercially sensitive information or breaches of consumer privacy (e.g. emails intended for .com.au addresses going to unrelated .au addresses, and vice versa).

The Australian namespace has built a positive reputation over many years, and is now widely recognised and trusted by members of the Australian internet community.

The Australian public has firmly established expectations of where to find Australian organisations online.

- The .com.au and .net.au extensions have a particularly high level of consumer awareness, and are seen as the place to find Australian businesses online.
- The .gov.au extension is known as the right address for securely accessing government information and services online.
- People expect to find Australian educational institutions, such as universities, on .edu.au addresses.
- And of course, .org.au domain names are immediately recognised as representing non-commercial organisations, such as charities.

The introduction of direct registration risks damaging the trusted reputation of the Australian namespace.

Direct registration is not in the interests of the Australian community

The 2017 Policy Review Panel has acknowledged³ that the .au ccTLD is a public asset and that auDA administers .au for the benefit of the Australian community. The 2017 Policy Review Panel also committed to ensuring that its recommendations comply with those principles.

Proceeding with direct registration is not in the best interests of the Australian community.

³ .au Policy Review Panel - Roles and Responsibilities: <https://www.auda.org.au/assets/pdf/Policy-Review-Panel-Roles-and-Responsibilities-20170829web.pdf>

If direct registration is implemented, the benefits will largely flow to the supply side of the Australian namespace (the registry operator, registrars and resellers), to the great detriment of existing registrants and other stakeholders in the Australian internet community.

Regardless of the approach to implementation, any potential benefits of introducing direct registration will be far outweighed by negative impacts on a large number of stakeholders. I therefore strongly encourage the 2017 Policy Review Panel to recommend that the implementation of direct registration should not proceed.

Issues Paper Question 1:

What date should be chosen as the cut-off date for determining registrant eligibility for priority registration of the second level domain name, and why?

I acknowledge that it is important to set a cut-off date, in order to mitigate any large-scale speculative registrations in existing extensions (.com.au, .net.au, .id.au, etc), that would be for the sole purpose of securing priority rights to the matching direct registration domain names.

However, it is important to recognise that this most recent examination of direct registration dates back to 2014⁴, when auDA called for nominations for the 2015 Names Policy Panel.

This examination of direct registration already spans three years, and there is much more work that would be required prior to the public availability of direct registration.

Despite the protracted consideration of direct registration; at this time, there is still very little awareness in the Australian internet community of the proposed introduction of direct registration. This includes registrants that have recently purchased a .au domain name; either through their registrar of choice, or via an aftermarket transaction.

⁴ auDA Panel Call for Nominations, 29 October 2014: <https://www.auda.org.au/news/auda-panel-call-for-nominations/>

The majority of recent registrants will be unaware of the significant changes that are proposed for the Australian namespace. Businesses have made investments in their brands, including domain names, trademarks and other intellectual property; unaware that direct registration is looming on the horizon.

It is therefore very important that any backdating of the cut-off date is kept to an absolute minimum.

My recommendation to the 2017 Policy Review Panel, is that the cut-off date be set as the most recent public announcement regarding direct registration; which at the time of writing is 6 October 2017 ⁵.

Issues Paper Question 2:

Should registrants of domain names at the fourth level within edu.au and gov.au be eligible for priority registration? If so, what rules should apply?

The Australian public is accustomed to finding government websites on .gov.au and educational institutions on .edu.au.

These long-held associations have been actively encouraged. For example, the Australian Government has advised consumers and industry on numerous occasions ^{6,7} to look for '.gov.au' as confirmation that they are interacting with a legitimate government entity.

The .gov.au and .edu.au extensions provide confidence to the Australian public, when they are dealing with government and educational institutions. It would make no sense for these organisations to move to the direct registration equivalent domain names.

⁵ .au is changing: Direct Registration Public Consultation Opens, 6 October 2017: <https://www.ada.org.au/news/au-is-changing-direct-registration-public-consultation-opens/>

⁶ "All Australian Government websites use the '.gov.au' extension": <https://www.accc.gov.au/media-release/beware-of-websites-offering-access-to-government-grants>

⁷ "To check if a website is officially affiliated with government, make sure the web address uses a '.gov.au' extension in their URL": <https://www.business.gov.au/news/dont-pay-for-government-grant-information>

Given that government and educational institutions already have well-established, dedicated extensions; .gov.au and .edu.au registrants should not be given priority registration.

The same applies for the dedicated 'non-commercial' extensions (.org.au and .asn.au), and the dedicated extension for individuals (.id.au). Registrants in those extensions should not be given priority registration.

Issues Paper Question 3:

What process should be implemented to resolve competing claims to the same .au name and why? Should registrants whose claim is unsuccessful be given priority to register another second level domain name?

