

1 **NEWMAN & NEWMAN, ATTORNEYS AT LAW, LLP**

2 Derek A. Newman (190467)  
3 S. Christopher Winter (190474)  
4 Venkat Balasubramani (189192)  
5 Roger M. Townsend (*pro hac vice* pending)  
6 505 Fifth Avenue South, Suite 610  
7 Seattle, WA 98104  
8 Telephone: (206) 274-2800  
9 Facsimile: (206) 274-2801

6 Attorneys for Plaintiffs

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8  
9 **UNITED STATES DISTRICT COURT**  
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

11 REGISTERSITE.COM, an Assumed  
12 Name of ABR PRODUCTS INC., a New  
13 York Corporation; NAME.COM, LLC, a  
14 Wyoming Limited Liability Company; R.  
15 LEE CHAMBERS COMPANY LLC, a  
16 Tennessee Limited Liability Company  
17 *d/b/a* DOMAINSTOBESEEN.COM;  
18 FIDUCIA LLC, a Nevada Limited  
19 Liability Company; SPOT DOMAIN,  
20 LLC, a Wyoming Limited Liability  
21 Company; ! \$ 6.25 DOMAINS!  
22 NETWORK, INC., a Delaware  
23 Corporation *d/b/a* ESITE  
24 CORPORATION; AUSREGISTRY  
25 GROUP PTY LTD., an Australian  
26 Proprietary Limited Company; ! \$ ! BID  
27 IT WIN IT, INC., a Minnesota  
28 Corporation,

Plaintiffs,

v.

INTERNET CORPORATION FOR  
ASSIGNED NAMES AND NUMBERS,  
a California corporation; VERISIGN,  
INC., a Delaware Corporation; and  
DOES 1-150, inclusive;

Defendants.

Case No.

**COMPLAINT FOR:**

- (1) Unfair Trade Practices Act Violation;
- (2) Violations of California Business & Professions Code §§ 17200, *et seq.*
- (3) Sherman Act, § 1, Unlawful Tying Arrangement
- (4) Sherman Act § 2, Attempted Monopolization
- (5) Violation of Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1964, Predicated on Violation of 18 U.S.C. § 1951
- (6) Intentional Interference with Prospective Economic Advantage
- (7) Breach of Contract; and
- (8) Declaratory Relief, 28 U.S.C. § 201

1 Plaintiffs REGISTERSITE.COM, an Assumed Name of ABR PRODUCTS  
2 INC., NAME.COM, LLC, R. LEE CHAMBERS COMPANY LLC which does  
3 business as DOMAINSTOBESEEN.COM, FIDUCIA LLC, SPOT DOMAIN,  
4 LLC, !\$6.25 DOMAINS! NETWORK, INC., which does business as ESITE  
5 CORPORATION, AUSREGISTRY GROUP PTY LTD., and ! \$ ! BID IT WIN IT,  
6 INC. (collectively “Plaintiffs”) file this Complaint against Defendants Internet  
7 Corporation for Assigned Names and Numbers, Verisign, Inc. and Does 1-150,  
8 inclusive (collectively “Defendants”), and allege as follows:  
9

## 10 I. NATURE OF THE CASE

11 1.1. The plaintiffs are domain name registrars accredited by defendant  
12 Internet Corporation for Assigned Names and Numbers (“ICANN”). Plaintiffs  
13 each offer a service to assist consumers in registering expired domain names.  
14 None of the plaintiffs charges a fee for its service unless and until it actually  
15 registers a domain name on behalf of its customer. The plaintiffs do not make any  
16 spurious “guarantees” about their services in marketing materials or elsewhere.

17 1.2. Defendant ICANN has, or has threatened to, enable Defendant  
18 Verisign to implement what they call the *Wait Listing Service* (the “WLS”).  
19 Defendants purport to offer consumers a “guaranteed” right to register an already  
20 registered domain name if the current registrant lets it expire. However, under  
21 most circumstances the guarantee is meaningless because the desirable domain  
22 names will never become available. Defendants have withheld any information  
23 about the likelihood (or lack thereof) that the WLS will provide any value to  
24 consumers. Such information, if provided, would reveal that most consumers  
25 purchasing WLS subscriptions would have a negligible chance of ever registering  
26 the domain names that they expect will become available.

27 1.3. Moreover, Defendant ICANN has, or has threatened to, enable  
28 Defendant Verisign and third party domain name registrars to intimidate current

1 registrants into buying unnecessary “insurance” to “protect” their domain names.  
2 Current registrants, who are dependent on defendants to preserve their rights and  
3 investments in their domain names, will have little choice but to purchase such  
4 insurance.

5 1.4. For example, if the WLS were implemented, Verisign could sell  
6 consumers the "right" to be first in line to register <microsoft.com> knowing that  
7 the Microsoft Corporation will not permit their rights to the domain name to  
8 become available. Verisign can then sell the Microsoft Corporation insurance to  
9 protect its valuable domain name from ever becoming available to the WLS  
10 consumer. The WLS thereby allows Verisign and ICANN to generate fees by  
11 playing their unknowing customers against each other for merely maintaining the  
12 status quo.

13 1.5. Simply put, the defendants are planning to implement (i) a scheme to  
14 dupe consumers into buying domain names the consumers will never be able to  
15 register, and (ii) an unlawful and fraudulent protection racket, all in violation of  
16 state and federal consumer protection, unfair competition, and racketeering laws.  
17 Several of the plaintiffs base their entire businesses on registering expired domain  
18 names. Consequently, those plaintiffs will literally go out of business if the  
19 defendants implement the WLS.

20 1.6. This lawsuit seeks to enjoin the defendants’ proposed unfair and  
21 unlawful WLS activities, and in the event the defendants launch the WLS, the  
22 plaintiffs seek to recover the damages they will suffer as a result thereof.  
23

## 24 **II. THE PARTIES**

25 2.1. Plaintiff ABR PRODUCTS INC. (“ABR Products”) is a New York  
26 corporation doing business as REGISTERSITE.COM, with its principal place of  
27 business at 2 Tamarck Circle, Fishkill, New York 12524.

28 2.2. Plaintiff NAME.COM, LLC (“Name.com”) is a Wyoming limited

1 liability company with its principal place of business at 360 Franklin St., Denver,  
2 CO 80218.

3 2.3. Plaintiff R. LEE CHAMBERS COMPANY LLC  
4 (“domainstobeseen.com”) is a Tennessee Limited Liability Company doing  
5 business as “domainstobeseen.com” with its principal place of business at 6441  
6 Bonny Oaks Drive, Suite “C”, Chattanooga, TN 37416-3537.

7 2.4. Plaintiff FIDUCIA LLC, (“Fiducia”) is a Nevada limited liability  
8 company with its principal place of business at 12-14 Vilandes St., Riga, LV-1010,  
9 Latvia.

10 2.5. Plaintiff SPOT DOMAIN, LLC (“Spot Domain”) is a Wyoming  
11 limited liability company with its principal place of business at 1539 Platte St.,  
12 Denver, CO 80202.

13 2.6. Plaintiff !\$6.25 DOMAINS! NETWORK, INC. (“Esite”) is a  
14 Delaware corporation doing business as Esite, with its principal place of business  
15 at 7711 O'Connor Blvd, Suite 416, Round Rock, TX 78681.

16 2.7. Plaintiff AUSREGISTRY GROUP PTY LTD. (“AusRegistry Group”)  
17 is an Australian Proprietary Limited Company with its principal place of business  
18 located at Level 6, 10 Queens Rd., Melbourne, Victoria, Australia.

19 2.8. Plaintiff ! \$ ! BID IT WIN IT, INC. (“BidItWinIt”) is a Minnesota  
20 corporation with its principal place of business at 5400 Vernon Ave. S, Suite 218,  
21 Minneapolis, MN 55436.

22 2.9. Defendant INTERNET CORPORATION FOR ASSIGNED NAMES  
23 AND NUMBERS (“ICANN”) is a California corporation with its principal place  
24 of business at 4676 Admiralty Way, Suite 330, Marina Del Rey, California 90292-  
25 6601.

26 2.10. Defendant VERISIGN, INC. (“Verisign”) is a Delaware corporation  
27 with its principal place of business located in California at 487 East Middlefield  
28 Road, Mountain View, California 94043.



1 the defendants has systematic and continuous contacts with the state of California.

2 3.4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and (c)  
3 because Defendant ICANN is a corporation organized under the laws of the state  
4 of California and Defendant Verisign is a corporation doing business in California.  
5 Additionally, the contract between Plaintiffs and defendant ICANN that forms the  
6 basis of Plaintiffs' breach of contract claim states that venue for any litigation  
7 concerning the contract will be a court located in Los Angeles, California, USA.  
8 This action also arises out of wrongful acts committed by Defendants in this  
9 judicial district and which subject Defendants to personal jurisdiction here.  
10 Because a substantial part of the events giving rise to these claims occurred in this  
11 judicial district, venue is also proper under 28 U.S.C. §1391(b)(2).

## 12 13 **IV. FACTS**

### 14 **A. THE DOMAIN NAME SYSTEM**

15 4.1. The Internet is an interconnected network of computer networks.

16 4.2. Each computer connected to the Internet has a unique 32 bit number  
17 assigned to it called an Internet protocol address (an "IP address"). The IP address  
18 is represented by four decimal numbers (octets) separated by periods. For example,  
19 the IP address identifying the computer which hosts the web site for defendant  
20 ICANN is 192.0.34.163.

21 4.3. The IP address system is an integral part of a communications  
22 protocol known as TCP/IP (*i.e.*, Transmission Control Protocol (TCP) and Internet  
23 Protocol (IP)) which was developed in part in the 1970s and integrated and  
24 completed in or around 1982. Communications over the Internet are made possible  
25 in large part because of the development of the TCP/IP communication protocol.

26 4.4. In or around November 1983, the "domain name system" (or "DNS")  
27 was developed. The domain name system allows the use of user-friendly  
28 alphanumeric domain names, such as <example.com>, to identify computers on the

1 Internet instead of harder-to-remember IP addresses. The domain name system  
2 operates through a series of databases that “resolve” or link domain names with the  
3 IP addresses with which they are associated.

4 **B. THE DOMAIN NAME HIERARCHY**

5 4.5. The DNS defines a hierarchical name space divided into zones, each  
6 of which has authority over the zones below it. The top zone is divided into top-  
7 level domains, or “TLDs”. Each TLD is divided into second-level domains.  
8 Second-level domains can be further divided into third-level domains, and so on.

9 4.6. In the domain <www.example.com>, <.com> is the top-level domain,  
10 <example.com> is the second level domain, and <www.example.com> is the third  
11 level domain, also referred to as the “hostname.” Each element of the domain is  
12 unique in its level in its zone. Thus, there can be any number of hosts named  
13 “www”, but there can only be one host named “www” in <example.com> (or any  
14 particular second-level domain). Similarly, although there can only be one second-  
15 level domain <example.com>, there can be as many second-level domains  
16 beginning with “example” as there are TLDs (e.g., <example.info>,  
17 <example.us>, etc.).

18 4.7. A set of “root servers” provides a list of the registries responsible for  
19 maintaining each top-level domain. Each registry’s name server provides  
20 references to the name servers associated with each domain name within that TLD,  
21 which in turn provide the IP address associated with the domain name.

22 4.8. The top-level domain name space of the DNS includes fourteen  
23 “generic” top-level domains, two hundred forty-three (243) two-letter country code  
24 domains, and one top level domain (*i.e.*, <.arpa>) reserved for Internet  
25 infrastructure purposes. Seven of the generic top domains, or “gTLDs” <.com>,  
26 <.net>, <.org>, <.edu>, <.gov>, <.mil>, <.int> (the “Original gTLDs”) were  
27 established in the 1980s. The remainder, <.biz>, <.info>, <.museum>, <.coop>,  
28 <.name>, <.pro> and <.aero> (the “New gTLDs,”), were authorized by defendant

1 ICANN in 2000 and activated between 2001 and 2002.

2 4.9. At the time the Original gTLDs were established, it was contemplated  
3 that <.com> would be used by commercial entities, <.net> by entities involved  
4 with the Internet networking infrastructure, <.org> by nonprofit organizations,  
5 <.edu> by educational institutions, <.gov> by the United States government,  
6 <.mil> by the United States Military, and <.int> by international organizations. No  
7 restrictions on registration were ever enforced in <.com> and <.net>, however, and  
8 individuals, businesses, network organizations, and non-profit organizations alike  
9 are permitted to register second-level domain names in those gTLDs.

10 4.10. Of the New gTLDs, four (<.biz>, <.info>, <.name>, and <.pro>) are  
11 unsponsored, while three (<.aero>, <.coop>, and <.museum>) are sponsored.  
12 Generally speaking, an unsponsored TLD operates under policies established by  
13 ICANN, while a sponsored TLD operates under policies established by the  
14 sponsoring organization.

### 15 **C. REGISTRANTS, REGISTRIES, AND REGISTRARS**

16 4.11. A “registrant” is a person who registers a domain name. A registrant  
17 has the exclusive right to use the domain names they register during the  
18 registration period. A registrant is a consumer.

19 4.12. As used herein, a “registry” is an organization responsible for  
20 maintaining the authoritative database of domain name/nameserver information for  
21 a top-level domain space. This database is known as the “zone file”. Often times,  
22 the registry is referred to as a “registry operator” and the zone file is referred to as  
23 the “registry”.

24 4.13. Internet users typically interact with the DNS through their Internet  
25 Service Providers. Specifically, when a user requests a Web site associated with a  
26 domain name, the user's computer looks in its local cache for the IP address  
27 associated with that domain name. If the IP address is not found locally, the  
28 computer will query the ISP's name server. If the ISP's name server does not have



1 the IP address for the domain name requested, it will query the appropriate  
2 registry's name server (*i.e.* its zone file), from which it will obtain the name and IP  
3 address of the name server associated with the domain name requested. It will then  
4 query the name server associated with the domain name, and pass the IP address  
5 back to the user's computer.

6 4.14. If more than one zone file existed for a top-level domain, Internet  
7 traffic would be unpredictable because two users might be routed to different  
8 destinations depending on which zone file their computer queried. Consequently,  
9 there can only be one authoritative registry for each top-level domain. As the  
10 operator of the sole authoritative registry for a top-level domain, a registry operator  
11 holds a monopoly with respect to registry services for that domain, and exercises  
12 market power with respect to that domain.<sup>1</sup>

13 4.15. A "registrar" acts as an interface between registrants and the registry  
14 operator, providing domain name registration and other related services to  
15 consumers.

16 4.16. In a typical transaction, a consumer visits a registrar's Web site and  
17 enters a second-level domain name such consumer is interested in registering in a  
18 search box provided for that purpose, and indicates the TLDs in which he is  
19 interested in registering that domain. The registrar then queries the appropriate  
20 registries and informs the customer whether, and in what TLDs, the desired domain  
21 name is available.

22 4.17. Thus, a customer who searches for the second-level domain  
23 "example" might find that "example.com" is already registered, but that  
24 "example.info" is available. The registrar may also suggest alternative domain  
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26 <sup>1</sup> See, e.g., letter from Andrew J. Pincus, Department of Commerce, to Hon. Tom Bliley,  
27 Chairman, House Committee on Commerce, 7/8/1999 ("With respect to NSI's provision of registry  
28 services - as to which an unsupervised NSI would be able to exercise market power today and for the  
foreseeable future - we believe the NSI-ICANN agreement must assure reasonable supervision to  
prevent the exercise of that market power in a way that injures consumers.")

1 names that are available for registration. If the customer decides to register a  
2 domain name, the registrar collects the customer's contact and payment  
3 information, processes the payment, and adds the domain name and its associated  
4 name server information to the appropriate registry.

5 4.18. Registrants register and administer domain names through registrars,  
6 and do not interact directly with the registry in connection with domain name  
7 registrations.

8 4.19. There can (but need not) be multiple registrars for each top-level  
9 domain, all of which interface with the registry.

10 4.20. From a domain name sales standpoint, a registry sells domain names  
11 in its name space to registrars on a wholesale basis. Registrars, in turn, sell those  
12 domain names to registrants on a retail basis. Registrars bill and collect fees from  
13 registrants for domain names. Registries almost always charge per-domain fees to  
14 registrars.

#### 15 **D. HISTORY OF GTLD DOMAIN NAME ADMINISTRATION**

16 4.21. Today's Internet has its origins in a network called the ARPANET,  
17 which was launched by the Department of Defense (DOD) in 1969. ARPANET  
18 was superceded by NSFNET, a network developed by the National Science  
19 Foundation (the "NSF") in 1990.

20 4.22. In 1992, Congress passed the Scientific and Advanced-Technology  
21 Act of 1992, 42 U.S.C. § 1862(g), which allowed commercial activity on NSFNET  
22 and permitted NSFNET to interconnect with commercial networks.

23 4.23. In 1993, NSF signed a cooperative agreement with Network  
24 Solutions, Inc. ("NSI") under which NSI became the exclusive registrar for  
25 second-level domains in <.com>, <.net>, <.org>, and <.edu> , as well as the  
26 exclusive registry operator for each of those top-level domains. The NSF initially  
27 underwrote NSI's domain registration services, thereby allowing Internet users to  
28 register domain names free of charge. However, on September 13, 1995, NSF and

1 Network Solutions entered into Amendment 4 of the cooperative agreement, which  
2 permitted Network Solutions to charge Internet users \$100 for a two-year  
3 registration of a second-level domain in the<.com>, <.net>, and <.org> domains.  
4 Thirty percent (30%) of the registration fees were to be paid into an NSF  
5 Infrastructure fund. In April 1998, the portion of the fee allocated to the  
6 Infrastructure fund was held to constitute an unconstitutional tax, and the effective  
7 rate for domain registrations dropped to \$35/year.

8 4.24. Beginning with the development of the domain name system in the  
9 mid 1980s and continuing through the present, domain names in <.com> and  
10 <.net> (among other TLDs) have been registered on a first-come, first-serve basis.

11 4.25. On July 1, 1997, the Clinton administration issued a report on  
12 electronic commerce, “*A Framework for Global Electronic Commerce.*” Among  
13 other things, the report supported private efforts to address Internet governance and  
14 made the Department of Commerce the lead agency on this initiative.  
15 Accompanying the report was a presidential directive that called on the Department  
16 to “support efforts to make the governance of the domain name system private and  
17 competitive and to create a contractually based self-regulatory regime that deals  
18 with potential conflicts between domain name usage and trademark laws on a  
19 global basis.” To carry out this mission, the Department first issued a Request for  
20 Comment on domain names system administration, and then on February 20, 1998,  
21 it published *Proposal to Improve Technical Management of Internet Names and*  
22 *Addresses*<sup>2</sup> (commonly referred to as the “Green Paper”). After receiving more  
23 than 650 comments, the Department ended the proposed rulemaking and instead  
24 published on June 10, 1998, a policy statement, also known as the “White Paper”.  
25 The White Paper, reflecting the views of the overwhelming majority of comments,  
26 called upon the private sector to create a new, not-for-profit corporation to assume

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27  
28 <sup>2</sup> 63 Fed. Reg. 8825 (1998)

1 responsibility, over time, for the management of certain aspects of the DNS. The  
2 White Paper identified four specific functions to be performed by this new  
3 corporation: (i) To set policy for and direct the allocation of Internet protocol (IP)  
4 number blocks; (ii) To develop overall policy guidance and control of top level  
5 domains (TLDs) and the Internet root server system; (iii) To develop policies for  
6 the addition, allocation, and management of gTLDs, and the establishment of  
7 domain name registries and domain name registrars and the terms, including  
8 licensing terms, applicable to new and existing gTLDs and registries under which  
9 registries, registrars, and gTLDs are permitted to operate; and (v) To coordinate  
10 maintenance and dissemination of the protocol parameters for Internet addressing.  
11 The White Paper also articulated the fundamental policies that would guide United  
12 States participation in the transfer of DNS management responsibility to the private  
13 sector: stability; competition; private, bottom-up coordination; and representation.

14 4.26. The White Paper listed a number of tasks to be undertaken on a  
15 priority basis, including in particular the creation and organization of a new, not-  
16 for-profit corporation (“NewCo”) to manage the DNS and the rapid introduction of  
17 competition in the provision of domain name registration services. The Department  
18 of Commerce committed to enter into an agreement with NSI by which NSI would  
19 agree to take specific actions, including commitments as to pricing and equal  
20 access, designed to permit the development of competition in domain name  
21 registration.

22 4.27. In fulfillment of the commitment expressed in the White Paper, on  
23 October 7, 1998, the Department of Commerce and NSI entered Amendment 11 to  
24 the Cooperative Agreement. In Amendment 11, NSI agreed to recognize NewCo  
25 "when recognized by the USG in accordance with the provisions of the Statement  
26 of Policy." NSI further committed to enter into a contract with NewCo, and  
27 acknowledged "that NewCo will have the authority, consistent with the provisions  
28 of the Statement of Policy and the agreement between the USG and NewCo, to

1 carry out NewCo's Responsibilities." Under Amendment 11, NewCo's  
2 Responsibilities specifically include the establishment and implementation of DNS  
3 policy and the terms, including licensing terms, applicable to new and existing  
4 gTLDs and registries under which registries, registrars and gTLDs are permitted to  
5 operate." Amendment 11 also provided for the development, deployment, and  
6 licensing by NSI (under a license agreement to be approved by the Department of  
7 Commerce) of a mechanism to allow multiple registrars to submit registrations for  
8 the gTLDs for which NSI acted as the registry (the "Shared Registration System,"  
9 or "SRS").

#### 10 **E. THE FORMATION OF DEFENDANT ICANN**

11 4.28. In September 1998, Defendant Internet Corporation for Assigned  
12 Names and Numbers was formed. ICANN is a not for profit California corporation  
13 organized without members. According to its bylaws, the board of directors of  
14 ICANN controls it.

15 4.29. In October, 1998, ICANN transmitted to the United States Department  
16 of Commerce a copy of Defendant ICANN's articles of incorporation, and  
17 proposed bylaws. In November 1998, the Department of Commerce entered into a  
18 Memorandum of Understanding with ICANN that recognized ICANN as the new,  
19 not-for-profit corporation for DNS management and specifically contemplated  
20 ultimate transition of management responsibility to ICANN. In the Memorandum  
21 of Understanding, ICANN expressly agreed to abide by principles of stability,  
22 competition, private, bottom-up coordination, and representation:

#### 23 C. The Principles:

24 The parties will abide by the following principles:

#### 25 1. Stability

26 This Agreement promotes the stability of the Internet and allows the  
27 Parties to plan for a deliberate move from the existing structure to a  
28 private-sector structure without disruption to the functioning of the DNS.  
The Agreement calls for the design, development, and testing of a new  
management system that will not harm current functional operations.

1           2. Competition

2           This Agreement promotes the management of the DNS in a manner that  
3           will permit market mechanisms to support competition and consumer  
4           choice in the technical management of the DNS. This competition will  
5           lower costs, promote innovation, and enhance user choice and  
6           satisfaction.

7           3. Private, Bottom-Up Coordination

8           This Agreement is intended to result in the design, development, and  
9           testing of a private coordinating process that is flexible and able to move  
10          rapidly enough to meet the changing needs of the Internet and of Internet  
11          users. This Agreement is intended to foster the development of a private  
12          sector management system that, as far as possible, reflects a system of  
13          bottom-up management.

14          4. Representation.

15          This Agreement promotes the technical management of the DNS in a  
16          manner that reflects the global and functional diversity of Internet users  
17          and their needs. This Agreement is intended to promote the design,  
18          development, and testing of mechanisms to solicit public input, both  
19          domestic and international, into a private-sector decision making  
20          process. These mechanisms will promote the flexibility needed to adapt  
21          to changes in the composition of the Internet user community and their  
22          needs.

23                 4.30. The Memorandum of Understanding also obligated ICANN to “act in  
24                 a non-arbitrary and reasonable manner with respect to design, development, and  
25                 testing of the DNS Project and any other activity related to the DNS Project,” and  
26                 to refrain from acting “unjustifiably or arbitrarily to injure particular persons or  
27                 entities or particular categories of persons or entities.”

28                 **F.     THE SHARED REGISTRATION SYSTEM**

                  4.31. On February 8, 1999, ICANN issued proposed guidelines for the  
                  selection and accreditation of registrars in the <.com>, <.net>, and <.org>domains.  
                  On March 4, 1999, after discussion of the guidelines within the Internet  
                  community, ICANN's Board of Directors adopted a Statement of Registrar  
                  Accreditation Policy.

                  4.32. On April 21, 1999 ICANN selected America Online, CORE (Internet  
                  Council of Registrars), France Telecom/Oléane, Melbourne IT and register.com as

1 the five registrars that would compete with NSI in the “testbed” phase of the SRS.  
2 On April 27, 1999 Register.com signed the original Registrar Accreditation  
3 Agreement, and on June 2, 1999 Register.com, the first competitive registrar,  
4 began registrations in <.com>, <.net>, and <.org> top-level domains. On  
5 September 28, 1999 the U.S. Department of Commerce, NSI, and ICANN  
6 announced tentative agreement on a series of agreements among them (including a  
7 revised Registrar Accreditation Agreement and a Registry-Registrar Agreement)  
8 concerning the post-testbed operation of the <.com>, <.net>, and <.org> top-level  
9 domains in a competitive environment. Those agreements were approved by  
10 ICANN’s Board of Directors on November 4, 1999 and signed by ICANN, the  
11 Department of Commerce, and NSI on November 10, 1999.

## 12 **G. DOMAIN NAME EXPIRATION AND DELETION**

13 4.33. As the total number of domain names registered in <.com> and <.net>  
14 has grown past thirty million, the pool of unregistered names<sup>3</sup> has been reduced  
15 accordingly. As early as 1999, news media were reporting a “shortage” of domain  
16 names in <.com>.

