



auDA Dispute Resolution Policy

Submission by the Australian Communications Consumer Action
Network to auDA

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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 activate its broad and diverse membership base to campaign to get a better deal for all communications consumers.

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1. Executive summary

ACCAN welcomes the opportunity to comment on auDA's dispute resolution policy. In our role as a peak body representing consumers on telecommunications issues we act as an advocate for consumers, including small businesses in their role as consumers. We are concerned to ensure that consumers of domain name services have access to a simple and affordable dispute resolution process, and that they are aware of their rights and responsibilities in this process. Our responses below address the points of the auDRP Review that we see as being relevant to these goals.

2. Responses to the auDRP review

2.1. auDRP Policy and Rules

2.1.1. Are there any aspects of the auDRP Policy and/or Rules which require clarification or modification?

Informal guidance on the Policy and Rules would be a useful resource for many individuals and small business consumers who are considering lodging a complaint. While the language of the Policy and Rules is reasonably clear, it may leave some uncertainty for consumers about their rights. It may not be clear, for example, whether clause 4c of the Policy ('How to Demonstrate Your Rights to and Legitimate Interests in the Domain Name in Responding to a Complaint') recognises shortened names as names by which a registrant is 'commonly known', or whether defensively registering a domain name to prevent gripe sites constitutes a 'legitimate non-commercial or fair use'.

An informal guide to domain name dispute resolution, including a survey of recent decisions in .au dispute resolution cases, would go some way to alleviating any such uncertainty.

2.1.2. Should any of the issues raised by the community in ICANN's Final Issues Report be considered under this review? If so, which issues and why?

The issues raised in the ICANN Final Issues Report all merit consideration and should be considered under this review. In saying this, further detail on any proposals arising from these issues would be useful to address various concerns. A poorly worded Safe Harbor policy or statute of limitations, for example, might be open to abuse by a party who has registered a domain name in bad faith. Further evidence relating to the proposals would also be valuable. For example, while an appeals process might add cost and complexity to the auDRP process, it may be useful if there is any evidence that (i) the existing dispute resolution process was failing in a significant number of cases, and (ii) an appeals process would remedy this failure.

2.2. auDRP Fees

2.2.1. Are the current auDRP fees appropriate?

ACCAN is concerned that the current auDRP fees may be excessively high, discouraging some consumers from making complaints. We recognise that there is a need for fees to be set high enough to dissuade frivolous complaints. However, the auDRP fees are among the highest of the fees listed in the auDA Issues Paper for complaints about a single domain with a single panelist.

A two-tiered fee structure may be useful, allowing a complaint to be made for a reduced fee where the complaint concerns a domain name that is deceptive, offensive, defamatory, etc.

We strongly recommend against any increase in the auDRP fees.

2.2.2. Should auDA continue to fix fees, or allow Providers to set their own fees in a competitive market (i.e. as per number of disputed domain names)?

We feel it is important to retain the fixed fees model if the fixed fee model is effectively ensuring a low barrier to entry for prospective complainants. Further evidence of what the fee might be under an alternative model would be welcome. In particular, it would be useful to know whether the fixed fee might be keeping the fee higher than it would be if competitive pressures were allowed to operate.

2.3. Clarification of Registrar Obligations

2.3.1. Should the Clarification of Registrar Obligations be incorporated into the auDRP?

In the interests of simplicity, it may be useful to incorporate the Clarification of Registrar Obligations into the auDRP. In particular, this may be of benefit to complainants who are unfamiliar with the full range of auDA policies and may be unaware of the relevance of the Clarification to the dispute resolution process.

2.4. auDRP Search Database

2.4.1. Is the auDRP Search Database useful?

The auDRP Search Database has the potential to be a useful service for individuals and small business considering making a complaint under the auDRP. There may, however, be difficulties in using the database for users who are unfamiliar with domain name policies—the database, to some extent, throws the user into the deep end—and the costs of obtaining expert advice on the matter may be a disincentive to pursuing a claim.

A survey of the common grounds for complaints and some indication of the success or failure of these complaints would put potential complainants in a better position to decide whether or not to lodge a complaint.

2.4.2. What improvements could be made to the auDRP Search Database, if any?

ACCAN suggests the following improvements, which would make the auDRP Search Database more useful, particularly to potential complainants who are unfamiliar with domain name disputes:

- A brief explanation of common key issues should be provided on the search page
- Links to the text of the decision should be included in search results

We also recommend that auDA ensure that the Search Database is made accessible to persons with disabilities, and that auDA's dispute resolution providers are encouraged to make the text of decisions similarly accessible. Accessibility issues are discussed further on page 7 of this submission.

3. Further recommendations

3.1. Accessibility of the auDRP and the dispute resolution process

To ensure that the dispute resolution process is accessible to persons with disabilities (PWD), auDA should ensure that the auDRP documentation is made available in a manner that satisfies document accessibility standards. The dispute resolution process itself should also be managed in a way that does not disadvantage PWD, and the auDRP Policy and Rules should be amended to make clear provisions for the dispute resolution process to operate in a way that is accessible to people with disabilities.

We note, for example, that the Australian Government's study into the accessibility of the PDF format found that PDF documents presented a number of accessibility challenges.¹

Relevant document accessibility standards and guidelines include the W3C's Web Content Accessibility Guidelines (WCAG) version 2.0² and Vision Australia's guidelines.³

¹ Department of Finance and Deregulation, *The Australian Government's study into the Accessibility of the Portable Document Format for people with a disability*, November 2010, <<http://www.finance.gov.au/publications/pdf-accessibility-study/index.htm>>.

² World Wide Web Consortium, *Web Content Accessibility Guidelines (WCAG)*, version 2.0, 11 December 2008, <<http://www.w3.org/TR/2008/REC-WCAG20-20081211/>>.

³ <<http://www.visionaustralia.org/>>