

March 25, 2004

Mr. Paul Twomey
President and CEO
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Via Email and U. S. Postal Service

Re: ICANN Transfer Policy

Dear President Twomey:

When I spoke at the ICANN meeting in Rome, it was an attempt to speak for the millions of eager but anxious people around the world who want to use the Internet to better their lives but are concerned about being abused in doing so. I sensed among your board a real sympathy for them and an awareness that they were indeed unrepresented. One abuse mentioned was slamming. I write today to urge that ICANN not take action that will worsen this problem.

To date ICANN has accredited well over 160 registrars and has more than a score of applications pending. We all know that the registrar industry has, since the opening of competition, become a fertile ground for fraud. Whether it is registering domains for multiple years while paying the registry for only one and absconding with the difference, becoming a registrar only to sell threads into the registry, or slamming (the fraudulent initiation of a transfer that is not desired by the registrant), these practices continue essentially unchecked by either ICANN or the registries. As noted in Rome, the current system has no safeguard against the quick-buck fraudsters. It has no meaningful capital requirements and no fee for becoming a registrar¹, and little ability to really review applications and eliminate the fraudsters.

In the existing registrar environment, slamming is widespread. Slamming often goes undetected due to the inexperience and confusion of most registrants when faced with it. When detected, it is hard for the registrant to gain redress. For example, a dishonest registrar's reseller often performs slamming so that when it is uncovered, the registrar can claim lack of knowledge. Even with the protective measures we have in place today, we continue to receive complaints from our customers whose domain names were transferred without their knowledge (i.e., fraudulently) or as a result of the customer's mistaken belief that they were renewing their domain name by responding to what was really a third-party solicitation for a transfer. Of course, in each of these cases the gaining registrar was tasked with obtaining "authorization" for the transfer – a role that would

¹ While it has been suggested that to require a fee to become a registrar is somehow "wrong", it should be noted that this is a common practice among the national nics. For example, the nic for the Peoples Republic of China requires a fee of 1,000,000 RMB (US \$ 120,773). If being a registrar for a single country can demand this fee, why should not being a registrar for worldwide gTLDs demand at least as much?

take on even more importance (to the exclusion of the current registrar's ability to stop an unauthorized transfer) under the proposed changes.

An honest registrar may be aware of slamming, but only in the most egregious and widespread cases, which offer clear proof of the slamming and show a recurring pattern, can the honest registrar fight the slamming. We are fighting two such situations currently. However, they represent only a fraction of the slamming to which our registrants are subjected.

The current transfer policy at least offers some limited protection to registrants by recognizing the ability to deny transfers for legitimate reasons. One such reason is the registrant's not confirming that he or she authorized the transfer. Where a customer intends to transfer, they have no problem understanding or responding to an email confirmation request – after all, they know about the transfer and have requested it. Where, however, the transfer was never requested by the customer (or was unknowingly “requested” by the customer), the customer may not respond to the current registrar's email request for confirmation simply because they do not understand or expect such an email. For the confused novice, which is an apt description for the more than 75% of our registrants who have one domain and are not familiar with the domain registration system, a non-response is a reaction to be expected when they are asked to authorize a transfer that they have never heard of, much less initiated. In fact, non-response is their most common reaction when slamming is involved.

To reverse the system and require transfer to be completed if registrants do not respond to a request for confirmation will be the greatest single step that could be taken to facilitate fraud. Consider the following indisputable and significant facts:

1. A transfer is not merely an administrative change to a domain name registration. A transfer effectively terminates the existing contract between the customer and the current registrar, potentially terminating all services associated with that customer's domain name registration. The consequences of such a termination can be devastating if they are not expected or approved by the customer. It is common for an innocent registrant to lose email service and a website upon which their livelihood depends when slamming occurs.

2. The gaining registrar has the financial incentive to find a way to complete a transfer – regardless of the legitimacy of that transfer. This creates the unavoidable potential for a “conflict of interest” when the gaining registrar is tasked with deciding whether or not it has received a valid and binding authorization from the registrant or the registrant's agent. Doubts are all too often resolved by the gaining registrar in favor of completing the transfer, to the detriment of the customer. The tens of thousands of complaints voiced by our customers are evidence of this truth.

3. An unauthorized transfer, in addition to resulting in a dissatisfied and often damaged customer, potentially exposes the losing registrar to legal liability for terminating the customer's contract and related services.