17 4.34. In April 1999, for example, in an article entitled “Domain Name List  
18 is Dwindling,” *Wired News* reported:

19 Wouldn't it be great to own a domain name that's also a popular word?  
20 Your site could be an instant classic like amazon.com or broadcast.com.  
Or sex.com or news.com.

21 Well, forget it. You don't stand a chance. Start-ups, squatters, and  
22 speculators already have bought up all the Internet's prime real estate. A  
23 *Wired News* investigation found that the .com versions of nearly all  
24 popular words have been taken. Of 25,500 standard dictionary words we  
25 checked, only 1,760 were free. And those were hardly winners. Who  
really wants to pay good money for maggoty.com or gluttonous.com? No  
smart entrepreneur has yet decided to lug around encumbrance.com or  
puzzle out what should go up at eigenfunction.com.

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26 <sup>3</sup>The pool of unregistered domain names is equal to all possible second-level domain names  
27 minus the sum of i) registered domain names and ii) domain names the registration of which is  
28 prohibited by law or policy (such as <example.com>, which is reserved for demonstration pursuant to  
RFC 2606).

1 The result: The once-fierce pace of domain name registration is slowing.  
2 In the last month, only about 100 new dictionary-word .com domains  
3 have been snatched up.<sup>4</sup>

4 4.35. As the number of registered domain names increases, not only the  
5 quantity but the quality of available unregistered names decreases.

6 4.36. The shortage of desirable domain names in <.com> and <.net> is  
7 ameliorated to some degree by the number of registered domain names that expire  
8 because they are not renewed by their current registrants.

9 4.37. Expired domain names are a critical resource for registrars and  
10 consumers. Approximately 800,000 domain names expire each month and are  
11 returned, at least momentarily, to the pool of unregistered domains available for  
12 registration. In light of the shortage of desirable domain names, competition for  
13 expired domain names can be fierce.

#### 14 **H. THE DOMAIN NAME DELETION PROCESS**

15 4.38. Domain names are registered for fixed periods from a minimum of  
16 one year to a maximum of ten years, in one year increments.

17 4.39. As the end of the registration period (the “expiry date”) approaches,  
18 the registrar associated with the domain name (the “sponsoring registrar”) typically  
19 sends the registrant one or more reminders that they must pay the domain name  
20 renewal fee or the domain name will expire.

21 4.40. If the registrant renews the domain name, the registrar sends a  
22 command to the registry to extend the expiry date by the number of years for  
23 which the registrant has renewed. The domain name remains in active status until  
24 the next expiry date.

25 4.41. If the customer has not renewed the domain name by the expiry date,  
26 the registry automatically adds one year to the expiry date and debits the  
27 sponsoring registrar’s account \$6.00 for the one-year renewal.

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28 <sup>4</sup>McCulloch, Declan, *Domain Name List is Dwindling*, Wired News, April 14, 1999  
<http://www.wired.com/news/technology/0,1282,19117,00.html> (last accessed February 21, 2004).



1           4.42. Although different registrars have different policies regarding  
2 expiration, most provide a "grace period" after the expiry date during which a  
3 domain name can be renewed and reactivated, albeit often at a higher fee. If the  
4 registrant renews the domain name during the grace period, the domain name  
5 returns to active status until the next expiry date.

6           4.43. If the registrant does not renew the domain within whatever grace  
7 period the sponsoring registrar may provide (if any), the sponsoring registrar sends  
8 a "delete" command to the registry within forty-five (45) days following the expiry  
9 date (the "Auto-Renew Grace Period" or "ARGP"), and the registry credits the  
10 \$6.00 renewal fee back to the sponsoring registrar's account.

11           4.44. Upon receipt of a "delete" command, the registry places the domain  
12 name on Redemption Period (RP) status for thirty (30) days, during which it can be  
13 recovered by the registrant (the "Redemption Grace Period" or "RGP") upon  
14 payment of a recovery fee determined by the sponsoring registrar (typically over  
15 \$100). Domain names in RP status do not appear in the zone file (and thus cannot  
16 be accessed via the Internet). The RGP was implemented in January 2003 to  
17 prevent domain names from being lost as a result of unintentional non-renewal.

18           4.45. If the registrant does not redeem the domain name within the RGP, the  
19 registry changes the domain name to "Pending Delete" status, where it remains for  
20 five (5) days. When in Pending Delete status, the domain name's status cannot be  
21 changed by either a registrar or the registry, and the domain name will be deleted.  
22 On the sixth day after being placed on Pending Delete status, the domain name is  
23 deleted from the registry.

24           4.46. Domain names are deleted from the registry in a batch process that  
25 takes place once a day (the "Batch Delete"). Approximately 20,000 domain names  
26 are deleted each day in the Batch Delete. All registrars have equal access to  
27 deleted (*i.e.*, expired) domain names.

28           4.47. During a Batch Delete, many registrars compete to register expired

1 domain names on behalf of their customers. Each competing registrar sends a  
2 series of “add” commands to the registry for each of the domains in the Batch Pool  
3 that it is attempting to register. The first competing registrar to have its command  
4 accepted for a given domain name registers that domain name. A desirable domain  
5 name that is deleted during a Batch Delete will often be re-registered within a few  
6 milliseconds of being deleted by the registry.

7 4.48. Verisign has set up specialized equipment to accommodate the high  
8 volume of “add” commands received from registrars competing to register domains  
9 deleted in the Batch Delete. Such equipment is generally referred to as the “Batch  
10 Pool.” The Batch Pool helps insure that all registrars attempting to register the  
11 domain names in the Batch Delete have equivalent access.

## 12 **I. COMPETITION FOR EXPIRED DOMAIN NAMES**

13 4.49. Consumers who wish to obtain a domain name that is currently  
14 registered can choose from many different companies that will assist them in doing  
15 so, through various business models including fixed price, first-come-first-serve,  
16 auction, and brokering.

17 4.50. Currently, each registrar that attempts to register domain names  
18 deleted in the Batch Delete offers its customers whatever services it thinks best, at  
19 whatever prices it chooses to set. Prices for domain names registered after being  
20 deleted in the Batch Delete can range from less than ten dollars to tens of  
21 thousands of dollars.

22 4.51. Many (if not most) ICANN-accredited domain name registrars offer  
23 backorder services in some form. There are typically at least 100 registrars  
24 competing to be the first to register desirable domain names as they are deleted  
25 from the registry.

26 4.52. Those registrars that do not offer backorder services are in no way  
27 precluded from registering expired domain names, as all registrars have equal  
28 access to the entire pool of unregistered domain names.

1 **J. PLAINTIFFS' SERVICES**

2 4.53. Plaintiffs each offer a service to assist consumers in registering  
3 domain names immediately upon expiration. More than ninety percent (90%) of  
4 the domain name orders Plaintiffs receive from consumers relate to domain names  
5 that are scheduled to be deleted, rather than to active, currently-registered domain  
6 names.

7 4.54. Plaintiffs charge no annual or other fees for their services unless and  
8 until a domain name is registered on the customer's behalf, in which case the  
9 customer is charged a \$60 registration fee. If multiple orders have been placed for  
10 the same domain name, the domain name is sold at an auction in which only those  
11 who placed backorders are allowed to participate. Because plaintiffs do not charge  
12 their customers unless the customers obtain a domain, customers can (and do)  
13 place backorders on dozens if not hundreds of domain names, thereby greatly  
14 increasing the likelihood that they will obtain at least one of the domain names  
15 they order.

16 4.55. Plaintiffs make no guarantee that any backorder will be successful,  
17 and plaintiffs' customers understand that plaintiffs are competing with other  
18 registrars to be the first to register expired domain names. Plaintiffs' auction  
19 model insures that each domain name successfully registered will ultimately be  
20 registered to the person who places the highest value on it based on their own  
21 business needs.

22 4.56. Plaintiffs offer their customers, at no charge, various valuable services  
23 relating to expired domain names. Such services include, without limitation, daily  
24 e-mail notification of soon-to-be-available domain names and e-mail notification  
25 of soon-to-be-available domain names containing user specified keywords.

26 4.57. Some of plaintiffs' competitors, such as SnapNames, charge an annual  
27 subscription fee to backorder a domain name. SnapNames allows only one  
28 "backorder" per domain name and, for \$69/year, attempts to be the first to register

1 that domain name when (and if) it is deleted from the registry. SnapNames has a  
2 strategic partnership with defendant Verisign.

3 4.58. Other competitors offer backorder services at a lower annual fee, or  
4 for a one-time fee, or charge a higher recurring fee for monitoring a larger number  
5 of domain names. Currently, consumers have substantial choice in domain name  
6 backordering.

7 4.59. Although many who use backorder services are individuals and  
8 businesses who hope to obtain a domain name to use themselves, others are  
9 brokers and resellers who attempt to obtain domain names through the expired  
10 domain name services described above, and then resell them.

11 **K. DEFENDANT VERISIGN'S ATTEMPTS TO SEIZE EXPIRING DOMAIN NAMES**

12 4.60. Defendant Verisign operates the <.com> registry by virtue of having  
13 acquired NSI in March 2000. In October 2003, Verisign sold 85% of the NSI  
14 registrar to a private investment group, but retained the NSI registry (and 15% of  
15 the NSI registrar). Verisign, both as registry operator and through NSI, has a long  
16 history of attempting to seize (among other things) expiring and expired domain  
17 names for its own benefit.

18 4.61. In February 1999, for example, prior to the implementation of the  
19 SRS, Network Solutions announced that it would limit public access to the zone  
20 files. At the time, companies offering services related to soon-to-be-available  
21 domains used the zone files to determine which domains were due to expire.<sup>5</sup> NSI  
22 ultimately restored zone file access at the insistence of the Department of  
23 Commerce.

24 4.62. In March 1999, NSI blocked access to certain WHOIS information  
25 (*i.e.*, registrant contact information required by the government to be public), and  
26 asserted that it was the exclusive owner of the information in the WHOIS database

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27 <sup>5</sup>See Oakes, Chris, *Companies Decry NetSol Policy*, Wired News, February 19, 1999  
28 <http://www.wired.com/news/politics/0,1283,17973,00.html> (last accessed February 21, 2004).

1 and could not be required to share it. All data in the WHOIS database had been  
2 collected by NSI under the authority of the Department of Commerce.<sup>6</sup> NSI  
3 ultimately restored WHOIS access at the insistence of the Department of  
4 Commerce.

5 4.63. Also in March 1999, NSI redirected traffic to the InterNic web site,  
6 which it operated on behalf of the U.S. government, to its own NSI registrar site.  
7 NSI ultimately removed the redirect at the insistence of the Department of  
8 Commerce.

9 4.64. In May 2000, NSI stopped deleting expired names and accumulated  
10 an inventory estimated at more than one million expired domain names.

11 4.65. In June 2000, NSI announced that it would no longer delete expiring  
12 domain names, and instead would auction them off.<sup>7</sup> NSI ultimately dropped the  
13 plan at ICANN's insistence.

14 4.66. In September 2003, without warning or discussion, Verisign added a  
15 "wildcard" to the DNS root for <.com> and <.net>, as a result of which *all*  
16 *unregistered domains* resolved to Verisign's own advertising-supported search site  
17 rather than to the standard "The Page Cannot be Displayed" DNS error page  
18 (which is generated locally on the user's computer).<sup>8</sup> Many software applications  
19 that relied on being able to distinguish between "good" and "bad" domain names  
20 (especially spam-prevention software) failed as a result of the configuration  
21 change. In response to public outrage and at ICANN's insistence, Verisign  
22 disabled the "service," but states that it plans to reactivate it in the future.<sup>9</sup>

## 23 **L. THE PROPOSED VERISIGN WAIT LISTING SERVICE**

24  
25 <sup>6</sup>See *Commerce to NSI: Give it Up*, Wired News, July 26, 1999  
<http://www.wired.com/news/print/0,1294,20950,00.html> (last accessed February 21, 2004).

26 <sup>7</sup>See Oakes, Chris, *NSI Commandeers Deadbeat Domains*, Wired News, June 26, 2000.

27 <sup>8</sup>See *VeriSign Sued Over Search Service*, Wired News, September 19, 2003  
<http://www.wired.com/news/business/0,1367,60518,00.html> (last accessed February 21, 2004).

28 <sup>9</sup>See *Internet Users Give Thumbs-Up to Site Finder Service*,  
[http://www.verisign.com/corporate/news/2003/pr\\_20031007b.html](http://www.verisign.com/corporate/news/2003/pr_20031007b.html) (last accessed February 21, 2004).

1           4.67. In March 2002, Verisign requested that Appendix G to the .com and  
2 .net Registry Agreements between Verisign and ICANN be amended. That  
3 appendix specifies the maximum price that Verisign may charge for "Registry  
4 Services." Registry Services are defined as those that are "provided as an integral  
5 part of the operation of the Registry TLD". In essence, "Registry Services" are  
6 those that a registry operator is enabled to provide on a sole-source basis by virtue  
7 of its appointment as such by ICANN, rather than services that are provided on a  
8 freely competitive basis.

9           4.68. The proposed WLS is a registry service because, unlike the expired  
10 domain name services currently provided competitively by registrars, it is  
11 implemented bypassing the normal return of deleted names to the available pool.  
12 Instead, the WLS automatically causes an expired domain name to be assigned to  
13 the registrar who sold the WLS subscription, and ultimately to its customer who  
14 purchased the WLS subscription on that domain name.

15           4.69. As proposed by Verisign, the WLS would operate as follows: Acting  
16 on behalf of customers, accredited registrars could place reservations for currently  
17 registered domain names in the .com and .net top-level domains. Only one  
18 reservation would be accepted for each registered domain name, and each  
19 reservation would be for a one-year period. Registrations for names would be  
20 accepted on a first-come/first-served basis, with the opportunity for renewal.

21           4.70. Verisign would charge the registrar a \$24.00 fee for each WLS  
22 subscription placed. The registrar's fee to its customer would be established by the  
23 registrar.

24           4.71. Before deleting registered domain names from the registry, Verisign  
25 would first check to determine whether a reservation has been placed for the name.  
26 If there is a reservation, Verisign would not delete the name, but instead would  
27 assign the name to the registrar who placed the reservation, charging the \$6.00  
28 annual registration fee to the registrar. The registrar would then register the name

1 to its customer, charging a fee determined by agreement of the registrar and  
2 customer.

3 4.72. If there is no reservation, Verisign would delete the name from the  
4 registry, so that the name is returned to the pool of names available for re-  
5 registration through all registrars on a first-come/first-served basis.

6 4.73. Verisign proposed to implement the WLS for a one-year trial. At the  
7 end of the year, ICANN and Verisign would evaluate whether the service should  
8 be continued. In the event the WLS is not continued, reservations extending  
9 beyond the trial would be honored. Although Verisign proposes to allow only (1)  
10 subscription pending at a time during the trial period, it has indicated its desire to  
11 offer a “deeper subscription queue” in the future (*e.g.*, “second in line”, “third in  
12 line”, etc.).

13 4.74. The VeriSign Registry Registrar Protocol (RRP) would not be used in  
14 the implementation of WLS. Rather, Registrars would perform all subscription  
15 transactions with Verisign using Verisign’s “Name Store” interface, separate from  
16 the Shared Registration System (SRS). Registrars cannot offer WLS subscriptions  
17 unless they use the “Name Store” interface. Installation of the Name Store  
18 interface requires potentially hundreds of hours of programming, at a cost of tens  
19 of thousands of dollars.

20 4.75. If the WLS is implemented, Verisign will become the sole source  
21 provider from which consumers could secure an expiring domain name. Although  
22 WLS subscriptions would be sold by registrars, rather than by Verisign itself,  
23 Verisign’s control of the registry precludes any possibility of competition. Thus,  
24 no registrar will be able to offer a service that charges a fee only if it succeeds in  
25 registering a domain name on the customer’s behalf, or that charges a one-time fee  
26 rather than an annual fee; nor will registrars be allowed to auction expired domain  
27 names in a fair and equitable manner. Verisign’s \$24 per year fee for WLS  
28 subscriptions precludes those business models.

1 4.76. If the WLS is implemented, Plaintiffs will be unable to offer the  
2 services they currently provide. Several of the Plaintiffs derive their entire revenue  
3 from services relating to expired domain names, and will be put out of business if  
4 the WLS is implemented. Others, if not put out of business, will lose their primary  
5 source of revenue and the entire goodwill associated with their businesses and  
6 business models.

7 4.77. For consumers, the replacement of a “pay if successful” model with  
8 an annual subscription model is a significant loss. The “pay if successful” model is  
9 the market’s successful attempt at accommodating the fact that most currently  
10 registered domains will be renewed, and that back orders on currently-registered  
11 names are therefore of inherently uncertain value (and of no value at all with  
12 respect to certain domain names).

13 4.78. As of October 2003, the latest month for which figures are available,  
14 there were 26,226,110 registered domain names in <.com> and 4,387,134  
15 registered domain names in <.net>, for a total of 30,618,929 registered domain  
16 names in those TLDs.

17 4.79. In October 2003, 462,247 domain names were deleted from the  
18 <.com> registry, and 83,367 domain names were deleted from the <.net> registry,  
19 for a total of 545,614 domain names deleted altogether. Assuming that October  
20 2003 was typical, approximately 23% of domain names in <.com> and <.net> are  
21 deleted each year.

22 4.80. If WLS subscriptions are distributed randomly among all domain  
23 names, only about 23% will result in the consumer obtaining the domain name to  
24 which such consumer subscribes.

25 4.81. WLS subscriptions are unlikely to be distributed randomly among all  
26 domain names. Rather, WLS subscriptions are likely to be purchased on the most  
27 desirable domain names, and are unlikely to be purchased on the least desirable  
28 domain names. Shorter domain names are commonly considered more desirable



1 than longer domain names, and domain names that are words in the English  
2 language are commonly considered more desirable than domain names that are not  
3 words in the English language.

4 4.82. The likelihood that a domain name will be allowed to expire and will  
5 be deleted from the registry varies according to (among other things) the number of  
6 years that it has already been registered, the number of characters it contains, and  
7 whether or not it is a word in the English language. In general, the longer a  
8 domain name has already been registered, and the shorter it is, the less likely it is to  
9 be allowed to expire. Domain names that are words in the English language are  
10 less likely to be allowed to expire than domain names that are not.

11 4.83. Less than five percent (5%) of domain names that have been  
12 registered for three years or more that are less than five characters (not including  
13 the TLD), or that are words in the English language, are allowed to expire.  
14 Consequently, of WLS subscriptions on the most desirable domain names, ninety  
15 five percent (95%) of consumers will never obtain the domain names to which they  
16 subscribe.

17 4.84. Consumers have a significant information disadvantage relative to  
18 Verisign in connection with WLS subscriptions. With a sufficiently large data set,  
19 it is likely possible to predict with some accuracy which desirable domain names  
20 will be allowed to expire and which will not. A robust model would likely analyze  
21 not only the domain name's desirability and stability, as described above, but also  
22 such matters as whether the domain name resolves to a Web site, how frequently  
23 that Web site (if existent) is unavailable, whether the registrant has allowed other  
24 domain names to expire, the timing of any previous renewals of the domain name  
25 relative to the expiry date, etc.

26 4.85. As the former sole owner of NSI registrar, and the current operator of  
27 the <.com> and <.net> registries, Verisign has exclusive access to a vast amount of  
28 data that would be relevant in building a model to predict which domain names are

1 likely to be allowed to expire. Indeed, it is likely that Verisign will be the only  
2 party in the world capable of building such a data set.

3 4.86. The only limitation on Verisign's ability to purchase WLS  
4 subscriptions on its own behalf is that it must do so through an accredited registrar.  
5 If Verisign purchases WLS subscriptions through NSI, at the current NSI price of  
6 \$35 per year (including registration fee), Verisign's effective price for a WLS  
7 subscription will be \$4.25 (before volume discounts). For each \$35 that Verisign  
8 pays to NSI, NSI will pay Verisign \$24 for the WLS subscription, \$6 for the  
9 domain registration, and 15% of the balance (corresponding to Verisign's equity  
10 interest in NSI).

11 4.87. There will not be any equivalent of the WHOIS database for WLS  
12 subscriptions. Only those registrars who offer WLS will be able to determine  
13 whether a particular domain name has a WLS subscription on it, and then only by  
14 querying one domain at a time through the Name Store interface.

#### 15 **M. ICANN'S CONSIDERATION OF THE WLS PROPOSAL**

16 4.88. Verisign first made its WLS proposal in December, 2001 by sending it  
17 to the ICANN Registrar Constituency, which represents the stakeholders who  
18 would be most directly impacted by the WLS proposal. The reaction from the  
19 members of the Registrar Constituency was overwhelmingly negative. On 10  
20 March 2002, the Registrars Constituency adopted a resolution opposing  
21 implementation of the WLS and urging ICANN to withhold permission for its  
22 implementation.

23 4.89. Verisign then submitted the WLS proposal to the ICANN board, in  
24 the form of a request to amend Appendix G of the <.com> and <.net> registry  
25 agreements to allow it to offer the service. On April 17 2002, ICANN general  
26 counsel Louis Touton, in an analysis of the WLS for the Board of Directors, noted  
27 that "ICANN has not yet developed a well-defined procedure for considering  
28 requests by registry operators to amend Appendix G to allow charging for an

1 additional registry service.” Recognizing that “action on VGRS's proposal may  
2 serve as a model for future actions,” Mr. Touton cautioned the Board that “it is  
3 important to carefully consider the process that should be followed.”

4 4.90. After noting that the registry operator is in a sole-source position in  
5 providing registry services and that its position as such “carries with it the potential  
6 for various types of harm to the legitimate interests of others,” Mr. Touton  
7 concluded that “[u]nder [the] circumstances, and given the existing conceptual  
8 approach of ICANN to seek consensus where possible, it is my judgment that *the*  
9 *Board should not seek to decide how to deal with this request without invoking the*  
10 *formal consensus development processes* currently established within ICANN”  
11 (emphasis added).

12 4.91. On April 22, 2002, the Board considered Mr. Touton’s analysis, and  
13 resolved to solicit community comment on Verisign’s request. The Board also  
14 requested the Names Council to coordinate within the Domain Name Supporting  
15 Organization (“DNSO”), an ICANN constituency concerned with DNS issues, a  
16 task force (the “Task Force”) to prepare and submit its recommendations regarding  
17 the WLS.

18 4.92. The Task Force consulted the various constituents whose interests  
19 would be impacted by the WLS and determined that the *consensus was*  
20 *overwhelmingly opposed* to implementing the WLS. On July 12, 2002, the Task  
21 Force recommended that the Board “*reject* Verisign’s request to amend its  
22 agreement to enable it to introduce its proposed WLS,” and “*reject* Verisign’s  
23 request to trial the WLS for 12 months.” (emphasis added).

24 4.93. On August 23, 2002, notwithstanding the opposition of the Registrar  
25 Constituency, the Task Force, and the vast majority of constituents who expressed  
26 their opinions on the ICANN web site, the ICANN Board adopted a resolution  
27 authorizing ICANN’s President and General Counsel to negotiate with VeriSign  
28 for the establishment of WLS.

1           4.94. On September 9, 2002, ICANN-accredited registrar Dotster invoked  
2 Section 4.3.2 of the 2001 Registrar Accreditation Agreement (the “RAA”) and  
3 requested an independent review of the Board’s actions and disputing the presence  
4 of a consensus. ICANN had not then, and on information and belief has not now,  
5 established any Independent Review Panel. On September 12, 2002, Dotster  
6 submitted a reconsideration request and formal request for review under ICANN’s  
7 Reconsideration Request Policy, asking ICANN to reconsider its August 23  
8 decision.

9           4.95. ICANN took no action on Dotster’s request until May 20, 2003, when  
10 it issued a recommendation that the Board take no action on Dotster’s  
11 reconsideration request. ICANN also indicated that it was not obligated to institute  
12 an independent review of its actions, as requested by Dotster.

13           4.96. On June 2, 2003, the ICANN Board adopted the recommendation  
14 issued on May 20, and again authorized negotiations between itself and VeriSign  
15 toward the establishment of WLS. Those negotiations recently concluded.

16           4.97. Some Registrars are currently promoting the WLS and are accepting  
17 “pre-orders” for WLS subscriptions on their Web sites.

18           4.98. Plaintiffs are informed and believe, and on that basis allege, that  
19 Verisign plans to launch the WLS no more than thirty (30) days after the  
20 Department of Commerce and the ICANN Board give final approval of the  
21 amendments to Appendix G to the registry agreements.

22           4.99. Plaintiffs are informed and believe that the ICANN Board plans to  
23 approve said amendments on March 6, 2004. Plaintiffs are further informed and  
24 believe that the Department of Commerce intends to “rubber stamp” the WLS  
25 proposal without giving it meaningful substantive consideration, and that Verisign  
26 will not be materially delayed in implementing the WLS as a result of the  
27 requirement that it secured Department of Commerce approval.

1  
2 **V. FIRST CAUSE OF ACTION**  
3 **UNFAIR TRADE PRACTICES ACT**  
4 **BUSINESS & PROFESSIONS CODE § § 17200 ET SEQ.**  
5 **(Against Verisign and Does 1-50)**

6 5.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1  
7 through 4.99 above as though fully set forth herein.

8 5.2. Plaintiffs assert this cause of action on their own behalf and on behalf  
9 of the general public, acting as a private attorney general under California's Unfair  
10 Trade Practices Act, California Business & Professions Code § § 17200 *et seq.*

11 5.3. California Business & Professions Code § 17200, *et seq.* declares  
12 unfair competition unlawful and defines unfair competition as, *inter alia*, "any  
13 unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue  
14 or misleading advertising . . ."

