



it's your domain

STAKING YOUR CLAIM ON THE WEB

A business guide to registering a web address

About this guide

Many small businesses wishing to develop an online presence find the process quite challenging. This guide has been developed in cooperation with .au Domain Administration Ltd (auDA), the Office of Small Business, and IP Australia (Patents, Trade Marks and Designs). It aims to assist small business operators to understand the importance of a domain name to their online presence, as well as their rights and responsibilities when registering one. In addition to this guide, a series of fact sheets

providing further detail on these matters has been prepared and is available on the Internet via the addresses listed in this guide. It should be noted that this document is *just a guide*, not a definitive reference, and prior to committing to any course of action you should seek appropriate professional advice or assistance. Contact details for further sources of information are provided throughout, and at the end, of this guide.

What's in a (domain) name?

Registering a domain name is a critical element in developing an online presence - it is your unique electronic address on the Internet (eg. www.yourbusinessname.com.au) where your website is located and you receive business email. It is a valuable part of your business identity and an important marketing tool.

If you intend to trade online, registering a domain name should be an early step in implementing your business plan, along with registering your company and business names and developing brands and trade mark(s). While these registrations serve different purposes and confer different rights and benefits they should be considered together to ensure you achieve the best combination of name, trade mark and domain name(s) available at the time.

There are two main types of domain name.

- domain names that end in .com, .net, .biz etc are available for use by anyone around the world and are generally referred to as 'global domain names'. You can find out more about global domain names by visiting www.icann.org (ICANN is the non-profit corporation with responsibility for domain name management).
- domain names that end with a 'country extension' such as com.au, org.au, net.au. In Australia this is referred to as the '.au domain space' and is administered by .au Domain Administration Ltd (auDA).

What can I have as my domain name?

There is a common misconception that because you already have a company or business name, or a registered trade mark, you have an automatic right to register the corresponding domain name. **This is not the case. No-one has an automatic right to a domain name.** Domain names are licensed on a “first come, first served” basis to eligible applicants. Prior to applying you should check that the domain name you are seeking is available – you can do this by visiting the AusRegistry site - www.ausregistry.com.au. You should also ensure that your proposed domain name is not infringing a registered trade mark either in Australia or major overseas markets which you intend to target. Failure to do so could have costly repercussions for your business.

If you cannot secure your business name as your domain name because it is already taken, there are other options available. For example you can:

- simply add a hyphen (-), eg., www.my-businessname.com.au or a combination of numbers, letters and hyphens, eg. www.b-2-b.com.au;

- use an abbreviation or acronym; or
- use something else which ‘connects’ the name to your business, such as an event that you organise, a key product you make or a service you provide. You can register more than one domain name - some businesses create separate domains for associated products or services. There is no restriction on the number of domain names that may be licensed by a registrant.

There are rules that govern whether or not particular .au domain names can be allocated, and there is also a reserved list of names that may not be licensed. This information, along with a set of guidelines to help you develop your domain name is available online on the auDA website - www.auda.org.au. The guidelines can also help you determine your eligibility for a ‘.com.au’ or ‘.net.au’ type of domain name - the two types of domain names appropriate for commercial entities in Australia. Other types of domain name are available in Australia for individuals, associations or non-commercial purposes, or are dedicated for specific uses not available to the public (for instance ‘.gov.au’ is only for government departments or agencies).

Local or global – which way to go

Deciding on whether to have an Australian or global domain name depends on what your business interests are. Generally businesses based in or wishing to market themselves in Australia choose a domain name ending in ‘.au’, while those operating globally in any country sometimes choose to have a global domain name. Names in both domains are equally visible on the Internet, though the rules, licensing periods and dispute resolution processes between them vary. Australian laws and policy govern .au domain names thereby affording a degree of protection to consumers. You should discuss which domain is best for you with the registrar or reseller you choose to register your domain name.

How much does it cost? How long does it take? How do I do it?

The cost varies depending on the type of domain you've chosen, the registration period, and the services included with your registration – all of which vary between registrars and resellers, as do the terms and conditions offered. For .au domain names visit the auDA web site for links to registrars and resellers to confirm current fees and options. Terms and conditions for global domain names are available at the ICANN website. Some auDA accredited registrars are also ICANN accredited registrars or resellers and can provide information on the cost of registering both global and .au domain names. Many registrars also offer telephone assistance. Registration of a domain name is usually done online and becomes effective almost immediately. The registration process is outlined in full on the back page of this guide.

What rights do I have in using my domain name?

