

# **Tucows Inc.'s Position on the Unilateral Limitation of Registrant Rights by ICANN Accredited Registrars**

*An Examination of the Arguments Supporting Superfluous  
Inter-Registrar Domain Transfer Procedures*

Prepared by:  
Ross Wm. Rader  
Director, Innovation & Research,  
Tucows Inc.  
t. 416.538.5492  
f. 416.531.5584  
ross@tucows.com

## **Executive Summary**

Tucows has a long history of working to protect and expand the rights of consumers whenever possible. Recent unilateral actions by certain ICANN Accredited Registrars to limit these rights by creating superfluous transfer procedures for Inter-Registrar transactions are inappropriate, harmful and arbitrary. Justifications to the contrary are thin, illogical and unsupported by fact.

While some have suggested that the solution to this problem is an increased level of rigor and standardization around these transfer related transactions, *it is Tucows' position that no policy problem actually exists*. Rather, it is our view that *improper practices employed by a few registrars must be corrected*.

## **Table of Contents**

<b>EXECUTIVE SUMMARY .....</b>	<b>2</b>
<b>AN OVERVIEW OF INTER-REGISTRAR DOMAIN TRANSFERS.....</b>	<b>4</b>
<b>THE SITUATION.....</b>	<b>5</b>
<b>TUCOWS' POSITION .....</b>	<b>11</b>
<b>CONCLUSIONS .....</b>	<b>12</b>
<b>DEFINITIONS.....</b>	<b>13</b>
<b>EXHIBIT B OF THE VERISIGN REGISTRAR LICENSE &amp; AGREEMENT.....</b>	<b>15</b>

## **An overview of Inter-Registrar Domain Transfers**

As part of its efforts to bring competition to the domain name registration and service sector, the Internet Corporation for Assigned Names & Numbers (ICANN) created a system by which a credible company could become accredited to register domain names on behalf of the general public. These companies are called Registrars: they perform the registration function that was previously monopolized by Network Solutions on behalf of the U.S. Department of Commerce. Thus far, ICANN has accredited dozens of firms to act as registrars. This has given consumers the ability to choose their preferred supplier.

This choice can be exercised when a new registration is undertaken, and at most times during the lifetime of the registration. In order to change suppliers, consumers simply have to notify the new registrar of their decision to change suppliers and the registration is transferred from the old registrar to the new one. Throughout this process, it is the responsibility of the gaining registrar to ensure that the consumer has the authority to request the transfer of the registration. The losing registrar is neither required nor explicitly empowered to do anything except ensure that its account with the client is settled prior to the termination of the relationship<sup>1</sup>.

---

<sup>1</sup> A complete version of Exhibit B of the Verisign Registrar License & Agreement which has thus far acted as the governing policy concerning this matter is contained at the end of this document.

## The Situation

A limited number of ICANN accredited registrars have unilaterally determined that adding additional layers of verification to the transfer process is somehow beneficial to consumers and appropriate policy for this industry. The most typical example of this occurs when the losing registrar - losing the transfer to another registrar *at the request of the consumer* - will require that the consumer provide them with numerous additional confirmation(s) of the initial instruction. The systems that support these transfer functions are typically automated in nature and often do not work properly. Worse, some of the new transfer authorization procedures have been purposely designed to mislead or confuse consumers. As a result, consumers have been hampered in their ability to choose a competitive supplier and move at will.

In practice, restrictive processes of this nature are undue, excessive and inconsistent with practices in any similar industry examined<sup>2</sup>. At worst, they are the equivalent of institutional domain name hijacking. Each time a registrar denies a transfer against the wishes of a consumer, they are effectively holding the domain name, and the consumer hostage.

Firms that engage in these practices have put forward a number of arguments to justify their decision to restrict the movement of consumers to other registrars. These statements include:

- “The additional processes create greater certainty as to who the actual consumer is and whether or not they have the apparent authority to request the transfer because the losing registrar is the only party to the transaction that maintains these records.”
- “The additional processes minimize the chance that a rogue registrar will undertake to ‘steal’ all of a registrar’s customers away from them through an unauthorized mass transfer of registrations.”
- “The additional processes create additional security.”