When asking a registrar to ensure that a particular transfer is approved and legitimate, it is intellectually dishonest to believe that the "gaining" registrar will be more concerned about the legitimacy of the transfer than will be the current registrar. The current registrar must be able to protect its customers from the disruptive termination of their services as a result of an unauthorized or fraudulent transfer at the request of a third-party registrar whose primary concern is to make the transfer happen. The proposed policy does not provide this protection.

The proposed changes in ICANN policy go even further and state "[t]he Registrar of Record may not deny a transfer request solely because it believes that the Gaining Registrar has not received the confirmation set forth above." This is a virtual carte blanche to slamming. The prevailing conditions in the registrar market are closely analogous to market conditions in the U.S. long distance telecommunications market of the late 1990s. Implementation of a standard form of authorization in that market did not prevent occurrences of "slamming." The FCC standard Letter of Agency (LOA) was subject to abuses by the "gaining" long distance service provider (including forgeries of customer signatures) that resulted in the unauthorized change of customers' long distance service provider. Under FCC rules, the "gaining" long distance service provider could alternatively obtain authorization through a "third party verification" mechanism which itself was the subject of abuse and which did not provide effective customer protection. From November 1999 to present, the FCC has imposed slamming forfeiture orders totaling \$11,250,000 in civil penalties and entered into slamming settlement agreements resulting in payments totaling \$7,860,000. Prior to 1999, the Commission imposed over \$6,000,000 in slamming related penalties. These enforcement actions all took place under a regime that required carriers to obtain authorization through a standard LOA. Finally, it is important to note that a consumer whose long distance service was slammed did not suffer the interruption of service. A domain name registrant, on the other hand, may potentially suffer the loss of his or her email, web site and the loss of the domain name registration in question.

Let us be candid. The changes ICANN has adopted were aimed at breaking a monopoly that no longer exists. I will not argue that the transfer policy was abused at that time. However, the abuse today is coming from fraudulent transfers, not from denials of transfers. In fighting what WAS an abuse yesterday, ICANN is facilitating what IS an abuse today.

As noted above, the standard forms of authorization, alone, have been proven to provide scant protection for consumers as witnessed in the United States long distance telecommunications industry. When this policy was passed by ICANN, the risk was recognized, and there was an undertaking to limit it with certain safeguards -- efficient transfer-undo processes and effective, low-cost dispute resolution processes. I understand that the dispute resolution mechanism is not ready for implementation for two

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reasons. First, the appellate level mechanism has not yet been formalized through the selection of an arbitrator to serve in that function. Since the policy allows registrars to bypass the first level registry-based dispute resolution stage and to initiate dispute resolution at the appellate level, implementation of the policy without having this important avenue of recourse in place would constitute a structural and fundamental flaw in the process. Second, I understand that the VeriSign registry may need a six-month period to develop necessary software functionality to execute an "undo" command for unauthorized transfers. This six-month period of time extends well past the contemplated implementation date of June 30, 2004 and, as such, would put registrants and registrars alike at risk of not being able to regain their "stolen" domain names in a timely fashion.

Due to the changes in environment since the adoption of the new transfer policies and the fact that in today's environment they will facilitate and increase fraud, I strongly urge you to reconsider the implementation of this policy. However, if ICANN decides to implement the new policy despite these concerns, I urge you not to implement it prior to full implementation of all of its aspects, including the limited safeguards of an arbitration system and an "undo" command. Additionally, I implore you to reconsider the flawed assumption that an "undo" command will somehow make the aggrieved parties "whole" after an unauthorized transfer. Yes, if effective, it will return a domain name registration to the proper registrar and registrant, but it will not rectify any adverse impact to the customer's services being terminated and his or her overall horrible experience with the ICANN imposed system that allowed the experience to happen. Undoing an unauthorized transfer will not undo the potential problems.

Given the inevitable increased level of slamming growing from such policy changes and resulting registrant injury and dissatisfaction, Network Solutions will do all that it can to protect innocent registrants and, if forced to, will take action to prevent the implementation of a policy that is so seriously flawed at its outset. We sincerely hope that this will not be necessary, but would be remiss if we did not clearly state our intentions.

We want to work with ICANN to continue to improve the domain system in a way that assures people of its integrity and makes them comfortable in being part of the online world that can enrich their lives. We know this is ICANN's goal too.

I appreciate your consideration of this very serious matter.

Sincerely Yours,

W. G. Champion Mitchell
Chairman and Chief Executive Officer

cc: All ICANN Board Members