

Submission to the Review of Australia's .au domain management

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Introduction

This submission represents the viewpoint of the author, and is not written on behalf of any organisation.

The submission is based on the discussion paper issued by the Review in November 2017, and broadly follows the outline and the questions posed by the Review.

1 auDA roles and responsibilities

The roles stated in the most recent annual report seem reasonable; the terms of endorsement are broader, and are also reasonable.

One role which should be added to both lists is the role of promoting and encouraging the use of Australian domain names; this relates to the specified role of engaging and educating stakeholders but is not the same thing. There is a great deal auDA could do in this regard (since at present it does little or nothing) – for example, at the consultative meeting on 14 December, I showed everyone a copy of *Domain names for dummies*, which explains the New Zealand domain name system.

One of the roles of auDA, which could also be highlighted, is to work with stakeholders to develop and review policies and to set strategies which have broad support within the stakeholder community, and which have been developed as a result of broad consultation and discussion - that is, consensus building. This was a requirement set out in policy panel procedures.

To illustrate, one issue which has been often discussed by policy panels is the disinclination of individuals to register domain names, not only in id.au but in other 2LDs as well. There are still many approaches to this, including research into the reasons. I will be presenting a paper at a library conference on 13-15 February, and suggesting that public libraries might provide assistance to their members in developing their internet identities including online names – in the same way as libraries have provided a wide range of services along these lines in the past.

We need to recognise that there are many interests, long and short term, in the domain name community, and that these interests overlap with interests in the internet more broadly. With regard to “community expectations” (Q 3)

there is a wide range, and they reflect the varied interests of stakeholders, which are discussed below.

It is also worth thinking about roles which might overlap with the domain name industry. This industry is not standalone – it works with other internet industries, such as web development, software development, social software, and so on.

2 Corporate governance

auDA is not a commercial enterprise, and the application to auDA of practices which relate primarily to for-profit companies is inappropriate. For example, a common principle for boards is that membership should be limited to 5-7 members. However, given that a major role for auDA is to achieve broad support amongst the stakeholder community, a larger board makes much more sense.

It is also true that “best practice corporate governance” (p.9) is not the same for all cases. The six “themes” cited in the discussion paper (p.9) do not all apply equally.

There have also been recent discussions and controversies, particularly around openness, and these issues have not yet been resolved. For example, although the Board has accepted that Board minutes and documents should be publicly available, it does not yet have protocols relating to what may be legitimately omitted from public minutes, and how comprehensive minutes should be.

It should also be noted that “independent” directors is a notional concept. Any director comes with views and opinions, baggage of various kinds. Rather than the dubious concept of an “independent” director, it is better to ensure that there is a balance of interests, skills and knowledge amongst non-elected directors. One good way to achieve this is a nominating committee appointed by the board and perhaps with input directly from members. It is definitely inappropriate to use a personnel search firm for this purpose, since this is not a standard recruitment task and the process is not an open one.

A simple change would be to make the process for electing directors more contemporary – the approach used is very out of date. Elections should be preferential and should be conducted by postal/online ballot. Where a casual vacancy occurs, it should be filled by by-election. All directors should be elected, and “independent” directors should be subject to confirmation by the membership. These measures are simple common sense, and would also tend to make the Board more representative.

Several conclusions

- ◆ There is absolutely no case for a smaller Board, which could only be less representative.

- ◆ There is no case for a higher proportion of “independent” directors, since this is a synonym for directors not elected by the members, and would tend to make the Board less representative and simplify the process of capture by a minority.
- ◆ The Accountability and Transparency Framework recommended by Westlake Consulting Ltd in 2011 was a great idea and should be revived.
- ◆ The election system is archaic and needs to be modernised and democratised.
- ◆ The discussion paper does not raise the possibility of government takeover of the functions of auDA, but this should be considered; it is contrary to current government policy preferences at present. In terms of the roles and responsibilities of auDA, there is a case that these could be managed more effectively by government.

