



ICANN is therefore moot in all events, as there is no further action that ICANN can undertake to effectuate the relief requested, even if ICANN had the ability and authority to transfer domain names (which it does not).

## II. ARGUMENT

By his second motion to enforce the stay in this case, the Receiver sought relief against both the registrar Fabulous.com and non-party ICANN. With respect to ICANN, the Receiver asked for an order requiring ICANN to "re-transfer" back to the Receivership estate four domain names that the registrar had previously transferred pursuant to default decisions rendered in various UDRP proceedings. (Dkt. # 739.) On January 3, 2012, ICANN opposed the Receiver's motion and submitted substantive evidence proving that ICANN could not effectuate the requested relief, both as a practical matter (ICANN lacks the technical ability to change domain name registrations) and because ICANN lacks the authority to force third parties to transfer their domain name registrations to the Receiver. (Dkt. #s 772, 772-1.)

In its reply, the Receiver did not address **any** of the substantive arguments made by ICANN in its opposition papers. (Dkt. # 775.) Notably, the Receiver did not take issue with **any** of the evidence submitted by ICANN in support of its position that it lacks both the technical ability and authority to effectuate the relief requested by the Receiver. (*Id.*) Instead, the Receiver accepted ICANN's evidence and **abandoned its request for relief as to ICANN**. Specifically, on January 10, 2012 (the same day the Court entered the order that is the subject of this motion), the Receiver submitted to the Court via e-mail a revised (third) proposed order that dropped any request for relief against ICANN. The Receiver represented to the Court that:

"[I]t appears that the Court can grant the relief requested by the Receiver without requiring ICANN's involvement (*i.e.*, by directing the Order towards Fabulous but not ICANN)."

In so doing, the Receiver effectively withdrew its motion as to ICANN.

Notwithstanding the Receiver's withdrawal of any requested relief as to ICANN, the Court ultimately granted the relief originally sought in the Receiver's second motion to enforce the stay, ordering that both ICANN and Fabulous.com "re-transfer back to their original registrant – Receivership Party Novo Point, LLC (as to domain name apple.com) and Quantec, LLC (as to domain names publicstorage.com, pulicstorage.com, and puplicstorage.com) – the 4 Transferred Domain Names which have already been transferred as a result of a Default Decision by WIPO (the "Retransfer")." (Dkt. # 782.) ICANN respectfully submits this motion for clarification of that order since the Receiver has abandoned any request for relief against ICANN.

In addition, ICANN notes that on January 13, 2012, the Receiver filed a Notice of Compliance With Order Granting The Receiver's Second Motion To Enforce Stay, confirming that Fabulous.com has "pushed the domain names back to [the Receiver's] Fabulous account." (Dkt. # 789.) The Court's order as to ICANN is therefore moot in all events, as there is no further action that ICANN can undertake to effectuate the relief requested, even assuming ICANN has the ability and authority to transfer domain names (which, as explained in ICANN's opposition to the Receiver's second motion to enforce the stay, it does not).

### **III. CONCLUSION**

For the reasons discussed herein, ICANN respectfully requests that the Court clarify and revise its order granting the Receiver's second motion to enforce the stay in this case to reflect the fact that the Receiver has withdrawn any request for relief as to ICANN and the fact the Receiver has informed the Court that Fabulous.com has effectuated the relief sought by the Receiver.

Dated: January 17, 2012

Respectfully submitted,

**JONES DAY**

/s/ Jason Cross

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*ATTORNEYS FOR NON-PARTY  
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ASSIGNED NAMES AND NUMBERS*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 17, 2012, I electronically filed the foregoing Non-Party ICANN's Motion for Clarification of the Court's Order Granting the Receiver's Second Motion to Enforce Stay with the Clerk of the Court for the U.S. District Court, Northern District of Texas, using the electronic case files system of the court. The electronic case files system sent a "Notice of Electronic Filing" to the individuals who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Jason Cross