You don't own a domain name - it is licensed for a set period of time and is subject to terms and conditions. You cannot sell your domain name licence, but under some circumstances you may transfer the rights to it to another entity. Securing the rights to your domain name ahead of anyone else gives you:

- exclusive right to use the domain name for the duration of the licence period subject to eligibility criteria being met; and
- some protection against cyber squatting¹ and infringement of your trade mark.

It is important to remember that having a domain name such as "yourbusiness.com.au" does not give you the right to stop others from holding similar domain names, eg. "yourbusiness.com", "your-business.com" or "yourbusiness.co.uk". Also, you only have rights to your domain name for as long as you keep the registration current and meet the eligibility criteria. **If you fail to renew the licence, your rights to that domain name end, and it may be licensed to a different entity.** Your rights to renew a domain name registration can also end if you no longer meet the eligibility criteria required to re-register the name.

¹ Cybersquatting is the practice of one entity registering a domain name with no intention to use it, but intending to make a profit by selling the domain name to an entity which already uses it as a business name or trade mark. [Source: "IP Toolbox - a complete guide to intellectual property", Module 12: Domain Names", IP Australia, 2002].

Trade marks, domain names & other names

A domain name can help to identify the source of particular goods and services from those of other traders on the Internet. However, registering a domain name or a business name does not automatically give you the right to register that name as a trade mark. Nor does the fact that you have a registered trade mark, automatically provide you with rights in the corresponding domain name. The domain name system is entirely separate from the trade mark registration system.

If you wish to check whether your proposed business name or domain name is identical or very similar to a pending or registered trade mark, you can access IP Australia's trade mark database (ATMOSS) at www.ipaustralia.gov.au. IP Australia's database does not include common law trade marks, only marks that are pending or registered on the IP Australia Register. It is not mandatory to apply for trade mark registration - you can rely on a common law trade mark. However, if your trade mark is not registered and another person uses it, you may have to take passing off action in the Courts under common law if you want to stop them.

This can be difficult and expensive. Further benefits of trade mark registration are outlined in the Trade Marks Application kit at www.ipaustralia.gov.au.

You can also ask a registered trade mark attorney or search firm to conduct the necessary common law trade mark searches as well as the search of the trade marks database.

By using a domain name that is identical to, or deceptively similar to a registered trade mark, there is a risk of trade mark infringement, particularly if the name relates to the same or similar goods or services covered by the trade mark registration. Further information on this is contained in the online fact sheets prepared in conjunction with this guide.

The following Table (adapted from IP Australia: 'Smart Start', www.ipaustralia.gov.au/smart-start) provides a synopsis of the relationships between Domain names, Company names and the like.



RELATIONSHIPS BETWEEN DOMAIN NAMES, COMPANY NAMES AND THE LIKE

TYPE	FUNCTION	BENEFITS & LIMITATIONS	COMPULSORY	WHERE TO REGISTER?
Company Name	Name ascribed to a corporate entity incorporated within the Commonwealth of Australia. If a company wishes to trade using a name other than its registered company name, the trading name must be registered as a business name.	Does not provide proprietary rights for the use of the name.	New companies must be registered with the Australian Securities and Investments Commission (ASIC) in order to be recognised as an Australian company under the Corporations Law	Australian Securities & Investment Commission. Call 1300 300 630 or visit www.asic.gov.au
Business Name	A business trades under its business name. Records the existence of the business, its owners and contact details.	Business name registers are state based so there could be businesses with the same name in different states. Does not provide proprietary rights for the use of the name.	If you are using a name other than your own (ie. John Smith), it is compulsory to register that name in each state & territory.	Business names are registered in each state.
Domain Name	Your address on the Internet - not necessarily an exact match to your company or business name.	A marketing tool that helps build your brand and transact with customers on line. Gives you an exclusive global right to use that name online for the licensed period.	No.	.auDomain Administration Ltd (auDA) gives authority to various registrars or resellers. See www.auda.org.au
Trade Mark	Can be a letter, number, word, phrase, sound, smell, shape, logo, picture, aspect of packaging or any combination of these.	Protects the identity of your goods and services. A registered trade mark gives you the exclusive right in Australia to use it as a brand and to legally stop imitators.	No.	IP Australia grants trade mark rights. Visit www.ipaustralia.gov.au or call 1300 651 010.

HELP!

What consumer protection is available?

