Review of Australia's .au domain management

Submission by

the Australian Communications Consumer Action Network

to the

Department of Communications and the Arts

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About ACCAN

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards availability, accessibility and affordability of communications services for all Australians.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will represent the views of its broad and diverse membership base to policy makers, government and industry to get better outcomes for all communications consumers.

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1.   Introduction

As the peak national body representing telecommunications consumers, the Australian Communications Consumer Action Network (ACCAN) is pleased to have the opportunity to submit to the Department of Communications and the Arts in its review of the administration of Australia's domain name system.

1.1.   Review background and scope

The Australian government is reviewing the administration of .au to ensure that the management framework of auDA remains fit for purpose and the .au domain is serving the needs of the online Australian community. Consideration of the .au Domain Administration (auDA) governance arrangements and an assessment of the terms of endorsement are being undertaken to determine whether Australia's top-level domain, .au, is being managed consistent with Government and community expectations.

auDA oversees the operation and management of the .au domain and administers Australia's country code top-level domain (ccTLD) on behalf of Australian internet users and is endorsed by the Australian Government under the terms established in 2000. auDA is recognised by the Internet Corporation for Assigned Names and Numbers (ICANN) as the manager of the .au ccTLD.

ACCAN is reassured by the government's ongoing commitment to the multistakeholder system of internet governance, and notes:

> the Australian Government is absolutely committed to supporting an open Internet which is administered by multi stakeholder organisations like ICANN and NOT by governments whether in the form of consortia or multilateral organisations like the ITU or the UN.[1]

1.2.   ACCAN view on domain space regulation

ACCAN believes there is robust evidence that there is a lower incidence of abuse, such as spam, malware and phishing, in well-regulated domain spaces[2]. Spamhaus currently rates the .au ccTLD as a very low source of spam[3]. It is ACCAN's view that the value inherent in the .au name space is the:

- association with Australia;
- perception of good access to the Australian legal system and the applicability of Australian consumer law; and
- high likelihood of names therein belonging to an Australian business or entity (believed to be generally trustworthy[4]).

Thus it is ACCAN's view that regulation of the .au domain space should be robust and enforced, as well as reinforcing the above values to meet the expectations of the Australian community.

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[1] https://www.malcolmturnbull.com.au/media/australian-committed-to-a-multi-stakeholder-system-of-internet-governance
2 *Statistical Analysis of DNS Abuse in gTLDs Final Report* commissioned by the ICANN CCTRT at https://www.icann.org/en/system/files/files/sadag-final-09aug17-en.pdf
[3] The Spamhaus Project pages on the most abused ccTLDs at www.spamhaus.org/statistics/tlds/
[4] *Behind the Dot*, Issue 13, Nov 2017, Ausregistry. The annual survey shows continuing high levels of recognition and trust in .au.

2. Responses to Issues Paper

2.1. Broad questions

Consumer engagement and expectations

It is ACCAN's experience that many consumers, including internet users, simply do not recognise or consciously use domain names at all. Furthermore, few consumers in the broader community understand the system of regulation and allocation. These low levels of consumer engagement are a barrier to consumers being able to exercise their rights and ensure protection and redress.

Where there is awareness, it is ACCAN's view that Australian consumers perceive a connection between *Australia* and the use of .au. There is also a presumption that Australian Consumer Law will apply – a perception which should be strengthened not weakened. Australian consumers expect that entities registered within .au have an Australian presence, are physically located in and/or do business in Australia.

General comments on rules

Any Australian resident, or citizen, business organisation, not-for-profit entity, association, sole trader or partnership as recognised under Australian law should be able to register a domain name within the .au name space.

Rules allowing for rapid deregistration or suspension should be strengthened in order to reduce the likelihood of fraud, and this approach should be applied broadly across the .au name space.

2.2. Issues Paper questions

Responses to questions have been grouped where the response spans more than one.

2.2.1. auDA's roles and responsibilities

1. What are auDA's primary roles and responsibilities?

auDA's primary roles and responsibilities are for the administration and operation of the .au name space as well as the creation and implementation of policy pertaining to the registration and licensing of domain names within .au. In essence this is for the policy, regulation and operation of the Australian domain name system as it exists under .au, consistent with the overarching policies and mechanisms for the international domain name system as defined by the Internet Engineering Task Force (IETF), the Internet Assigned Numbers Authority (IANA) and the Internet Corporation for Assigned Names and Numbers (ICANN)[56].

