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Via Electronic Mail

October 16, 2007

**Comments of the Whois Subcommittee of the International Trademark Association
on
ICANN's Proposed Advisory Regarding the Inter-Registrar Transfer Policy**

RECOMMENDATION

The Whois Subcommittee of the International Trademark Association (INTA) supports the proposed advisory that "A registrant change to Whois information is not a valid reason to deny a transfer request. A registrant's objection to transfer is not valid unless it is obtained voluntarily." To the extent not included in the proposed advisory, ICANN should also clarify that a registrant's change to DNS server information or settings is not a valid reason to deny a transfer request.

COMMENTS

The transfer of domains from one registrar to another is an important part of trademark owners' efforts to prevent infringement and protect consumers from confusing, fraudulent web sites. When a fraudulent web site, such as a phishing scam, is erected at a domain name containing a famous trademark, consumer harm (such as sales of inferior, counterfeit goods or the theft of money or the collection of personal information that can later be used for identity theft) can rapidly result. When the trademark owner becomes aware of the infringement, often the first step is to obtain control over the domain name, which may happen as a result of the registrant's voluntary surrender of the domain prior to legal action, as the result of a UDRP or court order, or through other means. Once the trademark owner has control of the domain, the immediate next step is usually to change the DNS settings for the domain, and change the registrant contact information to reflect the trademark owner as the registrant. It is important that these steps can be taken rapidly so that the fraudulent uses of the domain cease, to prevent further harm to potential customers and to the brand.

However, as a follow-on step, most trademark owners will prefer to transfer the domain to their registrar of choice. In the numerous such cases, it is highly inefficient to require the trademark owner to continue to manage multiple such domains at any given time through the registrars chosen by their infringing former registrants. It is in the interest of the consumer and the public that a trademark owner should be able to change DNS and Whois information as expeditiously as possible, and the trademark owner should not be penalized (in the form of a delay in transferring the domain) for having done so.

Allowing registrars to refuse transfer based on a change of Whois information may also interfere with the orderly implementation of a corporate acquisition or merger. Typically, if a company with a large domain name portfolio wants to transfer its portfolio to another registrar (such as, if the company has been acquired), it will generally update the Whois records before the transfer to make sure the correct administrative contact receives notices to approve the transfer requests. If registrars were allowed to deny any transfer for sixty days after such an update, the update would unnecessarily delay the domain names from being transferred.

As noted in the proposed advisory, the current Transfer Policy makes no mention of a change in Whois information as a valid reason to deny a transfer, and explicitly states that any written objection to the transfer from the contact must have been made “expressly and voluntarily.” Further, it is the registrant’s obligation to update the Whois with accurate information. As a result, we agree that it is inappropriate for any registrar to condition a change in Whois information on an agreement not to transfer the domain away from the current registrar for sixty days.

CONCLUSION

We thank ICANN for the opportunity to provide these comments. If there are any questions concerning this submission, please contact Claudio DiGangi at cdigangi@inta.org.

ABOUT INTA AND THE WHOIS SUBCOMMITTEE

The International Trademark Association (INTA) is a 129-year-old global organization with members in 190 countries. One of INTA’s key goals is the promotion and protection of trademarks as a primary means for consumers to make informed choices regarding the products and services they purchase. During the last decade, INTA has also served as the leading voice of trademark owners in the development of cyberspace, including as a founding member of ICANN’s Intellectual Property Constituency. INTA’s Whois Subcommittee (part of the INTA Internet Committee) is a group of over twenty trademark attorneys and professionals charged with monitoring adoption or modification of Whois policies in new and existing TLDs and advocating for adequate access to domain ownership information.

INTA has a particular interest in policy relating to the Whois database, because the information contained in the Whois database assists trademark owners and authorities in policing abuses of intellectual property and preventing consumer confusion and consumer fraud. Moreover, the information in Whois also allows Internet users and consumers from all walks of life to identify the owners of web sites selling goods or disseminating information over the World Wide Web.