



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

**Submission to 'Review of the structure and operation of
the .au internet domain name'**

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John Selby
Department of Business Law
Division of Law
Macquarie University
Sydney NSW 2109

T +61-2-9850 7081
F +61-2-9850 7686
John.selby@law.mq.edu.au

Background

The .au domain name system is a resource managed by auDA in the public interest under a co-regulatory scheme with the Commonwealth government. It forms part of the hierarchical DNS root currently managed by ICANN. The purpose of the domain name system is to enable Internet users to easily, conveniently and reliably find electronic resources hosted on computers connected to the Internet. It does this through maintaining a searchable database (registry) of registered domain names which are linked to the IP addresses of those computers.

Computers use numerical IP addresses (eg 192.168.0.1) to find each other. As people find it easier to remember words (and pre-existing brands) than numbers, the domain name system creates enormous value for Australia's citizens and its economy by lowering transaction costs for citizens to access an incredible variety of electronic resources (everything from finding the telephone number of their local MP to being able to do their banking online at 2am).

Lower transaction costs benefit the Australian economy and its Internet users by (amongst many other things):

- reducing the time Internet users spend searching for information (eg centralizing a large number of the apartments advertised as available for rent onto www.domain.com.au);
- increasing the geographical range of resources / products accessible to Internet users (buying a car on www.drive.com.au);
- enabling Internet users to find time-sensitive information, eg share prices on www.commsec.com.au);
- enabling Australia's small businesses to market their products and brands to national and global markets;
- enabling Australians to communicate with each other and to communicate Australia's culture to the world (by email and through online forums);
- enabling high volumes of lower-cost transactions which otherwise would not occur off-line (because they would be too expensive to co-ordinate and therefore unprofitable) to be successfully completed on-line (eg booking last-minute hotel rooms or airline tickets electronically).

The enormous benefits to the Australian economy and Australian citizens using the .au Domain Name System which arise due to these lower transaction costs critically depend upon a number of (often unstated) assumptions:

- that the registered owner of a domain name can be trusted by Internet users to operate the site in a safe and legitimate manner. This trust is commonly achieved through significant investment in both off-line and on-line branding and marketing, which often started years prior to the submission of an application for a .au domain name registration (**Trust**);
- that the entity which has invested resources in building up a valuable brand or name is the registered owner of that domain name (**Certainty**); and
- that the registered owner of a domain name can be reliably contacted by an Internet user in the event that something has gone wrong (**Identifiability**).

It is critical that all policy decisions made relating to the management of the .au domain name system protect the trust, certainty and identifiability assumptions built into the .au domain. Policy changes which reduce trust, certainty or identifiability in the .au domain name system will increase transaction costs for Australian Internet users and damage the Australian economy's competitiveness.

A Very Brief History of the .au Domain

The .au domain name system has a higher level of trust, certainty and identifiability as compared to a number of other top-level domains (such as .com). In March 1986, when Jon Postel at the University of Southern California Information Sciences Institute delegated the right to manage the .au domain to Robert Elz, an engineer at the University of Melbourne, Elz created a number of policies upon which he issued .au domains.

Elz initially permitted a business to apply to register only one .com.au domain name. He required that the domain name be identical to the company's registered name and initially would not permit registration of a domain name on the basis of a trade mark or brand. After feedback from Australian Internet users, Elz eventually relaxed these policies, permitting registration of a domain name on the basis of a trade mark. Elz did not permit the private transfer (re-sale) of domain names from a registrant to a third party (i.e. no secondary market). When auDA replaced Elz as the manager of the .au domain name space (a separate controversy), auDA retained some of Elz' policies and relaxed others. auDA did not permit the creation of a secondary market. Instead, a registrant could apply to the Registrar to cancel a registration and at the same time the third party could apply for subsequent registration.

The requirement that an applicant holds either a registered trade mark or registered business name/company name identical or closely connected to the domain name they were seeking to register was retained by auDA. This created a slightly higher transaction cost for registrants of .com.au domains as compared to registrants of .com domains (where anyone could register any domain name).

However, this minor barrier to registration created very significant benefits for Australian Internet users and successful domain name registrants –greater certainty and identifiability led to a much lower ownership-dispute rate for .au domains as compared to .com domains. There have been more than 12 000 .com domain name disputes filed under the UDRP since 2000. The .uk domain which is similarly permissive in its registration requirements as .com has had over 4667 disputes since 2001. In contrast, there have been only 79 .auDRP disputes lodged since 2002, a much lower rate of dispute.