15 5.4. Business & Professions Code § 17200 imposes a duty to avoid  
16 making false or misleading statements of fact to the public when marketing,  
17 soliciting, advertising, or otherwise inducing the public to enter into any  
18 obligation.

19 5.5. False and misleading statements of fact include omissions of material  
20 fact which, by the exercise of reasonable care, should be known to affect the  
21 average consumer's decision as to whether to enter into such obligation.

22 5.6. Defendant Verisign is currently soliciting ICANN-accredited  
23 registrars to enroll in its "Name Store" program in order to be able to offer their  
24 customers WLS subscriptions when the WLS is implemented. As Verisign's  
25 customers, registrars are "consumers" for the purposes of § 17200.

26 5.7. On its Web site, Verisign publishes promotional materials intended to  
27 induce registrars to offer the WLS service to their customers. Verisign also  
28 provides sample sales and marketing materials for participating registrars to use on  
their own Web sites, in order to solicit consumers to purchase WLS subscriptions.

5.8. The WLS is a business act by Verisign, and promoting the WLS to

1 registrars is a business practice. Providing marketing materials for registrars to use  
2 to solicit consumers to purchase WLS subscriptions is also a business act.

3 5.9. The quality of the WLS is material to registrars' decisions about  
4 whether to offer the WLS to their customers.

5 5.10. Nowhere in the promotional materials directed at registrars is there  
6 any disclosure of the likelihood that a WLS subscription will result in a domain  
7 name registration. Registrars who have inquired about the likelihood that a WLS  
8 subscription will result in a domain name registration have been told that the  
9 likelihood is 100%, if the domain name is not renewed during the subscription  
10 period – that is, Verisign has refused to provide information regarding the success  
11 rate of WLS subscriptions even when directly asked.

12 5.11. Verisign's failure to disclose the likelihood that a WLS subscription  
13 will result in a domain name registration renders its sales and promotional  
14 materials inherently deceptive and misleading. Moreover, to the extent that  
15 registrars are misled into offering the WLS, Verisign's sample sales and marketing  
16 materials are intended to cause such registrars to deceive consumers into  
17 purchasing WLS subscriptions.

18 5.12. Verisign's publication "Value of the Wait Listing Service (WLS)<sup>10</sup>"  
19 for example, states:

20 **Leveling the Playing Field for Expiring Names**

21 Until now registrars wishing to participate in the expiring domain name  
22 market have had one of two choices; either invest heavily in proprietary  
23 systems or partner with existing services provided by other registrars.  
24 Both options come at significant cost with no guaranteed results for their  
25 customers. By providing standard results to all customers, WLS levels  
26 the playing field for all registrars wishing to participate in the expiring  
27 names market.

28 5.13. Verisign thus implies that the WLS provides "guaranteed" results, and  
expressly represents that the WLS provides "standard results to all customers" and

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<sup>10</sup> [http://www.verisign.com/nds/naming/namestore/wls/wls\\_value\\_guide.pdf](http://www.verisign.com/nds/naming/namestore/wls/wls_value_guide.pdf) (last accessed  
February 25, 2004)

1 “levels the playing field for all registrars.” These statements, which are material to  
2 a registrar’s decision to offer the WLS to its customers, are deceptive and  
3 misleading.

4 5.14. The “guaranteed result” referred to is that *if* the domain name is  
5 deleted during the subscription period, it will be registered to the subscriber.<sup>11</sup> In  
6 truth, as described in paragraph 4.83 above, in most cases less than five (5%) of  
7 subscriptions will be successful.

8 5.15. Use of the word “guarantee” under these circumstances is inherently  
9 misleading, because the performance that the guarantee refers to will not occur in  
10 the majority of cases. That is, for most people, Verisign’s ability to successfully  
11 register an expiring domain will not be relevant, because the domains to which  
12 they subscribe will never expire.

13 5.16. The statement that the WLS provides “standard results” to all  
14 customers is similarly misleading. Customers who subscribe to the most desirable  
15 domain names will stand almost no chance of obtaining them. Customers who  
16 subscribe to the least desirable domain names, or domain names that are scheduled  
17 for deletion, will stand a far better chance of obtaining them (but still less than  
18 25%). These results are not “standard”.

19 5.17. The statement that the “WLS levels the playing field for all registrars  
20 wishing to participate in the expiring names market” is also misleading. To  
21 whatever extent it might be true with respect to “all registrars who choose to offer  
22 WLS subscriptions to their customers,” it is clearly false with respect to all  
23 registrars wishing to participate in the expiring names market,” many (if not most)  
24 of whom do not wish to offer WLS subscriptions, but who will have no playing  
25 field at all (much less a level one) unless they do. The considerable cost associated

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27 <sup>11</sup>Although ICANN refers to the WLS as a “guaranteed service,” Verisign itself is more  
28 circumspect, saying only that it “virtually ensures” that a domain name that expires will be registered to  
the WLS subscriber on the domain, if there is one (*see infra*).

1 with entering the playing field (in the form of programming fees, etc.) only  
2 accentuates this discrepancy.

3 5.18. "The Value of the Wait Listing Service" continues:

4 Improved Customer Experience

5 While it's frustrating to those desiring a registered domain name when  
6 the current registrations renews or transfers, it's understood to be par for  
7 the course in this business. What cannot be justified in the customer's  
8 mind is when the name is deleted and becomes available, they still miss  
9 out on the registration. Today, this can happen even after holding an  
10 expensive subscription for a long period of time.

11 WLS exponentially increases customer satisfaction by virtually ensuring  
12 delivery of a registration to the subscriber if and when the current  
13 registration is deleted. If a name is renewed, the subscriber can exchange  
14 the subscription to another domain up to 3 times within a subscription  
15 period of 12 months. If the subscriber has their heart set on a particular  
16 name they can exercise their option to have the subscription renewed  
17 automatically.

18 5.19. These statements would be misleading even if accompanied by  
19 appropriate disclosures: A WLS subscriber, of course, can similarly "hold an  
20 expensive subscription for a long period of time", and never obtain a domain name,  
21 just as happens today. In contrast to the current situation, however, if the WLS is  
22 implemented, consumers will have no other alternatives.

23 5.20. It is extremely unlikely that the WLS will "exponentially increase  
24 customer satisfaction," given that most consumers may receive nothing for their  
25 investment. Because Verisign not only fails to provide the data upon which one  
26 might base such a conclusion, but refuses to provide it, its claim regarding  
27 customer satisfaction is not only misleading but fraudulent.

28 5.21. The sample sales and marketing materials that Verisign provides for  
registrars to use in soliciting consumers to purchase WLS subscriptions are  
illustrative. Not only are there no disclosures regarding the likelihood that the  
WLS subscription will succeed, but WLS subscriptions are presented in such a way  
that they are virtually indistinguishable from actual domain registrations.

5.22. Unless enjoined by this Court, Verisign will accept WLS



1 subscriptions, without regard to whether the domain name to which the  
2 subscription is attached is due to expire during the subscription period. Verisign  
3 does not suggest that consumers be advised to check the expiration date of any  
4 domain for which they are purchasing a WLS subscription, nor does it disclose (or  
5 suggest that registrars disclose) that the WLS is being offered as a one-year trial  
6 period. Verisign's acceptance of WLS subscriptions that *cannot* result in a domain  
7 name (because the expiration date of the domain name falls later than the trial  
8 subscription period) is outright fraud.

9 5.23. By committing the acts as hereinabove alleged, Verisign is liable to  
10 Plaintiffs and members of the general public for violating Business & Professions  
11 Code § 17200, et seq.

12  
13 **VI. SECOND CAUSE OF ACTION**  
14 **UNFAIR TRADE PRACTICES ACT,**  
15 **BUSINESS & PROFESSIONS CODE § § 17200 ET SEQ.**  
16 **(Against ICANN and Does 51-99)**

17 6.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1  
18 through 5.23 above as though fully set forth herein.

19 6.2. Plaintiffs assert this cause of action on their own behalf and on behalf  
20 of the general public, acting as a private attorney general under California's Unfair  
21 Trade Practices Act, California Business & Professions Code § § 17200 *et seq.*

22 6.3. California Business & Professions Code § 17200, et seq. declares  
23 unfair competition unlawful and defines unfair competition as, *inter alia*, "any  
24 unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue  
25 or misleading advertising . . ."

26 6.4. ICANN's approval of the WLS, without which Verisign cannot offer  
27 the service, is an unfair and fraudulent business act. ICANN had a duty to impose  
28 appropriate limits on Verisign's ability to exploit its monopoly position to the  
detriment of consumers. ICANN entirely abdicated that responsibility, in violation  
of its own bylaws, its contractual agreements with the US Government, and its

1 agreements with Plaintiffs.

2 6.5. The Federal Trade Commission Act, 15 U.S.C. § § 41 et seq., declares  
3 unlawful “[u]nfair methods of competition in or affecting commerce, and unfair or  
4 deceptive acts or practices in or affecting commerce.” 15 U.S.C. § 45.

5 6.6. ICANN’s failure to impose any meaningful limits on Verisign’s  
6 ability to misappropriate community resources (including but not limited to domain  
7 names) for its own use and benefit, or to reap excessive fees for selling consumers  
8 worthless contingent future options on domain names that may never expire,  
9 constitutes an unfair practice affecting commerce. ICANN’s endorsement of the  
10 WLS as potentially beneficial to consumers similarly constitutes an unfair practice  
11 affecting commerce. ICANN’s approval of Verisign’s illegal tying agreement  
12 further constitutes an unfair practice affecting commerce.

13 6.7. By committing the acts as hereinabove alleged, ICANN is liable to  
14 Plaintiffs and members of the general public, for violating the FTC Act, 15 U.S.C.  
15 § 41 *et seq.*

16 6.8. By violating the FTC Act, ICANN is also in violation of Business &  
17 Professions Code § 17200, *et seq.*

18  
19 **VII. THIRD CAUSE OF ACTION**  
20 **SHERMAN ACT, § 1, UNLAWFUL TYING ARRANGEMENT**  
21 **(Against All Defendants)**

22 7.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1  
23 through 6.8 above as though fully set forth herein.

24 7.2. Every second-level domain name is unique within its TLD, and only  
25 certain currently-registered second-level domain names are considered valuable.  
26 The market for expired domain names, which focuses on identifying and obtaining  
27 valuable currently-registered domain names, is conceptually and practically  
28 distinct from the market for unregistered domain names. Among other things, the  
expired domain market has different business methods, different marketing  
strategies, uses different technologies (or uses the same technologies differently),

1 and meets different customer needs than the unregistered domain market.

2 7.3. VeriSign exercises market power with respect to registry services for  
3 the <.com> and <.net> TLDs. Verisign's operation of the registries for the <.com>  
4 and <.net> TLDs is separate and distinct from offering a "Wait Listing Service."

5 7.4. Consumers may register domain names at any ICANN accredited  
6 registrar, including plaintiffs. Consumers are free to transfer their registered  
7 domain names between registrars. Thus, consumers may register their domain  
8 names with one registrar, then transfer the domain names to another registrar to  
9 administer them.

10 7.5. WLS services are not transferable between registrars.

11 7.6. Each successful WLS subscription will result in a domain name  
12 registration. Domain registration fees are not included in the \$24 fee Verisign will  
13 charge to registrars for each WLS subscription sold.

14 7.7. Different registrars are likely to charge different amounts for WLS  
15 subscriptions, just as different registrars currently charge different amounts for  
16 domain name registrations.

17 7.8. In the event that a subscribed domain name expires and is registered  
18 to the WLS subscriber, the registration will be accomplished through the same  
19 registrar from whom the consumer purchased the (non transferable) WLS  
20 subscription.

21 7.9. Each consumer who purchases a WLS subscription will be required  
22 to agree to purchase a domain name registration in the event the WLS subscription  
23 is successful.

24 7.10. Each consumer for whom a WLS subscription results in obtaining a  
25 domain name will be compelled to purchase that domain name registration from  
26 the same registrar from which he purchased the WLS subscription.

27 7.11. VeriSign's WLS will unreasonably restrain commerce in domain  
28 name registration services, and will substantially limit the free choice consumers

1 now have in such services. Among other things, registrars who do not offer WLS  
2 subscriptions will not be able to register for any consumer any domain name  
3 obtained via a WLS subscription.

4 7.12. In addition, the registrar who offers the lowest price for WLS  
5 subscriptions will not necessarily be the registrar who offers the lowest price on  
6 domain name registrations, but consumers will be compelled to purchase domain  
7 name registration from that registrar nonetheless.

8 7.13. ICANN and Verisign have conspired to restrain trade by agreeing that  
9 WLS subscriptions will not be transferable among registrars, and by further  
10 agreeing that consumers who purchased WLS subscriptions will be compelled to  
11 agree to purchase a domain name registration from the same registrar. Indeed,  
12 Verisign presents this anti-competitive conduct as a benefit of offering WLS:

13 Generate New Registrations

14 WLS can increase your new .com and .net registration and renewal  
15 business. Every time one of your customers' subscriptions is fulfilled,  
16 you become the registrar of record.<sup>12</sup>

17 7.14. ICANN and Verisign's conduct as alleged herein is prohibited by the  
18 antitrust laws. Plaintiffs have been, and continue to be, damaged as a proximate  
19 result of ICANN and Verisign's conspiracy to restrain trade.

20 **VIII. FOURTH CAUSE OF ACTION**  
21 **SHERMAN ACT § 2, ATTEMPTED MONOPOLIZATION**  
22 **(Against All Defendants)**

23 8.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1  
24 through 7.14 above as though fully set forth herein.

25 8.2. VeriSign is a natural monopolist that exercises market power with  
26 respect to registry services in the <.com> and <.net> TLDs.

27 8.3. With the WLS, Verisign is seeking to monopolize a separate,

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28 <sup>12</sup>[http://www.verisign.com/nds/naming/namestore/wls/wls\\_value\\_guide.pdf](http://www.verisign.com/nds/naming/namestore/wls/wls_value_guide.pdf) (last accessed  
February 25, 2004)

1 adjacent, currently competitive market for expiring domain names. ICANN and  
2 Verisign have conspired to eliminate competition in this market.

3 8.4. If the WLS is implemented, Plaintiffs will be precluded from  
4 competing for soon-to-be-available domain names except through competition for  
5 WLS subscriptions, for each of which they will be required to pay Verisign \$24 per  
6 year.

7 8.5. Verisign's monopoly control of the registry gives it an unfair  
8 advantage in seizing control over the adjacent market for expiring domain names,  
9 which Verisign has no right to divert from the regular deletion process.

10 8.6. The acts of VeriSign and ICANN in connection with the WLS were  
11 predatory and undertaken with the specific goal of exploiting Verisign's  
12 monopolistic position to obtain an unfair advantage over the current competitive  
13 market and to eliminate competition from that market.

14 8.7. By virtue of ICANN's participation in Verisign's predatory scheme,  
15 there is a dangerous probability that Verisign will succeed at obtaining monopoly  
16 control over the expiring domain name market.

17  
18  
19 **IX. FIFTH CAUSE OF ACTION**  
20 **RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS**  
21 **18 U.S.C. § 1964 PREDICATED ON VIOLATION OF 18. U.S.C. § 1951**  
22 **(Against All Defendants)**

23 9.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1  
24 through 8.7 above as though fully set forth herein.

25 9.2. Since the implementation of the Redemption Grace Period in <.com>  
26 and <.net> on January 25, 2003, registrants have at least a thirty (30) day period  
27 after the expiry date during which they can recover their domain names. During the  
28 Redemption Grace Period, neither the Web site nor any e-mail addresses associated  
with the domain name are operational, thus giving registrants clear notice that their  
domain name requires attention.

1           9.3. Domain names can only be deleted from the registry by the  
2 sponsoring registrar or, if all grace periods have elapsed, by the registry.

3           9.4. Registrars are currently accepting “pre-orders” for WLS subscriptions.  
4 Said subscriptions are being offered as, among other things, “protection” against  
5 inadvertent loss of domain names. ICANN-accredited Registrar eNom’s Web site,  
6 for example, advertises “First Dibs,” eNom’s implementation of the Verisign  
7 WLS, as follows:

8           With First Dibs™ You Can Protect Your Existing Domain Names

9           eNom's First Dibs service enables you to securely protect your valuable  
10 domain names.

11           A domain name is a unique and valuable asset: there is only one like it  
12 in the world. A domain name provides a gateway where people from all  
13 around the world can stay connected with you and your business. Now  
14 with First Dibs you can protect this valuable asset. First Dibs will  
15 provide protection in the event your domain name unintentionally  
16 expires, by putting you at the front of the line at the registry should it  
17 inadvertently become available.

18           9.5. NSI’s Web site <NextRegistrationRights.com> similarly advertises  
19 “Next Registration Rights,” NSI’s implementation of the Verisign WLS, as  
20 follows:

21           Next Registration Rights helps you:

22           Protect the domain names you have

23           Get a domain name you always wanted... but somebody else already has!

24           9.6. Plaintiffs are informed and believe, and on that basis allege, that  
25 Defendant Verisign provided, developed, approved, or was otherwise involved in  
26 creation of the materials cited herein.

27           9.7. Plaintiffs are informed and believe, and on that basis allege, that  
28 Defendant Verisign could decline to accept any WLS subscription placed by the  
current registrant of the domain name to which the subscription applies.

          9.8. Defendant ICANN approved the sale of WLS subscriptions to current  
registrants of the domain names to which the subscriptions apply.



1 “guaranteed” service, and has stated that Plaintiffs’ services are not guaranteed.  
2 Plaintiffs’ services are guaranteed, in a far more meaningful way than the WLS, in  
3 that Plaintiffs do not charge for their services unless they succeed in registering a  
4 domain name on the consumer’s behalf. Verisign’s “guarantee,” in contrast (which  
5 Verisign does not state in the form of a guarantee), is that IF the current registrant  
6 allows a domain name to expire, and does not redeem it, Verisign will register that  
7 domain name to the holder of a WLS subscription on that domain name, if any.  
8 Unlike Plaintiffs, Verisign does not guarantee that the consumer will receive  
9 anything of value for his money.

10 10.4. ICANN President and CEO Dr. Paul Twomey, in testifying to the  
11 Senate Committee on Commerce on July 31, 2003, stated that:

12 In the absence of a registry service such as that proposed by VeriSign,  
13 various ICANN registrars had created products that purported to take  
14 reservations for names that might be deleted in the future. Those  
15 registrars then regularly queried registries in an attempt to be the first to  
16 learn of a deletion, in which case they would then seek to register the  
17 name for their clients. Obviously, no registrar could guarantee that any  
18 particular registration would be successful, and since there were  
19 commonly a number of registrars seeking to register any given deleted  
20 name, most people who signed up for those services were destined to be  
21 disappointed.

22 The VeriSign proposal offered a significant improvement from a  
23 consumer perspective to the various services already offered by  
24 registrars. Because VeriSign operated two registries, it could guarantee  
25 that a reservation made in the WLS for names registered in those  
26 registries would always be successful IF the name was ever deleted.  
27 Obviously, such a guarantee can only be offered by the registry or its  
28 agent, since only the registry can guarantee such performance. This fact  
lead some registrars to conclude that the availability of the WLS (with  
its guarantee of performance) to consumers would reduce the demand for  
their services (which were not able to offer a comparable guarantee), and  
thus they strongly opposed approval of the WLS. While reaction from  
other parts of the ICANN community that did not have a direct  
competitive interest was more mixed, it would be fair to characterize the  
majority view as opposed to approval of the WLS proposal.

After considering the full range of views expressed, the ICANN Board  
concluded that ICANN should act whenever possible in a way that  
promotes consumer choice and innovative services, and that its general  
goal to seek to increase competition when possible did not require it to  
prevent consumers from having the option of purchasing services they  
may decide are beneficial. It would be anomalous to “protect”  
competition between providers of non-guaranteed products by



1 preventing the new competition of a guaranteed product that at least  
2 some consumers would likely prefer. Considering all these factors, the  
3 Board approved the WLS proposal with certain conditions that it felt  
4 appropriate under the circumstances to protect consumer interests.  
5 Among these were a limitation of the approval to a twelve month  
6 experimental period, after which time the Board would be required to  
7 review and make an independent decision on the continuation of the  
8 WLS. The Board authorized ICANN's CEO and its General Counsel to  
9 negotiate amendments to the registry agreements with VeriSign that were  
10 consistent with its approval.

11 10.5. Dr. Twomey's statements were transcribed and published.

12 10.6. The statement "various ICANN registrars had created products that  
13 purported to take reservations for names that might be deleted in the future" is  
14 false. Registrars did not purport to take "reservations" for names that might be  
15 deleted in the future, but rather took orders that they would attempt to fill if the  
16 domain name ordered became scheduled for deletion. ICANN's statement that  
17 Plaintiffs and other ICANN registrars defrauded consumers by offering services  
18 that they could not, in fact, provide, is defamatory.

19 10.7. The statement "[t]his fact lead [sic] some registrars to conclude that  
20 the availability of the WLS (with its guarantee of performance) to consumers  
21 would reduce the demand for their services (which were not able to offer a  
22 comparable guarantee), and thus they strongly opposed approval of the WLS" is  
23 false and defamatory.

24 10.8. Defendant Verisign has similarly stated that Plaintiffs' services do  
25 not offer consumers any guarantee, and has represented that the WLS does offer  
26 consumers such a guarantee. Verisign's statements in this regard are false and  
27 defamatory.

28 10.9. At the time Defendants made the false and defamatory statements  
referenced herein, they knew that Plaintiffs were seeking business from  
prospective customers. Defendants' conduct was designed to disrupt the economic  
relationships between plaintiffs and their prospective customers, and did in fact  
disrupt those economic relationships.

1 10.10. Defendants' conduct as alleged herein violated laws including the  
2 Sherman Act and the FTC Act.

3 10.11. As a proximate result of Defendants' wrongful conduct, prospective  
4 customers have been deterred from doing business with Plaintiffs, and Plaintiffs  
5 have suffered damages in an amount to be determined at trial.

6 10.12. Plaintiffs are informed and believe and on that basis allege that the  
7 conduct of the Defendants was willful, fraudulent, malicious and oppressive,  
8 thereby entitling plaintiffs to punitive damages in an amount to be established at  
9 trial.

10  
11 **XI. SEVENTH CAUSE OF ACTION**  
12 **DECLARATORY RELIEF, 28 U.S.C. § 201**  
13 **(Against Verisign)**

14 11.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1  
15 through 10.12 above as though fully set forth herein.

16 11.2. Plaintiffs have each entered an agreement with Verisign (the  
17 "Registry-Registrar Agreement") that governs Registrars' use of, and Verisign's  
18 provision of, the Shared Registration System. Each Plaintiff is a party to the  
19 Registry-Registrar Agreement with Verisign, which is attached hereto as Exhibit A  
20 and incorporated herein by this reference.

21 11.3. Section 2.1 of the Registry-Registrar Agreement provides:

22 2.1. System Operation and Access. Throughout the Term of this  
23 Agreement, NSI shall operate the System and provide Registrar with  
24 access to the System enabling Registrar to transmit domain name  
25 registration information for the .com, .org and .net TLDs to the System  
26 according to a protocol developed by NSI and known as the Registry  
27 Registrar Protocol ("RRP").

28 11.4. The process by which expiring domain names are deleted from the  
registry (and thereby made available for registration) is an element of the  
functional specification for the Shared Registration System (the "Specifications").  
The Specifications, which include the RRP, are set forth at Appendix "C" to the

1 ICANN-Verisign <.com> Registry Agreement (among other places) and are  
2 binding on all ICANN-accredited registrars as well as on defendant Verisign.<sup>13</sup>

3 11.5. According to the Specifications, only the sponsoring registrar may  
4 cause a domain name to be deleted from the registry.<sup>14</sup> Each domain name is added  
5 to the registry by its sponsoring registrar when originally registered, and remains in  
6 the registry until removed in response to a “delete” command sent by the  
7 sponsoring registrar.

8 11.6. The Specifications consist of, among other things, the Grace Period  
9 Policy. The Grace Period Policy provides in relevant part:

#### 10 2.3 Auto-Renew Grace Period

11 The Auto-Renew Grace Period is a specified number of calendar  
12 days following an auto-renewal. An auto-renewal occurs if a  
13 domain name registration is not renewed by the expiration date;  
14 in this circumstance the registration will be automatically renewed  
15 by the system the first day after the expiration date. The current  
16 value of the Auto-Renew Grace Period is 45 calendar days. If a  
17 Delete, Extend, or Transfer occurs within the Auto-Renew Grace  
18 Period, the following rules apply:

19 Delete. If a domain is deleted within the Auto-Renew Grace  
20 Period, the sponsoring Registrar at the time of the deletion  
21 receives a credit of the Auto-Renew fee. *The domain is deleted  
22 from the Registry database and is immediately available for*

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23 <sup>13</sup>See, e.g., Minutes of Special Meeting of Board of Directors, February 10, 2000 (“the  
24 registration of domain names containing trailing hyphens contravenes the specification for the Shared  
25 Registry System, *the elements of which are binding on NSI-Registry and the ICANN-accredited*  
26 *registrars*”) (emphasis added).

27 <sup>14</sup>Because of security and functional considerations (such as the RGP), registrar “delete”  
28 commands have never been directly executed on the registry database, and as such do not result in the  
immediate deletion of domain names. Rather, the “delete” command changes the status of the domain  
name for which it is sent, and that status change triggers other processes that ultimately result in the  
domain name being deleted from the database. Prior to October 31, 2003, registry operators lacked any  
primary authority to delete domain names from the registry, and could only delete a domain name in  
response to a “delete” instruction from the sponsoring registrar. On October 31, 2003 the Board adopted  
the recommendations of the GNSO Council Deletes Task Force Report, including allowing registry  
operators to delete domain names from the registry after the redemption grace period if an affirmative  
“renew” command is not received during the auto-renew grace period. This authority, however, is  
essentially a housekeeping function; the registry cannot delete the domain name until after all grace  
periods have passed. The new deletion policy, which was adopted as a Consensus policy, applies to all  
domains registered after October 31, 2003, and becomes effective retroactively to all domain names  
registered before that date on April 28, 2004.