---

<sup>2</sup> For instance, the Canadian telecommunications industry has adapted for use in the local service market, the PIC/CARE Access Handbook, which was established to protect end-customers from unauthorized transfer of their primary interexchange carrier (slamming). The Business Process Sub-Working Group of the CRTC Interconnection Steering Committee established the resultant customer transfer procedures (Schedule H of the Master Agreement for Interconnection between LECs). The transfer procedures are:

- a) accepting a signed document as end-customer confirmation;
- b) oral confirmation verified by an independent third party;
- c) electronic confirmation through the use of a toll-free number; and
- d) electronic confirmation via the Internet.

- Business Process Sub-Working Group, CRTC Interconnection Steering Committee “Customer Migration Process for Canadian Implementation of Local Competition PART I - Primary Processes, Version 6”, April 26, 1999.

- “The additional processes are consistent with and support existing ICANN policy concerning transfers.”
- “Self-regulation by the industry will ensure that others will not be tempted to intervene.”
- “We are simply acting in the best interest of consumers.”
- “The additional processes protect and enhance the reputation of the industry.”
- “We believe that we have some advantages of stability that (customers) should know about.”

Closer examination clearly demonstrates that fact, practice or precedent does not support these positions.

*“The additional processes create greater certainty as to whom the actual consumer is and whether or not they have the apparent authority to request the transfer because the losing registrar is the only party to the transaction that maintains these records.”*

As previously mentioned, the gaining registrar has an obligation to ensure that the person requesting the transfer of the domain name has the apparent authority to undertake the transfer request. This can be accomplished through a number of means as long as reasonable effort is made to ensure the authenticity and validity of the request.

Currently, registration data pertaining to every domain name registration is stored in the publicly accessible database colloquially called “Whois”. Each registrar must maintain one of these databases and ensure the accuracy of the information contained in it as part of its continuing obligations under their accreditation contract with ICANN. Whois data assists the gaining registrar in verifying the source of the transfer request, as the gaining registrar will typically request that the administrative contact for the domain name registration verify their intent to transfer.

In other words, because these records are publicly accessible, it is a trivial exercise for the gaining registrar to verify the authenticity of the request with exactly the same level of precision that the losing registrar can.

*“Self-regulation by the industry will ensure that others will not be tempted to intervene.”*

The truth in this statement is that all registrars should remain vigilant and ensure that its conduct is consistent with reasonable and accepted practices in this and other similar industries. Outside regulation will increase costs and decrease registrar flexibility in the marketplace. The foregoing statement however conveniently ignores existing practice and “regulation” documented in the Verisign Registrar License and Agreement<sup>3</sup>. A minority of the operating registrars have seen fit to unilaterally obstruct a policy that the majority considers acceptable practice. Self-regulation does not imply that the community must be resistant to change. It does suggest, however that any changes to an ongoing practice be recognized as necessary and acceptable only after reaching consensus of and by the group.

Further, amendments to the established policy (as opposed to internally consistent clarifications) simply create more policy. Policy without enforcement is useless. For an extension to an existing policy to be successful, technical enforcement by the registry must be in place or a regulatory body must be established to enforce the policy. Technical enforcement will increase the cost of doing business and a regulatory

---

<sup>3</sup> Excerpts can be found starting on page 15 of this document

agency accomplishes exactly what the extensions purported to avoid. Accordingly, the question must be asked, why exactly is additional policy (as opposed to rational clarification) even desirable? Ironically, it is the actions of those making these statements and their failure to compromise that may precipitate the very intervention they claim they wish to avoid. Thus, they are best able to control intervention, or lack thereof.

*“The additional processes minimize the chance that a rogue registrar will undertake to ‘steal’ all of a registrar’s customers away from them through an unauthorized mass transfer of registrations.”*

The gaining registrar must pay in advance for each transfer undertaken. Further, such an action would be a clear violation of the ICANN registrar accreditation agreement resulting in the revocation of a rogue registrar’s standing. Lastly, both the criminal and civil justice systems of most countries would be an appropriate venue to pursue claims against parties undertaking actions of this nature.