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[5] RFC 1591 https://tools.ietf.org/html/rfc1591
[6]RFC 3375 https://tools.ietf.org/html/rfc3375

More fully, auDA's responsibilities are:

- developing and reviewing .au policies
- enabling and enforcing regulatory compliance
- maximising the security and technical stability of the .au space
- facilitating competition and consumer choice through the accreditation of .au registrars
- engaging and educating .au stakeholders and the broader community
- protecting consumer safeguards and providing effective dispute resolution mechanisms.

In so doing, there is an expectation that auDA will consult appropriately with the Australian government and the Australian internet community and manage the Australian domain name system in their interest, and consistently with Australian law.

For the bulk of the second layer domains (2LDs), auDA licenses registry operators, sets the policy for their management and manages their terms of operation. It also has responsibility to ensure that the closed 2LDs (edu.au, csiro.au, conf.au and gov.au) are operated consistently with auDA requirements and to appropriate community and technical standards.

Similar to other cc TLD operators auDA has also played a role in the broader internet policy and governance landscape both through its interactions with ICANN and the Internet Governance Forum (IGF) and through the work of the auDA Foundation. This is a valuable area for auDA to contribute.

2. Do the current terms of endorsement set out appropriate guiding principles for a fit for purpose .au ccTLD manager?

At the foundation, the guiding principles are sound and fit for purpose.

The current terms of endorsement[7], however, state that auDA should "represent Australian internet *industry* interests" in international fora – not the Australian end user. Thus it is arguable that the Australian internet consumer of domain names, both as licensee and user, is not included in this agreement. Thus the interests of domain name industry may be perceived to have priority when both the consumer and industry interests should be represented.

More significantly, the terms of endorsement do not clearly formalise the overarching relationship between the Australian government and auDA. The terms are silent on the mundane operational performance parameters that auDA should comply with in order to ensure the security and stability of the Australian domain name system. At the most extreme level, the terms also lack a clear mechanism for the government to terminate the delegation of .au to auDA should the government, or indeed the internet community, deem that necessary.

3. Do the terms of endorsement reflect community expectations for the management of the .au ccTLD?

It is ACCAN's view that the terms of endorsement largely reflect community expectations for the management of .au, however there is a need for periodic reviews of the delegation of .au which is not currently stated in the terms of endorsement.

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[7] https://www.iana.org/reports/2001/au-redelegation/alston-to-lynn-16aug01.html

In addition, the terms of endorsement are currently vague as to the extent to which consumer protections apply and what avenues for redress consumers have should auDA act inconsistently with community expectations or broader consumer protections. For example, where a consumer has paid license fees for a domain name, are there sufficient consumer protections in place to prevent or obtain redress after inappropriate domain name take downs (for example)? Through what avenues and where are the redress mechanisms? It is impractical for consumers to take their complaints at all times to the Australian Competition and Consumer Commission (ACCC), to state authorities such as the NSW Department of Fair Trading, or the courts. In the modern era the question of whether auDA has a regimen in place with strong enough consumer protections is even more important given that consumers are more and more reliant on electronic commerce. In tandem with this consumers are growing bolder online, more reliant on a well-functioning domain name system (DNS) and their expectations of performance are growing.

4. What external trends and developments may affect auDA's roles and responsibilities?

A significant development is the evolution of ICANN to incorporate greater consumer representation and government engagement through the creation of advisory committees to the ICANN board and the recent governance changes to separate operational management of the IANA functions from ICANN's naming policy function.

auDA needs to ensure the continuing robustness of .au given the changes in technology that potentially undermine the dominance of the DNS, such as social media, mobile apps and search engines, or even parallel systems whereby consumers and businesses navigate the internet without use of domain names. Service providers and communications infrastructure will continue to rely on the DNS in order to ensure the technical operation of internet services, however the commercial return on domain names may well decline significantly with technology changes.

The recent creation of a significant array of new generic top level domains (gTLDs) means that there are now a significant variety and quantity of names available outside the Australian name space. These new gTLDs may change the expectations on the Australian name space.

2.2.2. Corporate governance

5. What best practice approaches and processes should be considered with regard to auDA corporate governance?
6. What does good corporate governance for auDA look like? Are the ASX corporate governance principles sufficient? Should other principles also be considered?