1           12.2. As ICANN-Accredited Registrars, each Plaintiff has entered into an  
2 identical Accreditation Agreement with Defendant ICANN. The Accreditation  
3 Agreement grants Registrars the right to register domain names in accordance with  
4 procedures established by ICANN and Verisign in consultation with the  
5 Department of Commerce. All Registrars are required to sign the Accreditation  
6 Agreement, which was drafted by ICANN, without alteration or modification. Each  
7 Plaintiff is a party to the Accreditation Agreement with ICANN dated May 2001  
8 (the “2001 RAA”), which is attached hereto as Exhibit B and incorporated herein  
9 by this reference.

10           12.3. The Registrar Accreditation Agreement is one of several agreements  
11 among ICANN and other organizations involved in the Internet domain-name  
12 system. Those agreements are closely interrelated and operate cooperatively to  
13 implement those organizations' agreements to adhere to various policies developed  
14 through the private-sector, consensus-based process for management of the  
15 technical aspects of the Internet that has been established under the auspices of  
16 ICANN.<sup>15</sup>

17           12.4. The Registrar Accreditation Agreement includes language limiting the  
18 Registrars' obligation to implement ICANN-developed policies to those policies  
19 consistent with, and reasonably related to, the goals of ICANN as set forth in the  
20 White Paper.<sup>16</sup>

21           12.5. Consistent with that position, Section 2.3 of the 2001 RAA imposes  
22 broad obligations of “stability, competition, bottom-up coordination, and  
23 representation” on ICANN in *all matters that impact registrars*, not only under the  
24 RAA, but in general:

25           General Obligations of ICANN. With respect to all matters that impact  
26 \_\_\_\_\_

27           <sup>15</sup>Register.com, Inc. v. Verio, Inc., 00-Civ-5747 (BSJ) Submission of Amicus Curiae Internet  
28 Corporation for Assigned Names and Numbers.

<sup>16</sup>Minutes of Meeting of ICANN Board of Directors, July 16 1999.

1 the rights, obligations, or role of Registrar, ICANN shall during the Term  
2 of this Agreement:

3 2.3.1. exercise its responsibilities in an open and transparent manner;

4 2.3.2. not unreasonably restrain competition and, to the extent feasible,  
5 promote and encourage robust competition;

6 2.3.3. not apply standards, policies, procedures or practices arbitrarily,  
7 unjustifiably, or inequitably and not single out Registrar for disparate  
8 treatment unless justified by substantial and reasonable cause; and

9 2.3.4. ensure, through its reconsideration and independent review  
10 policies, adequate appeal procedures for Registrar, to the extent it is  
11 adversely affected by ICANN standards, policies, procedures or  
12 practices.

13 12.6. The 2001 RAA obligates Registrars to comply with ICANN policies  
14 only if they are adopted pursuant to ICANN consensus procedures and do not  
15 unreasonably restrain competition.

16 12.7. Section 2.3.3 of the 2001 RAA requires ICANN to treat all Registrars  
17 equally. The Memorandum of Understanding between ICANN and the  
18 Department of Commerce requires ICANN to require Verisign to do the same.

19 12.8. Registrars who do not offer the WLS, whether because of the expense  
20 associated with implementing it or concern for potential liability to consumers, do  
21 not have equivalent access to the registry as do Registrars who offer the WLS.

22 12.9. Nothing in the 2001 RAA or any agreement allows ICANN to make  
23 equal treatment conditional on a Registrar's offering additional services that they  
24 do not wish to offer, or on bearing the expense associated with offering such  
25 services.

26 12.10. With respect to expiring domain names, the 2001 RAA requires that  
27 expired domain names be deleted from the registry:

28 3.7.5 Registrar shall register Registered Names to Registered Name  
Holders only for fixed periods. At the conclusion of the registration  
period, failure by or on behalf of the Registered Name Holder to pay a  
renewal fee within the time specified in a second notice or reminder  
*shall*, in the absence of extenuating circumstances, result in cancellation  
of the registration. In the event that ICANN adopts a specification or  
policy concerning procedures for handling expiration of registrations,  
Registrar shall abide by that specification or policy. (emphasis added).

1           12.11. ICANN is required by its Bylaws, the 2001 RAA, and the  
2 Memorandum of Understanding to use its consensus policy process with respect to  
3 issues concerning domain name allocation.

4           12.12. If the WLS is implemented, no Registrar will be able to offer services  
5 based on competition for deleting domain names, and the current robust market for  
6 such services would be destroyed and replaced by Verisign's services. Many  
7 Registrars, including certain Plaintiffs, will be forced out of business.

8           12.14. If implemented, the WLS will unreasonably restrain competition, and  
9 ICANN's approval of the WLS constitutes a material breach of the Accreditation  
10 Agreements between ICANN and each of the Plaintiffs for which Plaintiffs have  
11 no immediate and adequate remedy at law.

12           12.15. The 2001 RAA obligates ICANN to use consensus procedures in  
13 connection with policies concerning allocation of domain names.

14           12.16. ICANN did not use consensus procedures in approving the WLS, and  
15 has denied that it was obligated to. ICANN's failure to use consensus procedures  
16 in approving the WLS constitutes a material breach of the Accreditation  
17 Agreements between ICANN and each of the Plaintiffs for which Plaintiffs have  
18 no immediate and adequate remedy at law.

19           12.18. Section 2.3.3 of the 2001 RAA obligates ICANN to "not apply  
20 standards, policies, procedures or practices arbitrarily, unjustifiably, or  
21 inequitably" with respect to all matters that "impact the rights, obligations, or role  
22 of Registrar."

23           12.19. ICANN has applied its procedures arbitrarily, unjustifiably and  
24 inequitably in approving the WLS, and ICANN's approval of the WLS constitutes  
25 a material breach of the Accreditation Agreements between ICANN and each of  
26 the Plaintiffs for which Plaintiffs have no immediate and adequate remedy at law.

27           12.20. Section 5.1 of the 2001 RAA provides, "[w]hile this Agreement is in  
28 effect, either party may seek specific performance of any provision of this

1 Agreement in the manner provided in Section 5.6 below, provided the party  
2 seeking such performance is not in material breach of its obligations.”

3 12.21. Each Plaintiff has performed, and continues to perform, all of its  
4 obligations under its respective Accreditation Agreement, and none is in material  
5 breach of its obligations under that Accreditation Agreement.

6 12.22. ICANN’s failure to perform its contractual obligations to Plaintiffs  
7 has caused, and continues to cause, significant damages to Plaintiffs, including  
8 without limitation loss of reputation and goodwill.

9 12.23. Each Plaintiff is entitled to a decree of specific performance  
10 compelling ICANN to fulfill its obligations under the 2001 RAA.

11 **XIII. NINTH CAUSE OF ACTION**  
12 **DECLARATORY JUDGMENT, 28 U.S.C. § 201**  
13 **(Against ICANN)**

14 13.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1  
15 through 12.23 above as though fully set forth herein.

16 13.2. The 2001 RAA obligates Registrars to comply with ICANN policies  
17 only if they are adopted pursuant to ICANN consensus procedures and do not  
18 unreasonably restrain competition.

19 13.3. Section 2.3.3 of the 2001 RAA requires ICANN to treat all Registrars  
20 equally. The Memorandum of Understanding between ICANN and the  
21 Department of Commerce requires ICANN to require Verisign to do the same.

22 13.4. Registrars who do not offer the WLS, whether because of the expense  
23 associated with implementing it or concern for potential liability to consumers, do  
24 not have equivalent access to the registry as do Registrars who offer the WLS.

25 13.5. Nothing in the 2001 RAA or any agreement allows ICANN to make  
26 equal treatment conditional on a Registrar’s offering additional services that they  
27 do not wish to offer, or on bearing the expense associated with offering such  
28 services.

13.6. The 2001 RAA requires that expired domain names be deleted from



1 the registry:

2 3.7.5 Registrar shall register Registered Names to Registered Name  
3 Holders only for fixed periods. At the conclusion of the registration  
4 period, failure by or on behalf of the Registered Name Holder to pay a  
5 renewal fee within the time specified in a second notice or reminder  
6 *shall*, in the absence of extenuating circumstances, result in cancellation  
7 of the registration. In the event that ICANN adopts a specification or  
8 policy concerning procedures for handling expiration of registrations,  
9 Registrar shall abide by that specification or policy. (emphasis added).

10 13.7. ICANN is required by its Bylaws, the 2001 RAA, and the  
11 Memorandum of Understanding to use its consensus policy process with respect to  
12 issues concerning domain name allocation.

13 13.8. If implemented, the WLS will unreasonably restrain competition in  
14 breach of ICANN's obligations under the Accreditation Agreements between  
15 ICANN and each of the Plaintiffs, for which Plaintiffs have no immediate and  
16 adequate remedy at law.

17 13.9. ICANN denies that the WLS restrains competition. Thus, an actual  
18 controversy exists between the parties concerning ICANN's obligation under the  
19 2001 RAA to avoid unreasonably restraining competition.

20 13.10. The 2001 RAA obligates ICANN to use consensus procedures in  
21 connection with policies concerning allocation of domain names.

22 13.11. ICANN did not use consensus procedures in approving the WLS, and  
23 has denied that it was obligated to, in breach of its obligation under the 2001 RAA  
24 and other agreements.

25 13.12. An actual dispute exists between the parties with respect to ICANN's  
26 obligation to follow consensus procedures before approving the WLS.

27 13.13. Section 2.3.3 of the 2001 RAA obligates ICANN to "not apply  
28 standards, policies, procedures or practices arbitrarily, unjustifiably, or  
inequitably" with respect to all matters that "impact the rights, obligations, or role  
of Registrar."

13.14. ICANN has applied its procedures arbitrarily, unjustifiably and

1 inequitably in approving the WLS.

2 13.15. ICANN denies that it applied its procedures inequitably in approving  
3 the WLS, and an actual dispute exists between the parties with respect to ICANN's  
4 obligations under the 2001 RAA.

5  
6 **XIV. TENTH CAUSE OF ACTION**  
7 **VIOLATIONS OF BUSINESS & PROFESSIONS CODE § 17200, et seq.**  
8 **(Against All Defendants)**

9 14.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1  
10 through 13.15 above as though fully set forth herein.

11 14.2. California Penal Code § 319 defines a lottery as follows:

12 "A lottery is any scheme for the disposal or distribution of property by  
13 chance, among persons who have paid or promised to pay any valuable  
14 consideration for the chance of obtaining such property or a portion of  
15 it, or for any share or any interest in such property, upon any agreement,  
16 understanding, or expectation that it is to be distributed or disposed of by  
17 lot or chance, whether called a lottery, raffle, or gift-enterprise, or by  
18 whatever name the same may be known."

19 14.3. California Penal Code § 320 provides that "Every person who  
20 contrives, prepares, sets up, proposes, or draws any lottery, is guilty of a [crime]."

21 14.4. California Penal Code § 321 criminalizes the act of selling or  
22 otherwise conveying the chance to win a prize in a lottery. Specifically, Penal  
23 Code § 321 provides:

24 "Every person who sells, gives, or in any manner whatever, furnishes or  
25 transfers to or for any other person any ticket, chance, share, or interest,  
26 or any paper, certificate, or instrument purporting or understood to be or  
27 to represent any ticket, chance, share, or interest in, or depending upon  
28 the event of any lottery, is guilty of a [crime]."

14.5. California Penal Code § 322 makes it a crime for any person to merely  
assist with a lottery. Specifically, Penal Code § 322 provides that:

"Every person who aids or assists, either by printing, writing,  
advertising, publishing, or otherwise in setting up, managing, or drawing  
any lottery, or in selling or disposing of any ticket, chance, or share  
therein, is guilty of a [crime]."

14.6. Lotteries are illegal in California and in every other state in this

1 country<sup>17</sup>.

2 14.7. Defendants are responsible for, engaging in, and perpetuating the  
3 Wait Listing System described above (the “Lottery Enterprise”).

4 14.8. The Wait Listing System constitutes a “lottery” pursuant to Penal  
5

6 <sup>17</sup> **Alabama:** Code of Ala. §§ 37A-37-20, -21, -22 (2000)(illegal lottery consists of (1) a prize, (2)  
7 awarded by chance, (3) for consideration); **Alaska:** Alaska Stat. §§37.66.200, -210, -220, -280(2),  
8 (37)(2000); *Morrow v. State*, 537 P.2d 377, 378 (Alas.1973)(private lottery consists of: consideration;  
9 chance, and prize); **Arizona:** Ariz. Rev. Stat §§37-3303, -3304 (2000); *Ex Parte Gray*, 204 P. 1029, 1031  
10 (Ariz. 1922)(lottery is species of illegal gaming consisting of consideration, chance, and prize); **Arkansas:**  
11 Ark. Stat. Ann.§5-66-373 (1999); *Burks v. Harris*, 370 S.W. 979, 980 (Ark. 1909); **California:** Cal. Pen.  
12 Code §319 (2000); *California Gasoline Retailers v. Regal Petroleum Corp.*, 330 P.2d 778, 783 (Cal. 1958);  
13 **Colorado:** Colo. Const. Art. XVIII, §2(1)-(3), (7)(1999); *Cross v. State*, 32 P. 821, 822 (Colo. 1893);  
14 **Connecticut:** Conn. Gen Stat. §§53-278a(3), -278b(b)(1999); **Delaware:** Del. Code, tit. 37, §3701 (1999);  
15 *Affiliated Enterprises Inc. v. Waller*, 5 A.2d 257, 259 (Del. 1939); **Florida:** Fla. Stat. §849.09 (1999);  
16 *Blackburn v. Ippolito*, 376 So.2d 550, 551 (Fla. App. 1963); **Georgia:** Ga. Code Ann. §§16-37-20, -22  
17 (1999); **Hawaii:** Haw. Rev. Stat. §§712-1220(6), -1221, -1222, -1223 (2000); **Idaho:** Idaho Code §18-4901,  
18 -4902 (1999); **Illinois:** 720 Ill. Comp. Stat. Ann. 5/28-1 (2000); *People v. Eagle Food Centers, Inc.*, 202  
19 N.E.2d 473, 476 (1964); **Indiana:** Ind. Code Ann. §§35-45-5-1, -3 (2000); **Iowa:** Iowa Code §725.12  
20 (1999); *State v. Hundling*, 264 N.W. 608 (Iowa 1935); **Kansas:** Kan. Stat. Ann. §§21-4302(b), -4303, -4304  
21 (1999); **Kentucky:** Ky. Rev. Stat. Ann. §§528.010(5)(a), -020, -030, -070 (1998); **Louisiana:** La. Rev. Stat.  
22 Ann. §§14:90(A)(1)(a), (b), 14:90.3 (2000); *State v. Boneil*, 8 So. 298 (La. 1890); **Maine:** Me. Stat. Rev.  
23 Ann. tit. 17-A, §952(6), 953, 954 (1999); **Maryland:** Md. Code Ann. §356 (1999); *Silbert v. State*, 12 Md.  
24 App. 516, 280 A.2d 55 (Md. Ct. Spec. App. 1971); **Massachusetts:** Mass. Ann. Laws ch. 271, §7 (2000);  
25 *Commonwealth v. Lake*, 317 Mass. 264, 57 N.E.2d 923 (Mass. 1944); **Michigan:** Mich. Stat. Ann.  
26 §28.604(1) (1999); *United-Detroit Theater Corp. v. Colonial Theatrical Enterprise*, 280 Mich. 425, 273  
27 N.W. 756 (Mich. 1937); **Minnesota:** Minn. Stat. §§609.75(a), .755 (1999); **Mississippi:** Miss. Code Ann.  
28 §97-33-31 (2000); **Missouri:** Mo. Const. art. II, §§39, 572.020 (2000); **Montana:** Mont. Code Ann. §§23-5-  
102, -112(23)(1999); **Nebraska:** Neb. Rev. Stat. §§28-1101(4), 28-1102 (1999); **Nevada:** Nev. Rev. Stat.  
§§462.105 (2000); **New Hampshire:** N.H. Rev. Stat. Ann. §647.2 (1999); *State v. Powell*, 567 A.2d 568  
(1989); **New Jersey:** N.J. Stat. Ann. §§2C:37-1(h), :37-2(a), (b)(2000); **New Mexico:** N.M. Stat. Ann. §30-  
19-1(E)(2000); **New York:** N.Y. Penal Law §225.00 (Consol. 1999); **North Carolina:** N.C. Gen. Stat. §14-  
290 (1999); *State v. Lipkin*, 169 N.C. 265, 84 S.E. 340 (N.C. 1915); **North Dakota:** N.D. Cent. Code  
§§12.1-28-01, -02 (2000); **Ohio:** Ohio Rev. Code §2915.02(2000); **Oklahoma:** Okla. Stat. tit. 21, §§1051-  
1053 (1999); **Oregon:** Or. Rev. Stat. §§167.117, .122, .127 (1997); **Pennsylvania:** 18 Pa. Cons. Stat.  
§5512(1999); **Rhode Island:** R.I. Gen. Laws. §11-19-1 (2000); **South Carolina:** S.C. Const. art. XVII, §7  
; S.C. Code Ann. §§16-19-10, -20, -30 (1999); *Darlington Theatres, Inc. v. Coker*, 190 S.C. 282, 2 S.E.2d  
782 (S.C. 1939); **South Dakota:** S.D. Const. art. III, §25; S.D. Codified Laws §§22-25-24, -26(1997);  
**Tennessee:** Tenn. Const. art. XI, §5; Tenn. Code Ann. §37-15-501(5), 39-17-506 (1999); **Texas:** Tex. Penal  
code §47.03 (2000); **Utah:** Utah Code Ann. §§76-10-1101, 1102, -1104 (2000); **Vermont:** 13 Vt. Stat. Ann.  
§§2101, 2102 (2000); Vt. A.G. Op. 83-9 (1982); **Virginia:** Va. Code Ann. §18.2-325 (2000); **Washington:**  
Wash. Rev. Code §9.46.0257 (2000); *State v. Langford*, 29 Wn. App. 455, 628 P.2d 829 (1980); **West  
Virginia:** W.Va. Code §§29-22A-1, 61-10-11 (2000); *State ex. Rel. Mountaineer Park, Inc. v. Polan*, 190  
W.Va. 276, 438 S.E.2d 308 (1993); **Wisconsin:** Wis. Stat. §§945.01(5)(a), (b), 945.02 (2000); **Wyoming:**  
Wyo. Stat. Ann §6-7-101(a)(iii) (1998); **District of Columbia:** D.C. Code §22-1501 (1999); *National  
Conference on Legalizing Lotteries, Inc. v. Farley*, 68 App. D.C. 319, 96 F.2d 861, 863 (D.C.Cir. 1938).

1 Code § 319 because Defendants are *distributing property (i.e., domain names)* by  
2 *chance (i.e. process beyond the control of the Defendants)*, among persons (*i.e.,*  
3 *WLS Subscribers*) who have paid valuable *consideration (i.e., the “application”*  
4 *fee)* for said chance.

5 14.9. Neither the Lottery Enterprise, nor any part of it, constitutes a  
6 charitable raffle.

7 14.10. The Defendants and each of them have contrived, prepared, set up,  
8 proposed, and/or drawn the lottery in the Lottery Enterprise. Accordingly, the  
9 Defendants and each of them are guilty of a crime pursuant to Penal Code § 320.

10 14.11. The Defendants and each of them have sold or transferred to would-  
11 be Registrants the chance to register a currently-registered domain name, and  
12 understood or represented the same to be such a chance, depending upon the event  
13 of the current registrant to renew the domain name, which Defendants do not  
14 control. Consequently, the Defendants, and each of them, are guilty of a crime  
15 pursuant to Penal Code § 321.

16 14.12. The Defendants’ enterprise is worse than a traditional lottery because  
17 in most cases there will be no winner. Accordingly, Defendants’ unfair and  
18 unlawful conduct stems beyond just a basic illegal lottery.

19 14.13. The Defendants and each of them have aided or assisted in setting up,  
20 managing, or drawing the lottery in the Lottery Enterprise. Thus, the Defendants,  
21 and each of them, are guilty of a crime pursuant to Penal Code § 322.

22 14.14. California Business & Professions Code § 17200, *et seq.* declares  
23 unfair competition unlawful and defines unfair competition as, *inter alia*, “any  
24 unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue  
25 or misleading advertising . . .”

26 14.15. The “unlawful business activity”, proscribed under Business &  
27 Professions Code, § 17200, includes anything that can properly be called a  
28 business practice and that at the same time is forbidden by law.

1 14.16. The Lottery Enterprise is a business practice.

2 14.17. As described above, the Lottery Enterprise is unlawful and unfair.

3 14.18. The Plaintiffs and each of them have suffered damages as a result of  
4 Defendants' unlawful and unfair business practices.

5 14.19. Further, Business & Professions Code § 17200 imposes a duty to  
6 avoid making false or misleading statements of fact to the public when marketing,  
7 soliciting, advertising, or otherwise inducing the public to enter into any  
8 obligation.

9 14.20. False and misleading statements of fact include omissions of material  
10 fact which, by the exercise of reasonable care, should be known to affect the  
11 average consumer's decision as to whether to enter into such obligation.

12 14.21. As businesses advertising, promoting, and soliciting the opportunity  
13 for potential Registrants to purchase from Defendants, Defendants have an  
14 obligation to fully disclose to the potential Registrants all material facts which  
15 would reasonably affect the potential Registrants' decision as to whether to  
16 purchase chances to register domain names from Defendants.

17 14.22. However, Defendants failed to disclose to the public the likelihood of  
18 winning the right to register the domain name(s) each (pre-order) WLS subscriber  
19 requested.

20 14.23. Said failure to disclose creates a false assumption in the mind of the  
21 public that the right to register currently-registered domain names may be easier  
22 than they believe.

23 14.24. Defendants knew, or should have known by the exercise of  
24 reasonable care, that such omission of facts creates a false assumption in the mind  
25 of the public that the right to register currently-registered domain names may be  
26 easier than they believe.

27 14.25. Thus, Defendants' failure to disclose such material facts in its  
28 advertisements, solicitations, promotions, and marketing for WLS subscriptions

1 constitutes false and misleading statements to the public.

2 14.26. By committing the acts as hereinabove alleged, the Defendants, and  
3 each of them, are liable to Plaintiffs and members of the general public, for  
4 violating Business & Professions Code § 17200, *et seq.*

#### 5 6 **XIV. PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs pray for the following relief against Defendants:

8 1. On Plaintiffs' First Cause of Action, unless the WLS is otherwise  
9 enjoined as prayed for herein, for preliminary and permanent injunctions:

10 a. Ordering Verisign and its agents, sales representatives, and  
11 affiliates to conspicuously disclose the average likelihood that a WLS  
12 subscription will result in the subscriber obtaining the domain name in all  
13 advertising, marketing, and promotional materials, and on all WLS order  
14 forms;

15 b. Ordering Verisign and its agents, sales representatives, and  
16 affiliates to conspicuously disclose the likelihood that the specific WLS  
17 subscription being ordered will result in the subscriber obtaining the domain  
18 name based on the number of characters it contains, the number of times it  
19 has previously been renewed, and any other information in Verisign's  
20 possession relevant to determination of the likelihood that a domain name  
21 will be renewed;

22 c. Prohibiting Verisign and its agents, sales representatives, and  
23 affiliates from accepting WLS subscriptions for domains that are not  
24 scheduled to expire within the WLS subscription period during the one-year  
25 trial of the WLS; and

26 d. Prohibiting Verisign and its agents, sales representatives, and  
27 affiliates from using the word "guarantee" in connection with the WLS.

