



Registrant Policy

Submission by

the Australian Communications Consumer Action Network

to

.au Domain Administration

13 March 2018

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 its registrant policy.

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:

- 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 available name space. auDA has constituted a Names Policy Review Panel¹ which has most recently released a paper on issues in registrant policy² and is conducting a consultation on potential changes 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://www.ada.org.au/assets/Uploads/PRP-Issues-Paper-Registrant-Policy-January-2018v3.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. No organisation or individual will be forced to relinquish or to adopt names in the new name space.

ACCAN opposed this move at the time of the 2015 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) for the domain name over which their organisation operates its business. ACCAN has not shifted from this central view.

1.3. Note on terminology

The auDA issues paper appears to confuse the term “.au name space” with the space allocated to names that might be registered directly under .au. It is ACCAN’s custom, along with the DNS industry generally, to use the phrase “.au name space” to mean *all names* appearing under the .au hierarchy. This submission attempts to make it clear which level of the hierarchy is being referred to at any given time and uses the existing conventions where ambiguous.

1.4. 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 generally 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 (which are believed to be generally trustworthy).

Thus it is ACCAN’s view that regulation should be robust and enforced across 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 questions

2.1. .au Structure

1. Should the .au Domain namespace be a ‘general purpose’ domain for all Australians allowing use for any purpose?

Should direct registrations become available, then the space should be available for all Australians, and those licensed to do business or reside in Australia, for any lawful purpose.

ACCAN has, however, continued to receive strongly expressed sentiments against the introduction of direct registrations. It is also 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.

2. Should the net.au namespace be closed to new registrations? If so, should existing net.au registrants be permitted to continue to renew their domain name indefinitely?

It is ACCAN’s view that the net.au name space should remain open for new registrations under largely the same arrangements as today. Whilst greater clarity and consistency in the eligibility for names is attractive in principle, any large scale change would be highly problematic to implement and likely to cause confusion and mistrust in the overall .au name space.

3. What should happen to the asn.au namespace? Should it be closed to new registrations or retained as a dedicated namespace for associations?

It is ACCAN’s view that the asn.au name space should remain open for new registrations under largely the same arrangements as today. Whilst greater clarity and consistency in the eligibility for names is attractive in principle, any large scale change would be highly problematic to implement and likely to cause confusion and mistrust in the overall .au name space.

4. Should the State and Territory namespaces be used for other purposes? If yes, why and what are the purposes for which domain names should be registered under these namespaces?

ACCAN is not opposed to a broadening of the availability of geographic names for other organisations, businesses and services but has a strong preference that these names be provided for locality based services. This would include names of the form plumbing.SUBURB.vic.au for example.

ACCAN is concerned, however, that organisations that have acquired domain name licenses that incorporate localities in their existing names may see contention should this change be made. This may also bring them into the sights of unscrupulous players seeking to represent themselves as SUBURB-plumbing.com.au under plumbing.SUBURB.vic.au or plumbing-SUBURB.vic.au for example. In these cases, organisations and individuals should have access to robust consumer protection and

complaints mechanisms. Priority access to such names should be therefore available to these organisations for a fixed period: ACCAN proposes a 12mo period from the introduction.

2.2. Reserved Names

5. Should auDA continue to maintain a public reserved list? Should the public reserved list be published? What process or steps should auDA take before deleting a restricted or prohibited name?

auDA should continue to maintain a public reserved list which should be published. ACCAN notes the difficulties in ensuring the completeness of the list, and that legislation may further preclude uses of strings beyond any reserve list.

ACCAN considers the deletion process outlined under the current misspellings policy to be adequate for the purpose of removing a name from the registry for this reason.

6. Should auDA be able to reserve names in the public interest? How should the public interest be defined? What names should be reserved in the .au domain namespace? Should the public interest test replace the Prohibition on Misspellings Policy?

ACCAN supports the list of suggested names on p21 of the discussion paper for reservation, including embassy and consulate, and should be withheld from general use in the direct .au registration name space. ACCAN, however, considers ‘tent-embassy’ to have particular meaning and should be available for use by Aboriginal and Torres Strait Islanders as culturally significant.

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), lottery.au, military.au, navy.au, air-force.au and army.au.