3 Stakeholder engagement

The interests represented amongst stakeholders include the following. However, it has to be said that for the great majority of stakeholders, domain names are not a first order issue (i.e. something really important), and they are a first order issue mainly for people whose livelihood is based on domain names. For the rest, many things are much more important.

Some stakeholder groups (not exhaustive)

- ◆ Registrars and resellers whose livelihoods relate to selling domain names either on the primary (new registrations) or secondary (domaining) markets are a major group and span both membership categories.
- ◆ Representation of “the public or common interest” (p.10) is unclear and opaque.
- ◆ Who looks after the long-term interests of the Australian DNS? For example, one can make out a strong case (see the last Names Panel report) that direct registration has its main benefit over the short to medium term, but much of the lobbying on the issue revolved around short-term interests.
- ◆ For most entities with a financial interest in sale of domain name licences, there is also a greater financial interest in other economic activities, such as development of websites, and web developers are a stakeholder group.
- ◆ The Australian Government is a clear stakeholder, but not represented on the Board. It should be.
- ◆ For many domain name holders, including but not only business holders, the name is extremely important, and what name they can have is also important. Many people claim to speak for this group, but in general it has been hard to attract broad interest from domain name holders.

4 Membership

There is also a strong case for eliminating the difference between supply and demand categories (Q14 and Q15). Already, the membership of these categories is irretrievably blurred. For example, staff of supply members may also join as individuals in the demand category. The demand category represents a very wide range of interests – not only the broad public interest, but a range of entities with financial interests in the domain name industry.

It is also highly desirable to increase the membership so as to enhance its representativeness, while ensuring that members are also stakeholders, and have a genuine interest in membership. Changing the membership structure as proposed might assist in attracting new members.

5 Security of the .au domain

The author of this submission is not qualified to make technical points on this issue. However, a significant emphasis of all policy panels has been on the need to ensure that entities obtaining Australian domain name licences (a) are Australian, and (b) exist. These two measures are seen to add to the security of the domain, and to perceptions of security.

The Author

Derek Whitehead, OAM, is a former Deputy State Librarian (State Library of Victoria), Director, Information Resources (Swinburne) and Chief Information Officer (Swinburne). He has had a close interest in a wide range of internet issues since being involved in the creation of Vicnet in 1994. He was nominated to government bodies dealing with online content regulation, and is involved with copyright and related issues.

Derek has also been involved in the domain name industry since 1999, when he was asked to chair the first auDA policy panel. He chaired these six panels:

- ◆ Name Policy Advisory Panel (February 2000 to July 2001)
<https://www.ada.org.au/policies/panels-and-committees/name-policy-advisory-panel/>
- ◆ New Names Advisory Panel (2002-03)
<https://www.ada.org.au/policies/panels-and-committees/new-names-advisory-panel/>
- ◆ Name Policy Review Panel (2004)
<https://www.ada.org.au/policies/panels-and-committees/name-policy-review-panel/>
- ◆ 2007 Names Policy Review Panel
<https://www.ada.org.au/policies/panels-and-committees/the-2007-names-policy-panel/>
- ◆ 2010 Names Policy Panel
<https://www.ada.org.au/policies/panels-and-committees/2010-names-policy-panel/>

◆ 2015 Names Policy Panel

<https://www.auda.org.au/policies/panels-and-committees/2015-names-policy-panel/>

The first panel successfully completed the task of developing Australian domain name policy, and the last completed a review with a focus on the direct registration issue.

Derek was also the chair of eDAC (edu.au Domain Advisory Committee) until mid-2017, and has been a member of the Board of the auDA Foundation.

He is an adjunct professor at two universities, and has a strong interest in academic research in the field of domain names, among other fields.

More information is located at <http://www.swinburne.edu.au/health-arts-design/staff/profile/index.php?id=dwhitehead>

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