28 2. On Plaintiffs' Second Cause of Action, unless the WLS is otherwise

1 enjoined as prayed for herein, for preliminary and permanent injunctions:

2 a. Ordering ICANN to withdraw its approval of the WLS, and  
3 refrain from approving any registry-level wait listing service in the future  
4 unless approved by relevant stakeholders using consensus procedures;

5 b. Unless the WLS is otherwise enjoined as prayed for herein,  
6 ordering ICANN to impose meaningful conditions on its approval of the  
7 WLS including without limitation restrictions on sales of WLS subscriptions  
8 on domain names not scheduled to expire during the subscription period, and  
9 on sales of WLS subscriptions to domain name holders;

10 3. On Plaintiffs' Third Cause of Action, unless the WLS is otherwise  
11 enjoined as prayed for herein:

12 a. For preliminary and permanent injunctions against Verisign  
13 pursuant to 15 U.S.C. § 26, prohibiting implementation of the WLS unless  
14 and until:

15 (i) Verisign enables transfer of subscriptions between  
16 registrars in a manner no more burdensome than transfer of domain  
17 names; and

18 (ii) Verisign enables customers to specify, at the time the  
19 WLS subscription is placed, the registrar to which the domain name  
20 should be registered if the domain name expires during the WLS  
21 subscription period;

22 b. For preliminary and permanent injunctions pursuant to 15  
23 U.S.C. § 26 Ordering ICANN to withdraw its approval of the WLS and to  
24 refrain from granting approval to the WLS or any similar service unless  
25 subscriptions are transferable between registrars and subscriptions and  
26 resulting domain name registrations may be purchased from different  
27 registrars; and

28 c. For treble damages and attorney's fees and costs as authorized

1 by 15 U.S.C. § 15;

2 4. On Plaintiffs' Fourth Cause of Action, unless the WLS is otherwise  
3 enjoined as prayed for herein:

4 a. For preliminary and permanent injunctions pursuant to 15  
5 U.S.C. § 26 ordering ICANN to withdraw its approval of the WLS, and  
6 refrain from approving any registry-level wait listing service in the future;

7 b. For preliminary and permanent injunctions pursuant to 15  
8 U.S.C. § 26 ordering Verisign to refrain from further violations of the  
9 antitrust laws; and

10 c. For treble damages and attorney's fees and costs as authorized  
11 by 15 U.S.C. § 15;

12 5. On Plaintiffs' Fifth Cause of Action, unless the WLS is otherwise  
13 enjoined as prayed for herein:

14 a. For preliminary and permanent injunctions ordering ICANN to  
15 withdraw its approval of the WLS, and refrain from approving any registry-  
16 level wait list service in the future that allows registrants to purchase wait  
17 list subscriptions on domain names of which they are the registrant;

18 b. For preliminary and permanent injunctions prohibiting Verisign  
19 and its agents from accepting WLS subscriptions from any registrant of the  
20 domain name to which the subscription applies;

21 c. For preliminary and permanent injunctions prohibiting Verisign  
22 and its agents, sales representatives, and affiliates from referring to WLS  
23 subscriptions as "protection", "insurance" or the equivalent in any sales,  
24 marketing, promotional or advertising materials; and

25 d. For treble damages and attorney's fees and costs as authorized  
26 by 18 U.S.C. § 1964;

27 6. On Plaintiffs' Sixth Cause of Action:

28 a. For damages according to proof at trial;



1           b.     For punitive damages according to proof at trial;

2           7.     On Plaintiffs' Seventh Cause of Action, for a declaratory judgment  
3 that Verisign will be in breach of the Registry-Registrar Agreements if it  
4 implements the WLS because Verisign is obligated by the Registry-Registrar  
5 Agreements to delete domain names from the registry at the direction of the  
6 sponsoring registrar;

7           8.     On Plaintiffs' Eighth Cause of Action, for a judicial decree of specific  
8 performance compelling ICANN to perform its obligations under each 2001  
9 Registrar Accreditation Agreement.

10          9.     On Plaintiffs' Ninth Cause of Action, for a declaratory judgment that:

11           a.     ICANN will be in breach of the Accreditation Agreements if it  
12 approves the WLS because implementation of the WLS will unreasonably  
13 restrain competition and ICANN's approval of the WLS fails to promote and  
14 encourage robust competition;

15           b.     ICANN will be in breach of the Accreditation Agreements if it  
16 approves the WLS because the WLS creates a two-tier system in which  
17 ICANN-accredited registrars do not have equal access to the registry; and

18           c.     ICANN is obligated to use consensus procedures in connection  
19 with policies relating to the allocation of domain names;

20          10.    On Plaintiffs' Tenth Cause of Action, for preliminary and permanent  
21 injunctions prohibiting Defendants, and each of them, from accepting  
22 consideration in exchange for the chance to register currently-registered domain  
23 names, unless those domain names are on "pending delete" status;

24          11.    On all causes of action:

25           a.     For any other and further equitable relief, including, without  
26 limitation, restitutionary relief, and/or disgorgement of wrongfully gained  
27 monies, revenue, or profit;

28           b.     For attorneys' fees and costs; and

1 c. For such other and further relief as the Court may deem just and  
2 proper.

3  
4 Dated this 27<sup>th</sup> day of February, 2004.

5  
6 Respectfully Submitted,

7 **NEWMAN & NEWMAN,**  
8 **ATTORNEYS AT LAW, LLP**

9 

10 By:

11 \_\_\_\_\_  
12 Derek A. Newman (190467)  
13 S. Christopher Winter (190474)  
14 Venkat Balasubramani (189192)  
15 Roger M. Townsend (*pro hac vice* pending)

# **EXHIBIT A**



# NSI-Registrar License and Agreement

(Approved November 4, 1999)  
(Posted November 9, 1999)

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On September 28, 1999, ICANN [announced](#) tentative agreement with the United States Department of Commerce and Network Solutions, Inc. on a series of agreements that will put the newly introduced competition among registrars in the .com, .net, and .org TLDs on a permanent and firmer footing. After written and oral public comments, these agreements were revised in several respects and were [adopted](#) by the ICANN Board on November 4, 1999.

One of these agreements is a revised NSI-Registrar License and Agreement under which competitive ICANN-accredited registrars are permitted to place and renew registrations in the registry.

The text of the revised NSI-Registrar License and Agreement appears below.

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## REGISTRAR LICENSE AND AGREEMENT

This Registrar License and Agreement (the "Agreement") is dated as of \_\_\_\_\_, 1999 ("Effective Date") by and between Network Solutions, Inc., a Delaware corporation, with its principal place of business located at 505 Huntmar Park Drive, Herndon, Virginia 20170 ("NSI" or the "Registry"), and \_\_\_\_\_, a \_\_\_\_\_ corporation, with its principal place of business located at \_\_\_\_\_ ("Registrar"). NSI and Registrar may be referred to individually as a "Party" and collectively as the "Parties."

WHEREAS, multiple registrars will provide Internet domain name registration services within the .com, .org and .net top-level domains wherein NSI operates and maintains certain TLD servers and zone files ("Registry");

WHEREAS, Registrar wishes to register second-level domain names in the multiple registrar system for the .com, .org and .net TLDs.

NOW, THEREFORE, for and in consideration of the mutual promises, benefits and covenants contained herein and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, NSI and Registrar, intending to be legally bound, hereby agree as follows:

### 1. DEFINITIONS

- 1.1. "DNS" refers to the Internet domain name system.
- 1.2. "IP" means Internet Protocol.
- 1.3. An "SLD" is a second-level domain of the DNS.
- 1.4. The "System" refers to the multiple registrar system developed by NSI for registration of second-level domain names in the .com, .org and .net TLDs.
- 1.5. A "TLD" is a top-level domain of the DNS.
- 1.6. The "Licensed Product" refers to the RRP, APIs, and software, collectively.

### 2. OBLIGATIONS OF THE PARTIES

**2.1. System Operation and Access.** Throughout the Term of this Agreement, NSI shall operate the System and provide Registrar with access to the System enabling Registrar to transmit domain name registration information for the .com, .org and .net TLDs to the System according to a protocol developed by NSI and known as the Registry Registrar Protocol ("RRP").

**2.2. Distribution of RRP, APIs and Software.** No later than three business days after the Effective Date

of this Agreement, NSI shall provide to Registrar (i) full documentation of the RRP, (ii) "C" and "Java" application program interfaces ("APIs") to the RRP with documentation, and (iii) reference client software ("Software") that will enable Registrar to develop its system to register second-level domain names through the System for the .com, .org and .net TLDs. If NSI elects to modify or upgrade the APIs and/or RRP, NSI shall provide updated APIs to the RRP with documentation and updated Software to Registrar promptly as such updates become available.

**2.3. New Architectural Features.** NSI will use its best commercial efforts to develop and implement two additional modifications to the Licensed Product by January 15, 2000 as follows:

**2.3.1.** NSI will issue an upgrade to the Licensed Product that will enable a Registrar to accept initial domain name registrations or renewals of a minimum of one year in length, or in multiples of one year increments.

**2.3.2.** NSI will issue an upgrade to the Licensed Product that will enable registrars to accept the addition of one additional year to a registrant's "current" registration period when a registrant changes from one registrar to another.

In no event shall the total unexpired term of a registration exceed ten (10) years.

Registrars will be able to offer these new features only for new registrations or renewals occurring after the Upgrade is deployed. Both Upgrades will be introduced into the Operational Test and Evaluation environment for testing prior to deployment.

**2.4. Registrar Responsibility for Customer Support.** Registrar shall be responsible for providing customer service (including domain name record support), billing and technical support, and customer interface to accept customer (the "SLD holder") orders.

**2.5. Data Submission Requirements.** As part of its registration of all SLD registrations in the .com, .net, and .org TLDs during the Term of this Agreement, Registrar shall submit the following data elements using the RRP concerning SLD registrations it processes:

**2.5.1.** The name of the SLD being registered;

**2.5.2.** The IP addresses of the primary nameserver and secondary nameserver(s) for the SLD;

**2.5.3.** The corresponding host names of those nameservers;

**2.5.4.** Unless automatically generated by the registry system, the identity of the registrar;

**2.5.5.** Unless automatically generated by the registry system, the expiration date of the registration; and

**2.5.6.** Other data required as a result of further development of the registry system by the Registry.

**2.6. License.** Registrar grants NSI as Registry a non-exclusive non-transferable limited license to the data elements consisting of the SLD name registered, the IP addresses of nameservers, and the identity of the registering registrar for propagation of and the provision of authorized access to the TLD zone files.

**2.7. Registrar's Registration Agreement and Domain Name Dispute Policy.** Registrar shall have developed and employ in its domain name registration business an electronic or paper registration agreement, including a domain name dispute policy, a copy of which is attached to this Agreement as [Exhibit A](#) (which may be amended from time to time by Registrar, provided a copy is furnished to the Registry three (3) business days in advance of any such amendment), to be entered into by Registrar with each SLD holder as a condition of registration. Registrar shall include terms in its agreement with each SLD holder that are consistent with Registrar's duties to NSI hereunder.

**2.8. Secure Connection.** Registrar agrees to develop and employ in its domain name registration business all necessary technology and restrictions to ensure that its connection to the System is secure. All data exchanged between Registrar's system and the System shall be protected to avoid unintended disclosure of information. Each RRP session shall be authenticated and encrypted using two-way secure socket layer ("SSL") protocol. Registrar agrees to authenticate every RRP client connection with the System using both an X.509 server certificate issued by a commercial Certification Authority identified by the Registry and its Registrar password, which it shall disclose only to its employees with a need to

know. Registrar agrees to notify Registry within four hours of learning that its Registrar password has been compromised in any way or if its server certificate has been revoked by the issuing Certification Authority or compromised in any way.

**2.9. Domain Name Lookup Capability.** Registrar agrees to employ in its domain name registration business NSI's Registry domain name lookup capability to determine if a requested domain name is available or currently unavailable for registration.

**2.10. Transfer of Sponsorship of Registrations.** Registrar agrees to implement transfers of SLD registrations from another registrar to Registrar and vice versa pursuant to the Policy on Transfer of Sponsorship of Registrations Between Registrars appended hereto as [Exhibit B](#).

**2.11. Time.** Registrar agrees that in the event of any dispute concerning the time of the entry of a domain name registration into the Registry database, the time shown in the NSI Registry records shall control.

**2.12. Compliance with Terms and Conditions.** Registrar agrees to comply with all other reasonable terms or conditions established from time to time, to assure sound operation of the System, by NSI as Registry in a non-arbitrary manner and applicable to all registrars, including NSI, and consistent with NSI's Cooperative Agreement with the United States Government or NSI's Registry Agreement with the Internet Corporation for Assigned Names and Numbers ("ICANN"), as applicable, upon NSI's notification to Registrar of the establishment of those terms and conditions.

**2.13. Resolution of Technical Problems.** Registrar agrees to employ necessary employees, contractors, or agents with sufficient technical training and experience to respond to and fix all technical problems concerning the use of the RRP and the APIs in conjunction with Registrar's systems. Registrar agrees that in the event of significant degradation of the System or other emergency, Network Solutions, as Registry, may, in its sole discretion, temporarily suspend access to the System. Such temporary suspensions shall be applied in a nonarbitrary manner and shall apply fairly to any registrar similarly situated, including NSI.

**2.14. Surety Instrument.** During the Initial Term and any Renewal Terms, Registrar shall have in place a performance bond, letter of credit or equivalent instrument (the "Surety Instrument") from a surety acceptable to NSI, in the amount of \$100,000 U.S. dollars. The terms of the Surety Instrument shall indemnify and hold harmless NSI and its employees, directors, officers, representatives, agents and affiliates from all costs and damages (including reasonable attorneys' fees) which it may suffer by reason of Registrar's failure to indemnify NSI as provided in [Section 6.16](#) by making payment(s) up to the full amount of the bond within ten (10) days of NSI's having notified the surety of its claim(s) of damages, having identified the basis for any such claim. NSI shall not be entitled to payment under the Surety Instrument until such time as it has certified that it has incurred expenses for which it is entitled to reimbursement in accordance with the provisions of [Section 6.16](#) of this Agreement.

**2.15. Prohibited Domain Name Registrations.** Registrar agrees to comply with the policies of NSI as Registry that will be applicable to all registrars and that will prohibit the registration of certain domain names in the .com, .org and .net TLDs which are not allowed to be registered by statute or regulation.

**2.16. Indemnification Required of SLD Holders.** Registrar shall require each SLD holder to indemnify, defend and hold harmless NSI, and its directors, officers, employees and agents from and against any and all claims, damages, liabilities, costs and expenses, including reasonable legal fees and expenses arising out of or relating to the SLD holder's domain name registration.

### 3. LICENSE

**3.1. License Grant.** Subject to the terms and conditions of this Agreement, NSI hereby grants Registrar and Registrar accepts a non-exclusive, non-transferable, worldwide limited license to use for the Term and purposes of this Agreement the RRP, APIs and Software, as well as updates and redesigns thereof, to provide domain name registration services in the .com, .org and .net TLDs only and for no other purpose. The RRP, APIs and Software, as well as updates and redesigns thereof, will enable Registrar to register domain names with the Registry on behalf of its SLD holders. Registrar, using the RRP, APIs and Software, as well as updates and redesigns thereof, will be able to invoke the following operations on the System: (i) check the availability of a domain name, (ii) register a domain name, (iii) re-register a domain name, (iv) cancel the registration of a domain name it has registered, (v) update the nameservers of a domain name, (vi) transfer a domain name from another registrar to itself with proper authorization, (vii) query a domain name registration record, (viii) register a nameserver, (ix) update the IP addresses of a nameserver, (x) delete a nameserver, (xi) query a nameserver, and (xii) establish and

end an authenticated session.

**3.2. Limitations on Use.** Notwithstanding any other provisions in this Agreement, except with the written consent of NSI, Registrar shall not: (i) sublicense the RRP, APIs or Software or otherwise permit any use of the RRP, APIs or Software by or for the benefit of any party other than Registrar, (ii) publish, distribute or permit disclosure of the RRP, APIs or Software other than to employees, contractors, and agents of Registrar for use in Registrar's domain name registration business, (iii) decompile, reverse engineer, copy or re-engineer the RRP, APIs or Software for any unauthorized purpose, or (iv) use or permit use of the RRP, APIs or Software in violation of any federal, state or local rule, regulation or law, or for any unlawful purpose.

Registrar agrees to employ the necessary measures to prevent its access to the System granted hereunder from being used for (i) the transmission of unsolicited, commercial e?mail (spam) to entities other than Registrar's customers; (ii) high volume, automated, electronic processes that apply to NSI for large numbers of domain names, except as reasonably necessary to register domain names or modify existing registrations; or (iii) high volume, automated, electronic, repetitive queries for the purpose of extracting data to be used for Registrar's purposes, except as reasonably necessary to register domain names or modify existing registrations.

**3.3. Changes to Licensed Materials.** NSI may from time to time make modifications to the RRP, APIs or Software licensed hereunder that will enhance functionality or otherwise improve the System. NSI will provide Registrar with at least sixty (60) days notice prior to the implementation of any material changes to the RRP, APIs or software licensed hereunder.

#### **4. SUPPORT SERVICES**

**4.1. Engineering Support.** NSI agrees to provide Registrar with reasonable engineering telephone support (between the hours of 9 a.m. to 5 p.m. local Herndon, Virginia time or at such other times as may be mutually agreed upon) to address engineering issues arising in connection with Registrar's use of the System.

**4.2. Customer Service Support.** During the Term of this Agreement, NSI will provide reasonable telephone and e-mail customer service support to Registrar, not SLD holders or prospective customers of Registrar, for non-technical issues solely relating to the System and its operation. NSI will provide Registrar with a telephone number and e-mail address for such support during implementation of the RRP, APIs and Software. First-level telephone support will be available on a 7-day/24-hour basis. NSI will provide a web-based customer service capability in the future and such web-based support will become the primary method of customer service support to Registrar at such time.

#### **5. FEES**

**5.1. License Fee.** As consideration for the license of the RRP, APIs and Software, Registrar agrees to pay NSI on the Effective Date a non-refundable one-time fee in the amount of \$ 10,000 payable in United States dollars (the "License Fee") and payable by check to Network Solutions, Inc., Attention: Registry Accounts Receivable, 505 Huntmar Park Drive, Herndon, Virginia 20170 or by wire transfer to Bank of America, for the credit of Network Solutions, Inc., Account #004112889843, ABA # 051000017, Swift, NABKUS3ARIC. No later than three (3) business days after either the receipt (and final settlement if payment by check) of such License Fee, or the Effective Date of this Agreement, whichever is later, NSI will provide the RRP, APIs and Software to Registrar.

#### **5.2. Registration Fees.**

(a) From the Effective Date of this Agreement through January 15, 2000, Registrar agrees to pay NSI the non-refundable amounts of \$18 United States dollars for each initial two-year domain name registration and \$9 United States dollars for each one-year domain name re-registration (collectively, the "Registration Fees") registered by Registrar through the System.

(b) Thereafter, and for the balance of the term of this Agreement, Registrar agrees to pay NSI the non-refundable amounts of \$6 United States dollars for each annual increment of an initial domain name registration and \$6 United States dollars for each annual increment of a domain name re-registration (collectively, the "Registration Fees") registered by Registrar through the System.

(c) NSI reserves the right to adjust the Registration Fees prospectively upon thirty (30) days prior notice to Registrar, provided that such adjustments are consistent with NSI's

Cooperative Agreement with the United States Government or its Registry Agreement with ICANN, as applicable, and are applicable to all registrars in the .com, .org and .net TLDs. NSI will invoice Registrar monthly in arrears for each month's Registration Fees. All Registration Fees are due immediately upon receipt of NSI's invoice pursuant to a letter of credit, deposit account, or other acceptable credit terms agreed by the Parties.

**5.3. Change in Registrar Sponsoring Domain Name.** Registrar may assume sponsorship of an SLD holder's existing domain name registration from another registrar by following the policy set forth in [Exhibit B](#) to this Agreement. Registrar agrees to pay NSI the applicable Registration Fee as set forth above. For transfers taking place after January 15, 2000, this shall result in a corresponding extension of the existing registration, provided that in no event shall the total unexpired term of a registration exceed ten (10) years. The losing registrar's Registration Fees will not be refunded as a result of any such transfer.

**5.4. Non-Payment of Registration Fees.** Timely payment of Registration Fees is a material condition of performance under this Agreement. In the event that Registrar fails to pay its Registration Fees, either initial or re-registration fees, within five (5) days of the date when due, NSI may stop accepting new registrations and/or delete the domain names associated with invoices not paid in full from the Registry database and give written notice of termination of this Agreement pursuant to [Section 6.1\(b\)](#) below.

## 6. MISCELLANEOUS

### 6.1. Term of Agreement and Termination.

(a) Term of the Agreement. The duties and obligations of the Parties under this Agreement shall apply from the Effective Date through and including the last day of the calendar month sixty (60) months from the Effective Date (the "Initial Term"). Upon conclusion of the Initial Term, all provisions of this Agreement will automatically renew for successive five (5) year renewal periods until the Agreement has been terminated as provided herein, Registrar elects not to renew, or NSI ceases to operate as the registry for the .com, .org and .net TLDs. In the event that revisions to NSI's Registrar License and Agreement are approved or adopted by the U.S. Department of Commerce, or ICANN, as appropriate, Registrar will execute an amendment substituting the revised agreement in place of this Agreement, or Registrar may, at its option exercised within fifteen (15) days, terminate this Agreement immediately by giving written notice to NSI.

(b) Termination For Cause. In the event that either Party materially breaches any term of this Agreement including any of its representations and warranties hereunder and such breach is not substantially cured within thirty (30) calendar days after written notice thereof is given by the other Party, then the non-breaching Party may, by giving written notice thereof to the other Party, terminate this Agreement as of the date specified in such notice of termination.

(c) Termination at Option of Registrar. Registrar may terminate this Agreement at any time by giving NSI thirty (30) days notice of termination.

(d) Termination Upon Loss of Registrar's Accreditation. This Agreement shall terminate in the event Registrar's accreditation by ICANN, or its successor, is terminated or expires without renewal.

(e) Termination in the Event that Successor Registry is Named. This Agreement shall terminate in the event that the U.S. Department of Commerce or ICANN, as appropriate, designates another entity to serve as the registry for the .com, .net. and .org TLDs (the "Successor Registry").

(f) Termination in the Event of Bankruptcy. Either Party may terminate this Agreement if the other Party is adjudged insolvent or bankrupt, or if proceedings are instituted by or against a Party seeking relief, reorganization or arrangement under any laws relating to insolvency, or seeking any assignment for the benefit of creditors, or seeking the appointment of a receiver, liquidator or trustee of a Party's property or assets or the liquidation, dissolution or winding up of a Party's business.

(g) Effect of Termination. Upon expiration or termination of this Agreement, NSI will complete the registration of all domain names processed by Registrar prior to the date of such expiration or termination, provided that Registrar's payments to NSI for Registration Fees are



current and timely. Immediately upon any expiration or termination of this Agreement, Registrar shall (i) transfer its sponsorship of SLD name registrations to another licensed registrar(s) of the Registry, in compliance with any procedures established or approved by the U.S. Department of Commerce or ICANN, as appropriate, and (ii) either return to NSI or certify to NSI the destruction of all data, software and documentation it has received under this Agreement.

(h) Survival. In the event of termination of this Agreement, the following shall survive: (i) [Sections 2.6, 2.7, 6.1\(g\), 6.6, 6.7, 6.10, 6.12, 6.13, 6.14](#) and [6.16](#); (ii) the SLD holder's obligations to indemnify, defend, and hold harmless NSI, as stated in [Section 2.16](#); (iii) the surety's obligations under the Surety Instrument described in [Section 2.14](#) with respect to matters arising during the term of this Agreement; and (iv) Registrar's payment obligations as set forth in [Section 5.2](#) with respect to initial registrations or re-registrations during the term of this Agreement. Neither Party shall be liable to the other for damages of any sort resulting solely from terminating this Agreement in accordance with its terms but each Party shall be liable for any damage arising from any breach by it of this Agreement.

**6.2. No Third Party Beneficiaries; Relationship of The Parties.** This Agreement does not provide and shall not be construed to provide third parties (i.e., non-parties to this Agreement), including any SLD holder, with any remedy, claim, cause of action or privilege. Nothing in this Agreement shall be construed as creating an employer-employee or agency relationship, a partnership or a joint venture between the Parties.

**6.3. Force Majeure.** Neither Party shall be responsible for any failure to perform any obligation or provide service hereunder because of any Act of God, strike, work stoppage, governmental acts or directives, war, riot or civil commotion, equipment or facilities shortages which are being experienced by providers of telecommunications services generally, or other similar force beyond such Party's reasonable control.

**6.4. Further Assurances.** Each Party hereto shall execute and/or cause to be delivered to each other Party hereto such instruments and other documents, and shall take such other actions, as such other Party may reasonably request for the purpose of carrying out or evidencing any of the transactions contemplated by this Agreement.

**6.5. Amendment in Writing.** Any amendment or supplement to this Agreement shall be in writing and duly executed by both Parties.

**6.6. Attorneys' Fees.** If any legal action or other legal proceeding (including arbitration) relating to the performance under this Agreement or the enforcement of any provision of this Agreement is brought against either Party hereto, the prevailing Party shall be entitled to recover reasonable attorneys' fees, costs and disbursements (in addition to any other relief to which the prevailing Party may be entitled).

**6.7. Dispute Resolution; Choice of Law; Venue.** The Parties shall attempt to resolve any disputes between them prior to resorting to litigation. This Agreement is to be construed in accordance with and governed by the internal laws of the Commonwealth of Virginia, United States of America without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the Commonwealth of Virginia to the rights and duties of the Parties. Any legal action or other legal proceeding relating to this Agreement or the enforcement of any provision of this Agreement shall be brought or otherwise commenced in any state or federal court located in the eastern district of the Commonwealth of Virginia. Each Party to this Agreement expressly and irrevocably consents and submits to the jurisdiction and venue of each state and federal court located in the eastern district of the Commonwealth of Virginia (and each appellate court located in the Commonwealth of Virginia) in connection with any such legal proceeding.

**6.8. Notices.** Any notice or other communication required or permitted to be delivered to any Party under this Agreement shall be in writing and shall be deemed properly delivered, given and received when delivered (by hand, by registered mail, by courier or express delivery service, by e-mail or by telecopier during business hours) to the address or telecopier number set forth beneath the name of such Party below, unless party has given a notice of a change of address in writing:

if to Registrar:

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with a copy to:

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if to NSI:

Network Solutions, Inc.  
505 Huntmar Park Drive  
Herndon, Virginia 20170  
Attention: Director, Customer Affairs  
Telecopier: +1 (703) 742-8706  
E-mail: julien@netsol.com

with a copy to:

General Counsel  
505 Huntmar Park Drive  
Herndon, Virginia 20170  
Telecopier: + 1 (703) 742-0065

**6.9. Assignment/Sublicense.** Except as otherwise expressly provided herein, the provisions of this Agreement shall inure to the benefit of and be binding upon, the successors and permitted assigns of the Parties hereto. Registrar shall not assign, sublicense or transfer its rights or obligations under this Agreement to any third person without the prior written consent of NSI.

**6.10. Use of Confidential Information.** The Parties' use and disclosure of Confidential Information disclosed hereunder are subject to the terms and conditions of the Parties' Confidentiality Agreement ([Exhibit C](#)) that will be executed contemporaneously with this Agreement. Registrar agrees that the RRP, APIs and Software are the Confidential Information of NSI.