These policies should also be revisited under the 2LDs also, however, ACCAN considers these names under the existing 2LD .au name spaces are able to be allocated in the most part as the 2LD designations give greater clarity and are less open to misuse, albeit often only implied.

Names corresponding with Aboriginal and Torres Strait Islander peoples or of cultural significance to Aboriginal and Torres Strait Islander (e.g. Eora, Dharug, Makarrata), should also be reserved for allocation by the corresponding recognised appropriate cultural entity. This entity may best be identified through liaison with the Office of the Registrar of Indigenous Corporations (<https://oric.gov.au>). Further consultation is needed in order to identify the best approach to preserving and allocating such names, and should be coupled with a rapid suspension policy.

7. Should the names identified in the discussion paper be reserved as future 2LD namespaces? Are there other names that should be reserved for use as future 2LD namespaces and why?

Indigenous Australian language groups may wish the right to allocate names under their language names. This could lead to names such as gadigal.eora.au for example. The existing geographic and other 2LDs are not appropriate for this system.

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. In ACCAN's consultation in this area, it was found that the level of education required on the potential uses was large and urges more consultation and education before making these names generally available for direct .au registration.

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.

The existing conf.au name space should be reopened for use and with rules preventing simple monetisation approaches.

8. Should there be a requirement for auDA to publish a list of names that are reserved for use by the registry and names that pose a risk to the operational stability and utility of the .au domain? Should there be any exceptions to the publication of names?

Names reserved under ICANN's gTLD exclusion policy and other relevant ICANN rules should be examined for preservation.

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.

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. The one exception to this is the string 'aus' and ACCAN prefers not to see aus.au in general availability.

2.3. Eligibility and allocation rules

9. How should the Australian presence requirements be defined? Should trademark applicants and registrants only be allowed to register a domain name that is an exact match to their Australian trademark application or registration when relying on the trademark application or registration to establish an Australian connection?

Any Australian resident, or citizen, should be able to register a domain name within the .au name space as well as Australian business organisation, foreign business registered to operate in Australia, not-for-profit entity, association, sole trader or partnership as recognised under Australian law subject to eligibility rules of the particular 2LD, and freely within the direct .au registration space. The level of proof required should be an appropriate Australian identity document, including ABN documentation such as that found in the ASIC, ACNC and ORIC databases. Further, the requirement

that there must be a close and substantial connection between the name and applicant must be retained and reinforced.

auDA should explore the use of systems provided by the Australian government for credential checking rather than requiring registrars to hold copies of identity documents. Should the case arise that registrars must obtain and retain personally identifying information and supporting documentation then a high degree of security must be required by auDA including mandatory data breach notification and redress systems, regardless of the size of the operator.

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

Australian registered trademarks with clear name correspondence should be available for reservation, however, these should only apply to complete trademark applications, not incomplete applications. Allowance may be made for pending trademarks, and these must lapse immediately should the trademark not be secured, and be available only for a 12 month period subject to the existence of an ongoing application.

10. What eligibility and allocation rules should apply to the .au domain namespace (direct registration) and the open 2LD namespaces, and why? Should the close and substantial connection rule be retained and why? Should allocation criteria be removed, and the focus be on registrant eligibility? Should domain monetisation continue to be permitted in the com.au and net.au 2LD and at the second level? How should domain monetisers interests be balanced against the needs of the broader Australian Internet Community?

ACCAN considers the close and substantial connection rule to be an essential component that enables trust in the Australian domain name system and does not want to see it diluted. If anything ACCAN would like to see this requirement strengthened.

ACCAN is opposed to domain monetisation as it locks out substantial parts of the Australian name space for organisations and businesses wishing to conduct their operations, subjects genuine Australian organisations to loss of reputation, drives up the price of domain names, and diverts unsuspecting users away from genuine businesses and organisations operating in good faith.

Case study⁵: a not-for-profit organisation held two domain names with one a longer version of the other. For a number of years the organisation hosted its email under one and its web site on the other. Choosing to consolidate onto one name, the organisation migrated its web site over to the short version, and dropped the longer name. That name was taken up by a domain monetiser with a list of advertising links, many of dubious merit. The not-for-profit organisation raised a complaint as it considered it had suffered severe reputational damage, but this was not upheld and it had no avenue for redress under existing auDA policy. The name was ultimately taken down on the basis that the monetiser was clearly not a not-for-profit entity. It was shown by the complainant that the monetiser was using another not-for-profit agency's business registration details. The monetiser also did not respond to the organisation's attempts at contact.

