4.10   Regulatory evolution of the .au domain name space

It took several attempts to transform the Australian domain name industry's regulation from Robert Elz's volunteer effort into the .au Domain Administration Ltd, the industry and government supported self-regulatory body which operates today.

Arnold provides a good summary of the regulatory evolution from both historical (Arnold, 2007a) and landmark (Arnold, 2007c) perspectives. My narrative recollection does not attempt to reproduce what already exists in academic studies. Instead, it focuses on my own perspectives as an industry insider throughout these changes.

Nearly one million Australian households had home Internet access in 1997 (Australian Bureau of Statistics, 1998) contrasted with five million households in 2007 (Australian Bureau of Statistics, 2007). This rapid growth in home Internet usage in the late 1990s led to more domain names being registered (Arnold, 2007b), applying stress to the volunteer effort (Tonkin, 2001) of Robert Elz, who acted as the regulator, registry and registrar for most .au domain names (Williams, 2003b).

An initial attempt at establishing a regulatory function for the .au domain name space was spawned from a 'Summit Meeting on Internet Domain Name System'; co-ordinated by the Internet Industry Association of Australia (1996). The summit was held on July 23, 1996 and resolved to develop policies through a consultative process that would address: guidelines for the registration of second level domains under .au; obligations of .au registrars; operations of the .au registry; process for dispute resolution; and governance of the domain name allocation system.

On Thursday February 20, 1997, Peter Gerrand, then Melbourne IT chief executive officer, composed an email (Gerrand, 1997, p. 1), provided in Table 18, which described 'the necessary steps for creating a representative industry self-regulatory body, provisionally named the Australian Domain Name Authority (ADNA)'.

Table 18: Peter Gerrand's (1997) email regarding the establishment of the Australian Domain Name Authority

```
From: Peter Gerrand <ceo@MelbourneIT.com.au>
To: Luke Carruthers <luke@magna.com.au>,
pvf@sydney.phillipsfox.com.au,simon@internode.com.au,
Pauline.van.Winsen@uniq.com.au,kim@cynosure.com.au, mmalone@iinet.net.au,
gih@telstra.net,hugh@connect.com.au
Subject: Drafting Group for Setting up Australian Domain Name Authority
Date: Thu, 20 Feb 1997 18:32:21 +1000

[..]

As I understand it, the task is:

To set out the necessary steps for creating a representative industry self-regulatory body,
provisionally named the Australian Domain Name Authority (ADNA). It will be the
responsibility of ADNA to determine and oversight policies on the administration of Second
and Third Level Domain Names within the .au name-space. In the development of its policies
ADNA must carry out public consultation processes, so that its final policies will be
accepted by the industry and by the relevant regulators (ACCC, ACA) as being the proper
outcomes of industry self-regulation.

In particular, the ADNA will have responsibility of determining:
(1) the hierarchy of 2LDNs under .au
(2) the rules for selecting (and deselecting) DNAs to administer 3LDNs
(3) the policies under which 2LDNs must accept or reject 3LDNs.

[I suggest it would be useful to also assign the ADNA the responsibility for producing
(4) a Code of Practice for DNAs, and
(5) a Code of Practice for ISPs in registering DNs on behalf of their clients.]
```

A self-described 'observer of the progress' provided a scathing report on ADNA's first year of operation. Mayo's (1998) email, provided in Table 19, proffered that ADNA's twelve months of existence had delivered 'positive statements of position', but no tangible outcomes.

