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28 November 2006

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

Via Email: aureview@dcita.gov.au

Dear Sir/Madam

Subject: Review of the structure and operation of the .au Internet domain

Please find attached EFA's submission in response to the DCITA Discussion Paper on the above topic.

Yours faithfully

Irene Graham
Executive Director
for and on behalf of the Board of Electronic Frontiers Australia Inc.

Electronic Frontiers Australia Inc. (EFA) Submission

**To: Department of Communications, Information Technology
and the Arts**

**Re: Review of the structure and operation of the .au Internet
domain**

28 November 2006

Introduction

Electronic Frontiers Australia Inc (EFA) is a non-profit national organisation concerned with the protection and promotion of the civil liberties of users of computer based communications systems and of those affected by their use. EFA was established in 1994, is independent of government and commerce, and is funded by membership subscriptions and donations from individuals and organisations with an altruistic interest in promoting civil liberties.

EFA was a founder member of auDA, and via its nominee Kimberley Heitman has been re-elected to the auDA Board on each occasion since 1999. EFA's submissions and policy statements as to the governance of the .au name space have been consistently focused on:

- (a) Freedom of expression;
- (b) Privacy for individuals;
- (c) High value assumed for the .au name space;
- (d) Transparency in decision-making;
- (e) Accountability in corporate governance;
- (f) Reducing costs to end users;
- (g) Evolving new second level domains within the .au space over time;
- (h) Promoting the auDA model as international best practice; and
- (i) Strong involvement in international forums including ICANN.

EFA appreciates the opportunity to make a submission to the DCITA review of governance of the .au name space. As a major contributor to policy development in auDA and with a membership with particular interest in, and expertise within, the Internet industry, EFA does assert a leading role in representing consumer interests and promoting technical excellence.

In general terms, we consider the trust of the Australian Government in conferring upon auDA the task of managing the Internet addressing within the Australian DNS has been fulfilled. auDA is an organisation with firm, published governance policies and which makes policy decisions only after extensive public consultation. Over the years, the membership of the auDA Board has evolved to more precisely represent the industry and community interests and the high level of participation by auDA members shows a vibrant and healthy organisation. The auDA staff, ably led by Chris Disspain, has developed into a professional organisation rightly praised by its peers.

The technical management of the Registry functions, including public tendering and detailed service level agreements, have been exemplary. Put simply, the Australian part of the Internet addressing system is leading the world in accountability, security and reliability. Since 1999, hundreds of new registrar and reseller businesses have been opened servicing .au, and the cost of auDA functions to the end-user has been reduced by more than half.

In managing the .au name space, auDA has placed a high value on the ".au brand". Important controls on eligibility for the commercial and private second level domains has meant that end-users can have a high degree of trust that a .com.au website is a genuine business located in Australia, and that cyber-squatters, spammers and fraudsters are banned. This has not always been a popular position, as for some registrars the only important factor is the number of .au domain names. auDA has resisted permitting new 2LDs that would have tended to be a burdensome cost on businesses – such as opening up duplicate commercial names such as web.au, biz.au or info.au which would be a multi-million dollar charge on businesses protecting their trademarks. However, proposals for policy reform which release valuable domain names – such as the "generics" and "geographics" names in .com.au, or the launch of the new community name space under AUCD, have been approved once a community consensus and proper business plan were achieved.

Accordingly, EFA submits that the present delegation of the .au name space to the auDA has been a policy success and the present structure of governance has achieved all reasonable objectives for balancing the public and private interest. In response to the particular survey questions, EFA responds as follows.

Responses to Discussion Paper Questions

3a In the broadest context, is the "domain operator/registry/registrar/reseller" model the most appropriate for .au in delivering the most efficient and effective administrative structures? – If not, what structural changes could provide greater efficiencies?

If competition and competitiveness are seen as key reasons not to establish a monopoly, the current structure meets the public interest best.

3b Does auDA's current operational and Board structure support appropriate and representative administration of the .au ccTLD? –If not, what changes could deliver more effective administration?

auDA staff and Board membership has, and will continue to, evolve over time. Recent constitutional changes and staff priorities should be given an opportunity to show that the organisation is keeping up to date.

3c Noting auDA's not-for-profit nature, are subsidiary trusts such as the auDA Foundation and auCD the most appropriate mechanisms by which to manage and distribute significant revenue streams?

Yes. Governance should be separate, and there are practical charity needs such as Deductible Gift Recipient status that are best placed in subsidiary trusts. We understand it is not envisaged by the current auDA staff or Board that the unexpected windfall from the sale of the restricted .com.au names will be repeated.

