

usTLD Policy Council
Meeting 5/31/2002

I. Attendees:

Jim Casey (NeuStar)
Jonathan Hudis (AIPLA)
Michael Palage (Industry)
Larry Singer (NACIO) rep. by Mary Gay Whitten
Claudette Tennant (ALA) - Joined late
David Wascher (Delegated Manager)
Joe Rubin (US Chamber of Commerce)
Juan Otero (National League of Cities)
Tom Cunningham (Bulk Register) - Not present
Tom McGarry (NeuStar – Technical Liaison -- Non-voting member) – not present

Jeff Neuman (NeuStar) also attended acting as .US Policy Council Secretariat.

1. Approval of Minutes of April Meeting – Mr. Hudis moved for approval. Mr. Wascher seconded and the minutes were then approved.
2. Report on .US Launch (Expanded Space) – A report was given by Mr. Casey on the status of .us and of the successful launch.
3. Update on Registry Communications Activities – At the meeting it was agreed that a private list serv would be set up for the Policy Council to communicate amongst themselves. In addition, NeuStar will commence working on a public website for materials to be posted on and to accept the solicitation of comments.
4. Mr. Casey discussed the “7 dirty words policy” and how that was an initial policy discussed with the NTIA for implementation. Going forward, future policies will be addressed by the Policy Council.
5. Council Discussions with the Press – Mr. Hudis referred to an article in the press that had quoted a member of the Policy Council and expressed concerns about individual members of the policy council speaking to the press as members of the council.
 - Motion: Mr. Hudis made a motion for the following resolution, which was seconded by Mr. Palage and approved unanimously by the Council.
 - *The Council resolves that no individual member of the Council shall speak to the press on behalf of the US Policy Council unless such specific issue has been discussed and voted on at one of the US Policy Council's meetings and a position was taken. Nothing herein shall prevent any member of the Council from talking to the Press on its own behalf (or his or her organization's behalf), so long as he or she identifies specifically on whose behalf the comment is made.*

6. Additional Members to add to the Policy Council?

Mr. Hudis made a recommendation that a consumer-oriented representative should be added to the council. Mr. Rubin reminded the Council that there are several members of the Policy Council that already represent consumers, but added that he believed that NeuStar should continue to reach out to these groups. Mr. Otero agreed with this and stated that the need to do this quickly was important. Hearing no objection from those on the call, Mr. Casey agreed to take this responsibility on and report back to the Council with candidates.

7. The .US Nexus Restrictions Revision?

Mr. Casey introduced the topic of soliciting policy council input on the possibility of modifying the Nexus dispute process. Specifically, NeuStar seeks comment on whether there are ways to give greater incentive to the public to police Nexus through the challenge process. One possible approach would be to allow a Nexus challenger to obtain a successfully challenged domain name if he or she can demonstrate a legitimate interest in the name. Another might be to provide a more streamlined process.

Mr. Hudis explained his concern that if a challenger is unable to obtain the domain name in a challenge, there will be little if any incentive for a challenger to initiate a dispute and pay the costs associated with the dispute. On the other hand, he believes that there may be a problem of bringing a nexus challenge when that person doesn't have a right in the name. This right could include a trademark, trade name, last name, etc. in the mark underlying the domain name.

Mr. Palage, however stated that to him, trying to put qualifications as to what constitutes a right on a domain name is extremely difficult and cited the well-known Telstra and Strick v. Strick cases. He believes that it is a slippery slope to go down this path and urged that if the idea here is for self-policing, if they challenge, let them have the name if the challenge is successful.

Mr. Washer explained that we need to figure out how to let two people fight over a name if they do not have a right to the name.

Mr. Casey reminded the Council that regardless the challenger would need to show that it meets the nexus requirements in order to have the name transferred.

Mr. Rubin expressed his fear that if there was no requirement that the challenger show legitimate rights, then there is a possibility for frivolous challenges by speculators.

Mr. Casey explained that the Council could decide to add a condition on the challenger that if he is successful in obtaining the name in a challenge that he would not be able to transfer the domain name if the purpose of such a transfer were speculation. Of course this would be difficult to police.

Mr. Casey then introduced the following motion, which was seconded by Mr. Palage:

- *Should there be a change to the existing policy such that a challenger, assuming it meets nexus requirements, be able to acquire the domain name if it prevails during a nexus challenge?*

Motion Passed 5 votes in favor, 2 against and 2 abstentions.

Mr. Casey then introduced the following motion:

- *Should the challenger have to also show a legitimate interest in the domain name?*

The Council agreed to table this motion until the next meeting and to not present this or the above motion to the attention of the DOC until this second part had been voted on.

8. Update on Compliance Report Process

Mr. Casey reported that the Compliance report has been drafted based on information from zone file and info from VeriSign, as well as information provided by delegated managers. NeuStar received 800 responses to a compliance survey. NeuStar has worked through a number of recommendations on maintenance and improvements for the locality space. There is no taking back delegations policy. Most are in compliance. The DOC has asked for a chance to review, provide us with comment, and then we will give it to the Policy Council to review. We will then give the Policy Council a minimum of thirty days to review and comment.

9. Requirement for a 6-month and 1-year report on usDRP.

This was introduced by Mr. Hudis. Mr. Hudis would like to have a report from both Dispute Providers for the usDRP by October 15th talking about statistics, problems, concerns, proposals to tweak the policies. Mr. Casey reminded Mr. Hudis that the Dispute Providers would have to agree to this, but did not think this would be a problem.