The ASX corporate governance principles are an excellent model and give flexibility to include the higher standards of transparency and openness in place in comparable internet organisations, such as ICANN, the Internet Society, the regional internet registries (APNIC, RIPE) and other ccTLD operators. For example, in those institutions board meetings are routinely open to the public and minutes are published on public facing web sites in a timely fashion. These activities are conducted mindful of commercial in confidence considerations such as the commercial arrangements for registry operators.

Other principles such as the ASX Listing Rules and the Australian Prudential Regulation Authority's Prudential Standard should also be considered in the formation of board codes of conduct and selection rules.

7. Should reform of existing auDA corporate governance arrangements be considered? If so, what are the reform priorities?

8. Do the current board arrangements support auDA in effectively delivering its roles and responsibilities?

9. Should reform of existing board arrangements be considered? If so, what are the reform priorities?

Without making any comments on the performance, or integrity, of any current, or previous, individual member of the auDA board, it is arguable that the board has historically been dominated by members of the domain name industry, rather than independent directors, end users or businesses taking up domain names for their own use. The board at present comprises a majority of elected members that are either in the employ of registry operators or are domainers[8]. Whilst there is a component of the board that is independent, that group is placed on the board by the board itself – thus there is a potential for a significant conflict of interest to be entrenched within the make up of the board. At the very least, the criteria for selection and qualifications of independent board members should be published and the skills matrix of the board as a whole tracked, measured and reported on.

Another approach would be to combine the domainer and registry classes as industry representatives and balance their membership against the end user category.

An alternative and preferable approach is the formation of a nominations committee (NOMCOM) comprising government, end user and industry representatives with the responsibility to identify and vet qualified candidates and invite them to the board. In this way checks of whether the person is of 'good fame and character'[9] or 'fit and proper'[10] as applicable to auDA could be made. It is notable that there does not appear to be such checks made at this point in time, despite similar constraints being routinely imposed on corresponding positions held under federal government agreements with quasi-autonomous and autonomous non-government organisations.

ACCAN notes that the terms of some directors have been lengthy, despite the two-year election cycles and defined appointment lengths for independent directors stated in the auDA constitution. An examination of the suitability of term limits for directors should be made in order to ensure renewal. In addition, ACCAN notes that numerous directors have held terms that have been quite short, raising the question as to the quality of recruitment and expectation setting as well as on-boarding processes.

The issues of DNS management and regulation are complex and require specialist expertise. The existing board term of two years is potentially too short, where other comparable not-for-profit organisations have board terms for elected members of three years, but limited to two consecutive terms, before permanent (or an interval of) retirement.

The question of director remuneration is also one that would benefit from scrutiny. The current system of setting remuneration of directors is approval by ordinary resolution of the members of auDA in general meeting. ACCAN supports the remuneration of directors in principle as this ensures

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[8] A *domainer* is someone whose business is *domaining*, ie the business of buying, selling, developing and monetising domain names.
[9] As per ASX Listing Rules 1.1, Condition 17
[10] As per Australian Prudential Regulation Authority's Prudential Standard CPS 520

that the costs of participation and potential loss of earnings due to the time demand in properly fulfilling the role of a director are covered.

A further issue exists in the fact that auDA is both responsible for regulatory compliance as well as policy development and complaint handling. While there are examples of regulators successful at handling all functions, more successful models call for clearer delineation than perhaps is the case with auDA. The model where complaint handling has internal and external mechanisms, and a clear escalation path, for dispute resolution does not seem to be immediately apparent at auDA. Registry operators, for example, could be the mechanism for internal dispute resolution, making auDA the place for external dispute resolution and escalated complaint handling. Either way, increased separation of policy development and the board is needed as, to reiterate the point, this is potentially at odds with robust consumer protection. It is also not clear where unresolved complaints go should auDA be unable to resolve them.

New Zealand model

Domain names in New Zealand are managed by InternetNZ which recently overhauled its governance model moving to a three part system, separating operations, policy and regulation, with the Domain Name Commission and New Zealand Domain Name Registry (NZRS) as separate companies under direct ownership of, and arm's-length from, InternetNZ. This model may be suitable for Australia that segregates the various operational interests within auDA itself and imposes separate governance mechanisms over the separate parts of InternetNZ.