Domain	Number of domain name disputes lodged	Rate of Disputes per 10 000 registered domains
.com	12 122	2.33
.uk	4667	1.6
.au	79	1.02

The rate of .au domain name disputes is less than half of the rate of .com disputes and 40% lower than the rate of disputes occurring in the .uk country-code domain.

Policies (such as the registration-eligibility criteria) which minimise the number of .au domain name disputes are certainly in the public interest. The fee of \$A1650 paid to a dispute resolution provider to hear a .au domain name dispute is a heavy burden in itself. The realistic cost to Australian small businesses of each .au domain name dispute is more likely to exceed \$A50 000, given the need for expensive legal advice and the opportunity cost of having managers’ of the businesses distracted by the dispute for several months.

A high level of domain name disputes coupled by a secondary market in domain names would also be likely to lead to opportunities for “extortion-like” behaviour, where illegitimate registrants of domain names have an incentive to earn profits by offering to sell domains to legitimate registrants for prices slightly less than the cost of resolving the dispute through the auDRP, but well above the cost of initially registering the domain. Policies which facilitated such behaviour would certainly not be in the public interest.

The .au domain name system currently consists of >770 000 domains, approximately 88% of which are registered under .com.au second-level domain.

Administrative structure of .au

- 1 *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?*

The .au domain name system needs to efficiently serve the diverse interests of a number of stakeholders, including:

- **Australian citizens and worldwide Internet users:**
 - i. the general public undertake more than 100 million .au domain name look-ups every single day

- **Private Sector Interests:**
 - i. 771 524 website operators had registered .au domains as of October 2006
 - ii. 23 for-profit domain name registrars, 1 non-profit registrar and 1925 re-sellers
 - iii. 1 x registry operator (AusRegistry)

- **Public Sector Interests:**
 - i. ~4000 – 5000 website operators had registered federal, state and local .gov.au domain names as of November 2006
 - ii. 1 x Government domain name registrars
 - iii. 1 x registry operator (AGIMO)

- **Co-ordination and Policy Setting Bodies**
 - i. 1 x Domain Name Policy Administrator (auDA)
 - ii. 1 x IP Address allocator (APNIC)
 - iii. the Federal Government (under the Telecommunications Act)

The current .au model is reasonably efficient and relatively low-cost, capable of accurately resolving hundreds of millions of .au domain name requests every day.

Whilst there are significant tensions between the interests and incentives of each group (eg Domain Name registrars and re-sellers have a commercial interest in maximizing registrations (their profits are principally generated through economies of scale from high volumes of registrations), whilst Internet users seek accurate registration information on sites containing useful content (a high-volume of misleading, deceptive, or pointless website registrations decreases the utility of the .au domain name space for its users.)

Significant structural changes are not required and are unlikely to generate greater efficiencies. Greater efforts to align the incentives of various groups towards the ultimate public interest of Australian citizens and world-wide Internet users would be appropriate. Any changes which would detract from the public interest of Australian citizens and world-wide Internet users (such as attempts to create a secondary market for domain names) should be rejected.

2 *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 is one of the most cost-efficient ccTLD managers (5 full-time staff), with 2005-06 budget expenses of ~\$A3 Million. This can be compared to the complaints which have been leveled against ICANN due to the bloating of its staff to 59 employees and its 2005-6 budgeted expenditure of ~\$A30 Million (USD 22.988m).

	2000-1	2005-6
auDA Staff (FTE)	4	5
auDA Annual Operating Expenses	\$A664 971	\$A2.5 Million
ICANN Staff (FTE)	15.3	59
ICANN Annual Operating Expenses	\$A5.56 Million	\$A30 Million

auDA’s board could be made more effective by permitting greater involvement by the heaviest users of the .au domain name system – Australian citizens who are looking up domain names when they use the Internet. Currently, such citizens are only indirectly represented in the “demand” class on the auDA board. As such, their interests are combined with domain name registrants, including large businesses such as Telstra, National Australia Bank and small businesses such as www.overclockers.com.au.

