

auDA PUBLISHED POLICY**Policy Title:** COMPLAINTS POLICY**Policy No:** 2010-04**Publication Date:** 06/08/2010**Status:** Current**1. BACKGROUND**

- 1.1 This document sets out auDA's policy on the handling of complaints made about registrants, auDA accredited registrars and resellers in the .au second level domains (2LDs). At the time of publication, the open 2LDs are asn.au, com.au, id.au, net.au and org.au.
- 1.2 auDA's Complaints Management Principles are set out in Schedule A of this document.

2. TERMINOLOGY

- 2.1 This policy uses the following terms:
- a) "complainant" means a party which has lodged a complaint with auDA regarding a .au domain name(s), or .au domain name services provided by an auDA accredited registrar or a reseller;
 - b) "domain complaints" means complaints about .au domain names and registrants – refer to paragraph 5.1 below for more detail;
 - c) "industry complaints" means complaints about .au domain name services provided by auDA accredited registrars or their resellers – refer to paragraph 6.1 below for more detail; and
 - d) "respondent" means a party which is the subject of a complaint lodged with auDA, and they can be auDA accredited registrars, resellers or registrants.

3. auDA'S JURISDICTION TO HANDLE COMPLAINTS

- 3.1 auDA's jurisdiction to handle complaints is limited to matters relating to the .au domain space. auDA does not have the jurisdiction to handle complaints about:
- a) generic Top Level Domains (eg. .com, .net, .biz, .info, etc) or other country code Top Level Domains (eg. .nz, .uk, .us, etc);
 - b) web hosting, website management or website design services;
 - c) Internet access or email services;
 - d) illegal or malicious use of a domain name, such as spam or phishing;
 - e) objectionable or offensive website content; or
 - f) possible breaches of the Telecommunications Act 1997, the Broadcasting Services Act 1992, the Trade Practices Act 1974, the Trade Marks Act 1995, the Privacy Act 1988 or any other legislation. For complaints about these matters you should contact the relevant government authority, such as the

Australian Communications and Media Authority (ACMA), the Telecommunications Industry Ombudsman (TIO), the Australian Competition and Consumer Commission (ACCC), a state or territory fair trading office, or the Office of the Privacy Commissioner.

- 3.2 auDA reserves the right not to acknowledge or investigate a complaint that is clearly frivolous, vexatious or abusive, or in auDA's opinion has been brought in bad faith.

4. auDA'S COMPLAINTS MANAGEMENT PROCESS

- 4.1 Complaints may be submitted to auDA via the online form on auDA's website, by fax or by post. auDA will acknowledge receipt of the complaint (subject to paragraph 3.2) and indicate the timeframe that the complainant can expect a response. auDA will endeavour to resolve the complaint as quickly as possible, but if the complaint is complex it may take several weeks to resolve. If this is the case, auDA will keep the complainant informed of the progress of the complaint.
- 4.2 On receipt of the complaint, where appropriate, auDA will request a response from the respondent. auDA will investigate the complaint based on the facts provided by all parties involved in the matter. auDA may seek further information from any party to assist with its investigation. auDA may place a registry server lock on the domain name(s) in question, in order to preserve the status quo whilst the investigation is pending.
- 4.3 After conducting a full investigation, auDA will notify the complainant and the respondent in writing of the outcome of the complaint and, if relevant, of any other courses of action available to the parties.

5. DOMAIN COMPLAINTS

- 5.1 Domain complaints include complaints about:
- a) registrant eligibility, including the "close and substantial connection" rule;
 - b) prohibited misspellings;
 - c) domain monetisation;
 - d) registering a domain name for the sole purpose of sale;
 - e) correct "ownership" of a domain name;
 - f) transfers (change of registrant); and
 - g) breaches of the domain name licence terms and conditions, or any auDA Published Policy.
- 5.2 auDA is the first point of contact for domain complaints. auDA will investigate the complaint on the basis of whether there has been a breach of auDA policy, not on the basis of whether the complainant has a better claim to the domain name, or whether the complainant's rights have been infringed. If the complainant's desired outcome is transfer of the domain name to themselves, then they should consider lodging a complaint under the .au Dispute Resolution Policy (auDRP) or taking legal action directly against the registrant.
- 5.3 If the complaint is upheld, auDA may take one or more of the following actions:
- a) instruct the registrar of record to delete the domain name(s) in question (known as "policy deletes") (refer to the Domain Renewal, Expiry and Deletion Policy (2010-01));

- b) instruct the registrar of record to correct the registrant details of the domain name(s) in question; or
- c) in the case of an unauthorised transfer, instruct the registry to reverse the transfer (refer to the Transfers (Change of Registrant) Policy (2008-08)).

6. INDUSTRY COMPLAINTS

6.1 Industry complaints include complaints about:

- a) domain name registration and domain name management services of an auDA accredited registrar or their reseller;
- b) transfers (change of registrar of record); and
- c) breaches of the Registrar Agreement, .au Domain Name Suppliers' Code of Practice, or any auDA Published Policy.