Table 19: ADNA's first year report according to Leni Mayo (1998)

```
From: Leni Mayo <leni@moniker.net>
Date: Mon, 04 May 1998 10:46:24 +1000
Subject: ADNA first year report

ADNA has been in existence for two weeks short of a year now, so I thought I'd sketch an
annual report from the point of view of an observer of the progress.  Sorry that it should
be so negative, but after one year I think it's reasonable for the community to have
expected tangible results, as opposed to positive statements of position etc.

Let's hope the year 2 scene looks significantly better.

Leni.

1. No delegation of authority from the .au authority, Robert Elz.

2. No progress on building consensus.
   Parties that remain outside the process include: ISOC-AU, AVCC,
   .net.au, .edu.au, and as of a few months ago .asn.au.
   Evolution: none, except that .asn.au has withdrawn from the process.

3. No compromises visible on the "roadblock" issues, including
   board representation or membership criteria.
   Evolution: none, membership and board composition is identical,
   except for resignations and withdrawals.  Perhaps this is a little
   strong, and one or two folks have come on board?

4. No significant sources of funding have been put in place.
   Evolution: none, ADNA still relies on $1,000 contributions
   from the (<10) members.

5. No chair has been formally appointed.

6. No operational infrastructure
   No office space, staff, network connectivity or software
   infrastructure (eg. SRS) has been tendered or put in place.

7. No new second-level domains
   Evolution: two forums focused on trademark community.
   Proposals for both .pr.au and .tm.au strongly rejected.

8. No competition within any second-level domain.
   Evolution: documents written etc, but no tangible results.

ADNA members (all of whom are on the board):
Luke Carruthers IIA luke@magna.com.au
Peter Gerrand Melbourne IT ceo@MelbourneIT.com.au
Mark Hughes Tradegate mark.hughes@ccamatil.com
Kevin Dinn IIA kevin@zip.com.au
Allan Horsley ATUG horsleya@atug.org.au
Michael Malone ASN.AU mmalone@iinet.net.au
Peter Cooper WAIA comrade@obverse.com.au

--
Leni Mayo                       Ph:   +61 3 9428 5530
                                Fax:  +61 3 9428 5902
Moniker Pty Ltd                 E-mail: mailto:leni@moniker.net
Internet Domain Names           WWW:   http://www.moniker.net
```

The next attempt to build consensus for the regulation of the .au domain name space was the .au Working Group. In this case, the National Office of the Information Economy (NOIE), an Australian Government agency, facilitated the process. Sandra Davey (1998) announced this newly formed group to the Link Mailing List on December 23, 1998, as presented in Table 20.

Table 20: Sandra Davey (1998) announces the formation of the .au Working Group

```
New .AU Working Group on Australian Domain Names
Sandra Davey sldavey@fl.asn.au
Wed, 23 Dec 1998 14:21:50 +1100

[...]

Dear Linkers,

The newly formed .AU Working Group on Australian Domain Names, recently created by NOIE,
has launched its public website. You'll find us at http://au.moniker.net

The Working Group has an objective to establish, in conjunction with the Internet
community, an organisation capable of taking over the delegation of the .au namespace by
March 1999.

All documents generated by the Working Group, including minutes and draft documents, are
available for public scrutiny and comment. In addition a public announcement list is also
available so you can be notified instantaneously of new additions and updates to the
website. The Working Group will use this mailing list as the primary way to notify the
community of progress by the Working Group and updates to the site.

The .AU Working Group looks forward to your participation.

Please redirect this mail to interested parties.

With best regards,

Sandra Davey
.AU Working Group
Email: sldavey@fl.asn.au
```

My first interaction with the .au Working Group was through an unsolicited commercial email message, otherwise known as spam, which was sent to me and numerous other Internet Service Providers (ISPs). Larry Bloch used his position on the .au Working Group as justification to send the spam (Bloch, 1999), presented in Table 21. The .au Working Group swiftly and decisively distanced itself from the spam (Davey, 1999b). The irony was that Bloch's spam came from his private 'au.com' domain name space which was, and remains, a direct competitor to 'com.au' domain name space.

I personally experienced the consequence of end user confusion with respect to the separate 'au.com' and 'com.au' domain name spaces. The operators of Sanctum Skin Care registered the domain name 'sanctum.au.com' which was easily confused with my company's domain name 'sanctum.com.au'. Their customers frequently sent orders for skin care products to my company's email address – sales@sanctum.com.au – instead of sales@sanctum.au.com. Sanctum Skin Care offered to purchase the 'sanctum.com.au' domain name for $800 – an offer which I declined. Eventually, they ceased promoting the 'sanctum.au.com' domain name. They switched to 'sanctumaustralia.com' which was more easily understood by end users, as evidenced by the decline in skin care product orders incorrectly placed with my company.

