

7 October 2019

By Email: policies@auda.org.au

Suzanne Ewart
Chair
c/o .au Domain Administration Ltd
PO Box 18315
MELBOURNE VIC 3001

Dear Ms Ewart

Submission - Reform of Existing Policies & Implementation of Direct Registration

1. This submission is made in response to auDA's Key Consultation Issues Paper dated October 2019 (**Issues Paper**) and the Proposed .au Namespace Implementation Rules (**.au Implementation Rules**) and proposed licensing rules (**Licensing Rules**).
2. REA Group Limited (**REA**) has made previous submissions on the subject of "direct registration" to auDA's Policy Review Panel (**PRP**) on 2 March 2018, 8 November 2018, 9 April 2019 and 10 May 2019.

Implementation of .au direct registration

3. REA remains opposed to the introduction of .au direct registration. If auDA proceeds to approve the launch of .au direct registration, REA submits that it must be done with adequate safeguards for existing domain name owners, including allowing for indefinite lock down of conflicted names and by taking proactive steps to address bad faith registration activity ahead of the launch date.

Cut off date

4. auDA has previously proposed a cut off date of 4 February 2018, which was the day before auDA commenced consultation regarding .au direct registration implementation models.
5. There is evidence that following auDA's February 2018 consultation process, parties began registering new names in the .id.au, .net.au, .asn.au and .org.au namespaces for the purpose of monetising the .au direct registration conflicted names process. REA will suffer detriment if the cut off date is delayed beyond 4 February 2018.
6. REA submits that any movement of the cut off date beyond 4 February 2018 is likely to:
 - a. increase the number of conflicted name lockdowns;
 - b. reward rent seeking behavior by domain speculators; and
 - c. reduce the utility of and trust in the new .au name space.
7. There is a vocal minority of domain investors who have advocated for a delay in the cut off date. It is important to contextualise that these stakeholders are active participants in the domain name aftermarket. When registering new domain names or purchasing names from drop catching platforms, these market participants have been fully informed that new registrations made after 4 February 2018 would not be eligible to participate in a priority allocation process and have priced this knowledge into new acquisitions.
8. At all relevant times since February 2018, the Policy Review Panel and subsequently auDA's positions on the cut off date have been on the public record. To the extent that other SMEs have registered names after 4

February 2018, it is reasonable that they rank behind earlier rights holders, while still retaining the ability to participate in the priority allocation process if they qualify as a Priority Status (Category 2) applicant.

