Department of Communications
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Review of Australia's .au domain management

Introduction

Internet Australia (IA) welcomes this opportunity to respond to the Department of Communications' Review of Australia's .au domain management.

Generally, auDA has performed its areas of technical and policy responsibility well and is seen globally as a model for the management of domain names. Its current, multi-stakeholder model of governance reflects, to some extent, long-standing Australian government policy, (a model in common with many other countries' management of their DNS space), and its policies have made the .au space relatively safe.

However, auDA's governance model should be broadened to better reflect the very wide range of stakeholders who are now dependent upon the Internet, and consequently upon the smooth operation of the domain name system. Improvements should also be made to auDA's structure and processes that would greatly enhance its transparency and accountability to all of its stakeholders, and ensure their interests are better understood and taken into account.

The current auDA governance model is too narrow. It fails to include all stakeholders in its processes and decision making commensurate with the scale and economic and social importance which the Internet, and thereby the domain name system, has acquired. The involvement of consumers through their advocacy bodies, as well as businesses and government agencies , are poorly represented, if at all, either in the auDA governance structure or in other auDA processes. auDA should recognise its role – and its broad responsibilities - to all its stakeholders, in sustaining a critical piece of infrastructure for the Australian economy and security.

The Discussion Paper raises areas for discussion, which this submission responds to, including auDA's roles and responsibilities, its governance and management, stakeholder engagement and the security and stability of the .au name space. This submission will address those issues.

Roles and Responsibilities

auDA has several key roles and responsibilities in the management of the .au name space, including the following:

- development and implementation of domain name policies
- technical management of the .au zone file/licensing of the registry(ies)
- licensing/accreditation of registrars, and addressing registrars/resellers
- ensuring compliance with licence requirements
- facilitation of .au Dispute Resolution Policy
- supporting government and private sector bodies in promoting and sustaining cyber-security in Australia
- providing complaint handling processes for the domain name industry, registrants and consumers.
- public/stakeholder education on auDA's roles and policies that impact on Internet users
- undertaking community programs (such as support for auIGF)
- supporting independent research into technical and other regulatory issues that impact on the .au name space (supported through the auDA Foundation)
- representation for .au at ICANN and other international fora

For the purposes of this submission, IA is not critiquing auDA's general performance against most of its key roles and responsibilities. However, we note possible areas of improvement that could enhance its performance and accountability.

Stakeholder Engagement

auDA should recognise that all of the following are 'stakeholders' in a stable and secure domain name space, and should be represented not only on its Board but in its other processes as well.

- DNS Industry – anyone involved in the management and/or sale of domain names, including:
  - Registry(ies)
  - Registrars
  - Resellers
  - Domainers
- Registrants - including
  - Large Corporates
  - Small businesses
- Internet users including consumers
- Government

Categories of Members

Under auDA's Constitution, the definition of 'supply class' member is a representative of an accredited registry(ies), a representative of an accredited registrar or reseller appointed by an accredited registrar.[1] A demand class

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[1] Clause 9.4 auDA Constitution.

representative is simply anyone who would not be qualified to be a Supply class member.[2] Both of the categories no longer reflect the industry as it has developed. The 'supply' category, for example, should include 'domainers' – an individual or organisation that acquires expired domains, and resells them. Because the definition of 'demand' class does not limit 'demand' members to those who use names – registrants, corporations, or Internet users including consumers – new participants in the domain industry such as domainers can be considered as within the 'demand' class.

Both the definitions of 'supply' and demand' class should be changed: the 'supply class' definition should include all who participate in the domain industry itself, and the 'demand' class should both exclude members who are involved in the domain industry and ensure that it reflects the users of domain names: registrants, businesses and other Internet users including consumers. This change is critical because the composition of both the auDA Board and its policy panels are based on the outdated definitions of demand and supply classes.

Composition of the Board

The auDA Constitution requires that the Board include four 'Supply Class' members, four 'Demand Class' members, and not more than three independent Directors 'appointed by the elected Directors', with the CEO as a non-voting member.[3] Because of the use of the outdated definitions of 'demand' and 'supply' members (discussed above), the auDA Board now contains four Supply class representative from the DNS industry, plus three 'Demand class' representatives, with one Demand Class seat left vacant. Of the three 'Demand Class representatives', one identifies as someone who 'owns a domain name business, one who sells domain names as they become available, and one lawyer who specialises in IP law. In short, the current auDA Board has no members who represent <u>users</u> of domain names (registrants, businesses and Internet users) calling into question both the 'independence' and representativeness of that Board.

Further, while the current structure and composition of the auDA may have been appropriate at the turn of the century, the concepts of appropriate board composition and director selection have gone through significant evolution in Australia in the past fifteen years. Increasingly the value and importance of independent and independently selected board members is being recognised both for listed and not for profit entities. IA therefore believes that there is a strong case for a majority of the members of the board of auDA to be independent and for these directors to be selected by an independent nomination committee.

