

Christmas Island Internet Administration Limited

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.au Review Paper Submissions
Department of Communications, Information Technology and the Arts
GPO Box 2154
Canberra ACT 2601

Dear Sir/Madame,

I write in my capacity as a director of Christmas Island Internet Administration Limited ("CiiA") and as the Administrative Contact for the .CX ccTLD. The .CX ccTLD represents the Australian external Indian Ocean territory of Christmas Island. CiiA is both the Sponsoring Organization for the .CX ccTLD and the operator of an ISP and mobile phone company on Christmas Island and the Cocos (Keeling) Islands. CiiA is a not-for-profit entity which sets .CX ccTLD policy, oversees the commercial environment and the Complaint Resolution Service for the .CX ccTLD. CiiA and operates in the same legislative and public policy environment as auDA.

The views expressed herein are formed by nearly ten years of involvement in the administration of ccTLD's (several of which -.CC / .CX / .NF, are external territories of Australia) and my involvement with the Council of Country Code Administrators Limited ("CoCCA"). CoCCA is a public not-for-profit Christmas Island company which seeks (through consensus) to "develop administrative models, policies and technologies which improve the utility, technical stability and interoperability of member ccTLD's with the DNS". CoCCA operates a network operations center in Sydney where ten ccTLDs registries are based. To date the CoCCA initiative has been joined by 11 ccTLD administrators - representing both national governments and private sector ccTLD administrators.

A core function of CoCCA has been to advance a best practice model for the administration of ccTLD's in which policy development, technical operation of a registry, and name-space commercialization are viewed as discrete functions.

The decision to comment on the .au Discussion Paper stems from a.) the observation that the changes to the auDA Objects approved by auDA members 14 August 06 signals a desire on the part of auDA to broaden its areas of involvement - a move which may impact elements of the existing regulatory landscape, and b.) DCITA's stated purpose for holding the review which looks at convergence issues and if broadly interpreted may encompass all Australian domain name management not just the .AU ccTLD. My Comments follow below.

3a

The administrative structure of the .au ccTLD - where policy development, registry maintenance and commercial activities are viewed as discrete activities is consistent with the emerging global best practices. The model delivers a degree of transparency in policy development, helps to ensure technical stability and promotes innovation and competition at the retail or consumer level.

There are many “flavors” of this model and it is not uncommon to see the day-to-day maintenance of the central registry (where a natural monopoly – and rents exist to be captured) carried out by a subsidiary entity of the Sponsoring Organization (.UK. /NZ to name a few)

Tendering registry maintenance every “X” years as in the case of .au and granting a private sector operator a license is perhaps not the most efficient way to deliver services to the registrants or the registrar or reseller communities.

Many ccTLD administrators have evolved from a technical background and have had to adopt their governance structures and culture to deal with the regulation of the commercial environment and more generally “policy development”. auDA is one of the relatively few “new breed” of ccTLD administrators which is “policy-centric” and does not have a history of technical involvement in the day to day administration of the ccTLD it administers .

A review of the current practice of outsourcing registry maintenance with an eye to perhaps creating a subsidiary entity (at a fraction of the set-up cost of auCD) which would operate the registry on a cost-plus or cost recovery basis might be worthy of a formal investigation.

3c

I am not in a position to comment on the specific performance of the auDA Foundation or auCD, however the notion of supporting the growth of the internet in a community via a foundation funded by a levy of some sort on registrations is well founded and has resulted in extremely good outcomes for the internet communities I have direct experience with - of Christmas Island and the Cocos (Keeling) Islands. Thus far millions of dollars from the .CC and .CX registries have flowed to two trusts established to underwrite connectivity and develop the information economy in the Indian Ocean Territories.

The benefits to the community of having the ability to fund small programs that may not be commercially viable or might not otherwise find sponsorship outweigh the costs to consumers of a small levy – provided the levy is small enough and the registry fees are already in a range that is relatively inelastic (a levy would have no measurable impact on demand).

3d

The exact legal status of the entity performing in the role of “trustee” for the ccTLD is perhaps not as important to good governance as drawing a distinction between the roles of policy development, maintenance of the central registry and commercial activities. The administrator-registry-registrar/reseller model can work equally well from the consumer's / registrars point of view when the administrator is a governmental or educational entity, for-profit or not-for-profit. A key to good governance is transparency not necessarily the absence of conflicting interests or oversight by a not-for-profit administrator.

In the domain industry the profit motive is more likely to impact who and under what circumstances registrants are allowed to register rather than price. If a considered policy and complaint resolution framework exists which reflects the laws, culture and customs of the community represented by the ccTLD – and protects the public interest, this should not be a source of concern. Restrictions (or the lack of restrictions) often reflect a branding exercise.

All communities served by the administrators of Australian ccTLDs would probably benefit from the establishment of an industry specific and independent Ombudsman's office funded by auDA, CiiA (CX), eNIC (CC) and NIDS (NF). The absence of a considered industry specific “administrative appeal” mechanism is a shortcoming to the current model adopted by all the managers of Australian ccTLDs.