Regarding the first part of the question (the process for resolving competing claims), please see my responses to Questions 2 and 10.

To summarise part of my response to Question 10, the process for priority direct registration rights should be a tiered allocation approach. This is the approach that was taken for direct registration in the .uk namespace.

Please see example below illustrating how a tiered allocation could be applied in the Australian namespace.

Example of the tiered allocation approach

Registrant A: ebranding.com.au

Registrant B: ebranding.net.au

Registrant C: ebranding.org.au

In the example above, the registrant of ebranding.com.au (Registrant A) would be given priority rights for the direct registration equivalent (ebranding.au).

Under the suggested tiered allocation approach, if a term is registered under the .com.au or .net.au extensions, then priority would be given to .com.au in the first instance. If the .com.au domain name is unregistered (or was registered after the cut-off date for priority registration), then the priority would flow to the .net.au domain name registrant.

If the term is unregistered in .com.au or .net.au, then it would be available for direct registration by any eligible registrant, from the time that direct registrations are made available to the Australian public.

Should registrants whose claim is unsuccessful be given priority to register another second level domain name?

The meaning behind the second part of the question is not entirely clear.

It seems to imply that if the registrant of ebranding.net.au is unsuccessful in gaining priority rights to the direct registration equivalent (ebranding.au), then they should get access to an alternative of some kind.

If that is indeed the intent, it seems like an unusual approach and not one that I have seen implemented in other countries.

A mechanism of this kind seems impractical to administer and I fail to see any benefits that would be derived from implementing this.

Issues Paper Question 4:

How much time should priority registrants have to exercise their right to register the matching second level name before it is made available to the public for registration?

It is crucial that priority registrants have a sufficient period of time for exercising their rights to matching second level domain names.

Educating the Australian internet community, and the Australian public more broadly, about the availability of direct registration will take time. International

examples have shown that it will take a number of years for awareness to expand beyond the domain industry and other ICT related sectors.

Logically, the period of time should mirror the current domain name license registration period of two years.

I understand that there needs to be a balance between providing a sufficient period of time for consideration and exercising of priority rights, and ensuring that the period of time is not so long that it has a negative impact on the namespace (further to the actual introduction of direct registration). I believe that a period of two years strikes the right balance.

Anything less than two years, would not give existing registrants enough time to become aware of the changes, and to make a determination as to the course of action that is in their best interests.

Issues Paper Question 5:

Should certain names be reserved for future use as 2LDs?

Please indicate which names and why they should be reserved as future 2LDs?

No.

Direct registration would result in three possible extensions for business use (.com.au, .net.au and .au). Under the current circumstances, with the two commercial extensions currently available (.com.au and .net.au), demand for .net.au has been very low.

.com.au is by far the most dominant domain name extension used in Australia. Of the available extensions in the Australian namespace (such as .com.au, .net.au and .org.au), .com.au represents nearly 90% of all domain names registered (88% as at the end of September 2017⁸). The second place extension (.net.au) is way behind at less than 10% of total registrations (9% as at the end of September 2017⁸).

⁸ AusRegistry Domain Report: <https://www.ausregistry.com.au/wp-content/uploads/2017/10/1709General.pdf>

For the latest reported period (October 2016 to September 2017 ⁸), total .com.au registrations increased by 2.6%. Over that same period, total .net.au registrations decreased by 3.3%.

There is already little appetite for the current 'alternative commercial extension' (.net.au).

The .id.au extension has been even less popular, with just 12,550 total registrations, as at September 2017 ⁸. This represents less than one percent (0.4%) of registrations across the available extensions in the Australian namespace.

The introduction of direct registration would add to the existing plethora of options, many of which have limited demand, so I see no value in adding even more options (2LDs) in the future.

Issues Paper Question 6:

Are there names whose use is not prohibited at law that should be reserved?

Nefarious people may seek to use direct registrations for phishing attacks, particularly given the potential confusion between existing extensions (such as .com.au) and .au.

It would be a simple matter, for example, for a phishing site to leverage off typo-traffic landing on the .au URL equivalent of a legitimate site operating on a .com.au domain name.

To maintain the integrity of the namespace, it may be sensible to reserve some names.

However, in practice these risks would be very difficult to account for. Beyond those words and phrase already restricted under commonwealth legislation ⁹, it is simply not feasible to 'cover all the bases'.

For example, financial institutions are common targets for those seeking to profit by imitating brands and obtaining financial gains from unsuspecting consumers.

⁹ Reserved List Policy: <https://www.ada.org.au/policies/2014-06/>

Should the corresponding brands, and terms used in existing domain names and trade marks of all financial institutions in Australia be reserved? And if so, what is the process should the legitimate organisation wish to use one or more of these reserved domain names? These rhetorical questions highlight the difficulties with maintaining the integrity of the Australian namespace with the introduction of direct registration.