**6.11. Delays or Omissions; Waivers.** No failure on the part of either Party to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of either Party in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise or waiver of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy. No Party shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such Party; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

**6.12. Limitation of Liability.** IN NO EVENT WILL NSI BE LIABLE TO REGISTRAR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR ANY DAMAGES RESULTING FROM LOSS OF PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF NSI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**6.13. Construction.** The Parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be applied in the construction or interpretation of this Agreement.

**6.14. Intellectual Property.** Subject to [Section 2.6](#) above, each Party will continue to independently own its intellectual property, including all patents, trademarks, trade names, service marks, copyrights, trade secrets, proprietary processes and all other forms of intellectual property.

### 6.15. Representations and Warranties

(a) Registrar. Registrar represents and warrants that: (1) it is a corporation duly incorporated, validly existing and in good standing under the law of the \_\_\_\_\_, (2) it has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement, (3) it is, and during the Term of this Agreement will continue to be, accredited by ICANN or its successor, pursuant to an accreditation agreement dated after November 4, 1999, (4) the execution, performance and delivery of this Agreement has been duly authorized by Registrar, (5) no further approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by Registrar in order for it to enter into and perform its obligations under this Agreement, and (6) Registrar's Surety Instrument provided hereunder is a valid and enforceable obligation of the surety named on such Surety Instrument.

(b) NSI. NSI represents and warrants that: (1) it is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware, (2) it has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement, (3) the execution, performance and delivery of this Agreement has been duly authorized by NSI, and (4) no further approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by NSI in order for it to enter into and perform its obligations under this Agreement.

(c) Disclaimer of Warranties. The RRP, APIs and Software are provided "as-is" and without any warranty of any kind. NSI EXPRESSLY DISCLAIMS ALL WARRANTIES AND/OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY OR SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT OF THIRD PARTY RIGHTS. NSI DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE RRP, APIs OR SOFTWARE WILL MEET REGISTRAR'S REQUIREMENTS, OR THAT THE OPERATION OF THE RRP, APIs OR SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE RRP, APIs OR SOFTWARE WILL BE CORRECTED. FURTHERMORE, NSI DOES NOT WARRANT NOR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE RRP, APIs, SOFTWARE OR RELATED DOCUMENTATION IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. SHOULD THE RRP, APIs OR SOFTWARE PROVE DEFECTIVE, REGISTRAR ASSUMES THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION OF REGISTRAR'S OWN SYSTEMS AND SOFTWARE.

**6.16. Indemnification.** Registrar, at its own expense and within thirty (30) days of presentation of a demand by NSI under this paragraph, will indemnify, defend and hold harmless NSI and its employees, directors, officers, representatives, agents and affiliates, against any claim, suit, action, or other proceeding brought against NSI or any affiliate of NSI based on or arising from any claim or alleged claim (i) relating to any product or service of Registrar; (ii) relating to any agreement, including Registrar's dispute policy, with any SLD holder of Registrar; or (iii) relating to Registrar's domain name registration business, including, but not limited to, Registrar's advertising, domain name application process, systems and other processes, fees charged, billing practices and customer service; provided, however, that in any such case: (a) NSI provides Registrar with prompt notice of any such claim, and (b) upon Registrar's written request, NSI will provide to Registrar all available information and assistance reasonably necessary for Registrar to defend such claim, provided that Registrar reimburses NSI for its actual and reasonable costs. Registrar will not enter into any settlement or compromise of any such indemnifiable claim without NSI's prior written consent, which consent shall not be unreasonably withheld. Registrar will pay any and all costs, damages, and expenses, including, but not limited to, reasonable attorneys' fees and costs awarded against or otherwise incurred by NSI in connection with or arising from any such indemnifiable claim, suit, action or proceeding.

**6.17. Entire Agreement; Severability.** This Agreement, which includes [Exhibits A, B and C](#), constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes any prior agreements, representations, statements, negotiations, understandings, proposals or undertakings, oral or written, with respect to the subject matter expressly set forth herein. If any provision of this Agreement shall be held to be illegal, invalid or unenforceable, each Party agrees that such provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity,

legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. If necessary to effect the intent of the Parties, the Parties shall negotiate in good faith to amend this Agreement to replace the unenforceable language with enforceable language that reflects such intent as closely as possible.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth in the first paragraph hereof.

Network Solutions, Inc.

[Registrar]

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## **Exhibit A**

### **Registrar's Dispute Policy**

**[To be supplied from time to time by Registrar]**

## **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.

## **Exhibit C**

### **CONFIDENTIALITY AGREEMENT**

THIS CONFIDENTIALITY AGREEMENT is entered into by and between Network Solutions, Inc. ("NSI"), a Delaware corporation having its principal place of business in Herndon, VA, and \_\_\_\_\_, a \_\_\_\_\_ corporation having its principal place of business in \_\_\_\_\_ ("Registrar"), through their authorized representatives, and takes effect on the date executed by the final party (the "Effective Date").

Under this Confidentiality Agreement ("Confidentiality Agreement"), the Parties intend to disclose to one another information which they consider to be valuable, proprietary, and confidential.

NOW, THEREFORE, the parties agree as follows:

#### **1. Confidential Information**

**1.1.** "Confidential Information", as used in this Confidentiality Agreement, shall mean all information and materials including, without limitation, computer software, data, information, databases, protocols, reference implementation and documentation, and functional and interface specifications, provided by the disclosing party to the receiving party under this Confidentiality Agreement and marked or otherwise identified as Confidential, provided that if a communication is oral, the disclosing party will notify the receiving party in writing within 15 days of the disclosure.

#### **2. Confidentiality Obligations**

**2.1.** In consideration of the disclosure of Confidential Information, the Parties agree that:

(a) The receiving party shall treat as strictly confidential, and use all reasonable efforts to preserve the secrecy and confidentiality of, all Confidential Information received from the

disclosing party, including implementing reasonable physical security measures and operating procedures.

(b) The receiving party shall make no disclosures whatsoever of any Confidential Information to others, provided however, that if the receiving party is a corporation, partnership, or similar entity, disclosure is permitted to the receiving party's officers, employees, contractors and agents who have a demonstrable need to know such Confidential Information, provided the receiving party shall advise such personnel of the confidential nature of the Confidential Information and of the procedures required to maintain the confidentiality thereof, and shall require them to acknowledge in writing that they have read, understand, and agree to be individually bound by the terms of this Confidentiality Agreement.

(c) The receiving party shall not modify or remove any Confidential legends and/or copyright notices appearing on any Confidential Information.

**2.2.** The receiving party's duties under this [section \(2\)](#) shall expire five (5) years after the information is received or earlier, upon written agreement of the Parties.

### **3. Restrictions On Use**

**3.1.** The receiving party agrees that it will use any Confidential Information received under this Confidentiality Agreement solely for the purpose of providing domain name registration services as a registrar and for no other purposes whatsoever.

**3.2.** No commercial use rights or any licenses under any patent, patent application, copyright, trademark, know-how, trade secret, or any other NSI proprietary rights are granted by the disclosing party to the receiving party by this Confidentiality Agreement, or by any disclosure of any Confidential Information to the receiving party under this Confidentiality Agreement.

**3.3.** The receiving party agrees not to prepare any derivative works based on the Confidential Information.

**3.4.** The receiving party agrees that any Confidential Information which is in the form of computer software, data and/or databases shall be used on a computer system(s) that is owned or controlled by the receiving party.

### **4. Miscellaneous**

**4.1.** This Confidentiality Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia and all applicable federal laws. The Parties agree that, if a suit to enforce this Confidentiality Agreement is brought in the U.S. Federal District Court for the Eastern District of Virginia, they will be bound by any decision of the Court.

**4.2.** The obligations set forth in this Confidentiality Agreement shall be continuing, provided, however, that this Confidentiality Agreement imposes no obligation upon the Parties with respect to information that (a) is disclosed with the disclosing party's prior written approval; or (b) is or has entered the public domain through no fault of the receiving party; or (c) is known by the receiving party prior to the time of disclosure; or (d) is independently developed by the receiving party without use of the Confidential Information; or (e) is made generally available by the disclosing party without restriction on disclosure.

**4.3.** This Confidentiality Agreement may be terminated by either party upon breach by the other party of any its obligations hereunder and such breach is not cured within three (3) calendar days after the allegedly breaching party is notified by the disclosing party of the breach. In the event of any such termination for breach, all Confidential Information in the possession of the Parties shall be immediately returned to the disclosing party; the receiving party shall provide full voluntary disclosure to the disclosing party of any and all unauthorized disclosures and/or unauthorized uses of any Confidential Information; and the obligations of [Sections 2](#) and [3](#) hereof shall survive such termination and remain in full force and effect. In the event that the Registrar License and Agreement between the Parties is terminated, the Parties shall immediately return all Confidential Information to the disclosing party and the receiving party shall remain subject to the obligations of [Sections 2](#) and [3](#).

**4.4.** The terms and conditions of this Confidentiality Agreement shall inure to the benefit of the Parties and their successors and assigns. The Parties' obligations under this Confidentiality Agreement may not be assigned or delegated.

**4.5.** The Parties agree that they shall be entitled to seek all available legal and equitable remedies for the breach of this Confidentiality Agreement.

**4.6.** The terms and conditions of this Confidentiality Agreement may be modified only in a writing signed by NSI and Registrar.

**4.7.** EXCEPT AS MAY OTHERWISE BE SET FORTH IN A SIGNED, WRITTEN AGREEMENT BETWEEN THE PARTIES, THE PARTIES MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, AS TO THE ACCURACY, COMPLETENESS, CONDITION, SUITABILITY, PERFORMANCE, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY OF ANY CONFIDENTIAL INFORMATION, AND THE PARTIES SHALL HAVE NO LIABILITY WHATSOEVER TO ONE ANOTHER RESULTING FROM RECEIPT OR USE OF THE CONFIDENTIAL INFORMATION.

**4.8.** If any part of this Confidentiality Agreement is found invalid or unenforceable, such part shall be deemed stricken herefrom and the Parties agree: (a) to negotiate in good faith to amend this Confidentiality Agreement to achieve as nearly as legally possible the purpose or effect as the stricken part, and (b) that the remainder of this Confidentiality Agreement shall at all times remain in full force and effect.

**4.9.** This Confidentiality Agreement contains the entire understanding and agreement of the Parties relating to the subject matter hereof.

**4.10.** Any obligation imposed by this Confidentiality Agreement may be waived in writing by the disclosing party. Any such waiver shall have a one-time effect and shall not apply to any subsequent situation regardless of its similarity.

**4.11.** Neither Party has an obligation under this Confidentiality Agreement to purchase, sell, or license any service or item from the other Party.

**4.12.** The Parties do not intend that any agency or partnership relationship be created between them by this Confidentiality Agreement.

IN WITNESS WHEREOF, and intending to be legally bound, duly authorized representatives of NSI and Registrar have executed this Confidentiality Agreement in Virginia on the dates indicated below.

("Registrar") Network Solutions, Inc. ("NSI")

By: \_\_\_\_\_ By: \_\_\_\_\_  
Title: \_\_\_\_\_ Title: \_\_\_\_\_  
Date: \_\_\_\_\_ Date: \_\_\_\_\_

# **EXHIBIT B**





# Registrar Accreditation Agreement

(17 May 2001)

(Additional appendices posted on 25 November 2002, 23 January 2003, and 3 April 2003)

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# Registrar Accreditation Agreement

This REGISTRAR ACCREDITATION AGREEMENT ("Agreement") is by and between the Internet Corporation for Assigned Names and Numbers, a California non-profit, public benefit corporation, and [Registrar Name], a [Organization type and jurisdiction] ("Registrar"), and shall be deemed made on \_\_\_\_\_, at Los Angeles, California, USA.

**1. DEFINITIONS.** For purposes of this Agreement, the following definitions shall apply:

1.1 "Accredit" means to identify and set minimum standards for the performance of registration functions, to recognize persons or entities meeting those standards, and to enter into an accreditation agreement that sets forth the rules and procedures applicable to the provision of Registrar Services.

1.2 "DNS" refers to the Internet domain-name system.

1.3 The "Effective Date" is \_\_\_\_\_.

1.4 The "Expiration Date" is \_\_\_\_\_.

1.5 "ICANN" refers to the Internet Corporation for Assigned Names and Numbers, a party to this Agreement.

1.6 "Personal Data" refers to data about any identified or identifiable natural person.

1.7 "Registered Name" refers to a domain name within the domain of a TLD that is the subject of an appendix to this Agreement, whether consisting of two or more (e.g., john.smith.name) levels, about which a TLD Registry Operator (or an affiliate engaged in providing Registry Services) maintains data in a Registry Database, arranges for such maintenance, or derives revenue from such maintenance. A name in a Registry Database may be a Registered Name even though it does not appear in a zone file (e.g., a registered but inactive name).

1.8 "Registered Name Holder" means the holder of a Registered Name.

1.9 The word "Registrar," when appearing with an initial capital letter, refers to [Registrar Name], a party to this Agreement.

1.10 The word "registrar," when appearing without an initial capital letter, refers to a person or entity that contracts with Registered Name Holders and with a Registry Operator and collects registration data about the Registered Name Holders and submits registration information for entry in the Registry Database.

1.11 "Registrar Services" means services provided by a registrar in connection with a TLD as to which it has an agreement with the TLD's Registry Operator, and includes contracting with Registered Name Holders, collecting registration data about the Registered Name Holders, and submitting registration information for entry in the Registry Database.

1.12 "Registry Data" means all Registry Database data maintained in electronic form, and shall include TLD Zone-File Data, all data used to provide Registry Services and submitted by registrars in electronic form, and all other data used to provide Registry Services concerning particular domain name registrations or nameservers maintained in electronic form in a Registry Database.

1.13 "Registry Database" means a database comprised of data about one or more DNS domain names within the domain of a registry that is used to generate either DNS resource records that are published authoritatively or responses to domain-name availability lookup requests or Whois queries, for some or all of those names.

1.14 A "Registry Operator" is the person or entity then responsible, in accordance with an agreement between ICANN (or its assignee) and that person or entity (those persons or entities) or, if that agreement is terminated or expires, in accordance with an agreement between the US Government and that person or entity (those persons or entities), for providing Registry Services for a specific TLD.

1.15 "Registry Services," with respect to a particular TLD, shall have the meaning defined in the agreement between ICANN and the Registry Operator for that TLD.

1.16 A Registered Name is "sponsored" by the registrar that placed the record associated with that registration into the registry. Sponsorship of a registration may be changed at the express direction of the Registered Name Holder or, in the event a registrar loses accreditation, in accordance with then-current ICANN specifications and policies.

1.17 "Term of this Agreement" begins on the Effective Date and continues to the earlier of (a) the Expiration Date, or (b) termination of this Agreement.

1.18 A "TLD" is a top-level domain of the DNS.

1.19 "TLD Zone-File Data" means all data contained in a DNS zone file for the registry, or for any subdomain for which Registry Services are provided and that contains Registered Names, as provided to nameservers on the Internet.

## **2. ICANN OBLIGATIONS.**

2.1 Accreditation. During the Term of this Agreement, Registrar is hereby accredited by ICANN to act as a registrar (including to insert and renew registration of Registered Names in the Registry Database) for the TLD(s) that are the subject of appendices to this Agreement according to Subsection 5.5.

2.2 Registrar Use of ICANN Name and Website. ICANN hereby grants to Registrar a non-exclusive, worldwide, royalty-free license during the Term

of this Agreement (a) to state that it is accredited by ICANN as a registrar for each TLD that is the subject of an appendix to this Agreement and (b) to link to pages and documents within the ICANN web site. No other use of ICANN's name or website is licensed hereby. This license may not be assigned or sublicensed by Registrar.

**2.3 General Obligations of ICANN.** With respect to all matters that impact the rights, obligations, or role of Registrar, ICANN shall during the Term of this Agreement:

2.3.1 exercise its responsibilities in an open and transparent manner;

2.3.2 not unreasonably restrain competition and, to the extent feasible, promote and encourage robust competition;

2.3.3 not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and not single out Registrar for disparate treatment unless justified by substantial and reasonable cause; and

2.3.4 ensure, through its reconsideration and independent review policies, adequate appeal procedures for Registrar, to the extent it is adversely affected by ICANN standards, policies, procedures or practices.

### **3. REGISTRAR OBLIGATIONS.**

**3.1 Obligations to Provide Registrar Services.** During the Term of this Agreement, Registrar agrees that it will operate as a registrar for each TLD for which it is accredited by ICANN in accordance with this Agreement.

**3.2 Submission of Registered Name Holder Data to Registry.** During the Term of this Agreement:

3.2.1 As part of its registration of Registered Names in a TLD as to which it is accredited, Registrar shall submit to, or shall place in the Registry Database operated by, the Registry Operator for the TLD the following data elements:

3.2.1.1 The name of the Registered Name being registered;

3.2.1.2 The IP addresses of the primary nameserver and secondary nameserver(s) for the Registered Name;

3.2.1.3 The corresponding names of those nameservers;

3.2.1.4 Unless automatically generated by the registry system, the identity of the Registrar;

3.2.1.5 Unless automatically generated by the registry system, the expiration date of the registration; and

3.2.1.6 Any other data the Registry Operator requires be submitted to it.

The appendix to this Agreement for a particular TLD may state substitute language for Subsections 3.2.1.1 through 3.2.1.6 as applicable to that TLD; in that event the substitute language shall replace and supersede Subsections 3.2.1.1 through 3.2.1.6 stated above for all purposes under this Agreement but only with respect to that particular TLD.

3.2.2 Within five (5) business days after receiving any updates from the Registered Name Holder to the data elements listed in Subsections 3.2.1.2, 3.1.2.3, and 3.2.1.6 for any Registered Name Registrar sponsors, Registrar shall submit the updated data elements to, or shall place those elements in the Registry Database operated by the Registry Operator.

3.2.3 In order to allow reconstitution of the Registry Database in the event of an otherwise unrecoverable technical failure or a change in the designated Registry Operator, within ten days of any such request by ICANN, Registrar shall submit an electronic database containing the data elements listed in Subsections 3.2.1.1 through 3.2.1.6 for all active records in the registry sponsored by Registrar, in a format specified by ICANN, to the Registry Operator for the appropriate TLD.

### 3.3 Public Access to Data on Registered Names. During the Term of this Agreement:

3.3.1 At its expense, Registrar shall provide an interactive web page and a port 43 Whois service providing free public query-based access to up-to-date (i.e., updated at least daily) data concerning all active Registered Names sponsored by Registrar for each TLD in which it is accredited. The data accessible shall consist of elements that are designated from time to time according to an ICANN adopted specification or policy. Until ICANN otherwise specifies by means of an ICANN adopted specification or policy, this data shall consist of the following elements as contained in Registrar's database:

3.3.1.1 The name of the Registered Name;

3.3.1.2 The names of the primary nameserver and secondary nameserver(s) for the Registered Name;

3.3.1.3 The identity of Registrar (which may be provided through Registrar's website);

3.3.1.4 The original creation date of the registration;

3.3.1.5 The expiration date of the registration;

3.3.1.6 The name and postal address of the Registered Name Holder;

3.3.1.7 The name, postal address, e-mail address, voice telephone number, and (where available) fax number of the technical contact for the Registered Name; and

3.3.1.8 The name, postal address, e-mail address, voice telephone number, and (where available) fax number of the administrative contact for the Registered Name.

The appendix to this Agreement for a particular TLD may state substitute language for Subsections 3.3.1.1 through 3.3.1.8 as applicable to that TLD; in that event the substitute language shall replace and supersede Subsections 3.3.1.1 through 3.3.1.8 stated above for all purposes under this Agreement but only with respect to that particular TLD.

3.3.2 Upon receiving any updates to the data elements listed in Subsections 3.3.1.2, 3.3.1.3, and 3.3.1.5 through 3.3.1.8 from the Registered Name Holder, Registrar shall promptly update its database used to provide the public access described in Subsection 3.3.1.

3.3.3 Registrar may subcontract its obligation to provide the public access described in Subsection 3.3.1 and the updating described in Subsection 3.3.2, provided that Registrar shall remain fully responsible for the proper provision of the access and updating.

3.3.4 Registrar shall abide by any ICANN specification or policy established as a Consensus Policy according to Section 4 that requires registrars to cooperatively implement a distributed capability that provides query-based Whois search functionality across all registrars. If the Whois service implemented by registrars does not in a reasonable time provide reasonably robust, reliable, and convenient access to accurate and up-to-date data, the Registrar shall abide by any ICANN specification or policy established as a Consensus Policy according to Section 4 requiring Registrar, if reasonably determined by ICANN to be necessary (considering such possibilities as remedial action by specific registrars), to supply data from Registrar's database to facilitate the development of a centralized Whois database for the purpose of providing

comprehensive Registrar Whois search capability.

3.3.5 In providing query-based public access to registration data as required by Subsections 3.3.1 and 3.3.4, Registrar shall not impose terms and conditions on use of the data provided, except as permitted by policy established by ICANN. Unless and until ICANN establishes a different policy according to Section 4, Registrar shall permit use of data it provides in response to queries for any lawful purposes except to: (a) allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass, unsolicited, commercial advertising or solicitations to entities other than the data recipient's own existing customers; or (b) enable high volume, automated, electronic processes that send queries or data to the systems of any Registry Operator or ICANN-Accredited registrar, except as reasonably necessary to register domain names or modify existing registrations.

3.3.6 In addition, Registrar shall provide third-party bulk access to the data subject to public access under Subsection 3.3.1 under the following terms and conditions:

3.3.6.1 Registrar shall make a complete electronic copy of the data available at least one time per week for download by third parties who have entered into a bulk access agreement with Registrar.

3.3.6.2 Registrar may charge an annual fee, not to exceed US\$10,000, for such bulk access to the data.

3.3.6.3 Registrar's access agreement shall require the third party to agree not to use the data to allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass, unsolicited, commercial advertising or solicitations to entities other than such third party's own existing customers.

3.3.6.4 Registrar's access agreement shall require the third party to agree not to use the data to enable high-volume, automated, electronic processes that send queries or data to the systems of any Registry Operator or ICANN-Accredited registrar, except as reasonably necessary to register domain names or modify existing registrations.

3.3.6.5 Registrar's access agreement may require

the third party to agree not to sell or redistribute the data except insofar as it has been incorporated by the third party into a value-added product or service that does not permit the extraction of a substantial portion of the bulk data from the value-added product or service for use by other parties.

3.3.6.6 Registrar may enable Registered Name Holders who are individuals to elect not to have Personal Data concerning their registrations available for bulk access for marketing purposes based on Registrar's "Opt-Out" policy, and if Registrar has such a policy, Registrar shall require the third party to abide by the terms of that Opt-Out policy; provided, however, that Registrar may not use such data subject to opt-out for marketing purposes in its own value-added product or service.

3.3.7 Registrar's obligations under Subsection 3.3.6 shall remain in effect until the earlier of (a) replacement of this policy with a different ICANN policy, established according to Section 4, governing bulk access to the data subject to public access under Subsection 3.3.1, or (b) demonstration, to the satisfaction of the United States Department of Commerce, that no individual or entity is able to exercise market power with respect to registrations or with respect to registration data used for development of value-added products and services by third parties.

3.3.8 To comply with applicable statutes and regulations and for other reasons, ICANN may from time to time adopt policies and specifications establishing limits (a) on the Personal Data concerning Registered Names that Registrar may make available to the public through a public-access service described in this Subsection 3.3 and (b) on the manner in which Registrar may make such data available. In the event ICANN adopts any such policy, Registrar shall abide by it.

#### 3.4 Retention of Registered Name Holder and Registration Data.

3.4.1 During the Term of this Agreement, Registrar shall maintain its own electronic database, as updated from time to time, containing data for each active Registered Name sponsored by it within each TLD for which it is accredited. The data for each such registration shall include the elements listed in Subsections 3.3.1.1 through 3.3.1.8; the name and (where available) postal address, e-mail address, voice telephone number, and fax number of the billing contact; and any other Registry Data that Registrar has submitted to the Registry



Operator or placed in the Registry Database under Subsection 3.2.

3.4.2 During the Term of this Agreement and for three years thereafter, Registrar (itself or by its agent(s)) shall maintain the following records relating to its dealings with the Registry Operator(s) and Registered Name Holders:

3.4.2.1 In electronic form, the submission date and time, and the content, of all registration data (including updates) submitted in electronic form to the Registry Operator(s);

3.4.2.2 In electronic, paper, or microfilm form, all written communications constituting registration applications, confirmations, modifications, or terminations and related correspondence with Registered Name Holders, including registration contracts; and

3.4.2.3 In electronic form, records of the accounts of all Registered Name Holders with Registrar, including dates and amounts of all payments and refunds.

3.4.3 During the Term of this Agreement and for three years thereafter, Registrar shall make these records available for inspection and copying by ICANN upon reasonable notice. ICANN shall not disclose the content of such records except as expressly permitted by an ICANN specification or policy.

3.5 Rights in Data. Registrar disclaims all rights to exclusive ownership or use of the data elements listed in Subsections 3.2.1.1 through 3.2.1.3 for all Registered Names submitted by Registrar to the Registry Database for, or sponsored by Registrar in, each TLD for which it is accredited. Registrar does not disclaim rights in the data elements listed in Subsections 3.2.1.4 through 3.2.1.6 and Subsections 3.3.1.3 through 3.3.1.8 concerning active Registered Names sponsored by it in each TLD for which it is accredited, and agrees to grant non-exclusive, irrevocable, royalty-free licenses to make use of and disclose the data elements listed in Subsections 3.2.1.4 through 3.2.1.6 and 3.3.1.3 through 3.3.1.8 for the purpose of providing a service or services (such as a Whois service under Subsection 3.3.4) providing interactive, query-based public access. Upon a change in sponsorship from Registrar of any Registered Name in a TLD for which it is accredited, Registrar acknowledges that the registrar gaining sponsorship shall have the rights of an owner to the data elements listed in Subsections 3.2.1.4 through 3.2.1.6 and 3.3.1.3 through 3.3.1.8 concerning that Registered Name, with Registrar also retaining the rights of an owner in that data. Nothing in this Subsection prohibits Registrar from (1) restricting bulk public access to data elements in a manner consistent with this

Agreement and any ICANN specifications or policies or (2) transferring rights it claims in data elements subject to the provisions of this Subsection.

