

## ICANN staff response to the GNSO Council question on domain name front running

29 May 2008

### Background:

On 8 May 2008 the GNSO Council approved a resolution to initiate a drafting team comprised of Council and constituency members and liaisons to work with ICANN staff to define a pre-issues research effort on the subject of domain name front running. The drafting group will examine the sort of expertise that will be required and the questions that should be examined, including:

- How the problem is defined?
- How prevalent is the problem?
- How measures that are being to address domain tasting might affect front running?
- Are there rules within the RAA that should be used?

During this discussion, GNSO Council members asked staff whether the issue is encompassed by the RAA, with the inference that if so, the compliance department [would have] looked at this and made a determination already. Council members emphasized that it would be helpful to know in advance of engaging this drafting team whether staff has made this determination, and if so, the associated rationale.

### Staff response and recommendations:

To ensure that parties are operating under the same assumptions, it is critical to define Domain Name Front Running. The SSAC defined Domain Name Front Running in its February 2008 report on Domain Name Front Running <<http://icann.org/committees/security/sac024.pdf>> as “an opportunity for a party to obtain some form of insider information regarding an Internet user’s preference for registering a domain name and to use this opportunity to preemptively register that domain name. In this scenario, "insider information" is information gathered from the monitoring of one or more attempts by an Internet user to check the availability of a domain name.”

The ICANN Registrar Accreditation Agreement (RAA) <<http://www.icann.org/registrars/ra-agreement-17may01.htm>> does not specifically address Front Running. The RAA would of course only apply to any activities of ICANN-accredited registrars; if ISPs, search engine operators, resellers or others engaged in front-running the RAA would not apply directly to them since they are not parties to that agreement.

ICANN does not have any information that any registrar has ever engaged in front running as defined by SSAC (that is, snooping on queries to register names for themselves to prevent their customers from registering the names). SSAC reviewed

approximately 120 reported cases of suspected front-running and was unable to confirm that any of the cases were indeed examples of front-running.

In January 2008, Network Solutions began a practice of registering domain names for a short period after consumers conducted domain name searches using its website. NSI claimed this service protects users in the event users decide later that they want a particular domain name. NSI claims that the primary purpose of this service is to prevent domain name front-runners from registering a domain name after consumers conduct availability checks. NetSol's service as launched did raise some issues under the RAA:

- RAA 3.3.1 Requires registrars to promptly post contact data for every **active** domain registration they sponsor.
- RAA 3.7.4 Requires registrars to have a reasonable assurance of payment before they **activate** a domain registration.
- RAA 3.7.7 requires registrars to enter a registration agreement for every registration they sponsor.

NetSol addressed these issues through modifications to the service: they ceased activating the domains that were in "cart hold" (i.e. the names were not placed on active status in the DNS – they were not delegated to any nameservers), and NetSol arranged to enter a registration agreement with a legal entity separate from the registrar for each name they were reserving for their customers.

It is recommended that a study be conducted to assess the extent to which Domain Name Front Running is occurring and to determine if Domain Name Front Running is indeed a threat to the security and stability of the Internet before ICANN takes policy steps to address Domain Name Front Running.