Each of these three points acts as a strong and very real deterrent to the type of the behavior that those making this statement purport to wish to avoid by modifying the existing industry transfer policy.

*“The additional processes create additional security.”*

Those putting this argument forward have never quantified or defined it. Further, no evidence has been put forward to indicate the truth of this statement. It is interesting to note however that all successful domain name hijackings that have been documented thus far have occurred as a result of poor security practices at the losing registrar<sup>4</sup>. Further, while these incidents are few and far between, the industry has undertaken more than one million successful, non-disputed transfers. In light of the role that the losing registrar has historically played in facilitating the theft of domain names and the overwhelming number of successful registrations, it is only prudent to err on the side of caution and leave the verification of the transaction as a responsibility of the gaining registrar. It might even be suggested that registrars focus on improving their internal security procedures rather than interfering with the transfer practices of third party registrars.

---

<sup>4</sup> Thor Olavsrud, “2600.com Domain Hijacked Due to Mix-up at NSI”, Internetnews.com [http://www.internetnews.com/wd-news/article/0,,10\_765581,00.html], May 14, 2001.  
Brian McWilliams, “Adobe.com Falls Prey to Domain Hijacker”, Internetnews.com [http://www.internetnews.com/wd-news/article/0,,10\_489731,00.html], October 19, 2000  
Scott Clark, “Network Solutions in Another Hijacking Controversy”, Internetnews.com [http://www.internetnews.com/bus-news/article/0,,3\_401471,00.html], June 23, 2000.



*“The additional processes are consistent with and support existing ICANN policy concerning transfers.”*

A review of ICANN’s bylaws, consensus policies and registrar accreditation documents clearly suggest that *ICANN does not have a documented policy on inter-registrar domain name transfers*. Transfer policies are currently the province of each registry. Each registry must provide the facilities to allow registrar transfers, but ICANN specifies neither the means nor framework by which the registry must do so. Nonetheless, ICANN’s general principles do have a distinct and specific impact on this and other matters governed through their contracts with registries, registrars and their other constituents.

ICANN is founded on the principles of fairness, global benefit and competition. As beneficiaries of ICANN policy, it is incumbent upon registrars to conduct their operations in accordance with these fundamental principles. For instance, the ICANN Articles of Incorporation specifically state that “The Corporation shall operate for the benefit of the Internet community as a whole [...] and, to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes that enable competition and open entry in Internet-related markets.”<sup>5</sup>

Further, when describing its key founding principles, ICANN specifically states, “Competition will drive down registration costs and improve consumer choice for businesses and individuals.”<sup>6</sup> While registration costs have certainly decreased<sup>7</sup>, the arbitrary policies of a few registrars work contrary to ICANN’s goal of improved consumer choice.

In the Department of Commerce/ICANN Joint Project Memorandum, ICANN has specifically agreed to “... promote[s] the management of the DNS in a manner that will permit market mechanisms to support competition and consumer choice in the technical management of the DNS. This competition will lower costs, promote innovation, and enhance user choice and satisfaction.”<sup>8</sup> Note that the phrase “consumer choice” is specifically used.

Lastly, this same agreement specifically states that “Neither Party, either in the DNS Project or in any act related to the DNS Project, shall act unjustifiably or arbitrarily to injure particular persons or entities or particular categories of persons or entities.”<sup>9</sup> In restricting the ability of consumers to exercise their freedom of choice conveniently, accredited registrars are specifically violating the basic tenets of the principal agreement that allow their businesses to exist.

---

<sup>5</sup> “ICANN Articles of Incorporation”, <http://www.icann.org/general/articles.htm>

<sup>6</sup> “Questions about ICANN”, <http://www.icann.org/general/background.htm#5>

<sup>7</sup> “Proposed Verisign Agreements Discussion”, <http://www.icann.org/melbourne/proposed-verisign-agreements-topic.htm>

<sup>8</sup> “ICANN/DOC Joint Project Memorandum”, <http://www.icann.org/general/icann-mou-25nov98.htm>

<sup>9</sup> *ibid.*

It is obvious that the processes employed by registrars to limit the freedom of choice of consumers are actually inconsistent with and working contrary to the founding principles of ICANN.