2.2.3. Stakeholder engagement

10. Who are auDA's stakeholders?

auDA's stakeholders are:
- The Australian government
- End users of domain names
- Licensees of domain names
- Registry operators
- The broader internet and user community
- Law enforcement and those concerned with maintaining the security and stability of the internet ecosystem

ACCAN sees the domain name industry comprises:
- Registry operators
- Resellers of domain names
- Registrars
- Businesses that trade in domain names (domainers)

Whilst the user community are those that register domain names for personal or immediate business use, or users generally of the DNS.

11. How should auDA engage with its stakeholders? Are there guiding principles which should be considered?
12. Are auDA's stakeholder engagement processes effective?

Consumers report dissatisfaction with the policy processes and engagement mechanisms for the .au name space[11]. There is a broad perception within the community that domain names should closely reflect the organisation that registers them, and that there is a general scarcity of names available within .au, with many owned and essentially unused in that there is no obvious web site nor other obvious services operated from the domain. Recent estimates[12] that significant numbers of domains are parked[13] backs this concern. This scarcity may be attributable to the activity of domainers and the relatively fewer number of 2LDs in the .au name space (as compared with the range of 2LDs available in New Zealand for example). Whilst comparable figures for the level of domain parking in .au are scant, anecdotal evidence from consumers is that available domain names within *.com.au, *.net.au, *.org.au are scarce and difficult to come by despite business name availability. Small businesses in contact with ACCAN complain that their preferred name is difficult to come by and often held by entities with unrelated business names or trademarked products.

To remedy this, policy panels should be multistakeholder with a broad range of representatives, ensuring balanced numbers between industry representatives and consumers.

An alternative approach would be for auDA to delegate its consumer engagement, and even policy development (both domain name specific and broad internet policy development), to an organisation such as ACCAN whose object it is to undertake consumer representation. In this way separation between policy development and compliance could be further established and maintained. ACCAN has a well-developed range of policy expertise across a range of related subject matter which, if suitably funded, could expand to appropriately cover the needs of auDA.

13. Is a transparency and accountability framework effective?

The elements of the Framework referred to in the issues paper are consistent with expected practice in the other internet organisations referred to in section 2.2.2 above. These standards have been considered effective elsewhere. It is unclear, however, the extent to which auDA has complied with this Framework, and the level of reporting against it is unclear. For any such system to be successful clear reporting and measurement against it is crucial.

As such, ACCAN supports the adoption of the Framework as outlined in the Westlake Consulting[14] review of 2011 and recommends auDA report against the measures on a regular basis.

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[11] ACCAN case reports.

[12] Statistical analysis of gTLDs released ICANN60 https://www.icann.org/news/announcement-2017-08-09-en
[13] A parked domain is an undeveloped domain which has no content other than automatically computed advertising banners and links, used to generate profit.
[14] https://www.auda.org.au/news/outcomes-of-the-independent-review-into-the-governance-of-au-further-information/

2.2.4. Membership

14. Is auDA's membership structure reflective of the range of stakeholders that rely on, or interact with, the .au domain?
15. Does auDA's membership structure support it in delivering its roles and responsibilities?

auDA's current membership structure ensures that industry perspectives are more likely to prevail within its board, governance approaches and policy development, regardless of the quality and integrity of the individuals involved. The categories of 'demand' and 'supply' simply do not match with community expectations of that category membership. As noted above, ACCAN sees the domain name industry comprises:
   - Registry operators
   - Resellers of domain names
   - Registrars
   - Businesses that trade in domain names (domainers).
In contrast, the user community are those that register domain names for personal or immediate business use, or users generally of the DNS.

The barriers to entry for membership of auDA are arguably low with limited to no checking that any applicant is indeed a real person under Australian law. This makes auDA potentially vulnerable to take over by interests contrary to its objectives and purpose.

2.2.5. Security of the .au domain

16. What emerging risks does auDA face in relation to the security and stability of the .au domain?
17. What is best practice for DNS administration?

The ICANN Security and Stability Advisory Committee (SSAC) is the authoritative source of best current practice for DNS technical administration and operation. From time to time SSAC and the IETF propose new approaches to the technical management of the DNS. Most recently ICANN was committed to updating the certification keys for the root DNS (Root KSK roll-over) which required technical changes to many DNS servers across the internet, including those operated by organisations such as auDA but also smaller non-internet organisations. With many organisations failing to make the necessary changes, ICANN elected to postpone the roll-over[15]. In activities such as this it is reasonable to expect that auDA would play a significant role in promotion and education, yet such promotion was not evident in the main Australian industry fora (eg AUSNOG, Communications Alliance). Australian organisations have also lagged in the adoption of systems such as DNSSEC[16] and this is an area where it could also be expected that auDA would have promoted its implementation and best practice more broadly in industry fora or led the development of an Industry Code for Internet Service Providers and other organisations.