Bad faith registration activity

9. REA has also become aware of other 3LD registration tactics of domain speculators which appear to be intended to profit from the implementation of direct registration. For example, REA identified that a third party had registered the 3LD *realestatecom.com.au* in August 2018. As an unconflicted Priority Status (Category 2) registration, the registrant would then have been permitted to register *realestatecom.au*. The 3LD registration has since been cancelled and subsequently registered by REA. REA has previously provided other similar examples to auDA.
10. There is significant potential for this type of registration activity to be used in phishing attacks, particularly using lookalike names to well-known companies and government departments. For example, consumers are unlikely to perceive the difference between *telstracom.au* and *telstra.com.au* when receiving an email and payment invoice. The auDRP process and trade mark infringement proceedings are too slow to address this type of registration activity before consumer harm is suffered. In cases of fraudulent registration for phishing, the damage is typically done within days of the initial registration.
11. One of the three objects of the .au Implementation Rules is to “*provide protection to existing Registrants of eligible licences ... in order to ensure public confidence and trust in .au*”. In order to achieve that object, it is critical that auDA addresses the security challenges posed by this registration activity.
12. In addition to security concerns, there is also risk that these types of registrations will be used for typo squatting to wrongfully capture web traffic and to engage in other IP infringement or misleading conduct which results in consumer detriment.
13. When determining eligibility for the .au direct registration priority application process, REA submits that auDA should block Priority Status (Category 2) applicants (those registered after 4 February 2018) with the following 3LD suffixes.¹
 - a. *com.com.au, *com.net.au, *com.id.au, *com.org.au, *com.asn.au (eg. *nabcom.com.au* → *nabcom.au*);
 - b. *net.com.au, *net.net.au, *net.id.au, *net.org.au, *net.asn.au (eg. *abcnet.com.au* → *abcnet.au*);
 - c. *gov.com.au, *gov.net.au, *gov.id.au, *gov.org.au, *gov.asn.au (eg. *centrelinkgov.com.au* → *centrelinkgov.au*);
 - d. *org.com.au, *org.net.au, *org.id.au, *org.org.au, *org.asn.au (eg. *redcrossorg.com.au* → *redcrossorg.au*);
 - e. *asn.com.au, *asn.net.au, *asn.id.au, *asn.org.au, *asn.asn.au (eg. *divingasn.com.au* → *divingasn.au*);
 - f. *edu.com.au, *edu.net.au, *edu.id.au, *edu.org.au, *edu.asn.au (eg. *monashedu.com.au* → *monashedu.au*).
14. After the implementation of direct registration, auDA should also place a registry block on new registrations at the second level ending with the following suffixes:
 - a. *com.au (eg. *nabcom.au*);
 - b. *net.au (eg. *abcnet.au*);
 - c. *gov.au (eg. *centrelinkgov.au*);
 - d. *org.au (eg. *redcrossorg.au*);
 - e. *asn.au (*asuasn.au*); and
 - f. *edu.au (*monashedu.au*).Bona fide registrations with these suffixes could be managed by an exceptions process.
15. If auDA does not implement proactive processes, it will place a burden on private enterprise and non-profits to monitor or defensively register lookalike names and bring complaints to auDA for suspension or cancellation of dubious registrations. This is a significant cost impost which could easily be avoided.

¹ The eligibility and allocation rules for 3LDs under .gov.au and .edu.au are sufficiently robust to prevent this type of activity in those namespaces.

16. Alternatively, auDA should establish a fast track process for suspension and cancellation of 2LD licences with the characteristics above.
17. auDA should also explicitly identify that this type of registration activity breaches paragraph 2.5.2 of the Licensing Rules. Namely, by adding the example from auDA's Licensing Rules Explanatory Guide to paragraph 2.5.4:

A name is deceptively similar to a namespace, where the name omits or repeats a letter contained in the name of a second level namespace or differs only by a single full stop from a name registered at the third level in the .au ccTLD.

NOTE: For example, comm.au is deceptively similar to the name of the com.au namespace, co.au is also deceptively similar to com.au and medicare.gov.au is deceptively similar to medicare.gov.au.

The .au 'lockdown' model

18. REA is supportive of the current lockdown model. REA submits that for so long as there remains a conflict between Priority Status (Category 1) applicants, the lockdown model should be maintained. REA does not support any sunset date to the lockdown model which might favour one Category 1 applicant over another.
19. As highlighted at paragraph 13, auDA should consider blocking certain bad faith category 2 registrations from the priority application process.
20. REA is supportive of an annual fee to maintain the annual lockdown (as set out in our 10 May 2019 submission). This will maximise the utility and availability of the new namespace by requiring registrants to focus resources on bona fide conflicts rather than locking down names for speculative or bad faith purposes.

Internationalised Domain Names

21. REA understands that auDA intends to introduce internationalised domain names (IDNs) in the .au ccTLD in Chinese (Simplified), Korean, Japanese, Arabic and Vietnamese.
22. REA submits that there is no evidence of demand for IDNs in the .au ccTLD. To the extent that Australian traders wish to use IDNs, there are already many available options under .com, .cn, .kr, .jp and .vn.
23. China remains the most prevalent national market for counterfeiting activity. It is likely that the introduction of IDNs will increase brand protection costs for brand owners who will feel compelled to defensively register Chinese (Simplified) variations of key domain names.
24. Before introducing IDNs in the .au ccTLD, auDA should conduct a cost-benefit analysis weighing the brand protection costs for Australian business against any economic and accessibility benefits of opening up IDNs under .au.

Yours faithfully,



Sarah Turner
General Counsel & Company Secretary
REA Group Limited