Both the “Supply” and the “Demand” class represented on auDA’s Board also includes certain entities who have interests which directly conflict with the public interest. In the “Supply” Class, for-profit registries and re-sellers have a clear business incentive to seek policies which maximize the volume of .au domain registrations. It is therefore not surprising that some members of the Supply class may seek the removal of the ABN/ACN/trade mark requirement for registering a .com.au domain.

The removal of such requirements may cause an increase in the volume of domain name registrations – but the vast majority of such registrants would likely cause damage to the Australian economy (eg organized crime gangs anonymously registering domains to steal Australian citizen’s banking details, purveyors of pornography and online-gambling services would benefit from anonymous registration and some opportunists would seek to parasite off the hard work of Australian businesses by racing to speculatively register their domain names and offering to “sell” them to their legitimate owners for a fee slightly less than the cost of resolving a domain name dispute under the .auDRP).

In the “Demand” Class, some entities seek to gain private profits by increasing the transaction costs for all Australian citizens through polluting the .au domain name space with misleading websites, and parasitically stealing value from the brands of hard-working small Australian businesses. One of the means by which they seek to achieve this agenda is through the creation of a secondary market in domain names and a lax domain name renewal policy which could enable the extortion of money from legitimate rights holders. Far from promoting economic efficiency, such policies would reduce wealth and result in losses to the vast majority of Australian businesses affected.

3 *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?*

I must disclose a conflict of interest on this topic, as I was a successful applicant for a \$A20 000 grant from the auDA Foundation to assist in funding a PhD scholarship at Macquarie University for research into Indigenous Internet law issues by an Indigenous Australian. I do believe that these trusts are spending money in the public interest by distributing a portion of the proceeds of generic and geographic domain name auctions to a very diverse range of worthy causes.

Unlike the normal .au domain name registration process (whereby a party is entitled to register a domain name when they have a pre-existing right to use that name), the generic name and geographic domain name auctions undertaken by auDA (which funded the auDA Foundation and the auCD) were designed to efficiently allocate names to entities that most valued the right to use those names (by definition, no single entity had a pre-existing right to use a generic or geographic domain name). As such, these are special cases which fall outside of the issue of the creation of a secondary market for .au domain names.

- 4 *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?*

In November 1987, Paul Mockapetris authored RFC1034 – Domain Names, which explained the core concepts of the Domain Name System, and stated:

"The design goals of the DNS influence its structure...
The primary goal is a consistent name space which will be used for referring to resources.

“Competition and growth” in the .au domain name space are **not** necessarily the best outcomes for the Australian Internet community. A domain name space which grew merely through the registration of domain names for the purposes of hoarding, misdirection of Internet users, or speculation would most definitely not be one which had been managed in the public interest. Permitting the mass registration of domain names (domain hoarding) with the goal of private re-sale of valuable domain names does not benefit Internet users: it merely transfers money from the hands of one private citizen to another, with no public benefit whatsoever!

As Mockapetris foresaw in 1987, the Australian community would be best served by a domain name system which only contains domain names which have been registered to host websites or other services which are designed to be useful to Internet users through look-ups.

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

In designing the governance regime for the .au domain name space, the Commonwealth was faced with (what is called in New Institutional Economics Theory) a “make – or buy” decision. Should it make its own regulatory regime (command and control regulation through a government department or agency), or buy one in from a third party (self-regulation or co-regulation)? The Commonwealth chose to implement what could most accurately be described as a co-regulatory scheme, whereby auDA develops and implements policies subject to the Commonwealth being able to seize control if it objects to how the .au space is being managed.

There are significant agency issues arising out of the creation of a self-regulatory (or co-regulatory) body with limited financial resources at start-up (making it prone to capture by private-sector interests capable and willing to provide desperately needed funds) and the extent to which private-sector interests can consequently leverage their funding into ongoing dominance over the self-regulatory process.

The lack of start-up funding also means that the regulatory body is unable to hire large numbers of technical experts. It therefore becomes dependent on volunteers to provide technical advice (eg auDA's technical and policy committees have been staffed principally by volunteers). Industry groups and private-sector entities have a very strong interest and financial ability to offer up volunteers to fill places on such committees. However, the interests of those volunteers may not necessarily align with the public interest.

When creating self-regulatory or co-regulatory bodies in the future, it is suggested that the Australian government should provide start-up or seed funding to those bodies to minimize the risk of capture or weak governance as a consequence of financial desperation and the lack of sufficient independent technical experts to formulate draft policies in-house.