Best practice also includes escrow of registry data through the engagement of an independent entity to act as data escrow agents. It is not clear that existing auDA arrangements include that either within its own registry operations or in the registrars it licenses. It is recommended that this be included in future iterations of registry licenses and operation.

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[15] https://www.icann.org/news/announcement-2017-09-27-en
[16] https://www.internetsociety.org/deploy360/dnssec/maps/

18. Does auDA maintain appropriate mitigation strategies? What additional mitigation strategies should be considered? How should these strategies be assessed?
19. What is the optimal mix of capabilities to expand auDA's cybersecurity preparedness?
20. How should auDA engage with the Government in its management of risks?

The record of performance of .au is generally considered strong, as is evidenced by the low level of abuse recorded by the Spamhaus Project and high levels of confidence expressed by Australians in measures of their sentiment towards domains in the name space. The technical operations of .au, however, should be recognised as critical infrastructure and managed to appropriate standards.

At its very basis, DNS is fundamentally a robust protocol, however a high level of expertise is required in order to ensure that ccTLD systems implementation is robust, reliable and as secure as possible with the ability to counter DNS abuse and misuse. The requirements to ensure this go beyond the Australian Advanced Signals Directorate Information Security Principles, and ACCAN commends auDA for the establishment of its Information Security Standard[17] (ISS) accreditation scheme. auDA should participate in the key security forums, both national and international, in order to ensure it has the level of expertise required and the relationships with key players. In turn, auDA should promote DNS best practice amongst Australian industry fora, not only through its ISS.

Internet security (cybersecurity), however, is a constantly evolving area needing continuous attention. Responses to threats and security breaches need to be immediate, and applied with skill and care in order to ensure precision and effectiveness. ICANN has implemented a system known as the Uniform Rapid Suspension System (URS) and this system, coupled with existing anti-abuse policies appears to be enabling rapid removal of overt phishing, malware and cybersquatting sites. Whilst ACCAN encourages and supports the implementation of similar policies to ensure robust internet security practices, care and expertise must accompany this effort to ensure due process and unintended consequences are avoided. Suspension of the domain of a small business can mean the difference between the ongoing viability of that business, so care must be taken to avoid improper or accidental take down.

The expected standards of internet security should be specified in a revised arrangement between the Australian government and auDA either through an MOU or other performance contract as mentioned in earlier sections. These standards should be reported on and subject to scrutiny by the internet technical community as well as government stakeholders. These standards must include the contemporary recommendations of ICANN's SSAC and in particular such items as data escrow.

Furthermore, ACCAN is of the view that auDA should participate in key government cybersecurity forums and promote best practice in broader industry forums.

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[17] https://www.auda.org.au/industry-information/registrars/information-security-standard-iss/

3.   Supplementary comments

3.1.   Consumer outreach and engagement

ACCAN remains concerned that the general Australian population and existing registrants, and in particular small businesses, are unaware of significant changes in Australian domain name policy. auDA would benefit from increased levels of engagement with specialised consumer representative organisations both in policy development and in education and communications, provided the resources were made available.

3.2.   auDA customer service

auDA should ensure its customer service units are appropriately resourced for complaint handling, particularly as it goes through a period of change. Staff should also receive appropriate training on policy, customer service and complaint handling and be supported through what will likely be a challenging period.

The Telecommunications Consumer Protections Code[18] contains the broadly expected standards of complaint management for the telecommunications industry. Wherever appropriate and applicable, the Australian DNS industry should look to adopting practices that are in alignment with these approaches. auDA is in a unique position to ensure best practice through its relationships with registry operators and resellers.

3.3.   Reporting and review

auDA should gather registration, reservations, applications, abuse, fraud, complaint and other relevant data on an ongoing basis. This data should be made available to stakeholders and members.

Comparison data with other ccTLDs should also be carefully monitored such that auDA continuously strives for best practice operation.

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[18] https://www.acma.gov.au/Industry/Telco/Reconnecting-the-customer/TCP-code/the-tcp-code-telecommunications-consumer-protections-code-acma Complaint handling is covered in chapter 8