

INTERNATIONAL CHAMBER OF COMMERCE  
INTERNATIONAL COURT OF ARBITRATION

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REQUEST FOR ARBITRATION

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INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS  
(United States of America)  
Claimant,

v.

VERISIGN, INC. (United States of America)  
Respondent.

November 10, 2004

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## INTRODUCTION

This Request for Arbitration arises out of a dispute over obligations that Respondent VeriSign, Inc. ("VeriSign") assumed under an agreement with Claimant Internet Corporation for Assigned Names and Numbers ("ICANN") in exchange for ICANN's appointment of VeriSign as the ".net" registry operator for the Internet. These disputes have arisen because VeriSign has refused to comply with its obligations under the parties' agreement and has taken actions that are inconsistent with those obligations. VeriSign's conduct threatens the secure and stable operation of the .net registry. VeriSign's actions and its assertions that it need not comply with those obligations are contrary to the terms of the parties' agreement.

ICANN is the internationally organized nonprofit corporation responsible for coordinating the global Internet's domain name system. The Internet domain name system consists of approximately 250 Top-Level Domains ("TLDs") (e.g., .com, .net, .org, .edu) and about 64.5 million registered domain names (e.g., www.interNIC.net) for which TLD operators charge for registration. ICANN's mission is to protect the stability, integrity, and utility of this system on behalf of the global community. Among its many responsibilities, ICANN is charged with overseeing the delegation of TLDs to qualified applicants. ICANN has awarded contracts to a number of entities to operate one or more TLDs and to maintain the definitive registry of domain names for that TLD. VeriSign is one of those entities. Pursuant to separate May 2001 registry agreements, VeriSign is the "registry" for, and thus has the responsibility for operating, two of the largest TLDs, ".com" and ".net." These two TLDs collectively contain nearly 90% of all registered domain names in the United States, and 53% of all registered domain names on the Internet throughout the world. This arbitration concerns only the 2001 .net Registry Agreement (".net agreement").<sup>1</sup>

The disputes between ICANN and VeriSign are causing serious contention between the parties. VeriSign has, on multiple occasions, taken unilateral actions (with little or no notice to ICANN or to affected users and operators of the Internet) contrary to its obligations under the relevant agreements. This has had the impact of threatening the stable operation of the .com and .net TLDs.

For example, on September 15, 2003, VeriSign, with virtually no notice whatsoever to ICANN or the Internet community, introduced a "wildcard" in the .com and .net registries such that when an Internet user typed in a domain name address that did not exist, that user, instead of receiving an error message, was re-directed to a special Internet page set up and maintained by VeriSign (the "Wildcard service"). If, for example, a user

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<sup>1</sup> Unlike the 2001 .net Registry Agreement, which mandates dispute resolution via arbitration at the insistence of either party, the 2001 .com Registry Agreement (".com agreement") allows either party to initiate litigation unless both parties agree to arbitration. ICANN would welcome the opportunity to arbitrate the parties' disputes under the .com agreement, but VeriSign has chosen to pursue litigation instead. That litigation was originally filed in United States District Court for the Central District of California, but was dismissed with prejudice (*See* Order attached hereto as Exhibit B) on August 26, 2004. VeriSign subsequently filed a similar action that is now pending in the Superior Court of California. *VeriSign, Inc. v. Internet Corporation for Assigned Names and Numbers*, No. BC 320763 (Cal. Sup. Ct., filed Aug. 27, 2004).

accidentally typed "www.interNNIC.net" instead of "www.interNIC.net", the user would be sent to a VeriSign-operated web page that contained links to paid advertisements. VeriSign's unilateral implementation of the Wildcard service not only violated the .net agreement, but also provoked serious concern and outcry across the Internet community.

Within hours of its deployment, ICANN received numerous complaints and comments from concerned members of the community. These individuals informed ICANN that the Wildcard service was adversely affecting their systems by, among other things, overriding various software programs widely used in connection with the DNS. The community urged ICANN to take action and called on VeriSign to deactivate the wildcard. In response to the outcry, ICANN requested that VeriSign voluntarily suspend the service so that ICANN and the Internet community could study the service and make informed recommendations regarding its future use. VeriSign refused. Following that refusal, on October 3, 2003, ICANN's chief executive officer sent a letter to VeriSign stating that VeriSign's unilateral and unannounced changes to the operation of the .net registry were not consistent with material provisions of the agreement. He further warned that, if VeriSign did not return the .net registry to its pre-wildcard state, ICANN would be forced to take the steps necessary under the .net agreement to compel VeriSign's compliance. Only then did VeriSign elect to temporarily suspend the use of the Wildcard service. VeriSign, however, has stated publicly that it plans to reintroduce the Wildcard service at some point in the future and that it may do so at its discretion.

The Wildcard service is not the first time VeriSign has chosen to ignore its contractual obligations to seek to gain some inappropriate financial advantage from its stewardship of the .com and .net registries. In November 2000 and again in January 2003, VeriSign violated both agreements by initiating two different fee-based services (International Domain Name "IDN" service and "ConsoliDate" service) without obtaining the necessary contractual amendments required by the agreements. For example, the .net agreement expressly requires that VeriSign obtain written consent from ICANN to amend the agreement before it can charge a fee for any "Registry Service" not already listed on Appendix G to the agreement. VeriSign has refused to comply with its obligations under the agreements by continuing to offer the services without the necessary amendments in place.