6 *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?*

auDA's principal purposes and activities do reflect the needs of the Australian Internet community. In particular, the need for stability in the .au domain is paramount. Stability has been a significant feature in the .au domain name space – the lack of public attention and awareness on this topic is perhaps back-handed evidence of this. The vast majority of Australian Internet users do not appear to understand how the .au domain actually works – but they recognize that it does work every day when they use the Internet. If it stopped working stably, or the high level of trust, certainty and identifiability they have in the .au domain name space were to be eroded, I expect that the Australian public would rapidly voice their concerns to their local MPs, in major newspapers, through talkback-radio, online-forums, etc. The lack of public debate over the .au domain name system could be argued by some to be a sign that its management has been reasonably successful. Whether this is truly the case is debatable and could only be verified by increasing the level of awareness of domain name issues in the minds of Australian citizens.

7 *How effective has auDA been in achieving these principle purposes?*

Despite some flaws, auDA has been able to achieve its principle purposes to a significant degree.

One measure of the effectiveness of auDA is to compare the number of .au domains registered per 1000 Australian citizens with that of other country codes. As can be seen from the table below, the rate of adoption of .au domains is significantly higher than most comparative country code domains.

Country	Approximate total number of country-code domains registered (2006)	Country-code domains registered per 1000 citizens (2006)
Australia (.au)	770 000	38.5
Canada (.ca)	766 000	25.544
Ireland (.ie)	54 700	14.7
New Zealand (.nz)	221 433	54.9

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

Australian Internet users expect the manager of a ccTLD to ensure that it is managed for stability with a high level of trust, certainty and identifiability. It could prove useful to include these expectations with greater clarity in auDA's constitution.

- 9 *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?*

At present, an entity which is dissatisfied with a decision made by auDA has limited options when seeking to appeal the process used to reach that decision or to reverse the substance of that decision, short of suing auDA in federal or state courts. As a policy-making body regulating a resource in the public interest, it is arguable that perceptions of transparency and openness would be improved through the possibility of review of auDA decisions by the Administrative Appeals Tribunal. This may provide a low-cost, procedurally fair means of enhancing transparency and openness.

Such procedural reviews should not seek to second-guess the substance of decisions made by auDA or its volunteer-committees, instead focusing on ensuring that appropriate processes and procedures were followed in reaching the decision.

- 10 *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?*

As discussed above, the Australian government faced a “make-or-buy” decision when determining how to regulate the .au domain name space. Any proposed alternative should be assessed to determine whether it would achieve more effective or fair regulatory results in a more efficient manner than is currently being achieved by auDA.

It is open to debate whether the current volunteer-based ad-hoc volunteer committee structure used by auDA to develop policy is capable of providing unbiased, open and accountable decisions less prone to capture by particular interests than if those policies were developed through a traditional internal government process of public-sector policy review and public submissions. The lack of an effective appeals process from the decisions of auDA’s ad-hoc volunteer committees is of concern.

11 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?

The .au domain name system needs to efficiently serve the diverse interests of a number of stakeholders, including:

- **Australian citizens and worldwide Internet users:**
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Representatives of the general public who use domain name system to lookup websites every day should have greater input into auDA's decision making.

There are certain situations where the interests of some stakeholders (and their industry representatives) may conflict with those of other stakeholders, and with the public interest. For example, for-profit registrars and re-sellers are high-volume, low-margin businesses. Attempts by registrars and re-sellers (and their industry representatives) to expand the volume of .au registrations (and therefore their private profits) should be weighed carefully against the increased costs this would impose upon Australian Internet users and the vast majority of Australian businesses through reduced trust, certainty and identifiability. These groups may be supported by "entrepreneurs" who seek to engage in domain-name speculation, hoarding and private re-sale, which is not in the public interest.

It is critical in the management of the .au domain name space in the public interest that the short-term profits of a small number of industry players are not permitted to outweigh the broader public interest.

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

Allowing longer time periods for policy reviews and for external written submissions to auDA policy committees would improve stakeholder input. Greater efforts should be made by auDA to publicise the existence of its ad-hoc committees and of their requests for stakeholder / public input.

