

**Comments on Proposed Changes to the .US Nexus Dispute Policy**  
(All Comments Received as of November 20, 2002)

-----Original Message-----

From: GREGG MOSCOE [mailto:XXXXXX@usa.net]  
Sent: Wednesday, November 06, 2002 12:37 PM  
To: US-List-Admin@Neustar.biz  
Subject: COMMENT ON CHANGES TO .US DISPUTE POLICY AND RULES

These changes won't mean much if...

1) A registrant/reseller who does not qualify under the Nexus Category 3 is allowed to simply shift to a U.S.-based contact as a front, while still primarily doing business reselling TLDs rather than actively pursuing business related to a specific TLD.

2) If the Nexus dispute policy requiring an arbitrator is required to protest such situations. Nexus arbitration should only be required when two or more entities having arguable claim to a TLD seek resolution, not to protect resellers. It is simply too expensive for most individuals, non-profits and small businesses to undertake this process simply to pry a TLD loose from a profiteering reseller.

In my experience, the reseller simply prices the domain a little under what it would cost to dispute it. He's wagering that someone who really wants the domain will pay \$1500 to him instead of \$2000 to dispute it.

Now, if a decision based on a single dispute could then be applied to multiple domains under the same registrar, that might have some value. Or, if there was a substantial penalty attached to falsifying registration information, or by setting up a sham front, there could be a deterrent value.

Why should each and every domain have to go through the dispute process, if a decision in one case has determined that the manner in which the domains are registered is invalid, either based on the registrant/resellers Nexus status, or by establishing that registration information is misleading or fraudulent?

When I spoke to the abuse contact at a major registrar organization, I was informed that they relied on the honor system to enforce the Nexus registration requirement. Even when presented with the information from 'who-is' which clearly indicated that a foreign-based reseller had registered thousands of .us TLDs and was clearly in violation of Nexus 3 requirements based on the information provided, the registrar would take no action.

Let's use the dispute process when it makes sense, and create a more accessible mechanism that empowers registrar organizations to police their resellers, as well as a requirement that they do so.

-----Original Message-----

From: Gregg Moscoe [mailto:XXXXXX@usa.net]  
Sent: Monday, November 11, 2002 12:19 PM





Requirements policy require that a registrant of a domain within the .US top-level domain be either 1) a person who is a United States citizen, 2) a person who has established permanent domicile governed by the United States, 3) an organization which has been established the United States, or 4) an organization which has been established outside of the United States but which has a bona fide lawful presence in the United States. Together this set of criteria is mapped into Nexus Categories 1, 2, and 3 in the usTLD Nexus Requirements. Thus if an unfit registrant does not satisfy any of these criteria from Nexus Categories 1, 2, or 3, a rightful would-be registrant who does satisfy at least one of Nexus Categories 1, 2, or 3 is blocked by the unfit registrant from registering a domain within the .US top-level domain. The rightful would-be registrant has a valid dispute which has entirely different foundations than disputes the first intellectual-property-related category. That foundation in this second category is the usTLD Nexus Requirements which in turn are based on the NeuStar Proposal which NeuStar submitted to the United States Department of Commerce which in turn is based on policies issued by the United States Department of Commerce regarding this new era for the .US top-level domain which in turn are based on public hearings & comments regarding the .US top-level domain.

According to both the Nexus Dispute Policy currently in effect as well as the proposed modified Nexus Dispute Policy, all disputes have only one possible Draconian track for investigation: the complainant must hire an arbitration panelist for at least \$1000. For disputes falling into what I refer to as the intellectual-property dispute category #1, this arbitration is a cost-effective and efficient mechanism for the rightful owners of intellectual property to claim what is rightfully theirs and for spurious claims on that intellectual property to be cleanly dismissed or disposed of.

But for disputes falling into the violation-of-government-policy category #2, hiring arbitration services for over \$1000 is absurd in the case that the complainant satisfies the usTLD Nexus Requirements and the registrant does not in any way satisfy any of Nexus Categories 1, 2, or 3 in the usTLD Nexus Requirements (either due to the registrant falsifying information or due to registrar negligence). Consider the following scenario. Imagine a Czech citizen residing in the Czech Republic who satisfies none of the Nexus Categories 1, 2, or 3 uses a Taiwan-based registrar to register some second-level domain name in the .US top-level domain. Let's call this spurious registration, FrogsWithWings.us. Let us assume that the registration of FrogsWithWings.us by a foreigner without bona fide presence in the U.S. was for two years. Two months after the Czech registration of FrogsWithWings.us which violated NeuStar and Department of Commerce policy, a law-abiding, tax-paying adult U.S. citizen (who clearly satisfies Nexus Category 1) attempts to register FrogsWithWings.us only to find that some Czech citizen has FrogsWithWings.us illegitimately registered in violation of NeuStar policies and in violation of Department of Commerce policies. This would-be registrant who is the U.S. citizen must evoke the Nexus Dispute Resolution policy in order to dispute this invalid registration of FrogsWithWings.us. This requires the U.S. citizen to pay at least \$1000 in arbitration fees while the Czech citizen in the Czech Republic pays nothing (beyond, say, nine dollars to register the illegitimate registration of FrogsWithWings.us via Taiwan). Not only is this not fair in some abstract ethnical sense. Not only is this unjust in some rights-as-a-citizen sense. More importantly this is an abrogation of the responsibilities of the government of the United States of America to defend its territory if the sole mechanism of enforcement of the usTLD Nexus Requirements (and corresponding Department of Commerce oversight of!