3d Do you believe the governance structures for the .au domain deliver the best outcomes to the Australian Internet community, balancing the need for a reliable regulatory regime operating in the public interest with the need to facilitate competition and growth in .au? –If not, what governance structures could be adopted to deliver a better service to the Australian community?

Yes, the current structure delivers good community representation along with attracting members and Board members who are highly informed about the Internet and local needs. auDA should not be a user organisation or an industry cartel – the current matching of Supply and Demand class interests is consistent with best practice in other telecommunications managers such as ACIF.

3e Is a not-for-profit industry self-regulatory model the most appropriate governance structure for the .au domain?

Yes, other alternatives canvassed in the past have been deficient in terms of cost or as agents for driving innovation. auDA has assisted to manage the .au namespace at little cost to the taxpayer and without heed to profit.

3f Do auDA's principal purposes and activities, as codified in the auDA Constitution, fully reflect the needs of the Australian Internet community, and position auDA to best deliver on these needs?

The objectives of auDA were amended by constitutional change in 2006 to better reflect the aspirations of the consulted community of interests. We understand that, at present, there have been no additional submissions or proposals for change.

3g How effective has auDA been in achieving these principle purposes?

On any metric – cost, reputation, stability or accountability, auDA has done better than any other country code organisation. There are no credible proposals for change.

3h Does the role defined for auDA reflect the expectations Internet users have for the manager of a ccTLD?

Yes, though these expectations may change over time.

3i Are current processes and procedures for the operation of .au sufficiently open and transparent and do they provide for timely, relevant outputs? –If not, what operational changes could help improve openness and transparency?

Policy reviews must of necessity be carefully planned and executed, with a keen eye to implementation. Over time, we expect online feedback will improve the depth of consultation, but not necessarily the speed of the reviews. We note the Board publishes its minutes and has recently had an open, public Board meeting. We understand the Board itself operates under the highest standards of probity and conflict management.

3j Is the current role of the Australian Government in the administration of .au appropriate e.g. acting as an observer on the auDA board and holding reserve powers under legislation? –Alternatively, what role would you like to see the Australian Government assume in relation to .au?

In our view it appears to have worked well to date. We understand that to date the Government's representatives have been helpful on an informal basis and can escalate matters for formal response or input. The "reserve powers" should continue to be held to protect against the consequence of catastrophic failure, not for daily matters.

3k The Australian Internet community, to whom auDA is responsible, is a broad, all-encompassing concept. Who are the key stakeholders auDA should endeavour to engage and collaborate with in order to deliver the best, most relevant and representative outcomes to the community?

Consumer organisations, technical groups, industry and business representatives and Internet experts. In future, particular attention must be given to the needs of security and in the fight against fraud on the Internet.

3l Are there better mechanisms by which stakeholder input could be sought?

auDA already has a host of public initiatives underway, such as public meetings, education resources and advertising.

3m Are there general comments or observations you would like to make regarding the security and stability of the domain name system in Australia?

At present, few problems – in the future, excellence is the minimum acceptable standard. We understand that auDA is working on security issues in several spheres and this will likely prove a model for other country code managers.

4a Do you believe auDA's management of the current naming structure for .au has delivered maximum benefit to Australian Internet users? –Please provide reasons for your comments.

Policy development in .au has been careful and incremental, balancing the high value of the ".au brand" against industry exuberance and minority exceptionalism. It is hard to develop a consensus to remove policy or create a new 2LD, because it involves an objective analysis of the business case and the ramifications on other name spaces and all users.

Over time, this will develop a stable, consistent and high value Internet addressing system for Australia. A good proposal for an innovative use of the Australian DNS will have support – however ideas which merely duplicate existing name spaces, or open up strange new exceptions (like catholic.au) should not be approved.

The 2007 name policy review by auDA should reform some areas of policy, but only after adequate public consultation. Proponents of a narrow economic argument – that all new names add value – have, we understand, been invited to present economic evidence to that effect.

4b Is auDA's process for introducing new 2LDs appropriate? –Please provide reasons for your comments.

Yes, as above. A new 2LD is not only an opportunity for new websites, but an impact on existing websites. If a new category, such as "religions" is included, then rules for the sensible administration of those new names will need further consultation. Lots of good ideas prove to give rise to contentious eligibility issues – for example whether Woolworths would qualify for membership in pharmacy.au.

4c What do you believe would be the benefits and drawbacks of introducing registrations directly at the top level–e.g. www.dcita.au?

There is no objective evidence on the demand for such names, and business is rightly concerned that it would effectively require the hundreds of thousands of com.au and net.au domain name holders to buy a new name. A business could not risk its name being bought by a competitor or any type of unsavoury owner. There would be a huge number of trademark collisions between com.au and net.au (as well as non-commercial domain name owners and foreign websites) vying for the "best right" to the top level name.