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

In other areas of telecommunications, the Australian government has promoted policies which recognize the value of identifiability as a means of discouraging behaviour which is not in the public interest. For example, to reduce the volume of spam emails and direct-marketing telephone calls received by Australians, the Australian government promoted the Spam Act 2003 and the introduction of a Do-Not-Call registry. Anonymous registration of mobile phone numbers is not permitted in Australia.

The .au domain is currently relatively secure and stable. The current requirements for registration (ACN/ABN/Trade mark) and public identification of the domain name registrant add significantly to this security and stability. Removal of these requirements would significantly detract from the security and stability of the .au domain and would also contradict the telecommunications policies developed by the Australian government.

DNS structure in .au

1 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.

auDA's management of the current naming structure for .au has delivered a reasonable degree of benefit to Australian Internet users. There is certainly room for significant debate about the means by which auDA acquired the right to manage the .au domain name space from Robert Elz. Since that time, auDA has faced initial challenges from a lack of start-up funding, conflict from competing demands and challenges to its authority from domestic and overseas shady business practices (which compelled auDA to launch legal action).

auDA's actions in managing the .au domain also form part of a larger debate over domain names which is occurring at a global level. The lack of awareness of the general public of auDA's management policies is of concern, especially given the fundamental importance of the .au domain name system to Australian society and the Australian economy.

- 2 *Is auDA's process for introducing new 2LDs appropriate? —Please provide reasons for your comments.*

auDA's current policy permits submission of applications for new 2LDs at any time. This may lead to some inefficiency as committees would need to be formed in an ad-hoc way for each application made. It may be more efficient to create a two-month time-frame every two years in which auDA could accept applications, which would then be subjected as a group to a more formal review. There should be no requirement to have to approve any or all of the applications received. Extensive public discussion of the applications could then be made.

It is important when considering applications for new 2LDs that auDA avoid the perception that plagued ICANN several years ago when it required very substantial non-refundable application fees be lodged by applicants for new TLDs. ICANN collected a large amount of money in this way, and many applicants complained that they did not feel ICANN's procedures were fair.

- 3 *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 a lengthy history of the .au country code domain being structured to permit registration at the Third-Level (eg www.telstra.net.au). Some other countries started by permitting registration at the Second-Level, (eg: www.rogers.ca, www.kuleuven.be).

It is unclear what the public interest benefit of permitting registrations at the Second-Level of .au would be. If the proposed benefits are merely increased profits for registrars and re-sellers through having trade mark owners, businesses, charities and individuals register yet another domain name in addition to their pre-existing domains (already registered under .com.au, .org.au and .id.au, etc). This would merely result in increased costs for Australians. It would also cause confusion in the public and the dilution of investments in website brands already established in the market (eg: to find a business' website, should an Internet user type into their browser www.x.com.au or www.x.au?)

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

Whilst it is technically very easy to introduce additional 2LDs, the economic, cultural and social policies involved are very complex. ICANN's attempt to introduce additional top-level domains through applications and public hearings have been criticized as verging on the farcical. Given the immense benefit of the .au domain name system to Australian society and the Australian economy, the business cases, social policies and cultural philosophies behind any attempts to introduce additional 2LDs should be subjected to stringent and lengthy public evaluation prior to any attempts at implementation.

One of the inherent complexities in the domain name space is that only one entity can register a domain name. In contrast, up to 42 businesses could simultaneously use a single trade mark in Australia, by registering that trade mark in different classes. Introducing additional second-level domains which enable a significant critical-mass of entities which have legitimate rights to register a domain that has already been registered by another legitimate rights holder in an existing 2LD is in the public interest.

In contrast, introducing more 2LDs merely to induce current domain name owners to spend more money registering the same name in another 2LD is pointless and verging on extortion. It is not surprising that, historically, trade mark holders in particular have lobbied against the introduction of large numbers of new 2LDs.

Policy development and enforcement

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

auDA currently appoints committee members to develop policies after receiving applications from members of interested stakeholders and the general public. The procedures used by auDA to select one applicant as opposed to another applicant are not transparent. For example, as an unsuccessful applicant to sit on auDA's competition review committee, I was not informed as to the criteria by which my application was assessed, nor given any procedural means to appeal that decision.

- 2 *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?*

Given the high speed of change on the Internet, flexibility is critical in the policy development process. However, greater transparency, procedural fairness, accountability and an appeals process would improve the decisions made by auDA's policy development committees without significantly impacting on flexibility.