Issues Paper Question 7:

Should names that are potentially confusing or misleading when registered at the second level be reserved (ie not available for registration)?

Please note my response to Question 6, as similar issues apply.

There is, much like the situation outlined at Question 6, the potential for confusion and for deliberately misleading registrations. However, it is again difficult to fully contain such problems.

Issues Paper Question 8:

Should names that are a deliberate misspelling of the existing 2LDs be prohibited from being registered at the second level?

Please refer to my answers for Questions 6 and 7.

The existing Prohibition on Misspellings Policy¹⁰ has not been effective.

It is unrealistic to expect that all the possible deliberate misspellings can be accounted for in one list. Businesses commence, close, create new brands and cease existing ones; day in, day out. The current approach, through the Prohibition

¹⁰ Prohibition on Misspellings Policy: <https://www.auda.org.au/policies/index-of-published-policies/2008/2008-09/>

on Misspellings Policy, is a waste of resources and does little to protect the integrity of the Australian namespace.

Issues Paper Question 9:

Should direct registration be implemented in .au using a staged process or concurrent reservation and open availability process, and why?

If direct registration proceeds, then the implementation should follow a clear, easy to understand process.

It is important to recognise that the majority of registrants in the Australian namespace do not have a deep understanding of the domain industry or how the namespace is administered and operated.

For most registrants, the only domain industry participants that they engage with are their registrar of choice, and perhaps a hosting service provider. The totality of these interactions might be as limited as transactions to register a domain name or purchase a hosting service.

The issue with using a staged process for the rollout of direct registration, is that it would add complexity by setting multiple release dates (the opening and closing of a reservation period, and the opening of public availability).

It would be much more difficult to ensure that existing and prospective registrants have sufficient awareness and comprehension of the process, if there are multiple stages and key dates involved.

I suggest that the 2017 Policy Review Panel recommends a concurrent reservation and open availability process, as this will be the least complicated approach for existing and prospective registrants.

Of course, this would require some mechanism by which reserved domain names can only be taken up by those holding priority rights. For example, it could be that registration of reserved domain names can only be undertaken following some form of authentication. This could be an automated email to the contact email address of

the existing domain name that qualifies the prospective registrant for priority rights to the direct registration equivalent.

Issues Paper Question 10: Should other registrants or rights holders be given priority during the landrush or reservation period to register a second level domain name (trademark owners)?

Existing registrants

If direct registrations are introduced in Australia, then it is imperative that priority rights be given to existing .com.au registrants.

A 'free for all' approach was initially put forward in proposals to introduce direct registrations under the .uk namespace and the backlash was so strong that the policy was ultimately changed to ensure that there were appropriate protections for existing registrants ¹¹.

In order to protect UK businesses and their established online brands, existing registrants were given priority access to the equivalent .uk domain name.

A tiered allocation approach was used, which started with .co.uk registrants and then proceeded through the other extensions if the .co.uk domain name was unregistered.

This tiered approach was adopted in recognition of the fact that the vast majority of UK businesses operate on the .co.uk extension.

The situation in Australia is remarkably similar, with .com.au being the dominant extension used by Australian businesses. com.au represents nearly 90% of all domain names registered in the .au namespace (88% as at the end of September 2017 ¹²).

¹¹ Trials And Tribulations Of .UK: <https://www.domainer.com.au/trials-and-tribulations-of-uk/>

¹² AusRegistry Domain Report: <https://www.ausregistry.com.au/wp-content/uploads/2017/10/1709General.pdf>

The UK approach was a simple and effective way to protect the rights of existing registrants and maintain the integrity and reputation of the .uk namespace.

Australia should look to the UK approach as best practice for the allocation of priority rights.

Intellectual property rights holders (e.g. trade marks)

Whilst in principle this may sound like a sensible approach, it is problematic once you dig beneath the surface.

For example, which intellectual property rights holder should be given priority for dove.au?

Many consumers would be aware of the Dove soap brand, and also the Dove chocolate brand.

The soap brand (Dove) is owned by Unilever, the chocolate brand (Dove) is owned by Mars. Both hold numerous trade marks for 'dove'.

As at 8 November 2017, IP Australia lists 157 trade marks ¹³ (47 approved) featuring the word 'dove'. This includes trade marks held by Unilever, Mars, and many other organisations.

Even if composite trade marks (e.g. logos) were not considered to be eligible, and only (matching) word trade marks were given priority rights; in the example outlined above, there are numerous organisations (not just Unilever and Mars) that hold registered trade marks for the word 'dove'.

Intellectual property rights holders (i.e. trade mark holders) should not be given priority access to direct registration at any time, including during a landrush or reservation period.

¹³ IP Australia trade mark search results: <https://search.ipaustralia.gov.au/trademarks/search/quick/result?q=Dove>

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