



Implementation of Direct Registrations

Submission by

the Australian Communications Consumer Action Network

to

.au Domain Administration

10 November 2017

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 auDA Names Panel on the implementation of direct registrations.

ACCAN consulted with its members (organisational and individual) in the drafting of this response and sought broader community comment.

As well as addressing some of the questions posed in the Issues Paper, ACCAN would also like to provide feedback and recommendations on:

- whether priority should be given to existing registrants
- restrictions on registrant eligibility
- general regulation approach to the Australian name space (.au).

1.1. Review background and scope

The auDA Board has convened the Names Policy Review Panel to make recommendations on:

- 1) the development of an implementation policy for direct registration; and
- 2) policy reform of a list of broader domain name management policies.

The review aims to examine and make recommendations on:

- a) establishing mechanisms to ensure auDA is responsive and accountable to the supply and demand sides of the Australian Internet Community;
- b) promotion of fair trading;
- c) promotion of consumer protection; and
- d) adopting open and transparent procedures which are inclusive of all parties having an interest in use of the domain name system in Australia.

Many Australian not-for-profit organisations and businesses currently have domain names for their internet presence under second level domains (2LDs), for example *.com.au and *.org.au. Recently [auDA](#), the body responsible for Australia's country code top level domain name system (ccTLD), agreed to introduce 'direct registrations'. This is where an organisation's chosen internet domain name does not use the familiar "*.com.au", "*.net.au", "*.org.au" forms and new names will be simply "*.au".

The purpose of this is to simplify domain names and to broaden the name space available. auDA has constituted a Names Policy Review Panel¹ which has released an issues paper² and is conducting a consultation on how this should be implemented to best protect all stakeholders (suppliers and domain name holders and users).

¹ Narelle Clark ACCAN DCEO is a member of the auDA Names Policy Review Panel

² <https://auda.org.au/assets/pdf/2017PRP-03102017-directreg-issuespaper-WEB.pdf>

Domain names are used to find resources and services on the internet such as web pages (e.g.) and email addresses (e.g.).

Examples

Current names	Possible new names	Example use
abc.net.au	abc.au	iview.abc.au
accan.org.au	accan.au	info@accan.au
tio.com.au	tio.au	www.tio.au

1.2. Direct registration background

On 18 April 2016, the Board of .au Domain Administration Limited (auDA) approved second level domain name registration in .au, known as direct registration. The existing 2LDs will continue to operate as dedicated domains for businesses, not-for-profit organisations, government, education and individuals.

ACCAN opposed this move at the time of the previous auDA consultation on the basis that it would increase consumer confusion and detract from the existing investment in marketing and branding made by many Australian organisations (registrants). ACCAN has not shifted from this central view.

auDA has canvassed this topic on other dates in the past – these dates were not available at the time of writing and should be considered as part of the implementation process.

1.3. ACCAN view on domain space regulation

ACCAN has taken the view that there is evidence that there is a lower incidence of abuse, such as spam, malware and phishing, in well-regulated domain spaces³ than in those that are less well regulated. Spamhaus currently rates the .au ccTLD as a very low source of spam⁴. It is ACCAN’s view that the value inherent in the *.au name space is its:

- association with Australia;
- the 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).

Thus it is ACCAN’s view that regulation should be robust and enforced within the .au name space.

³ *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>

⁴ The Spamhaus Project pages on the most abused ccTLDs at www.spamhaus.org/statistics/tlds/

2. Responses to Issues Paper

2.1. Broad questions

Sentiment on direct registrations

ACCAN has continued to receive strongly expressed sentiments against the introduction of direct registrations. It is our experience that many consumers, including internet users, simply do not recognise or directly use domain names at all. Furthermore, few consumers in the broader community understand their system of regulation and allocation. These two observations represent a strong argument for caution in the introduction of direct registrations and emphasise the need for comprehensive education and outreach initiatives to accompany any change.

Should priority be given to existing name holders?

Under any system of direct registration, ACCAN believes existing registrants should be given priority for a set period to license the new direct registration. This allows the existing investments in names to be protected. ACCAN believes all 2LD registrants should have the same degree of rights.

ACCAN recognises that priority also gives rights to existing holders that do **not** actually have a close matching business name, trademark, or product, but hold names for historical reasons for example, or have acquired the rights through automated systems, thus locking out others with perhaps stronger moral claims to a name. Some care therefore should be taken in assessing the claims for existing rights.