⁵ ACCAN member case study. Details can be made available to auDA in confidence.

ACCAN is opposed to monetisation of domains registered at the top level of the .au name space should these names be introduced and does not see any benefit in allowing it to occur.

11. Should internationalised domain names be trialled at the second level, and under what conditions?

ACCAN recognises that approximately 15% of Australians are born in countries where the first language is not English (ABS 2016⁶). It is therefore likely that future consumers within Australia will expect to be able to use characters and script other than ASCII. On that basis, ACCAN is not opposed to a trial of such names, but would counsel extreme caution in order to ensure the use is not misleading or subject to abuse and misuse. It is also noted that take up around the world to date has been low, and that ICANN is currently undertaking further work in this area. It is therefore reasonable for auDA to await the outcomes of the ICANN work.

2.4. Licence conditions

12. Should a registrant be able to sublease the domain name to an unrelated party? If yes, in what circumstances should this be permitted?

ACCAN does not readily see a legitimate use for a domain name by an unrelated party. Without a clear business partnership in place this would appear to go against the fundamental principle of there being no proprietary rights to a domain name in Australia.

13. Where a domain name licence is transferred between registrants, should the transferee receive the benefit of the remainder of the licence period?

Should transfers take place ACCAN sees no reason why the transfer should not include the residue of the existing licence period.

14. Should auDA be given the power to suspend a domain name licence? When should auDA suspend rather than cancel a domain name licence? What should be the maximum suspension period before a domain name licence is cancelled?

It is ACCAN's view that auDA must have the ability to suspend a domain name licence, and that this should be because:

- there is substantial evidence the licensee is operating the domain name with the intent to mislead, cause harm or conduct crime requiring rapid take down
- there is substantial evidence that a malicious party has gained control over the name
- there is substantial evidence of contention over the name to enable resolution
- other serious activity likely to cause substantial harm, grossly mislead consumers and the like.

ACCAN prefers the use of suspension as this gives the opportunity for names to be reinstated should this be reasonable. A clear process for assessment and evaluation, avenues for appeal and independent review are also recommended.

⁶ <http://www.abs.gov.au/AUSSTATS/abs@.nsf/mf/3412.0>

15. For what purposes should auDA be allowed to collect, use and disclose registrant data?

auDA must be able to collect, use and disclose basic registrant data in order to properly identify administrative and technical contacts for any domain name. The set of identifiers in the current WHOIS are appropriate.

Disclosure should also be made to properly authorised law enforcement agencies, and only to those clearly so designated on the public record, consistent with the data retention legislation. ACCAN also recognises that auDA must comply with properly constituted court orders.

16. Are there any concerns with the current level of information included in the public WHOIS service? Should the technical contact field be utilised for agent and lessee details?

In principle, ACCAN urges strong transparency for the contact details of all domain name holders such that the principle of consumers and users generally being able to have confidence in the veracity of the goods and services they are purchasing or otherwise engaging with. ACCAN also recognises a need for the protection of vulnerable individuals and groups. Should auDA wish to pursue a path of greater obfuscation of personal details, then the following groups will need to be assured of free or low cost access to the data, with audit trails:

- Properly authorised law enforcement agencies (as above)
- Community legal centres
- Financial counsellors
- Consumer representative organisations
- Disability support agencies

As a result in the increased use of telephone number porting scams, ACCAN would strongly prefer that telephone numbers are not exposed in public WHOIS data.

It is essential also that WHOIS data retains administrative and technical details to ensure swift resolution of technical issues with domain performance.

3. Supplementary comments

3.1. Improvements to registrar policy

ACCAN remains concerned that the general Australian population has limited understanding of domain names and their working.

Registrar policy should incorporate a requirement for:

- DNS hosting that complies with IETF standards for DNS and where servers respond appropriately to properly constructed queries
- Clear indications that further advice may be needed on business and organisation names to ensure lawful use

3.2. auDA customer service

auDA should ensure its customer service units are appropriately resourced during any changes to registrant policy 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 of major changes to registrant policy. This data should be made available to stakeholders and members.

Comparison data with other ccTLDs should also be carefully monitored through any period of change.