**3.6 Data Escrow.** During the Term of this Agreement, on a schedule, under the terms, and in the format specified by ICANN, Registrar shall submit an electronic copy of the database described in Subsection 3.4.1 to ICANN or, at Registrar's election and at its expense, to a reputable escrow agent mutually approved by Registrar and ICANN, such approval also not to be unreasonably withheld by either party. The data shall be held under an agreement among Registrar, ICANN, and the escrow agent (if any) providing that (1) the data shall be received and held in escrow, with no use other than verification that the deposited data is complete, consistent, and in proper format, until released to ICANN; (2) the data shall be released from escrow upon expiration without renewal or termination of this Agreement; and (3) ICANN's rights under the escrow agreement shall be assigned with any assignment of this Agreement. The escrow shall provide that in the event the escrow is released under this Subsection, ICANN (or its assignee) shall have a non-exclusive, irrevocable, royalty-free license to exercise (only for transitional purposes) or have exercised all rights necessary to provide Registrar Services.

### **3.7 Business Dealings, Including with Registered Name Holders.**

**3.7.1** In the event ICANN adopts a specification or policy, supported by a consensus of ICANN-Accredited registrars, establishing or approving a Code of Conduct for ICANN-Accredited registrars, Registrar shall abide by that Code.

**3.7.2** Registrar shall abide by applicable laws and governmental regulations.

**3.7.3** Registrar shall not represent to any actual or potential Registered Name Holder that Registrar enjoys access to a registry for which Registrar is Accredited that is superior to that of any other registrar Accredited for that registry.

**3.7.4** Registrar shall not activate any Registered Name unless and until it is satisfied that it has received a reasonable assurance of payment of its registration fee. For this purpose, a charge to a credit card, general commercial terms extended to creditworthy customers, or other mechanism providing a similar level of assurance of payment shall be sufficient, provided that the obligation to pay becomes final and non-revocable by the Registered Name Holder upon activation of the registration.

**3.7.5** Registrar shall register Registered Names to Registered Name Holders only for fixed periods. At the conclusion of the registration period, failure by or on behalf of the Registered

Name Holder to pay a renewal fee within the time specified in a second notice or reminder shall, in the absence of extenuating circumstances, result in cancellation of the registration. In the event that ICANN adopts a specification or policy concerning procedures for handling expiration of registrations, Registrar shall abide by that specification or policy.

3.7.6 Registrar shall not insert or renew any Registered Name in any registry for which Registrar is accredited by ICANN in a manner contrary to an ICANN policy stating a list or specification of excluded Registered Names that is in effect at the time of insertion or renewal.

3.7.7 Registrar shall require all Registered Name Holders to enter into an electronic or paper registration agreement with Registrar including at least the following provisions:

3.7.7.1 The Registered Name Holder shall provide to Registrar accurate and reliable contact details and promptly correct and update them during the term of the Registered Name registration, including: the full name, postal address, e-mail address, voice telephone number, and fax number if available of the Registered Name Holder; name of authorized person for contact purposes in the case of an Registered Name Holder that is an organization, association, or corporation; and the data elements listed in Subsections 3.3.1.2, 3.3.1.7 and 3.3.1.8.

3.7.7.2 A Registered Name Holder's willful provision of inaccurate or unreliable information, its willful failure promptly to update information provided to Registrar, or its failure to respond for over fifteen calendar days to inquiries by Registrar concerning the accuracy of contact details associated with the Registered Name Holder's registration shall constitute a material breach of the Registered Name Holder-registrar contract and be a basis for cancellation of the Registered Name registration.

3.7.7.3 Any Registered Name Holder that intends to license use of a domain name to a third party is nonetheless the Registered Name Holder of record and is responsible for providing its own full contact information and for providing and updating accurate technical and administrative contact information adequate to facilitate timely resolution of any problems that arise in connection with the Registered Name. A Registered Name Holder

licensing use of a Registered Name according to this provision shall accept liability for harm caused by wrongful use of the Registered Name, unless it promptly discloses the identity of the licensee to a party providing the Registered Name Holder reasonable evidence of actionable harm.

3.7.7.4 Registrar shall provide notice to each new or renewed Registered Name Holder stating:

3.7.7.4.1 The purposes for which any Personal Data collected from the applicant are intended;

3.7.7.4.2 The intended recipients or categories of recipients of the data (including the Registry Operator and others who will receive the data from Registry Operator);

3.7.7.4.3 Which data are obligatory and which data, if any, are voluntary; and

3.7.7.4.4 How the Registered Name Holder or data subject can access and, if necessary, rectify the data held about them.

3.7.7.5 The Registered Name Holder shall consent to the data processing referred to in Subsection 3.7.7.4.

3.7.7.6 The Registered Name Holder shall represent that notice has been provided equivalent to that described in Subsection 3.7.7.4 to any third-party individuals whose Personal Data are supplied to Registrar by the Registered Name Holder, and that the Registered Name Holder has obtained consent equivalent to that referred to in Subsection 3.7.7.5 of any such third-party individuals.

3.7.7.7 Registrar shall agree that it will not process the Personal Data collected from the Registered Name Holder in a way incompatible with the purposes and other limitations about which it has provided notice to the Registered Name Holder in accordance with Subsection 3.7.7.4 above.

3.7.7.8 Registrar shall agree that it will take reasonable precautions to protect Personal Data

from loss, misuse, unauthorized access or disclosure, alteration, or destruction.

3.7.7.9 The Registered Name Holder shall represent that, to the best of the Registered Name Holder's knowledge and belief, neither the registration of the Registered Name nor the manner in which it is directly or indirectly used infringes the legal rights of any third party.

3.7.7.10 For the adjudication of disputes concerning or arising from use of the Registered Name, the Registered Name Holder shall submit, without prejudice to other potentially applicable jurisdictions, to the jurisdiction of the courts (1) of the Registered Name Holder's domicile and (2) where Registrar is located.

3.7.7.11 The Registered Name Holder shall agree that its registration of the Registered Name shall be subject to suspension, cancellation, or transfer pursuant to any ICANN adopted specification or policy, or pursuant to any registrar or registry procedure not inconsistent with an ICANN adopted specification or policy, (1) to correct mistakes by Registrar or the Registry Operator in registering the name or (2) for the resolution of disputes concerning the Registered Name.

3.7.7.12 The Registered Name Holder shall indemnify and hold harmless the Registry Operator and its directors, officers, employees, and agents from and against any and all claims, damages, liabilities, costs, and expenses (including reasonable legal fees and expenses) arising out of or related to the Registered Name Holder's domain name registration.

3.7.8 Registrar shall abide by any specifications or policies established according to Section 4 requiring reasonable and commercially practicable (a) verification, at the time of registration, of contact information associated with a Registered Name sponsored by Registrar or (b) periodic re-verification of such information. Registrar shall, upon notification by any person of an inaccuracy in the contact information associated with a Registered Name sponsored by Registrar, take reasonable steps to investigate that claimed inaccuracy. In the event Registrar learns of inaccurate contact information associated with a Registered Name it sponsors, it shall take

reasonable steps to correct that inaccuracy.

3.7.9 Registrar shall abide by any ICANN adopted specifications or policies prohibiting or restricting warehousing of or speculation in domain names by registrars.

3.7.10 Nothing in this Agreement prescribes or limits the amount Registrar may charge Registered Name Holders for registration of Registered Names.

3.8 Domain-Name Dispute Resolution. During the Term of this Agreement, Registrar shall have in place a policy and procedures for resolution of disputes concerning Registered Names. Until different policies and procedures are established by ICANN under Section 4, Registrar shall comply with the Uniform Domain Name Dispute Resolution Policy identified on ICANN's website ([www.icann.org/general/consensus-policies.htm](http://www.icann.org/general/consensus-policies.htm)).

3.9 Accreditation Fees. As a condition of accreditation, Registrar shall pay accreditation fees to ICANN. These fees consist of yearly and variable fees.

3.9.1 Yearly Accreditation Fee. Registrar shall pay ICANN a yearly accreditation fee in an amount established by the ICANN Board of Directors, in conformity with ICANN's bylaws and articles of incorporation. This yearly accreditation fee shall not exceed US\$4,000 for the first TLD for which Registrar is Accredited plus US\$500 for each additional TLD for which Registrar is Accredited at any time during the year. Payment of the yearly fee shall be due within thirty days after invoice from ICANN.

3.9.2 Variable Accreditation Fee. Registrar shall pay the variable accreditation fees established by the ICANN Board of Directors, in conformity with ICANN's bylaws and articles of incorporation, provided that in each case such fees are reasonably allocated among all registrars that contract with ICANN and that any such fees must be expressly approved by registrars accounting, in the aggregate, for payment of two-thirds of all registrar-level fees. Registrar shall pay such fees in a timely manner for so long as all material terms of this Agreement remain in full force and effect, and notwithstanding the pendency of any dispute between Registrar and ICANN.

3.9.3 On reasonable notice given by ICANN to Registrar, accountings submitted by Registrar shall be subject to verification by an audit of Registrar's books and records by an independent third-party that shall preserve the confidentiality of such books and records (other than its findings as to the accuracy of, and any necessary corrections to, the accountings).

3.10 Insurance. Registrar shall maintain in force commercial general liability insurance with policy limits of at least US\$500,000 covering liabilities arising from Registrar's registrar business during the term of this Agreement.

#### **4. PROCEDURES FOR ESTABLISHMENT OR REVISION OF SPECIFICATIONS AND POLICIES.**

4.1 Registrar's Ongoing Obligation to Comply With New or Revised Specifications and Policies. During the Term of this Agreement, Registrar shall comply with the terms of this Agreement on the schedule set forth in Subsection 4.4, with

4.1.1 new or revised specifications (including forms of agreement to which Registrar is a party) and policies established by ICANN as Consensus Policies in the manner described in Subsection 4.3,

4.1.2 in cases where:

4.1.2.1 this Agreement expressly provides for compliance with revised specifications or policies established in the manner set forth in one or more subsections of this Section 4; or

4.1.2.2 the specification or policy concerns one or more topics described in Subsection 4.2.

4.2 Topics for New and Revised Specifications and Policies. New and revised specifications and policies may be established on the following topics:

4.2.1 issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, technical reliability, and/or operational stability of Registrar Services, Registry Services, the DNS, or the Internet;

4.2.2 registrar policies reasonably necessary to implement ICANN policies or specifications relating to a DNS registry or to Registry Services;

4.2.3 resolution of disputes concerning the registration of Registered Names (as opposed to the use of such domain names), including where the policies take into account use of the domain names;

4.2.4 principles for allocation of Registered Names (e.g., first-come/first-served, timely renewal, holding period after expiration);

4.2.5 prohibitions on warehousing of or speculation in domain names by registries or registrars;

4.2.6 maintenance of and access to accurate and up-to-date contact information regarding Registered Names and nameservers;

4.2.7 reservation of Registered Names that may not be registered initially or that may not be renewed due to reasons reasonably related to (a) avoidance of confusion among or misleading of users, (b) intellectual property, or (c) the technical management of the DNS or the Internet (e.g., "example.com" and names with single-letter/digit labels);

4.2.8 procedures to avoid disruptions of registration due to suspension or termination of operations by a registry operator or a registrar, including allocation of responsibility among continuing registrars of the Registered Names sponsored in a TLD by a registrar losing accreditation; and

4.2.9 the transfer of registration data upon a change in registrar sponsoring one or more Registered Names.

Nothing in this Subsection 4.2 shall limit Registrar's obligations as set forth elsewhere in this Agreement.

#### 4.3 Manner of Establishment of New and Revised Specifications and Policies.

4.3.1 "Consensus Policies" are those specifications or policies established based on a consensus among Internet stakeholders represented in the ICANN process, as demonstrated by (a) action of the ICANN Board of Directors establishing the specification or policy, (b) a recommendation, adopted by at least a two-thirds vote of the council of the ICANN Supporting Organization to which the matter is delegated, that the specification or policy should be established, and (c) a written report and supporting materials (which must include all substantive submissions to the Supporting Organization relating to the proposal) that (i) documents the extent of agreement and disagreement among impacted groups, (ii) documents the outreach process used to seek to achieve adequate representation of the views of groups that are likely to be impacted, and (iii) documents the nature and intensity of reasoned support and opposition to the proposed policy.

4.3.2 In the event that Registrar disputes the presence of such a consensus, it shall seek review of that issue from an Independent Review Panel established under ICANN's bylaws. Such review must be sought within fifteen working days of the publication of the Board's action establishing the policy. The



decision of the panel shall be based on the report and supporting materials required by Subsection 4.3.1. In the event that Registrar seeks review and the Independent Review Panel sustains the Board's determination that the policy is based on a consensus among Internet stakeholders represented in the ICANN process, then Registrar must implement such policy unless it promptly seeks and obtains a stay or injunctive relief under Subsection 5.6.

4.3.3 If, following a decision by the Independent Review Panel convened under Subsection 4.3.2, Registrar still disputes the presence of such a consensus, it may seek further review of that issue within fifteen working days of publication of the decision in accordance with the dispute resolution procedures set forth in Subsection 5.6; provided, however, that Registrar must continue to implement the policy unless it has obtained a stay or injunctive relief under Subsection 5.6 or a final decision is rendered in accordance with the provisions of Subsection 5.6 that relieves Registrar of such obligation. The decision in any such further review shall be based on the report and supporting materials required by Subsection 4.3.1.

4.3.4 A specification or policy established by the ICANN Board of Directors on a temporary basis, without a prior recommendation by the council of an ICANN Supporting Organization, shall also be considered to be a Consensus Policy if adopted by the ICANN Board of Directors by a vote of at least two-thirds of its members, so long as the Board reasonably determines that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the operational stability of Registrar Services, Registry Services, the DNS, or the Internet, and that the proposed specification or policy is as narrowly tailored as feasible to achieve those objectives. In establishing any specification or policy under this provision, the ICANN Board of Directors shall state the period of time for which the specification or policy is temporarily adopted and shall immediately refer the matter to the appropriate Supporting Organization for its evaluation and review with a detailed explanation of its reasons for establishing the temporary specification or policy and why the Board believes the policy should receive the consensus support of Internet stakeholders. If the period of time for which the specification or policy is adopted exceeds ninety days, the Board shall reaffirm its temporary establishment every ninety days for a total period not to exceed one year, in order to maintain such specification or policy in effect until such time as it meets the standard set forth in Subsection 4.3.1. If the standard set forth in Subsection

4.3.1 is not met within the temporary period set by the Board, or the council of the Supporting Organization to which it has been referred votes to reject the temporary specification or policy, it will no longer be a "Consensus Policy."

4.3.5 For all purposes under this Agreement, the policies specifically identified by ICANN on its website ([www.icann.org/general/consensus-policies.htm](http://www.icann.org/general/consensus-policies.htm)) at the date of this Agreement as having been adopted by the ICANN Board of Directors before the date of this Agreement shall be treated in the same manner and have the same effect as "Consensus Policies" and accordingly shall not be subject to review under Subsection 4.3.2.

4.3.6 In the event that, at the time the ICANN Board of Directors establishes a specification or policy under Subsection 4.3.1 during the Term of this Agreement, ICANN does not have in place an Independent Review Panel established under ICANN's bylaws, the fifteen-working-day period allowed under Subsection 4.3.2 to seek review shall be extended until fifteen working days after ICANN does have such an Independent Review Panel in place and Registrar shall not be obligated to comply with the specification or policy in the interim.

4.4 Time Allowed for Compliance. Registrar shall be afforded a reasonable period of time after receiving notice of the establishment of a specification or policy under Subsection 4.3 in which to comply with that specification or policy, taking into account any urgency involved.

## 5. MISCELLANEOUS PROVISIONS.

5.1 Specific Performance. While this Agreement is in effect, either party may seek specific performance of any provision of this Agreement in the manner provided in Section 5.6 below, provided the party seeking such performance is not in material breach of its obligations.

5.2 Termination of Agreement by Registrar. This Agreement may be terminated before its expiration by Registrar by giving ICANN thirty days written notice. Upon such termination by Registrar, Registrar shall not be entitled to any refund of fees paid to ICANN pursuant to this Agreement.

5.3 Termination of Agreement by ICANN. This Agreement may be terminated before its expiration by ICANN in any of the following circumstances:

5.3.1 There was a material misrepresentation, material inaccuracy, or materially misleading statement in Registrar's application for accreditation or any material accompanying the application.

5.3.2 Registrar:

5.3.2.1 is convicted by a court of competent jurisdiction of a felony or other serious offense related to financial activities, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of those offenses; or

5.3.2.2 is disciplined by the government of its domicile for conduct involving dishonesty or misuse of funds of others.

5.3.3 Any officer or director of Registrar is convicted of a felony or of a misdemeanor related to financial activities, or is judged by a court to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN deems as the substantive equivalent of any of these; provided, such officer or director is not removed in such circumstances.

5.3.4 Registrar fails to cure any breach of this Agreement (other than a failure to comply with a policy adopted by ICANN during the term of this Agreement as to which Registrar is seeking, or still has time to seek, review under Subsection 4.3.2 of whether a consensus is present) within fifteen working days after ICANN gives Registrar notice of the breach.

5.3.5 Registrar fails to comply with a ruling granting specific performance under Subsections 5.1 and 5.6.

5.3.6 Registrar continues acting in a manner that ICANN has reasonably determined endangers the stability or operational integrity of the Internet after receiving three days notice of that determination.

5.3.7 Registrar becomes bankrupt or insolvent.

This Agreement may be terminated in circumstances described in Subsections 5.3.1 - 5.3.6 above only upon fifteen days written notice to Registrar (in the case of Subsection 5.3.4 occurring after Registrar's failure to cure), with Registrar being given an opportunity during that time to initiate arbitration under Subsection 5.6 to determine the appropriateness of termination under this Agreement. In the event Registrar initiates litigation or arbitration concerning the appropriateness of termination by ICANN, the termination shall be stayed an additional thirty days to allow Registrar to obtain a stay of termination under Subsection 5.6 below. If Registrar acts in a manner that ICANN reasonably determines endangers the stability or operational integrity of the Internet and upon notice does not immediately cure, ICANN may suspend this Agreement for five working days pending ICANN's application for more extended specific performance

or injunctive relief under Subsection 5.6. This Agreement may be terminated immediately upon notice to Registrar in circumstance described in Subsection 5.3.7 above.

#### 5.4 Term of Agreement; Renewal; Right to Substitute Updated Agreement.

This Agreement shall be effective on the Effective Date and shall have an initial term running until the Expiration Date, unless sooner terminated. Thereafter, if Registrar seeks to continue its accreditation, it may apply for renewed accreditation, and shall be entitled to renewal provided it meets the ICANN-adopted specification or policy on accreditation criteria then in effect, is in compliance with its obligations under this Agreement, as it may be amended, and agrees to be bound by terms and conditions of the then-current Registrar accreditation agreement (which may differ from those of this Agreement) that ICANN adopts in accordance with Subsection 2.3 and Subsection 4.3. In connection with renewed accreditation, Registrar shall confirm its assent to the terms and conditions of the then-current Registrar accreditation agreement by signing that accreditation agreement. In the event that, during the Term of this Agreement, ICANN posts on its web site an updated form of registrar accreditation agreement applicable to Accredited registrars, Registrar (provided it has not received (1) a notice of breach that it has not cured or (2) a notice of termination of this Agreement under Subsection 5.3 above) may elect, by giving ICANN written notice, to enter an agreement in the updated form in place of this Agreement. In the event of such election, Registrar and ICANN shall promptly sign a new accreditation agreement that contains the provisions of the updated form posted on the web site, with the length of the term of the substituted agreement as stated in the updated form posted on the web site, calculated as if it commenced on the date this Agreement was made, and this Agreement will be deemed terminated.

5.5 Addition or Deletion of TLDs for Which Registrar Accredited. On the Effective Date, Registrar shall be accredited according to Subsection 2.1 for each TLD as to which an appendix executed by both parties is attached to this Agreement. During the Term of this Agreement, Registrar may request accreditation for any additional TLD(s) by signing an additional appendix for each additional TLD in the form prescribed by ICANN and submitting the appendix to ICANN. In the event ICANN agrees to the request, ICANN will sign the additional appendix and return a copy of it to Registrar. The mutually signed appendix shall thereafter be an appendix to this Agreement. During the Term of this Agreement, Registrar may abandon its accreditation for any TLD under this Agreement (provided that Registrar will thereafter remain accredited for at least one TLD under this Agreement) by giving ICANN written notice specifying the TLD as to which accreditation is being abandoned. The abandonment shall be effective thirty days after the notice is given.

5.6 Resolution of Disputes Under this Agreement. Disputes arising under

or in connection with this Agreement, including (1) disputes arising from ICANN's failure to renew Registrar's accreditation and (2) requests for specific performance, shall be resolved in a court of competent jurisdiction or, at the election of either party, by an arbitration conducted as provided in this Subsection 5.6 pursuant to the International Arbitration Rules of the American Arbitration Association ("AAA"). The arbitration shall be conducted in English and shall occur in Los Angeles County, California, USA. There shall be three arbitrators: each party shall choose one arbitrator and, if those two arbitrators do not agree on a third arbitrator, the third shall be chosen by the AAA. The parties shall bear the costs of the arbitration in equal shares, subject to the right of the arbitrators to reallocate the costs in their award as provided in the AAA rules. The parties shall bear their own attorneys' fees in connection with the arbitration, and the arbitrators may not reallocate the attorneys' fees in conjunction with their award. The arbitrators shall render their decision within ninety days of the conclusion of the arbitration hearing. In the event Registrar initiates arbitration to contest the appropriateness of termination of this Agreement by ICANN, Registrar may at the same time request that the arbitration panel stay the termination until the arbitration decision is rendered, and that request shall have the effect of staying the termination until the arbitration panel has granted an ICANN request for specific performance and Registrar has failed to comply with such ruling. In the event Registrar initiates arbitration to contest an Independent Review Panel's decision under Subsection 4.3.3 sustaining the Board's determination that a specification or policy is supported by consensus, Registrar may at the same time request that the arbitration panel stay the requirement that it comply with the policy until the arbitration decision is rendered, and that request shall have the effect of staying the requirement until the decision or until the arbitration panel has granted an ICANN request for lifting of the stay. In all litigation involving ICANN concerning this Agreement (whether in a case where arbitration has not been elected or to enforce an arbitration award), jurisdiction and exclusive venue for such litigation shall be in a court located in Los Angeles, California, USA; however, the parties shall also have the right to enforce a judgment of such a court in any court of competent jurisdiction. For the purpose of aiding the arbitration and/or preserving the rights of the parties during the pendency of an arbitration, the parties shall have the right to seek temporary or preliminary injunctive relief from the arbitration panel or in a court located in Los Angeles, California, USA, which shall not be a waiver of this arbitration agreement.

5.7 Limitations on Monetary Remedies for Violations of this Agreement. ICANN's aggregate monetary liability for violations of this Agreement shall not exceed the amount of accreditation fees paid by Registrar to ICANN under Subsection 3.9 of this Agreement. Registrar's monetary liability to ICANN for violations of this Agreement shall be limited to accreditation fees owing to ICANN under this Agreement. In no event shall either party be liable for special, indirect, incidental, punitive, exemplary, or consequential

damages for any violation of this Agreement.

**5.8 Handling by ICANN of Registrar-Supplied Data.** Before receiving any Personal Data from Registrar, ICANN shall specify to Registrar in writing the purposes for and conditions under which ICANN intends to use the Personal Data. ICANN may from time to time provide Registrar with a revised specification of such purposes and conditions, which specification shall become effective no fewer than thirty days after it is provided to Registrar. ICANN shall not use Personal Data provided by Registrar for a purpose or under conditions inconsistent with the specification in effect when the Personal Data was provided. ICANN shall take reasonable steps to avoid uses of the Personal Data by third parties inconsistent with the specification.

**5.9 Assignment.** Either party may assign or transfer this Agreement only with the prior written consent of the other party, which shall not be unreasonably withheld, except that ICANN may, with the written approval of the United States Department of Commerce, assign this agreement by giving Registrar written notice of the assignment. In the event of assignment by ICANN, the assignee may, with the approval of the United States Department of Commerce, revise the definition of "Consensus Policy" to the extent necessary to meet the organizational circumstances of the assignee, provided the revised definition requires that Consensus Policies be based on a demonstrated consensus of Internet stakeholders.

**5.10 No Third-Party Beneficiaries.** This Agreement shall not be construed to create any obligation by either ICANN or Registrar to any non-party to this Agreement, including any Registered Name Holder.

**5.11 Notices, Designations, and Specifications.** All notices to be given under this Agreement shall be given in writing at the address of the appropriate party as set forth below, unless that party has given a notice of change of address in writing. Any notice required by this Agreement shall be deemed to have been properly given when delivered in person, when sent by electronic facsimile with receipt of confirmation of delivery, or when scheduled for delivery by internationally recognized courier service. Designations and specifications by ICANN under this Agreement shall be effective when written notice of them is deemed given to Registrar.