6.2 Under Federal Government policy, the Australian domain name industry is self-regulatory. This means that industry participants are themselves responsible for determining appropriate responses to any problems that arise within the industry. In accordance with this self-regulatory approach, auDA is an office of last resort with regard to making a complaint about a registrar or reseller. Before auDA will investigate a complaint, the complainant must have first attempted to resolve the complaint with the registrar or reseller involved. Under the .au Domain Name Suppliers' Code of Practice, all registrars and resellers must have adequate complaints-handling policies and procedures in place.

6.3 Before making a complaint to auDA, the complainant must allow a reasonable period of time for the registrar or reseller to respond to the complaint. auDA will not investigate the complaint unless the complainant has done so. The complainant should also collect any relevant supporting documentation, such as registration agreements, policies, emails and other correspondence with the registrar or reseller. Failure to do so may mean that auDA is unable to investigate the complaint for lack of evidence.

6.4 If the complaint is upheld, auDA may take one or more of the following actions:

- a) request the registrar or reseller to issue the complainant with a full explanation and apology;
- b) request the registrar or reseller to remedy their error and/or refund any payment for services not received;
- c) in the case of an unauthorised transfer, instruct the registry to reverse the transfer (refer to the Transfers (Change of Registrar of Record) Policy (2003-03));
- d) request the registrar or reseller to amend the practice or procedure that led to the complaint;
- e) notify the registrar or reseller that they are in breach of the Registrar Agreement, the .au Domain Name Suppliers' Code of Practice or an auDA Published Policy, and request them to remedy the breach; or
- f) refer the complaint to the relevant government authority.

Please Note: auDA is not a government agency or statutory authority, therefore it does not have legislative power to impose fines or other penalties on a registrar or reseller.

- 6.5 If the registrar or reseller involved does not comply with auDA's request pursuant to paragraph 6.4 a)-d), auDA may take the following action:
- a) in the case of a reseller of a registrar, auDA may direct the registrar not to accept any services from that reseller, and to terminate any reseller licence in existence between the registrar and that reseller; or
 - b) in the case of a registrar, auDA may suspend or terminate the registrar's accreditation.

7. OTHER COMPLAINTS AND DISPUTES

- 7.1 The Complaints (Registrant Eligibility) Policy (2004-01) sets out the process for making a complaint about invalid registrant eligibility details as displayed on WHOIS, eg. where the WHOIS record shows a deregistered company, a removed business name or a cancelled ABN. Complaints must be lodged with the registrar of record for the domain name.
- 7.2 The .au Dispute Resolution Policy (auDRP) provides for independent arbitration of disputes between a registrant and another party with competing rights in the domain name. Proceedings must be lodged with one of the approved auDRP Providers listed on auDA's website.
- 7.3 auDA will not mediate or resolve disputes between a registrant and another party over a domain name. auDA may at its discretion, at the request of the parties or on its own initiative, place a registry server lock on the domain name pending resolution of the dispute by the parties themselves. Resolution of the dispute must be evidenced by a Deed of Settlement or an order of a competent arbitrator, tribunal, court or legislative body.
- 7.4 auDA will not mediate or resolve commercial disputes between registrars and their own resellers, except insofar as the dispute involves a breach or possible breach of the Registrar Agreement, .au Domain Name Suppliers' Code of Practice, or any auDA Published Policy.

8. COMPLAINTS REPORTING

- 8.1 auDA maintains a complaint register for quality assurance purposes. Quarterly reports will be produced to the board of auDA to highlight the performance of the complaint management system and the report will include (but not be limited to):
- a) number and nature of complaints received during the reporting period;
 - b) number of complaints resolved during the reporting period;
 - c) number of complaints upheld/denied during the reporting period;
 - d) time taken to investigate complaints; and
 - e) action to address systemic issues (if any).

9. REVIEW OF POLICY

- 9.1 From time to time, auDA may update this document for the purposes of clarification or correction.

SCHEDULE A

auDA COMPLAINTS MANAGEMENT PRINCIPLES

1. Purpose

This schedule sets out the auDA Complaints Management Principles.

2. Complainant Rights and Responsibilities

Complainants can expect the following from auDA:

- have valid complaints treated as genuine and properly investigated;
- have their complaint information remain confidential within auDA;
- be given clear and appropriate information regarding auDA's complaints management process; and
- be informed about the progress and outcome of the complaint.

Complainants are expected to:

- make sure the complaint has reasonable grounds and possesses sufficient detail;
- provide relevant and pertinent information if requested by auDA at anytime during the investigation; and
- notify auDA of any concerns about auDA's complaints management process as soon as possible.

3. Respondent Rights and Responsibilities

Respondents can expect the following from auDA:

- be given clear and appropriate information regarding auDA's complaints management process;
- be given clear information regarding complaints against them; and
- be given reasonable time as set out by auDA to respond to complaints against them.

Respondents are expected to:

- respond to complaint investigation requests from auDA within the timeframe specified;
- provide relevant and pertinent information in response to complaints;
- action auDA resolution requests within the timeframes specified; and
- notify auDA of any concerns about auDA's complaint management process as soon as possible.

4. Fairness to all parties

Subject to these principles, each investigation is conducted in confidence and independently; and all parties are entitled to clear and appropriate communication from auDA.