Priority should apply for a period of four years, backdating to the 18 April 2016 commencement and ending approximately two years after implementation in early 2018.

Should there be restrictions on eligibility?

Under the existing rules Australian organisations with an ABN can register under *.com.au and *.net.au, and Australian not-for-profits can register in *.org.au and *.asn.au with similar sector specific rules for the other categories. All organisations and individuals must demonstrate an Australian nexus.

These rules should be preserved and strengthened as it is ACCAN's view that Australian consumers perceive a general connection between *Australia* and the use of *.au and 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, is physically located and/or does business in Australia.

Any Australian resident, or citizen, should therefore be able to register a domain name within the .au name space as well as business organisation, not-for-profit entity, association, sole trader or partnership as recognised under Australian law. The level of proof required should be an appropriate Australian identity document, including ABN documentation such as that found in the ASIC and ACNC databases. Further, the requirement that there must be a close and substantial connection between the name and applicant must be retained and reinforced.

The existing requirement that there must be a close and substantial connection between the name and applicant must be preserved and reinforced.

Rules allowing for rapid deregistration should be strengthened in order to reduce the likelihood of fraud, and this approach should be applied more broadly to other parts of the *.au name space.

New Zealand model

New Zealand recently also introduced direct registrations, with a model that allows for clear priority where eligibility dates from the date of first canvassing the introduction of direct registrations. The model used appears sound and should be reflected in the Australian model as much as possible. Note that the auDA Issues Paper does not correctly describe the New Zealand implementation model.

2.2. Issues Paper questions

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?

The cut-off date should be from 18 April 2016, with consideration of earlier dates from the time of prior canvassing of direct registrations as per the New Zealand model. This allows for the fairest allocation of priority on the basis that allocations subsequent to 18 April 2016 are more likely to be speculative in nature and not necessarily reflect business intentions.

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

Australian educational institutions with names under various *.edu.au and *.gov.au spaces, should have priority for the new names where the name is distinctive, i.e. without a clash, and not simply the geographic locality or generic discipline (i.e. not simply arts.uni-name.edu.au). This will allow for unique institutions to claim pre-existing rights.

Government entities performing similar functions at the state level should be encouraged to collaborate such that combined services such as roads.au or transport.au may be possible. This has particular merit for such generic functions. Federal, or Australia-wide, functions should take priority over state functions (e.g. communications.au and health.au) but again collaboration should be encouraged where possible. Liaison with the management of the gov.au name space should be undertaken to conduct an appropriate audit for consideration for reservation.

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?

ACCAN believes that registrations with the longest tenure and associated with a single organisational entity should have higher priority when licensing *.au names.

In order to maximise fairness where the longest continuing registration cannot be established, a lottery should be held to resolve competing claims. Lotteries should not be held where the conflict exists within a single entity, i.e. where two domain names are registered to the same organisation/person. Multiple registrations to a single entity should correspond to multiple entries in the lottery, reflecting the level of diligence an entity has taken in securing the name for its use.

Should auDA ultimately decide that an auction process is to be held, rather than a lottery process, auction proceeds should be directed to positive internet-oriented causes, such as digital literacy and online safety programs, rather than profit for auDA.

An organisation may be happy to swap for another name if they miss out on a direct registration and implementation processes should take this into account. This can be made available as an option in the event another similar domain name becomes vacant as a result of a direct registration.

*How much time should priority domain name holders have to exercise their right to register the matching *.au name before it is made available to the public for registration?*

Priority should be able to be secured for a period of four years, assuming the 18 April 2016 commencement and implementation early within 2018, or approximately two years after implementation.

Should certain names be reserved for future use as 2LDs? Please indicate which names and why they should be reserved as future 2LDs?

The following should be considered for reservation:

- names within the current ICANN generic top level domains (gTLDs) registration list
- bank, shop, biz, museum and other categories of long standing gTLDs with broad acceptance should be considered.

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

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

Names reserved under ICANN's gTLD exclusion policy and other relevant ICANN rules should be examined for preservation. Existing auDA reserved names should be preserved. ACCAN supports the addition of those also proposed in the Issues Paper.