As the registrant of .au domain name, you have a number of safeguards protecting you. For instance auDA provides:

- an industry Code of Practice for registrars and resellers, Consumer Safeguards and Consumer Alerts –which protect your rights when registering domain names;
- a Dispute Resolution Policy, which aims to provide a cheaper and speedier alternative to litigation arising from disputes over domain name rights; and
- a complaints handling mechanism, for those wishing to complain about .au domain names (auDA has no jurisdiction over global domain name disputes or complaints).

The Australian Competition and Consumer Commission (ACCC) also has broad powers under the *Trade Practices Act 1974* to investigate complaints relating to Internet services and electronic commerce. The ACCC website www.accc.gov.au/ecommerce/access1b.htm has further information. auDA and the ACCC have also brought, and won, actions against resellers who have engaged in misleading or deceptive practices when offering domain name registration services. Additionally, you have consumer protection rights under Commonwealth and State/Territory fair trading and consumer laws.

Business Snapshot

Organic Formulations Pty Ltd

Hailing from Riddells Creek in rural Victoria, Organic Formulations Pty Ltd is an environmentally focussed small business that has been involved in the manufacture of organic botanical blends and the processing of skin, body and haircare products since 1989.

When it came to moving their business online in November 2000 they wanted to be sure they were able to project (and protect!) the "right" image, as well as get the national and international exposure that could benefit their business.

"It was a big learning curve but the results have been fantastic. It's the best 'business card' we could possibly have hoped for."

Organic Formulations registered both in the Australian domain name space and globally - www.organicformulations.com.au and www.organicformulations.com although they only promote the Australian domain name as they want to capitalise on Australia's internationally perceived green image.

A key to the success of the company's online journey was finding the right registrar. After twelve months Organic Formulations switched to their current registrar, recognising that they needed someone with the products, skills and capabilities to complement their own. Two years on they're happy with their choice and continue to work closely with the registrar to develop their business.

Checklist

How do I register and use my domain name

1 **Decide on a domain name (which can be something other than your business name) and a name space that best suits your needs. Check to see if you are eligible for the name.**

Do this by researching the ICANN website, for a global domain name, or the auDA or AusRegistry websites, for .au domain name information. This is important as different criteria apply for the various types of domain space. You will also need to decide on the second level domain you'd like – this is the '.com' or '.net' part of the name.

2 **Check if your chosen domain name is available** – by checking the relevant WHOIS service

- for .com.au, net.au, org.au, asn.au or id.au names use the AusRegistry WHOIS service, www.ausregistry.com.au;
- for global domain names, check the WHOIS service(s) available through the ICANN website www.icann.org

If your chosen name is not available, look at other options, eg. acronyms, events, products or services as included in the auDA guidelines.

3 **Ensure your chosen domain name does not infringe someone else's rights**, for example, a trade mark either in Australia or major overseas markets you intend to target. You may be sued if it does. IP Australia's trade mark database is at www.ipaustralia.gov.au/trademarks

4 **Choose an auDA (or ICANN) Accredited Registrar or their reseller.**

Both the auDA and AusRegistry websites provide a list of auDA accredited registrars. Any one of these registrars can help you register your chosen .au domain name (or names) if available. Select a registrar and follow their registration instructions. Service offerings, charges and terms and conditions may vary from registrar to registrar, and should be considered carefully. The cost to register varies depending on the term of the licence and the type of domain name chosen. You can register a domain name for email use only if you wish – once you set up an email address, your domain name can follow you anywhere.

5 **Arrange for your domain name to be "hosted".**

A hosting service provides an online location for your website, and ensures that the address records in the Domain Name System (DNS) for your email and website are updated and the path leads to that server. Your existing Internet Service Provider (ISP), other ISPs, or a "webhosting" service can host your domain name. Some registrars and resellers include hosting as part of their domain name service. Domain name hosting usually includes:

- the hosting of your domain name;
- an email address(es) and re-direction to this address;
- space for a web site under your domain name, and server support for additional functionality on your web site, such as security measures.

You should shop around for the service offering that best suits you. Unlike a domain name that is part of your ISP's domain, your own domain name will be 'portable', which means that your website can reside on a server in Australia, or overseas if you want.

6 **Create your web page and set up your email addresses.** You can do this yourself, or get your registrar or reseller, your ISP or someone else to do it for you.

7 **Renew!** – If you remain eligible but fail to renew your license, you will lose your right to use the domain name. You can transfer to a different registrar if you wish.

Contacts and further information

Fact Sheets have been prepared in conjunction with this guide and are available on the auDA website - www.auda.org.au.