*“We are simply acting in the best interests of consumers.”*

This statement requires the listener to believe the logic that acting against the wishes of the consumer (remember, each transfer is initiated by the consumer) can somehow be equated with acting in the best interest of the consumer. Some have attempted to support this statement by referring to studies and surveys that have been undertaken, however they have declined to make the methodology, data and conclusions available to the public or any industry participants in this sector.

*“The additional processes protect and enhance the reputation of the industry.”*

Each day thousands of consumers are left wondering why they cannot transfer their domain name to the registrar of their choice. Each day, thousands of consumers are left wondering why the process of successfully transferring a domain name registration is so incredibly complicated. Each day, thousands of consumers ask themselves what the true value of competition is when they cannot get what they want. Perpetuating these conditions neither protects nor enhances the reputation of the industry.

*“We believe that we have some advantages of stability that (customers) should know about.”*

This last statement, when combined with the fact that those actually engaging in the complained of practices are the leaders in market share, casts serious doubt on the veracity of their concern for consumers.

## **Tucows' Position**

Tucows has adopted a remarkably simple position on this subject. *Appropriate and accepted policy already exists* as documented in Exhibit B of the Verisign Registrar License & Agreement. This policy does need to be clarified however. Currently, the policy states that the losing registrar may deny a transfer on grounds that "include, but are not limited to..." Modification of this statement to read that the grounds for inquiry "are limited to..." the stated conditions will satisfy the legitimate interests of losing registrars to inquire, where they have reason to do so, as to the authority of another registrar to seek a transfer.

*All other concerns that have been raised in relation to transfers are sufficiently covered by existing contracts, ICANN & Registry policy and law.*

This is not to say that Tucows is universally opposed to the rational progression and development of industry policy, or in specific cases, opposed to the replacement of old policy by newer, more comprehensive statements. We urge all involved to consider the factual basis of the foregoing statements and whether they are valid either to support the development of new policy or to justify perversions of existing policy only as it relates to this specific matter. Reconstructing all policy related to this issue will not resolve this issue in a timeframe suitable to meet the needs of thousands of registrants that are affected each and everyday.

## **Conclusions**

Millions of registrants are barely aware that business interests, whose agenda is to protect the erosion of their customer base, are seriously limiting their rights and freedoms. Given the fallacious nature of the justifications offered by these firms, one may safely conclude that they are acting in their own interests and not those of the consumer.

## Definitions

The domain name industry has often been accused of perpetuating the use of technical gibberish. Hopefully these definitions<sup>10</sup> will assist the reader in digesting this document.

**Contact:** Contacts are individuals or entities associated with domain name records. Typically, third parties with specific inquiries or concerns will use contact records to determine who should act upon specific issues related to a domain name record. There are typically three of these contact types associated with a domain name record, the Administrative contact, the Billing contact and the Technical contact.

**Contact, Administrative:** The administrative contact is an individual, role or organization authorized to interact with the registry or registrar on behalf of the Domain Holder. The administrative contact should be able to answer non-technical questions about the domain name's registration and the Domain Holder. In all cases, the Administrative Contact is viewed as the authoritative point of contact for the domain name, second only to the Registrant.

**Contact, Billing:** The billing contact is the individual, role or organization designated to receive the invoice for domain name registration and re-registration fees.

**Contact, Technical:** The technical contact is the individual, role or organization that is responsible for the technical operations of the delegated zone. This contact likely maintains the domain name server(s) for the domain. The technical contact should be able to answer technical questions about the domain name, the delegated zone and work with technically oriented people in other zones to solve technical problems that affect the domain name and/or zone.

**Domain Holder:** The individual or organization that registers a specific domain name. This individual or organization holds the right to use that specific domain name for a specified period of time, provided certain conditions are met and the registration fees are paid. This person or organization is the "legal entity" bound by the terms of the relevant service agreement with the registry operator for the TLD in question.

**ICANN:** Internet Corporation for Assigned Names and Numbers. A non-profit organization founded to assume responsibility for IP address space assignment, protocol parameter assignment, domain name system management and root server system management.