3f

While the current operational and board structure would seem appropriate to the administration of the .au Domain it may not be appropriate to meeting one of the new principle purposes of auDA –the maintenance and promotion of stability in the internet's *unique identifier* system. The maintenance of Australian unique identifier system encompasses a wide range of activities and potentially creates overlaps and collisions within the current regulatory environment.

By way of example there are four (some might argue five if you include Antarctica) Australian ccTLD “unique identifiers” - as well as eNUM and IPV6 number assignments. All players in the industry with day-to-day administrative authority for Australian internet identifiers should engage in consultation with others who maintain portions of the internet's unique identifier system - to ensure consumers are well informed and the industry benefits from a clear regulatory environment. auDA and the ACMA have a high public profile and may be well placed to co-ordinate such a campaign.

Consistent with self-regulation the administrators of several of the Australian external territories have harmonized policy in complaint resolution, privacy, and registrar accreditation. There has been some early dialog with auDA on the issue of working collaboratively with other “Australian” ccTLDs on areas of mutual interest - but there has been some resistance on the part of auDA to formalizing a relationship. The changes to the auDA constitution may provide an avenue for further exploration of areas where consumers and the industry would benefit from a closer relationship.

By way of example auDA and the Australian internet community might benefit from the establishment of a formal “AU ccTLD panel” made up of the administrators of AU, CX, CC, NF, HM ccTLDs where a constructive dialog on harmonizing applicable policy across these name spaces can take place.

3i

The introduction of an Ombudsman's office where a registrar's or registrant's complaint regarding an auDA administrative decision (or for that matter CiiA, eNIC, NIDS decision) could be mediated - and if necessary or referred a “higher

authority" for a binding decision would improve the self-regulatory model. There is no process that I am aware of for an appeal of an administrative decision or policy interpretation – other than the courts.

Given the contractual nature of the Administrator-Registrar relationship, and the power of the administrator to dictate the terms of the contract (and in so doing limit avenues of possible appeal) and to restrict immediately the on-going commercial activities of a registrar the current process are less than ideal.

Unless there is a compelling public interest to protect a registrars access to registry services should not be restricted while a matter is under appeal.

3j

The 2001 amendments to Telecommunications Act 1997 increased the powers of the ACA and ACCC under Part 22 to allow for intervention if industry self-regulation proves ineffective. This mechanism serves only as a safety net in the event that a self-regulatory body at some time in the future proves incapable of managing an electronic addressing service in the public interest.

The ACA's powers to intervene and declare itself a 'manager of electronic addressing' for a specified type of electronic addressing when it determines the current management of electronic addressing is unsatisfactory in accordance with 'generally accepted principles and standards' is appropriate.

In light of auDA's stated desire to assume authority for maintenance of an expanded set of unique internet identifiers the powers and mechanisms available to the of the ACA or the ACCC to issue legally binding directions to rectify a deficiency in administration might be clarified. By way of example; a theoretical "Ombudsman Office" might have the option to refer an unresolved complaint to the ACMA for a binding decision. Such an option might help to ensure informal mediation was undertaken in good faith.

Domain administrators working in the current self regulatory environment are expected to regulate (in this context meaning "manage the activities of participants in the industry to match broad public policy objectives" - but are not regulatory authorities and should not assume those powers by "stealth".

The government has reserve powers to declare "a" manger rather than simply "the" declared manger. This Australian Internet community currently has several mangers of internet addressing - if the definition is expanded to eNUM, IP numbers, and Australian ccTLD administrators. The industry self-regulatory environment has worked well in Australia - although in the age of convergence greater co-operation and harmonization of policy between the various entities currently involved in the administration of internet identifiers is in the public interest.

It is also worth noting that the relationship between the Commonwealth and Australian domain administrators (broadly defined) is between DCITA and the administrators not between the ACMA and the administrators. As the reserve

powers are in fact held by the ACMA (presumably) it might be worth strengthening that relationship – especially in light of convergence.

7a

auDA has excelled (by any measure) in representing Australian interests and more generally responsible ccTLD governance in international fora. auDA's contributions regionally (through APTPD) and globally (via ICANN and the IGF) to ccTLD governance and the stability and interoperability of the DNS (from a policy perspective) has been substantial.

8

Increased co-ordination between the ACMA, auDA and other Australian entities involved in management or maintenance of the internet's unique identifiers is clearly desirable and timely. auDA's core competence is in policy development and administration - not technical. Relying largely on out-sourced advice keeps auDA salaries and staff levels low - but this approach may come at a considerable overall cost to consumers - especially if the primary source of advice is a private entity operating under a monopoly license from auDA.

Pressure, should it exist, to declare auDA (or any other entity) "the" declared manager for *all* internet addressing should be resisted. Industry and consumers have to date been well served by managers working together in the public interest. By way of example the ACMA and auDA (and various other entities) recently sponsored an eNUM day. Industry self-regulation is working and should be allowed to continue to do so. Further "natural integration" may be necessary and where clear benefits to the community exist should be encouraged.

The private sector entities involved in maintenance of the internet's unique identifiers would probably benefit from the establishment of a peer based forum for formal co-ordination of activities which might over time lead to increased harmonization or even integration in order to introduce economies of scale.

Thank you for the opportunity to comment on the au discussion paper.

Garth Miller
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