- 1 "Second level (2LD) domain name categories and criteria"
- 2 "Who's Who in the Domain Name Industry"
- 3 "Trade marks and domain names" – adapted from IPAustralia's "IP Toolbox – a complete guide to intellectual property", Module 12 – Domain Names.

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IP Australia (Patents, Trade Marks & Designs)

PO Box 200, Woden, ACT, 2606

Discovery House, Phillip, ACT, 2606

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Fax: 02 6283 7999

Email: assist@ipaustrialia.gov.au

Website: www.ipaustrialia.gov.au

Office of Small Business,

Dept of Industry Tourism Resources

GPO Box 9839, Canberra, ACT, 2601

Level 5, 33 Allara Street, Canberra City, ACT, 2601

Phone: 02 6276 1304

Fax: 02 6276 1335

Email: osb@industry.gov.au

Website: www.industry.gov.au/smallbusiness

Australian Competition and Consumer Commission (ACCC)

PO Box 1199, Dickson ACT 2602

470 Northbourne Avenue, Dickson ACT 2602

Phone: 1300 - 302 502

Fax: 02 6243 1199

Website: www.accc.gov.au



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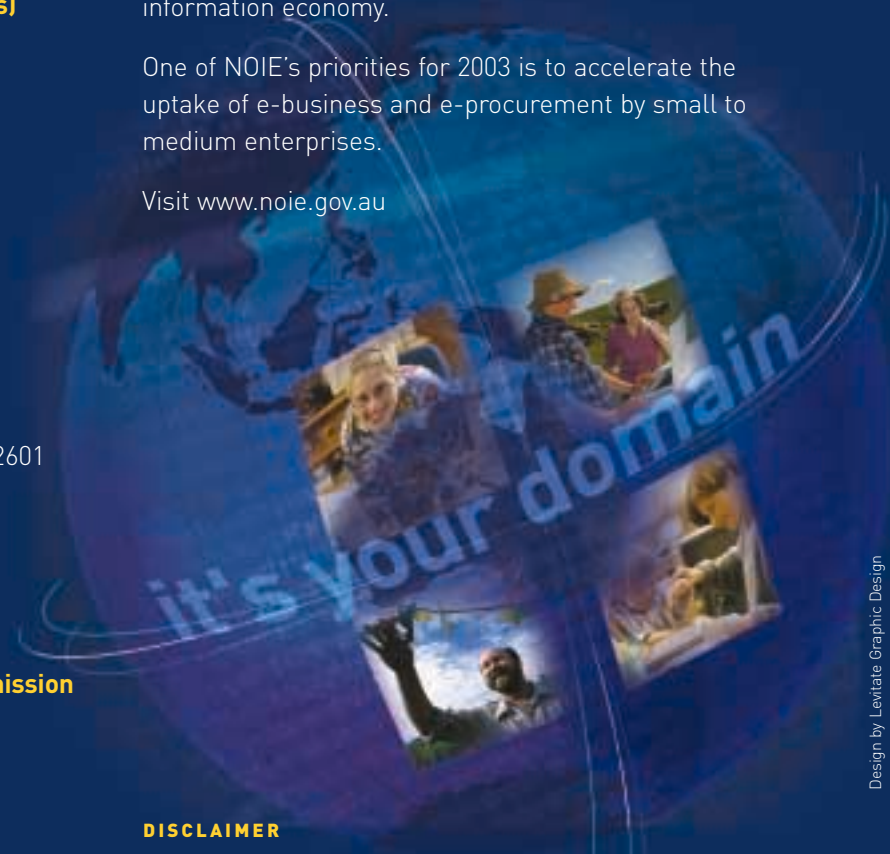
The National Office for the
INFORMATION ECONOMY

About NOIE

The National Office for the Information Economy (NOIE), provide strategic advice to the Commonwealth Government on the key factors driving the information economy. NOIE coordinate the application of new technologies to government administration and promote the benefits of the information economy.

One of NOIE's priorities for 2003 is to accelerate the uptake of e-business and e-procurement by small to medium enterprises.

Visit www.noie.gov.au



DISCLAIMER

This guide has been developed by the National Office for the Information Economy (NOIE), in cooperation with the .au Domain Administration Ltd (auDA), the Office of Small Business and IP Australia. Domain name policy and procedures are continually evolving and it is important that users refer to the sources listed throughout the document for detailed and current, information and advice. While due care has been exercised by NOIE to ensure the accuracy and currency of the material contained in this publication, it strongly recommends that users exercise their own skill and care with respect to its use and seek professional advice where appropriate.