NeuStar) is via an excessive \$1000 financial burden placed on an individual U.S. citizen without the help of the government of the United States of America. By asking the citizen of the U.S. whose territory has been invaded by the Czech citizen to pay directly for the defense of this U.S. territory, there effectively is no actual national defense of the .US top-level domain territory and thus whether the government of the U.S.A. actually effectively governs the borders of the .US top-level domain territory is called into direct question. If a government cannot control the borders of a territory which that government claims as its own, then the question is raised of whether that government truly has any governance of that undefended territory, which in this case would be the .US top-level domain.

[By the way, this scenario is taken directly from a real-life situation in which I find myself regarding a domain-name registration in the .US top-level domain which I intend to dispute through some channel. The domain name which I wish to register is not FrogsWithWings.us, but all of the other details are unchanged.]

I seek an active enforcement of the borders of the .US top-level domain territory by some portion of the government of the United States of America. This national defense of the U.S.A.'s .US top-level domain territory may emanate from the Department of Commerce, the newly formed Department of Homeland Defense, or the Defense Department, whichever the United States government prefers. To this end, I seek that the United States government ensure that all domain-name registrations within the .US top-level domain by registrants who satisfy none of Nexus Categories 1, 2, or 3 be removed promptly, just as illegal immigrants are and just as invading armies would be. To this end, I seek that the United States government defend the borders of its national territory in its .US top-level domain through all means necessary and proper, which may include increased oversight of NeuStar to ensure that foreign registrars are not predatorily invading the .US territory, that foreign registrants are not illegitimately squatting on the .US territory, that domestic registrars are not careless in their stewardship of .US territory, and most importantly that all parties strictly obey the policies and regulations set forth by the United States Department of Commerce governing the .US top-level domain and that all parties strictly obey all NeuStar policies which the United States Department of Commerce has approved.

The .US top-level domain is tantamount to a territory of the United States of America. True, it is not a physical territory, but it is a territory which is under the direct control of the United States of America, its laws, its government(s), and its sovereignty. As such, a nation is a country with a valid government when that nation-country-government can control its borders and defend its demarcated borders, permitting the proper administration of its governance over that territory. A nation which cannot control and defend the demarcated borders of a territory which that nation claims as its own abrogates its ability to govern that territory and thus loses control of that territory to whomever seeks to invade, to squat unrightfully, or to commit overt or implied acts of anarchy within that territory.

Specifically, the United States Department of Commerce certainly intends for the .US top-level domain to continue to be controlled by the United States Department of Commerce as an entity within the jurisdiction of governance of the United States' government. If the .US top-level domain is in fact to be effectively governed by the United States of America and the

policies which the government of the U.S.A. issues to NeuStar via the United States Department of Commerce, then there must be some form of national defense of the .US top-level domain which protects the .US territory from outside attack by those natural persons or organizations which do not satisfy Nexus Categories 1, 2 or 3 in the usTLD Nexus Requirements. Although a registrant may lie in claiming to satisfy at least one of Nexus Categories 1, 2, or 3, the responsibility ultimately falls to the government of the United States of America to repel this intrusion, much like the Immigration and Naturalization Service repels illegal immigrants who are within the physical territory of some portion of the United States of America, lest the government of the U.S.A. lose control of the .US top-level domain territory to an anarchy of spurious foreign domain-name registrations. Likewise, although a U.S.-based registrar may be negligent in checking that a registrant satisfy at least one of Nexus Categories 1, 2, or 3, the responsibility of enforcement of the borders of the United States of America again ultimately falls to the government of the United States of America to defend its .US top-level-domain territory, lest the government of the U.S.A. lose control of its .US top-level domain territory to careless domestic registrars. Likewise, although a foreign-based registrar may be negligent in checking that a registrant satisfy at least one of Nexus Categories 1, 2, or 3, the responsibility of enforcement of the borders of the United States of America again ultimately falls to the government of the United States of America to defend its .US top-level-domain territory, lest the government of the U.S.A. lose control of its .US top-level domain territory to an anarchy of predatory foreign registrars. Likewise, although NeuStar may have policies and procedures which somehow permit a spurious domain-name registration in the .US top-level domain by a spurious registrant who meets none of the Nexus Categories 1, 2, or 3 through no direct overt act of commission by NeuStar, the responsibility of enforcement of the borders of the United States of America again falls to the government of the United States of America to defend its .US top-level-domain territory, lest the government of the U.S.A. lose control of its .US top-level domain due to insufficient oversight of privatization.

This public comment is submitted prior to 23:59 (11:59PM)EST on 20 November 2002. I expect that this public comment to be included in the official list of public comments regarding the public review of the proposed modification to the Nexus Dispute Policy which must be submitted no later than 20 November 2002.

Daniel Miller  
a U.S. citizen in the U.S.A.

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