**Registrant:** See Domain Holder

**Registrar:** A person or entity that, via contract with Domain Holders and a Registry, provides front-end domain name registration services to registrants, providing a public interface to registry services.

---

<sup>10</sup> Ross Wm. Rader, "Domain Name & Related Definitions", IETF Draft  
[\[http://www.ietf.org/internet-drafts/draft-ietf-provreg-dn-defn-01.txt\]](http://www.ietf.org/internet-drafts/draft-ietf-provreg-dn-defn-01.txt), May 2001.

**Registrar, Accredited:** A Registrar that has been certified as meeting certain minimal criteria to act as a Registrar for a specific TLD. This term is almost solely used when referring to Registrars that have been certified by ICANN.

**Registrar, Sponsoring:** The Registrar responsible for the submission of the domain name to the Registry.

**Registry:** A Registry is the person(s) or entity(ies) responsible for providing registry services. Registry services include customer database administration, zone file publication, DNS operation, marketing and policy determination in accordance with the general principles outlined in RFC 1591 [5]. A Registry may outsource some, all, or none of these services.

## **Exhibit B of the Verisign Registrar License & Agreement**

### **Exhibit B**

#### **Policy on Transfer of Sponsorship of Registrations Between Registrars**

##### Registrar Requirements.

The registration agreement between each Registrar and its SLD holder shall include a provision explaining that an SLD holder will be prohibited from changing its Registrar during the first 60 days after initial registration of the domain name with the Registrar. Beginning on the 61st day after the initial registration with the Registrar, the procedures for change in sponsoring registrar set forth in this policy shall apply. Enforcement shall be the responsibility of the Registrar sponsoring the domain name registration.

For each instance where an SLD holder wants to change its Registrar for an existing domain name (i.e., a domain name that appears in a particular top-level domain zone file), the gaining Registrar shall:

- 1) Obtain express authorization from an individual who has the apparent authority to legally bind the SLD holder (as reflected in the database of the losing Registrar).
  - a) The form of the authorization is at the discretion of each gaining Registrar.
  - b) The gaining Registrar shall retain a record of reliable evidence of the authorization.
- 2) In those instances when the Registrar of record is being changed simultaneously with a transfer of a domain name from one party to another, the gaining Registrar shall also obtain appropriate authorization for the transfer. Such authorization shall include, but not be limited to, one of the following:
  - a) A bilateral agreement between the parties.
  - b) The final determination of a binding dispute resolution body.
  - c) A court order.
- 3) Request, by the transmission of a "transfer" command as specified in the Registry Registrar Protocol, that the Registry database be changed to reflect the new Registrar.
  - a) Transmission of a "transfer" command constitutes a representation on the part of the gaining Registrar that:
    - (1) the requisite authorization has been obtained from the SLD holder listed in the database of the losing Registrar, and
    - (2) the losing Registrar will be provided with a copy of the authorization if and when requested.

In those instances when the Registrar of record denies the requested change of Registrar, the Registrar of record shall notify the prospective gaining Registrar that the request was denied and the reason for the denial.

Instances when the requested change of sponsoring Registrar may be denied include, but are not limited to:

- 1) Situations described in the Domain Name Dispute Resolution Policy
- 2) A pending bankruptcy of the SLD Holder
- 3) Dispute over the identity of the SLD Holder
- 4) Request to transfer sponsorship occurs within the first 60 days after the initial registration with the Registrar

In all cases, the losing Registrar shall respond to the e-mail notice regarding the "transfer" request within five (5) days. Failure to respond will result in a default "approval" of the "transfer."

#### Registry Requirements.

Upon receipt of the "transfer" command from the gaining Registrar, the Registry will transmit an e-mail notification to both Registrars.

The Registry shall complete the "transfer" if either:

- 1) the losing Registrar expressly "approves" the request, or
- 2) the Registry does not receive a response from the losing Registrar within five (5) days.

When the Registry's database has been updated to reflect the change to the gaining Registrar, the Registry will transmit an email notification to both Registrars.

#### Records of Registration.

Each SLD holder shall maintain its own records appropriate to document and prove the initial domain name registration date, regardless of the number of Registrars with which the SLD holder enters into a contract for registration services.