Top-level domains would destroy the value in the 2LDs, by making com.au merely a name in the pack, next to comm.au and con.au. Because it would be a different structure to most country code names, it would invite fraudulent use of phony "2LDs" in the format "national.con.au".

It is difficult to see a benefit other than proliferation of names for its own sake.

4d Similarly, what do you believe would be the benefits and drawbacks of introducing more 2LDs?

One at a time, there may be a business case. The current auDA review of policies, as well as the ability of the Board to call for a public consultation process at any time, means that a persuasive and logical proposal has every chance of being implemented. These would generally be "closed" 2LDs (with specific eligibility rules) rather than "open" 2LDs (without eligibility rules).

5a Are auDA's mechanisms for policy development appropriate, taking into account the requirements and input of internet stakeholders?

Yes. There is scope for oral or written submissions and detailed examination of the merits. Advertising the reviews to the public in media other than the Internet has been, and should continue to, be routine.

5b Is the policy development process sufficiently flexible to respond to both the changing Internet environment and dynamic needs of the Internet community? –If not, in what ways could these policy mechanisms be improved?

The current process is flexible and allows participation from all walks of life. Current stakeholders and policy proponents must be prepared to argue the case before the public consultation process.

5c As with the policy development process, are these mechanisms appropriate, taking into account the changing Internet environment and needs of stakeholders? –If not, in what ways could these policy mechanisms be improved?

The mechanisms are based on best practice in Government and statutory authorities.

5d Should all auDA policies have formal review periods?

Not necessarily. Different policies are impacted by different timelines and pressures. For example, decisions on WHOIS privacy do not need review as often as pricing policies.

5e Are the current policy enforcement mechanisms appropriate, and are they consistently enforced?

Yes, although inter–agency cooperation with the ACCC, which we understand has recently reduced, could be assisted by Government support for the ACCC treating auDA more like a fellow regulator.

6a Have measures to introduce competition in the .au space been successful?

Absolutely. Hundreds of new Internet names businesses have prospered from the removal of the pre–1999 monopolies. Competition in the Registry part of the industry has resulted in two competitive tender processes, which have in turn led to much lower prices for consumers.

6b Does the current structure ensure a competitive market and the best value for consumers? –If not, what further mechanisms could be introduced to increase competition?

More automation of the application of the domain name eligibility rules would reduce the cost of, and potentially the need for, Registrar involvement in approving a new domain name. For example, an ability to link to the Government's business identity databases would be an unqualified benefit for users of the current registration processing system.

6c Are the rights of domain name consumers sufficiently protected by current mechanisms? –If not, what further measures could be taken?

We understand that the auDRP is presently being reviewed to address this question, and the clauses in contracts with Registrars as to end–user rights are subject to periodic review.

6d Are the current mechanisms for dispute resolution efficient and effective? –If not, what alternative measures could be implemented?

See above. The auDRP is relatively cheap, but not free. Trademark owners and persistent litigants may be distorting the results by limiting the scope of the "good faith" defence. However, consistency and certainty of outcome may require a formality in dispute resolution of at least that presently required under the auDRP.

6e Given auDA's policy oversight responsibilities, operational expenses and ongoing commitment to reducing wholesale domain name costs as efficiencies are realised, do you believe the current structure delivers maximum pricing efficiency to Australian Internet users? –If not, what changes could be considered?

The auDA portion of the cost of registering a domain name is now so low as to be inconsequential to the consumer. Whether it is worth collecting at a smaller figure is moot. It is possible that auDA functions could be better funded by other mechanisms, such as a secondary market.

6f Given auDA's functions and related operational expenses, do you consider that the current \$4.95 auDA domain name fee is appropriate?

It is as low as a fee could or should be.

6g Following the introduction of competition to the .au space, do you consider that the average retail fee of .au domain names is appropriate?

The industry offers differentiated service levels to add value, and consumers can now purchase no-frills domain name registration for barely more than the retail cost. The fee from the Registry is tested by periodic public tender, and represents the opportunity cost of infrastructure and the ongoing cost of applying the .au policy framework.

6h Are the current mechanisms for the development of eligibility and allocation rules for the .au domain appropriate, responsive and open to input from stakeholders?

Yes. Any sort of proposal can be considered in a timely fashion.

6i Is there any evidence that current policies restrict business opportunities for stakeholders in the domain name marketplace? –Is this restriction positive, or negative?

The eligibility rules restrict fraud and discourage unprofessional behaviour. Domain monetizing is permitted in defined circumstances and subject to the rights of other stakeholders, such as trademark owners. The current policy mix maximises the legitimate use of a domain name by a business, and restricts unfair exploitation of trademarks and domain names by predators.