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[2] Clause 9.5 auDA Constitution.
[3] Clause 18.2, auDA Constitution.

Composition of Policy Panels

The composition of Policy Panels attempts to strike a balance of interests in its membership. However, the composition of those panels is based on the Constitution's definitions of 'demand' and 'supply' class members. Again, those definitions do not include the variety of stakeholders that will be impacted by auDA policies. And again, processes that consider auDA policies must represent the interests of all stakeholders.

Membership

As with the Board, auDA membership is split into the two categories – demand and supply. Again, that categorisation does not represent both the broader structure of the industry, and the breadth of the interests in the .au space. Further, in its current form, the auDA Board draws its membership from a fairly narrow group of predominantly technical experts and/or members of industry.

auDA should consider changing its membership model and broadening its membership base. For example, Canada's Internet Registration Authority (CIRA) automatically offers membership to all .ca domain owners – a model auDA could follow.

IA Recommends
- **Amend the auDA Constitution to define 'supply' class to include individuals or organisations directly involved in the management of .au domain names**
- **Amend the Constitution to define 'demand class' to:**
  - **specifically exclude anyone who would be eligible for membership in the 'supply class' and**
  - **include end users of .au names including registrants and representatives of end users (businesses and Internet users and consumers)**
- **Require all independent directors to be selected at arms' length from Board members**
- **Consider strategies to broaden auDA's membership base..**

Government Engagement

Government has a very clear, strong interest in the management of .au, as a very significant part of Australian's critical infrastructure. When auDA received the delegation from ICANN, however, the government chose not to be a direct participant in auDA but rather to have a role as an observer on the board. Generally speaking, this "hands off" approach has worked well but it does carry some, at least potential, dangers.

Should something go seriously awry with the administration or the governance of .au, the Government has the residual capacity to assume the auDA role – the 'nuclear' option. But there is no "in-between" consultative mechanisms to cover how auDA and government should cooperate in such a situation. This is a clear risk both to the auDA board and to Government.

While we support the retention of auDA's multi-stakeholder management model, earlier proposals for auDA-Government cooperation should be revisited. These can include a Memorandum of Understanding between Government and auDA, or an exchange of letters on steps each party will follow to maintain ongoing communication.

Recent amendments to telecommunications legislation suggest a more formal, legislative path to ensure industry management, but with clear Government powers to respond if deemed necessary.

Under proposed changes to the Numbering arrangements, actual management of the Numbering [4] would be by a Numbering Scheme Manager. Under the Scheme, the Minister can delegate numbering powers to a Numbering Scheme Manager, against principles for management of numbering, and with Ministerial power to revoke the delegation for failure to meet numbering principles. Oversight of the Scheme is by the ACMA that can require the Scheme Manager to report against Scheme principles.

The value of this model is that it allows day-to-day management of the activity by industry itself, but with clear responsibility for transparency and accountability against established principles, and with Government power to respond if that is deemed necessary.

IA Recommendation
- **auDA and the Government reach agreement through a Memorandum or Understanding or Exchange of Letters on matters of mutual concern and agreed procedures for cooperation; or**
- **The government consider a scheme similar to the Numbering Manager Scheme to formalise the Government's power to delegate (or revoke delegation) the management of the .au name space to auDA, against agreed principles, and with clear auDA reporting requirements against those principles.**

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[4] Outlined in Schedule 6, Communications Legislation Amendment (Deregulation and Other Measures) Bill 2017.

Review of auDA

In the past several years, auDA has been independently reviewed.[5] IA strongly supports the continuation of this practice of regularly reviewing auDA's policies and practices, at least every five years.

Dispute Resolution policy –

Currently, under auDA's Dispute Resolution Policy, there is no mechanism for appeal from the outcome of a decision, except through the Courts – often an expensive and timely exercise. auDA should consider amending the process to allow an appeal against initial findings within their processes – as, for example, is offered in New Zealand.[6]

Support for Research, Education and Outreach.

 In the past, auDA has supported regional Internet Governance Forums. While not critical to the security and stability of names, the IGF's have raised awareness to domain name issues among the public – its stakeholders. Further, the auDA Foundation has provided financial assistance to support emerging expertise and development of new applications within the system and should be continued. The auDA Foundation also supplied funding into more general independent research into technical, regulatory and other issues that contributed to building/supporting the education and outreach functions, or the other existing functions

Review of auDA decisions:

Consider establishing an independent mechanism to review major decisions that impact on the stability/security of the .au Space.

Conclusion

auDA has largely carried out its technical and policy implementation functions well. However, its structures and processes are outdated and must be changed and broadened to reflect the interests of all of its stakeholders – industry, registrants, businesses, internet users and consumers and governments – in a stable, safe and secure .au name space.

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[5] See the Westlake Review in 2011, and the CameronRalph Report, in 2016 – both available on the auDA website at <auda.org.au>
[6] See, for example <http://www.jaws.co.nz/information/category/domain-names/.nz-domain-name-dispute-resolution-policy-faqs>