- 3 *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?*

See comments above.

- 4 *Should all auDA policies have formal review periods?*

To ensure their ongoing relevance, it would be useful for auDA policies to have a formal review period. However, such reviews are expensive to undertake and should not occur so often as to impede the effective management of the .au domain name space. I would suggest a synchronized four-year review period for all policies to be held at the same time. Shorter review periods are likely to lead to poor outcomes as review-exhaustion would afflict many interest groups, favouring groups with sufficient profit-incentive to agitate for a policy change and disadvantaging the broader Australian Internet-user community.

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

auDA is able to enforce policies through technical means (such as the auDRP) quite efficiently and effectively. Policies which cannot be enforced through technical means (eg policies against fraudulent domain renewal notices) are not as effectively enforced by auDA as it must prove its case in court and have the court's judgment enforced. This is very expensive given auDA's limited resources and is a limitation inherent in the self-regulatory/co-regulatory model.

Domain names policies

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

“Competition” is a very complex term, almost a code-word in its obscurity. The removal of MelbourneIT’s monopoly on the marketing and licensing of the registration of .au domains by auDA did introduce significant competition into the supply industry for the .au domain name space. Competition between re-sellers of domain name registrations is particularly intense, with 1925 .au domain re-sellers registered with 24 registrars.

Competition also exists between 2LDs, particularly proponents for the introduction of new domains (often desiring to operate the registry for that new domain) as they face competition from existing dominant 2LDs (eg: .com.au) and existing registries/registrars who would not benefit from new 2LDs. In this respect, the critical importance of auDA properly vetting new applications for domains is evident. It would be against the public interest to introduce “competition” which merely results in the cannibalization / fragmentation of existing domains, as compared to facilitating growth in registrations by entities who previously have not registered domain names.

To a limited extent, competition also exists between the four dispute resolution providers under the .auDRP. The very low level of demand for dispute resolution services in the .au space has meant that none of those dispute resolution providers could have viable business models if they purely depended upon income from domain name disputes. I analysed the flaws in the attempt to introduce competition into the .com dispute resolution process in an article published in the 2004 edition of the Macquarie Business Law Journal, “Competitive Justice: The Role of Dispute Resolution Providers under ICANN’s UDRP”, pp23-58. I can provide a copy of this article upon request.

2 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?

The current structure in the .com.au space is highly competitive for re-sellers. Re-sellers competing to offer a generic product (a two-year registration of a .au domain name) has led to rapid innovation in service offerings. Many of these innovations have been beneficial to consumers. However, certain activities which have endangered the value of the .au domain name space have also occurred. One example of this is the attempt by certain re-sellers (or unlicensed re-sellers) to extract money from Australian citizens and small businesses by sending to them misleading or bogus invoices for “renewal” or “protection” services.

auDA has been compelled to invest significant resources in attempting to prevent recurrences of these activities, which are a blight on the proper functioning of the .au domain name space.

This example highlights the potential danger of attempts to encourage “too much competition” in the marketplace, which sometimes results in market failure.

- 3 *Are the rights of domain name consumers sufficiently protected by current mechanisms? —If not, what further measures could be taken?*

Domain name consumers have faced exploitation, especially in relation to renewing their domains. Individually, it is not efficient for each domain name registrant affected to pursue those responsible (particularly when they have operated from outside Australia). As policy manager for the .au domain name space, auDA is the most logical and efficient entity to take action to regulate market failures as they occur. However, it is debatable whether auDA has the finances to afford to mount a sustained legal campaign to prevent recurrences of these problems. It may be useful to apply some of the funds generated by domain name auctions towards building a legal fund which could be used by auDA solely to protect the interests of domain name consumers.

- 4 *Are the current mechanisms for dispute resolution efficient and effective? —If not, what alternative measures could be implemented?*

The current mechanisms for .au dispute resolution have been used very sparingly (ie 79 times). It is clear that the identification and prior rights requirements for registering a .com.au domain are the most efficient and effective means of dispute resolution – they operate to minimize the rate of disputes arising in the first place.

One suggestion to improve the fairness of the .auDRP would be to permit registrants of .au domains to have the option of selecting which dispute resolution provider would be used to resolve any disputes involving that name (or to randomize that selection process). This would remove two unfair situations:

- 1) a web site registrant being compelled to resolve a dispute using procedural rules which did not even exist at the date they initially registered their domain;
- 2) any perceived biases by dispute resolution providers in favour of complainants (as has been identified as existing in the .com UDRP).