6j Could a relaxation of these rules facilitate meaningful growth in .au, or could it lead to inappropriate name registration and hoarding practices?

There is no objective evidence to show that removing rules would create meaningful growth. On the contrary, Australian businesses need a name space with a good reputation. Constant vigilance and policing of the .au namespace is necessary to ensure that .au websites do not acquire a global reputation for fraud or tolerance to spammers.

There is no doubt that relaxation of the eligibility rules would result in a transfer of domain names from those who are entitled to them to those who can best exploit the value of the name. This would encourage speculation in the value of domain names rather than the patient development of true e-commerce.

6k Does the current prohibition on the resale of domain names best serve the Australian Internet community, or do the benefits of a relaxed policy regime outweigh potential impacts upon registrants and registry operators?

There is consensus that there needs to be a secondary market to facilitate the transfer of domain names. However, implementation of such a market in a way that is fair, economical and results in the purchaser having good title is not simple. At present, a business can sell its right to a domain name on a sale of the

business, and this permits most proper transmissions of the domain name to the new owners.

Public consultation in 2007 should address the conviction that a secondary market is desirable, while seriously tackling the ways that the integrity of the eligibility rules is maintained. Put simply, Australia cannot accept an outcome whereby all the names are bought by spammers.

6l Is there a need for affirmative action in facilitating and developing secondary markets, or will it occur naturally?

We understand that the 2007 review will address this. EFA has no firm views, other than to note that there is a need to address the current illegal trading in domain names and to consider that auction sites like eBay would be popular means of selling domain names.

6m If a secondary market were introduced for .au domain names, what would be the most appropriate framework through which it could be regulated?

auDA should govern the regulation of the secondary market.

6n Is there a need for increasing the general community's awareness of the mechanisms that operate in the administration of au?

Yes. auDA does, and we assume will continue to, develop educational resources and advertising materials for the public to know more about .au.

6o Who should be responsible for funding awareness raising and education efforts?

auDA.

6p Given that registrars and resellers are the primary point of contact for consumers, are their advertising campaigns sufficient in promoting .au?

While the market has its own objectives, its advertising is voluntary and a business risk. auDA should run public awareness campaigns promoting .au, but it is up to the industry to promote the 2LDs.

7a Is the current level of representation of Australian interests in international fora appropriate?

Yes. auDA has attended all the ICANN meetings and is a respected member. auDA is active in regional Internet forums and working parties, and consults with Australian interest groups and technical experts as to world's best practice.

7b Is the balance between government, business and civil society participation in these international fora appropriate?

ICANN's governance and the role of the United Nations working groups are necessarily compromised by their own stakeholder issues. International forums will become more focused and professional over time, and it is likely that all sectors will benefit from the contributions of the others in developing sustainable policies.

7c With the aim of promoting domestic policy interests, are there other groups or organisations in which Australia could play a more significant role?

The United States is becoming active in monitoring the censorship of the Internet by intolerant regimes. Australia could do much to develop an international convention against Internet censorship.

8a Given the natural synergies between the naming and numbering systems that underpin the operation of the Internet, is the current separation of functional responsibilities between numbering and naming appropriate?

No, auDA should eventually deal direct with ICANN over both. In Australia, auDA should have authority to allocate IP ranges and review policy over the same.

8b Aside from technical implementation and global allocation issues discussed above, what challenges should be addressed as part of the IPv4 to IPv6 shift?

Fraud and security are the main barriers to implementation. IPv6 is trying to tackle international lettering at the same time, which is fraught with issues.

8c With the increasing convergence between traditional communications, media and information technology networks, what are the particular technical and policy challenges that will face the .au domain?

Whether Internet Protocol addresses continue to be the primary addressing system used to deliver content over numerous transmission methods will result in an evolving, or reducing, importance in managing the .au DNS. It is probable that a policy-rich environment provides the best incubator for new business models and uses of the DNS.

8d Do these technical and structural shifts generate a need for changes to the current model for the management of the .au domain?

Not necessarily, but auDA has shown itself to be responsive to change and capable of reform as the domain name industry matured. Australia did not suffer collapses of core infrastructure, frauds in allocation, or abuses arising from domain name speculation under auDA's remit to date. On the contrary, auDA acted fast to restrain numerous breaches of law and best practice.

8e If the current regime continues in its present form and role, what changes would you suggest to its operation or governance to make it more effective?

Review by DCITA on a periodic basis in much the same format as this Review.

8f Are there any other general comments you would like to make?

The Chairman of auDA, Tony Staley and the CEO Chris Disspain, are to be commended for the professional job they do. Volunteer directors have evidently worked hard since 1999 to best develop the .au namespace and deserve recognition for the successful outcomes.