Table 21: Larry Bloch's (1999) spam email – sent to ISPs regarding the .au Working Group

```
From: larry.bloch@netregistry.au.com <larry.bloch@netregistry.au.com>
Sent: Wednesday, 17 February 1999 22:29
To: josh@sanctum.com.au
Subject: OPEN LETTER TO AUSTRALIAN ISPs


Dear Joshua

As you know NOIE has convened a Working Group to manage the transition
of control of the .au domain space to a new body (.au Domain Administration
- auDA).

The .au name space is a hugely vital component of the Australian Internet
community and is relevant to the growth and prosperity of our industry.

As a member of the Working Group, NetRegistry is striving to ensure that the
migration
of the National Resource stays true to a number of principles:

1. Any interested ISP should be able to participate, if desired.
2. Any interested ISP should be able to compete on a level playing field
with current 2LD monopolies.
3. The new structure should ensure that .au is managed to the highest
standard of service for the lowest possible cost per domain name.

NetRegistry will be standing for election to the board of this new entity on
these principles. We would like to represent the views of the ISP community.

As such, I would like to encourage as many ISPs as possible to lend their
support to these principles so that we can be clear about your preferences.
Your participation in the process is vital in ensuring sufficient
representation of the supply side of domain registration in Australia.

To represent the concerns of the ISP community fairly, NetRegistry has
prepared a series of questions to guide our participation in the Working
Group and any future Regulatory Body. Please go to
http://www.tell-us-what-you-want.au.com/ and complete the questionnaire.
Results will be sent to all participants and presented to the members of the
WG for consideration.

References:
au Working Group website:  http://au.moniker.net/
ISP Questionnaire: http://www.tell-us-what-you-want.au.com/

Regards


_____
Larry Bloch
Chief Executive Officer
NetRegistry Pty Limited
email:  larry@netregistry.au.com
Office: +61-(0)2-9699 6099
Fax:+61-(0)2-9699 6088
```

The working group set itself a tight timeframe, aiming to establish the new regulatory body for administration of the .au space by March 1999 (.au Working Group, 1999). Despite the initial distraction of Bloch's spam, the .au Working Group rapidly produced a constitution for the proposed new organisation '.au Domain Administration Ltd' (Davey, 1999a). The importance of end users was highlighted through one of the five objectives of the new organisation, which stated that it 'must be representative of all members of the Internet community in Australia - users and suppliers of domain name services, and general users of the Internet' (.au Working Group, 1999, p. 1).

One month after the target date, the first meeting of the .au Domain Administration (auDA) was held in Melbourne (Davey, 1999c). The first policy to be released from auDA was not a domain name policy per se, but a policy on how to *create* domain name policies through consultative public advisory panels (Davey, 1999d).

Two auDA advisory panels were empanelled in 2000; the first tasked with producing policies for allocating .au domain names (auDA, 2000b), and the second to with developing a competition model for the .au domain name industry (auDA, 2000a). My involvement in the first panel was explored in section 4.9. December 2000 saw auDA receive endorsement from the Australian Government (Disspain, 2000) and in August 2001, the .au domain name space was re-delegated from Robert Elz to auDA to manage (IANA, 2001). On July 1, 2002, the new .au competition model, and the new domain name allocation rules, were successfully implemented (Sinclair, 2002a).

The growth of the Internet leading up to 2000 (Australian Bureau of Statistics, 2000), and the lack of an established regulator for the .au domain name space, provided fertile ground for the deceptive practice of domain name slamming.

4.11   Domain name slammers

'Slamming' is where a consumer's 'service' is switched over from one company to another without the consumer's express knowledge or consent (Ofcom, 2007). For example, in the United States Federal Communications Commission established rules in 1998 to address Telephone Slamming in the deregulated United States telecommunications industry (Federal Communications Commission, 2008).

Domain name slamming is where a domain name seller sends marketing notices which are made to look like legitimate invoices (ComputerWire, 2002). These notices are designed to deceive domain name registrants into transferring their existing domain name to the domain name seller or registering a new domain name similar to one they already have with the domain name seller. The domain name registrant's contact details are usually sourced, legally or illegally (Federal Court of Australia, 2007), from a publically available registrant database. For example, the misleading and deceptive domain name marketing notice (Federal Court of Australia, 2004) in Figure 5 was sent to me as the registrant of 'whatsinaname.**com.au**'. However, the notice offered me the new registration of 'whatsinaname.**net.au**', rather than a renewal of my existing domain name.