Consumers may expect to find official court information at court.au or official policing information at police.au and these should be reserved. Other examples include parliament.au, emergency.au, bank.au (and similarly for other financial institutions), military.au, navy.au, air-force.au and army.au.

Existing rules precluding geographic and cultural names such as Australia, Commonwealth, Anzac, Uluru, Christmas, Easter, Hanukah, Ramadan, Mohammed should be retained. Names corresponding with Aboriginal and Torres Strait Islander peoples or of cultural significance (e.g. Eora, Dharug, Makarrata), should also be reserved for allocation by the corresponding Land Council, or recognised appropriate cultural entity.

Consumers may also find two letter codes under ISO 3166-1 misleading and other countries may object to us using their country code to make names such as nz.au or uk.au. These should be reserved pending further review. Codes corresponding to ISO 3166-1 alpha 3 need not be reserved.

Names corresponding to terms used for registered professionals should also be considered for reservation, with views sought from the relevant professional bodies, potentially on a first refusal basis, including: engineers.au, lawyers.au, doctors.au, nurses.au, physiotherapists.au, dentists.au, accountants.au, psychologists.au, podiatrists.au.

The Australian Health Practitioner Regulation Agency should be consulted for an appropriate list.

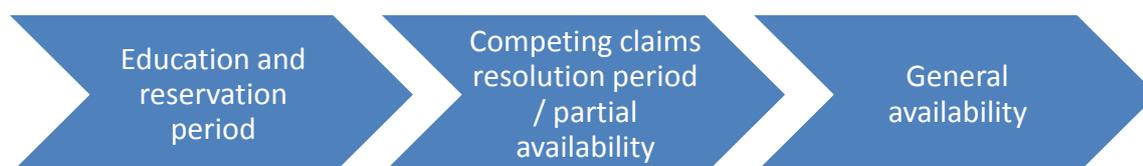
Non-professional registrations, such as licensed cablers, builders and plumbers are typically less onerous to obtain and more broadly open to licensing and therefore not necessary for name space reservation.

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

Steps should be taken to prevent obvious typosquatting and deliberate misspelling of existing domain names should be prohibited from being registered at the second level. Other models from other country code top level domains (ccTLDs) and other gTLDs should be assessed for adoption, with a view to identifying best practice, if existing auDA policy be deemed inadequate.

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

The land rush period has arguably already begun. New names under *.au should be made available in stages, with a reservation period open exclusively in the first instance for at least one year, then concurrent to general availability for another year whilst competing claims are resolved. After two years general availability should commence, with regard to existing reservations. All existing *.au domain names should be reserved during the initial reservation period.



Existing registrations should be locked out in the second period, whilst also allowing for broader availability of new names. After names have been released from reservation by existing registrants and/or disputes resolved, names should be released for general direct registration.

Further analysis of the New Zealand model should be undertaken to determine which aspects should be considered for adoption. This would allow for consistency across the region and easy adoption by registry operators.

Should other domain name holders or rights holders be given priority during the land rush or reservation period to register a second level domain name (trademark owners)?

Australian registered trademarks with clear name correspondence should be available for reservation, however, these should only apply to complete trademarks, not incomplete trademarks. Allowance may be made for pending trademarks, but with expiry should the trademark not be secured.

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, will be unaware of this introduction and may be put at a disadvantage through the implementation process. The loss of a domain name in today's digital world can be catastrophic for business, and direct registration represents the potential for significant traffic diversion. It is therefore essential that a strong education and outreach program be constructed in order to raise awareness of these changes prior to implementation. ACCAN therefore recommends (at least) the following:

- Direct emails to registrars both from auDA and their registrar
- Targeted advertising through the ICT services sector
- Targeted outreach through the NFP sector and small business groups
- Significant social media promotion

Further mechanisms should also be researched and identified for use.

3.2. auDA customer service

auDA should ensure its customer service units are appropriately resourced during the introduction of direct registrations to ensure smooth registry, registrar and registrant support. Staff should also receive appropriate training on policy, customer service and complaint handling and be supported through what will likely be a challenging period.

3.3. Reporting

auDA should gather registration, reservations, applications, abuse, fraud, complaint and other relevant data prior and during the implementation and release of direct registrations. This data should be made available to stakeholders and members.

Comparison data with other ccTLDs should also be carefully monitored.