- 5 *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?*

auDA currently receives from registrars \$4.95 for each .au domain name registered. This fee has reduced from \$15 per domain name in 2002 to its current price as the volume of .au domain names registered has risen beyond certain defined volume targets. As registrars charge consumers significantly more than this each domain name registered. At \$4.95 per domain name and 770 000 domain names currently registered for 2 years each, auDA could be expected to receive approximately \$1.9Million per year from such fees. This is a relatively small amount of money to fund the management of a critical piece of Australia's infrastructure in the public interest.

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

auDA's ability to expand its marketing and public awareness of the .au domain name space, to pay the true costs of its policy development process (currently borne almost entirely by volunteers) and to improve the .au domain name space are constrained by its relatively low budget. Whilst too high a charge would be detrimental to the operation of the .au domain and against the public interest, fees that were too low would result in a weak regulator that is prone to capture and unable to correct market failures. Therefore, a balance must be sought between the two extremes.

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

There is a large difference between the retail prices charged by resellers for the same .au 2LDs. For example,

Domain	MelbourneIT	NetRegistry
.com.au (2 yrs)	\$140	\$44.95
.net.au (2 yrs)	\$140	\$44.95
.org.au (2 yrs)	\$88	\$13.75
.id.au (2 yrs)	\$99	\$29.95

From an outsider's perspective, it is hard to justify the almost 200% differential between the cost of registering the same .com.au domain name through either MelbourneIT or NetRegistry. The additional "value" offered by MelbourneIT is unclear (though I am sure that they would be interested in providing feedback on this point).

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

These policies have been developed after significant input from many different stakeholders with many different (and often conflicting) incentives. The eligibility criteria for registering .au domains are very minor inconveniences at most for legitimate registrants. At the same time, the eligibility rules provide significantly higher levels of trust, credibility and identifiability which benefits all Australian Internet users. They reduce the level of domain name disputes significantly as compared to generic top-level domains (less than half the rate of disputes as compared to .com) and other country code domains (40% fewer disputes in .au than in .uk) which do not have eligibility requirements. The .ie regulator reports that its eligibility requirements provide significant benefits to the Irish community through reduced dispute rates and through greater certainty.

The removal of the allocation rule which prohibited a legal entity or individual from registering more than one .au domain name was appropriate as it recognized the reality of businesses and individuals operating more than one brand within one legal entity.

The process by which new .au domains should be allocated is tremendously complex and has been discussed above.

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

As has been discussed previously, the current policies implemented by auDA legitimately attempt to correct market failures by restricting business opportunities which are based upon exploitation for private profit and quasi-extortion. Legitimate business activities which are in the public interest are not unduly restrained by auDA's current policies. Therefore, these restrictions are mostly positive.

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

It is very likely that a relaxation of these policies would lead to inappropriate name registration and hoarding practices. This would damage the trust, certainty and identifiability within the current .au domain name space and would certainly not be in the public interest.

- 11 *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?*

The current prohibition on resale is definitely serving the Australian Internet community's best interests. Any proposed benefits of a relaxed policy regime would only flow to a small number of private speculators, who would impose much larger costs on every other member of the .au Internet community. This would result in a net loss of value for the Australian economy. Such action is clearly not in the public interest.

The impact of a relaxed policy would be felt far more by Australian small businesses than by registry operators. Those small businesses cannot afford \$50 000 in legal costs to regain a domain name to which they have a legitimate right. Those small businesses are the one's spending money to build valuable brands and real businesses which benefit the Australian community and are the growth engine of the Australian economy.

Forcing those individuals and small businesses to pay significantly higher prices (perhaps even up to tens of thousands or hundreds of thousands of dollars) to speculators who have invested only \$45 per domain name is preposterous and would likely result in significant public discontent. It would certainly be an inefficient allocation of resources in the Australian economy and a pseudo-tax on the broader community designed solely to permit speculators to win a jackpot lottery. Such a proposition is certainly not in the public interest!

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

A secondary market is not appropriate for a namespace designed to facilitate recognition and easily-memorable access to resources. Australians are not permitted to re-sell identifiers in other Australian namespaces (eg their telephone numbers) for public policy reasons and a similar restriction is appropriate in the .au domain name space.