If to ICANN, addressed to:

Internet Corporation for Assigned Names and Numbers  
Registrar Accreditation  
4676 Admiralty Way, Suite 330  
Marina del Rey, California 90292 USA  
Attention: General Counsel  
Telephone: 1/310/823-9358  
Facsimile: 1/310/823-8649

If to Registrar, addressed to:

[Registrar Name]  
a [organization type and jurisdiction]  
[Courier Address]  
[Mailing Address]  
Attention: [contact person]  
Registrar Website URL: [URL]  
Telephone: [telephone number]  
Facsimile: [fax number]  
e-mail: [e-mail address]

5.12 Dates and Times. All dates and times relevant to this Agreement or its performance shall be computed based on the date and time observed in Los Angeles, California, USA.

5.13 Language. All notices, designations, and specifications made under this Agreement shall be in the English language.

5.14 Amendments and Waivers. No amendment, supplement, or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both parties. No waiver of any provision of this Agreement shall be binding unless evidenced by a writing signed by the party waiving compliance with such provision. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided.

5.15 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

5.16 Entire Agreement. Except to the extent (a) expressly provided in a written agreement executed by both parties concurrently herewith or (b) of written assurances provided by Registrar to ICANN in connection with its Accreditation, this Agreement (including the appendices, which form part of it) constitutes the entire agreement of the parties pertaining to the accreditation of Registrar and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their duly authorized representatives.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

By: \_\_\_\_\_  
Paul Twomey  
President and CEO

[Registrar Name]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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## .AERO APPENDIX

The Internet Corporation for Assigned Names and Numbers, a California non-profit, public benefit corporation ("ICANN"), and [Registrar Name], a [organization type and jurisdiction] ("Registrar") have entered into a Registrar Accreditation Agreement ("Registrar Accreditation Agreement"), of which this appendix (".aero Appendix") is a part.

Registrar wishes to be accredited in the .aero TLD pursuant to and subject to the Registrar Accreditation Agreement and ICANN wishes to accredit Registrar in the .aero TLD. Pursuant to and subject to the Registrar Accreditation Agreement, Registrar and ICANN hereby agree as follows:

1. Definitions. All initially capitalized terms not otherwise defined herein shall have the definitions assigned to such terms in the Registrar Accreditation Agreement.
2. Registrar Election. Registrar hereby elects and agrees to become accredited by ICANN to provide Registration Services in the .aero TLD.
3. ICANN's Acceptance. ICANN hereby accepts Registrar's election to become accredited by ICANN to provide Registration Services in the .aero TLD.
4. Need for Agreement with Sponsor. Registrar's obligation under Subsection 3.1 to operate as a registrar for the .aero TLD is conditioned upon the .aero Sponsor (designated as such by a TLD Sponsorship Agreement with ICANN) selecting Registrar as one authorized to act as an .aero registrar and upon an Authorizing Agreement between Registrar and the .aero Sponsor.
5. Sponsored TLD/Sponsor's Delegated Authority. Registrar acknowledges that the .aero TLD is a sponsored TLD, over which the .aero Sponsor has delegated policy-formulation authority under its TLD Sponsorship Agreement with ICANN. The scope of delegation is currently stated at <http://www.icann.org/tlds/agreements/aero/sponsorship-agmt-att2-20nov01.htm> and includes topics that will affect the manner in which Registrar conducts its business of registering domain names in the .aero TLD. (The delegation includes, for example, Practices and performance of ICANN-Accredited Registrars selected by Sponsor with respect to Registered Names and their registration. ) Registrar agrees to comply with the requirements established by the .aero Sponsor within its delegated scope of policy-formulation authority.
6. Deviations from Obligations of this Agreement Due to Delegation. The .aero



Sponsor may develop and implement a policy within the scope of its authority granted by its TLD Sponsorship Agreement with ICANN that requires Registrar to deviate from one or more obligations of this Registrar Accreditation Agreement. In that event, the .aero Sponsor will notify ICANN in writing of the policy and the manner in which the .aero Sponsor believes that Registrar's obligation(s) under this Registrar Accreditation Agreement should be modified. Within thirty days after this notification, ICANN will either:

(a) notify Registrar and the .aero Sponsor in writing of the modification(s) to Registrar's obligations under this Registrar Accreditation Agreement that in ICANN's opinion is (are) appropriate to allow Registrar to comply with the .aero Sponsor policy. In case of this notification by ICANN, Registrar may act in conformity with the modified obligation(s) stated in the ICANN notification.

(b) notify Registrar and the .aero Sponsor in writing that in ICANN's opinion no modification of Registrar's obligations is appropriate. In case of this notification by ICANN, Registrar will continue to comply with its obligations without any modification until it is notified in writing by ICANN that a resolution of any difference between the opinions of ICANN and the .aero Sponsor is resolved.

IN WITNESS WHEREOF, the parties hereto have caused this .aero Appendix to be executed by their duly authorized representatives.

ICANN

[Registrar Name]

By: \_\_\_\_\_  
Paul Twomey  
President and CEO

By: \_\_\_\_\_  
Name:  
Title:  
Dated: \_\_\_\_\_, 200\_\_

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## .BIZ APPENDIX

The Internet Corporation for Assigned Names and Numbers, a California non-profit, public benefit corporation ("ICANN"), and [Registrar Name], a [organization type and jurisdiction] ("Registrar") have entered into a Registrar Accreditation Agreement ("Registrar Accreditation Agreement"), of which this appendix (".biz Appendix") is a part.

Registrar wishes to be accredited in the .biz TLD pursuant to and subject to the Registrar Accreditation Agreement and ICANN wishes to accredit Registrar in the .biz TLD. Pursuant to and subject to the Registrar Accreditation Agreement, Registrar and ICANN hereby agree as follows:

1. Definitions. All initially capitalized terms not otherwise defined herein shall have the definitions assigned to such terms in the Registrar Accreditation Agreement.

2. Registrar Election. Registrar hereby elects and agrees to become accredited by ICANN to provide Registration Services in the .biz TLD.

3. ICANN's Acceptance. ICANN hereby accepts Registrar's election to become accredited by ICANN to provide Registration Services in the .biz TLD.

IN WITNESS WHEREOF, the parties hereto have caused this .biz Appendix to be executed by their duly authorized representatives.

ICANN

[Registrar Name]

By: \_\_\_\_\_

By: \_\_\_\_\_

Paul Twomey  
President and CEO

Name:

Title:

Dated: \_\_\_\_\_, 200\_\_

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## .COM APPENDIX

The Internet Corporation for Assigned Names and Numbers, a California non-profit, public benefit corporation ("ICANN"), and [Registrar Name], a [organization type and jurisdiction] ("Registrar") have entered into a Registrar Accreditation Agreement ("Registrar Accreditation Agreement"), of which this appendix (".com Appendix") is a part.

Registrar wishes to be accredited in the .com TLD pursuant to and subject to the Registrar Accreditation Agreement and ICANN wishes to accredit Registrar in the .com TLD. Pursuant to and subject to the Registrar Accreditation Agreement, Registrar and ICANN hereby agree as follows:

1. Definitions. All initially capitalized terms not otherwise defined herein shall have the definitions assigned to such terms in the Registrar Accreditation Agreement.

2. Registrar Election. Registrar hereby elects and agrees to become accredited by ICANN to provide Registration Services in the .com TLD.

3. ICANN's Acceptance. ICANN hereby accepts Registrar's election to become accredited by ICANN to provide Registration Services in the .com TLD.

IN WITNESS WHEREOF, the parties hereto have caused this .com Appendix to be executed by their duly authorized representatives.

ICANN

[Registrar Name]

By: \_\_\_\_\_  
Paul Twomey  
President and CEO

By: \_\_\_\_\_  
Name:  
Title:  
Dated: \_\_\_\_\_, 200\_\_

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## .COOP APPENDIX

ICANN and [Registrar] have entered into a Registrar Accreditation Agreement ("RAA"), of which this .coop Appendix ("Appendix") is a part. Pursuant to and subject to the RAA, Registrar and ICANN hereby agree as follows:

1. Definitions. As used in the RAA (including this appendix) with respect to the .coop TLD:

1.1 Sponsor refers to the entity designated as the Sponsoring Organization for the .coop TLD by a Sponsorship Agreement with ICANN, so long as that Sponsorship Agreement is in effect.

1.2 "Registry Operator" is the entity responsible, in accordance with an agreement between the Sponsor (or its assignee) and that person or entity, for providing Registry Services for the .coop TLD.

1.3 Registry Services, with respect to the .coop TLD, shall have the meaning defined in the Sponsorship Agreement in effect between ICANN and the Sponsor.

1.4 Authorizing Agreement refers to the Sponsor's standard written agreement with registrars under which they are authorized to receive from Registry Operator Registry Services for the .coop TLD.

1.5 Registered Name refers to a domain name within the domain of the .coop TLD, whether at the second or a lower level, about which Registry Operator (or an affiliate engaged in providing Registry Services) maintains data in a Registry Database, arranges for such maintenance, or derives revenue from such maintenance. A name in a Registry Database may be a Registered Name even though it does not appear in a zone file (e.g., a registered but inactive name).

All initially capitalized terms not otherwise defined in this Appendix shall have the definitions assigned to such terms in the RAA.

2. Registrar Election. Registrar hereby elects and agrees to become accredited by ICANN to provide Registrar Services in the .coop TLD.

3. ICANN's Acceptance. ICANN hereby accepts Registrar's election to become accredited by ICANN to provide Registrar Services in the .coop TLD.

4. Need for Agreement with Sponsor. Registrar's obligation under RAA Subsection 3.1 to operate as a registrar for the .coop TLD is conditioned upon the .coop Sponsor selecting Registrar as one authorized to act as a .coop registrar, and upon Registrar and the .coop Sponsor having an Authorizing Agreement in effect.

5. Sponsored TLD/Sponsor's Delegated Authority. Registrar acknowledges that the .coop TLD is a sponsored TLD, over which the .coop Sponsor has been delegated policy-formulation authority under its TLD Sponsorship Agreement with ICANN. The scope of delegation is currently stated at <<http://www.icann.org/tlds/agreements/coop/sponsorship-agmt-att2-06nov01.htm>> and includes topics that will affect the manner in which Registrar conducts its business of registering domain names in the .coop TLD. (The delegation includes, for example, Practices of ICANN-Accredited Registrars selected by Sponsor with respect to Registered Names and their registration. ) Registrar agrees to comply with the requirements established by the .coop Sponsor within its delegated scope of policy-formulation authority.

6. Deviations from Obligations of this Agreement Due to Delegation. The .coop Sponsor may develop and implement a policy within the scope of its authority granted by its TLD Sponsorship Agreement with ICANN that requires Registrar to deviate from one or more obligations of this RAA. In that event, the .coop Sponsor will notify ICANN in writing of the policy and the manner in which the .coop Sponsor believes that Registrar's obligation(s) under this RAA should be modified. Within thirty days after this notification, ICANN will either:

(a) notify Registrar and the .coop Sponsor in writing of the modification(s) to Registrar's obligations under this RAA that in ICANN's opinion is (are) appropriate to allow Registrar to comply with the .coop Sponsor policy. In case of this notification by ICANN, Registrar may act in conformity with the modified obligation(s) stated in the ICANN notification.

(b) notify Registrar and the .coop Sponsor in writing that in ICANN's opinion no modification of Registrar's obligations is appropriate. In case of this notification by ICANN, Registrar will continue to comply with its obligations under the RAA without any modification until it is notified in writing by ICANN that a resolution of any difference between the opinions of ICANN and the .coop Sponsor is resolved.

IN WITNESS WHEREOF, the parties hereto have caused this .coop Appendix to be executed by their duly authorized representatives.

ICANN

[Registrar Name]

By: \_\_\_\_\_

By: \_\_\_\_\_

Paul Twomey  
President and CEO

Name:

Title:

Dated: \_\_\_\_\_, 200\_\_

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## .INFO APPENDIX

The Internet Corporation for Assigned Names and Numbers, a California non-profit,

public benefit corporation ("ICANN"), and [Registrar Name], a [organization type and jurisdiction] ("Registrar") have entered into a Registrar Accreditation Agreement ("Registrar Accreditation Agreement"), of which this appendix (".info Appendix") is a part.

Registrar wishes to be accredited in the .info TLD pursuant to and subject to the Registrar Accreditation Agreement and ICANN wishes to accredit Registrar in the .info TLD. Pursuant to and subject to the Registrar Accreditation Agreement, Registrar and ICANN hereby agree as follows:

1. Definitions. All initially capitalized terms not otherwise defined herein shall have the definitions assigned to such terms in the Registrar Accreditation Agreement.
2. Registrar Election. Registrar hereby elects and agrees to become accredited by ICANN to provide Registration Services in the .info TLD.
3. ICANN's Acceptance. ICANN hereby accepts Registrar's election to become accredited by ICANN to provide Registration Services in the .info TLD.

IN WITNESS WHEREOF, the parties hereto have caused this .info Appendix to be executed by their duly authorized representatives.

ICANN

[Registrar Name]

By: \_\_\_\_\_  
Paul Twomey  
President and CEO

By: \_\_\_\_\_  
Name:  
Title:  
Dated: \_\_\_\_\_, 200\_\_

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## .MUSEUM APPENDIX

ICANN and [Registrar Name] have entered into a Registrar Accreditation Agreement ("RAA"), of which this .museum Appendix ("Appendix") is a part. Pursuant to and subject to the RAA, Registrar and ICANN hereby agree as follows:

1. Definitions. As used in the RAA (including this appendix) with respect to the .museum TLD:
  - 1.1 Sponsor refers to the entity designated as the Sponsoring Organization for the .museum TLD by a Sponsorship Agreement with ICANN, so long as that Sponsorship Agreement is in effect.
  - 1.2 "Registry Operator" is the entity responsible, in accordance with an agreement between the Sponsor (or its assignee) and that person or entity, for providing Registry Services for the .museum TLD.
  - 1.3 Registry Services, with respect to the .museum TLD, shall have the meaning defined in the Sponsorship Agreement in effect between ICANN and the Sponsor.

1.4 Authorizing Agreement refers to the Sponsor's standard written agreement with registrars under which they are authorized to receive from Registry Operator Registry Services for the .museum TLD.

1.5 Registered Name refers to a domain name within the domain of the .museum TLD, whether consisting of two or more (e.g., example.art.museum) levels, about which Registry Operator (or an affiliate engaged in providing Registry Services) maintains data in a Registry Database, arranges for such maintenance, or derives revenue from such maintenance. A name in a Registry Database may be a Registered Name even though it does not appear in a zone file (e.g., a registered but inactive name).

All initially capitalized terms not otherwise defined in this Appendix shall have the definitions assigned to such terms in the RAA.

2. Registrar Election. Registrar hereby elects and agrees to become accredited by ICANN to provide Registrar Services in the .museum TLD.

3. ICANN's Acceptance. ICANN hereby accepts Registrar's election to become accredited by ICANN to provide Registrar Services in the .museum TLD.

4. Need for Agreement with Sponsor. Registrar's obligation under RAA Subsection 3.1 to operate as a registrar for the .museum TLD is conditioned upon the .museum Sponsor selecting Registrar as one authorized to act as a .museum registrar, and upon Registrar and the .museum Sponsor having an Authorizing Agreement in effect.

5. Sponsored TLD/Sponsor's Delegated Authority. Registrar acknowledges that the .museum TLD is a sponsored TLD, over which the .museum Sponsor has been delegated policy-formulation authority under its TLD Sponsorship Agreement with ICANN. The scope of delegation is currently stated at <<http://www.icann.org/tlds/agreements/museum/sponsorship-agmt-att2-20aug01.htm>> and includes topics that will affect the manner in which Registrar conducts its business of registering domain names in the .museum TLD. (The delegation includes, for example, Practices of ICANN-Accredited Registrars selected by Sponsor with respect to Registered Names and their registration.) Registrar agrees to comply with the requirements established by the .museum Sponsor within its delegated scope of policy-formulation authority.

6. Deviations from Obligations of this Agreement Due to Delegation. The .museum Sponsor may develop and implement a policy within the scope of its authority granted by its TLD Sponsorship Agreement with ICANN that requires Registrar to deviate from one or more obligations of this RAA. In that event, the .museum Sponsor will notify ICANN in writing of the policy and the manner in which the .museum Sponsor believes that Registrar's obligation(s) under this RAA should be modified. Within thirty days after this notification, ICANN will either:

(a) notify Registrar and the .museum Sponsor in writing of the modification(s) to Registrar's obligations under this RAA that in ICANN's opinion is (are) appropriate to allow Registrar to comply with the .museum Sponsor policy. In case of this notification by ICANN, Registrar may act in

conformity with the modified obligation(s) stated in the ICANN notification.

(b) notify Registrar and the .museum Sponsor in writing that in ICANN's opinion no modification of Registrar's obligations is appropriate. In case of this notification by ICANN, Registrar will continue to comply with its obligations under the RAA without any modification until it is notified in writing by ICANN that a resolution of any difference between the opinions of ICANN and the .museum Sponsor is resolved.

IN WITNESS WHEREOF, the parties hereto have caused this .museum Appendix to be executed by their duly authorized representatives.

ICANN

[Registrar Name]

By: \_\_\_\_\_

By: \_\_\_\_\_

Paul Twomey

Name:

President and CEO

Title:

Dated: \_\_\_\_\_, 200\_\_

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## .NAME APPENDIX

The Internet Corporation for Assigned Names and Numbers, a California non-profit, public benefit corporation ("ICANN"), and [Registrar Name], a [organization type and jurisdiction] ("Registrar") have entered into a Registrar Accreditation Agreement ("Registrar Accreditation Agreement"), of which this appendix ( .name Appendix ) is a part.

Registrar wishes to be accredited in the .name TLD pursuant to and subject to the Registrar Accreditation Agreement and ICANN wishes to accredit Registrar in the .name TLD. Pursuant to and subject to the Registrar Accreditation Agreement, Registrar and ICANN hereby agree as follows:

1. Definitions. All initially capitalized terms not otherwise defined herein shall have the definitions assigned to such terms in the Registrar Accreditation Agreement.
2. Registrar Election. Registrar hereby elects and agrees to become accredited by ICANN to provide Registration Services in the .name TLD.
3. ICANN's Acceptance. ICANN hereby accepts Registrar's election to become accredited by ICANN to provide Registration Services in the .name TLD.
4. Data Submission. Pursuant to Subsection 3.2.1, as part of its registration for SLD E-mail forwarding, the NameWatch Service, and Defensive Registrations, Registrar shall submit to, or shall place in the Registry Database operated by, the Registry Operator for the TLD that Registry Operator, consistent with Appendix C to its Registry Agreement with ICANN, data elements Registry Operator requires be submitted to it.

IN WITNESS WHEREOF, the parties hereto have caused this .name Appendix to be executed by their duly authorized representatives.

ICANN

[Registrar Name]

By: \_\_\_\_\_  
Paul Twomey  
President and CEO

By: \_\_\_\_\_  
Name:  
Title:  
Dated: \_\_\_\_\_, 200\_\_

### .NET APPENDIX

The Internet Corporation for Assigned Names and Numbers, a California non-profit, public benefit corporation ("ICANN"), and [Registrar Name], a [organization type and jurisdiction] ("Registrar") have entered into a Registrar Accreditation Agreement ("Registrar Accreditation Agreement"), of which this appendix (".net Appendix") is a part.

Registrar wishes to be accredited in the .net TLD pursuant to and subject to the Registrar Accreditation Agreement and ICANN wishes to accredit Registrar in the .net TLD. Pursuant to and subject to the Registrar Accreditation Agreement, Registrar and ICANN hereby agree as follows:

1. Definitions. All initially capitalized terms not otherwise defined herein shall have the definitions assigned to such terms in the Registrar Accreditation Agreement.
2. Registrar Election. Registrar hereby elects and agrees to become accredited by ICANN to provide Registration Services in the .net TLD.
3. ICANN's Acceptance. ICANN hereby accepts Registrar's election to become accredited by ICANN to provide Registration Services in the .net TLD.

IN WITNESS WHEREOF, the parties hereto have caused this .net Appendix to be executed by their duly authorized representatives.

ICANN

[Registrar Name]

By: \_\_\_\_\_  
Paul Twomey  
President and CEO

By: \_\_\_\_\_  
Name:  
Title:  
Dated: \_\_\_\_\_, 200\_\_

### .ORG APPENDIX

The Internet Corporation for Assigned Names and Numbers, a California non-profit, public benefit corporation ("ICANN"), and [Registrar Name], a [organization type and jurisdiction] ("Registrar") have entered into a Registrar Accreditation Agreement ("Registrar Accreditation Agreement"), of which this appendix (".org Appendix") is a part.



Registrar wishes to be accredited in the .org TLD pursuant to and subject to the Registrar Accreditation Agreement and ICANN wishes to accredit Registrar in the .org TLD. Pursuant to and subject to the Registrar Accreditation Agreement, Registrar and ICANN hereby agree as follows:

1. Definitions. All initially capitalized terms not otherwise defined herein shall have the definitions assigned to such terms in the Registrar Accreditation Agreement.
2. Registrar Election. Registrar hereby elects and agrees to become accredited by ICANN to provide Registration Services in the .org TLD.
3. ICANN's Acceptance. ICANN hereby accepts Registrar's election to become accredited by ICANN to provide Registration Services in the .org TLD.

IN WITNESS WHEREOF, the parties hereto have caused this .org Appendix to be executed by their duly authorized representatives.

ICANN

[Registrar Name]

By: \_\_\_\_\_  
Paul Twomey  
President and CEO

By: \_\_\_\_\_  
Name:  
Title:  
Dated: \_\_\_\_\_, 200\_\_

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## .PRO APPENDIX

ICANN and [Registrar] have entered into a Registrar Accreditation Agreement ("RAA"), of which this .pro Appendix ("Appendix") is a part. Pursuant to and subject to the RAA, Registrar and ICANN hereby agree as follows:

1. Definitions. As used in the RAA (including this appendix) with respect to the .pro TLD, all initially capitalized terms not otherwise defined in this Appendix shall have the definitions assigned to such terms in the RAA.
2. Registrar Election. Registrar hereby elects and agrees to become accredited by ICANN to provide Registrar Services in the .pro TLD.
3. ICANN's Acceptance. ICANN hereby accepts Registrar's election to become accredited by ICANN to provide Registrar Services in the .pro TLD.

IN WITNESS WHEREOF, the parties hereto have caused this .pro Appendix to be executed by their duly authorized representatives.

ICANN

[Registrar Name]

By: \_\_\_\_\_  
Paul Twomey  
President and CEO

By: \_\_\_\_\_  
Name:  
Title:  
Dated: \_\_\_\_\_, 200\_\_

## LOGO LICENSE APPENDIX

The Internet Corporation for Assigned Names and Numbers, a California non-profit, public benefit corporation ("ICANN"), and [Registrar Name], a [organization type and jurisdiction] ("Registrar") have entered into a Registrar Accreditation Agreement ("Registrar Accreditation Agreement"), of which this appendix ("Logo License Appendix") is a part. Definitions in the Registrar Accreditation Agreement apply in this Logo License Appendix.

Registrar wishes to acquire from ICANN, and ICANN wishes to grant to Registrar, a license to use the trademarks listed below the signature block of this Logo License Appendix ("Trademarks") in connection with Registrar's role as an ICANN-accredited registrar. Pursuant to and subject to the Registrar Accreditation Agreement, Registrar and ICANN hereby agree as follows:

### LICENSE

1. Grant of License. ICANN grants to Registrar a non-exclusive, worldwide right and license to use the Trademarks, during the term of this appendix and solely in connection with the provision and marketing of Registrar Services in order to indicate that Registrar is accredited as a registrar of domain names by ICANN. Except as provided in this subsection and Subsection 2.2 of the Registrar Accreditation Agreement, Registrar shall not use the Trademarks, any term, phrase, or design which is confusingly similar to the Trademarks or any portion of the Trademarks in any manner whatsoever.
2. Ownership of Trademarks. Any and all rights in the Trademarks that may be acquired by Registrar shall inure to the benefit of, and are hereby assigned to, ICANN. Registrar shall not assert ownership of the Trademarks or any associated goodwill.
3. No Sublicense. Registrar shall not sublicense any of its rights under this appendix to any other person or entity (including any of Registrar's resellers) without the prior written approval of ICANN.

### REGISTRATION AND ENFORCEMENT

1. Registration. Registration and any other form of protection for the Trademarks shall only be obtained by ICANN in its name and at its expense.
2. Enforcement. Registrar shall promptly notify ICANN of any actual or suspected infringement of the Trademarks by third parties, including Registrar's resellers or affiliates. ICANN shall have the sole discretion to initiate and maintain any legal proceedings against such third parties; Registrar shall not take

any such actions without the prior written approval of ICANN; and ICANN shall retain any and all recoveries from such actions.

3. Further Assurances. Registrar agrees to execute such other documents and to take all such actions as ICANN may request to effect the terms of this appendix, including providing such materials (for example URLs and samples of any promotional materials bearing the Trademarks), cooperation, and assistance as may be reasonably required to assist ICANN in obtaining, maintaining, and enforcing trademark registration(s) and any other form of protection for the Trademarks.

### TERM AND TERMINATION

This Logo License Appendix shall be effective from the date it is signed below by both parties until the Expiration Date, unless this appendix or the Registrar Accreditation Agreement is earlier terminated. Each party shall have the right to terminate this appendix at any time by giving the other party written notice. Upon expiration or termination of this appendix, Registrar shall immediately discontinue all use of the Trademarks.

IN WITNESS WHEREOF, the parties have caused this Logo License Appendix to be executed by their duly authorized representatives.

ICANN

[Registrar Name]

By: \_\_\_\_\_  
Paul Twomey  
President and CEO

By: \_\_\_\_\_  
Name:  
Title:  
Dated: \_\_\_\_\_, 200\_\_

### TRADEMARKS:

1. ICANN Accredited Registrar
- 2.



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Comments concerning the layout, construction and functionality of this site should be sent to [webmaster@icann.org](mailto:webmaster@icann.org).

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