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

A secondary market should never be introduced for .au domain names. To do so would be create a net negative result for the Australian Internet community and the Australian economy.

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

Definitely. The vast majority of the general community are only a very limited understanding of how the .au domain name space is administered.

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

A variety of stakeholders in the .au domain name space should take responsibility for awareness and education efforts. auDA, registry operators, registrars and resellers should all contribute financially to these efforts. The easiest way to raise the money to fund such efforts (short of a direct financial contribution by the Australian government) would be to prolong the number of registrations for which auDA receives a \$4.95 fee to a higher volume of registrations so that additional revenues accrue to auDA which can be allocated to funding awareness raising and education efforts. In addition, it would be appropriate for a component of any future proceeds generated through generic domain name auctions conducted by auDA to be used for these purposes.

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

Clearly, these advertising campaigns have been insufficient on their own in promoting .au.

International participation

- 1 *Is the current level of representation of Australian interests in international fora appropriate?*

Australia has definitely punched above its weight with regard to being represented on international fora relating the domain name space. For example, the current CEO of ICANN is a former director of the Australian government agency which was known as NOIE (now part of AGIMO) and another ICANN staff member based in Brussels is an Australian.

Australian representatives assisted in the founding of ICANN's Governance Advisory Council (which produced the a report on Re-delegation Principles that was used by ICANN to justify re-delegating the .au space to auDA over the objection of its incumbent manager, Robert Elz).

It is certainly appropriate for Australia to have representatives on international fora discussing the domain name space. What is important is that those representatives openly and transparently represent the interests of the broader Australian Internet community.

- 2 *Is the balance between government, business and civil society participation in these international fora appropriate?*

Civil society participation should be increased.

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

The activities of Regional Internet Registries in allocating IP addresses is of critical importance, which could benefit from increased Australian participation

Emerging technical issues

- 1 *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?*

Name/Number spaces for identifiers such as the IP address system, the telephone system and the number plate system are similar but distinct to the domain name space, having significantly different stakeholders and balance of interest playing fields. Therefore, the current separation of functional responsibilities is appropriate.

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

The current bias in the ASCII system towards languages based upon the Roman-character script is challenging given that the greatest growth in Internet usage (and demand for IP addresses under IPv6) is in countries which have languages that are not based upon the Roman-character script. The dangers of phishing attacks being made more easily implemented due to the introduction of diacritical marks into the domain name space is of concern as it may cause significant cyber-crime issues.

The move from IPv4 to IPv6 is a massive undertaking which is worthy of a separate inquiry.

- 3 *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?*

The selection and appropriate introduction of new 2LDs will be challenging. This is especially the case when IP addresses are issued to portable devices, etc under IPv6.

The scale of routing table growth will be challenging as millions / billions of new IP addresses are allocated to new devices. This is especially the case when trying to communicate with devices which are mobile and shifting from one network to another. For example, imagine the difficulty of trying to stream data to a device which is constantly being issued new IP addresses as it moves from one network to another.

This is an issue not just for devices which receive content, but also for devices which are acting as mobile servers. If a domain server changes its IP address, that domain will not be accessible until its IP address is updated in the registry. The ability of the registry to handle high volumes of dynamic updates (potentially millions per second) is unclear.

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

It is impossible to predict now how the current model for the management of the .au domain will be affected by these technical and structural shifts. It is therefore critical that structural dynamism be possible.

5 *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?*

- Increased accountability and openness in the selection of auDA policy development committees;
- An appeals process for procedural fairness complaints arising out of auDA policy decisions;
- Increased representation on auDA's board by representatives of Australian Internet end users, separate from the current "Demand" class, which is currently more closely connected to business interests.

6 *Are there any other general comments you would like to make?*

No at this point in time.

About the Author:

John Selby is a Lecturer within the Department of Business Law and the Division of Law at Macquarie University. After practicing as a commercial Internet lawyer in Tokyo, and in Sydney with Mallesons Stephen Jaques, he now researches and teaches in Internet Law. John is also a research associate at the UNSW Centre for Cyberspace Law & Policy. He is currently undertaking extensive research applying theories of New Institutional Economics to the operation and management of the .au domain name space. He has presented elements of his research at conferences in Australia, Europe and North America.