VeriSign has taken the position that services like the Wildcard service, ConsoliDate, and IDN, and a "wait listing" service that VeriSign has proposed to offer, are not subject to the parties' agreement in any respect. Specifically, VeriSign has argued that these services are not "Registry Services" as that term is defined in the agreement. However, the definition provided in the contract, together with the accompanying examples, makes clear that VeriSign's services do constitute "Registry Services" and, therefore, are governed by the agreement.

By initiating this arbitration, ICANN seeks a declaration of VeriSign's obligations under the .net agreement and a declaration that VeriSign has violated its obligations under the agreement. These declarations are necessary to protect ICANN's ability under the agreement to ensure that VeriSign's activities in operating the .net registry do not endanger the stability or security of the Internet and are consistent with ICANN's goals in

coordinating the domain name system, including promoting competition in the provision of registration services. They may also be relevant to the ongoing process of determining whether VeriSign or some other entity should be chosen to operate the .net registry when the existing agreement expires on June 30, 2005.

## **PARTIES TO THIS ARBITRATION**

1. Claimant INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS ("ICANN") is a not-for-profit corporation, organized and existing under the laws of the State of California, with its principal office and place of business located at 4676 Admiralty Way, Suite 330, Marina del Rey, CA 90292-6601, United States of America.

2. Respondent VERISIGN, INC. ("VeriSign") is a corporation, organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 487 East Middlefield Road, Mountain View, CA 94043, United States of America.

## **NATURE OF ARBITRATION**

3. By this Arbitration, ICANN seeks declaratory relief interpreting a number of contractual rights, duties, and obligations of both parties under the .net agreement. Additionally, ICANN seeks a declaration that VeriSign violated the .net agreement. These violations arise from VeriSign's unauthorized conduct as Registry Operator of the .net registry under the .net agreement, a copy of which is attached hereto as EXHIBIT A. ICANN also reserves the right to seek additional relief on additional subjects that relate to the parties' obligations under the .net agreement.

4. The arbitral jurisdiction of the International Chamber of Commerce is based on paragraph 5.9 of the .net agreement, which states:

Disputes arising under or in connection with this Agreement, including requests for specific performance, shall be referred in the first instance to arbitration conducted as provided in this Subsection 5.9 pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce ("ICC"). The arbitration shall be conducted in the English language and shall occur in Los Angeles County, California, USA. There shall be three arbitrators: each party shall choose one arbitrator and, if the two arbitrators are not able to agree on a third arbitrator, the third shall be chosen by the ICC. 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 ICC 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 initiation of arbitration. Either party, if dissatisfied with the result of the arbitration, may challenge that result by bringing suit against the other party in a court located in Los Angeles, California, USA to enforce its rights under this Agreement. In all litigation involving ICANN concerning this Agreement (as provided in the remainder of this Subsection), 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 a temporary stay or injunctive relief from the arbitration panel or a court located in Los Angeles, California, USA, which shall not be a waiver of this arbitration agreement.

## **BACKGROUND AND CIRCUMSTANCES OF THE DISPUTE**

### **THE INTERNET DOMAIN NAME SYSTEM**

5. The Internet is a "network of networks" that allows computers around the world to communicate with each other quickly and efficiently. These computers (and other devices) serve a variety of purposes, including hosting web sites, handling e-mail, and providing access points to the Internet for users. For the Internet to function effectively, computers connected to the Internet must have unique identifiers, or addresses, so that information can be routed to and from each computer or set of computers using such identifiers.

6. The unique identifiers used by Internet computers to route traffic and establish connections among themselves are lengthy numerical codes known as Internet Protocol ("IP") addresses. For example, the IP address for the computer that hosts InterNIC's web site (a web site providing public information regarding domain name registration services) is "192.0.34.161".

7. Because Internet users cannot easily remember IP addresses, most Internet computers also have a unique, user-friendly address, called a "domain name", which corresponds to the computer's IP address. The domain name for InterNIC's web site computer is [www.interNIC.net](http://www.interNIC.net).

8. However, user-friendly domain names would be useless without an effective way to translate domain names to the IP addresses that computers use to communicate among themselves. Such translation enables a user to access a service on the Internet (such as a web site) by typing the domain name rather than the IP address into a web browser.

9. Nearly all Internet computers translate domain names to unique numbers (also referred to as "IP addresses") by using the Domain Name System ("DNS"), which the Internet engineering community devised in the early 1980s. The DNS is based on a hierarchical network of computers known as "nameservers." These computers receive queries from a user's computer, or its interface, for information about the domain name it is attempting to locate. The nameserver transmits information about that domain name to the user's computer in response. Currently, there are over 1,000,000 nameservers on the Internet.

10. At the top of the DNS hierarchy are 13 special nameservers, called "root servers." They are located at various sites around the world and identified by the letters A through M. The root servers contain the IP addresses for the nameservers of all top-level domain registries (i.e., .com, .net, .org). Also scattered across the Internet are millions of computers called "recursive nameservers" that routinely cache (store) the information they receive from queries to the root servers. These recursive nameservers are located strategically with Internet Service Providers ("ISPs") or institutional networks. They are used to respond to a user's request to resolve a domain name -- that is, to translate that domain name to the corresponding IP address.

11. In addition to a hierarchical network of computers, the DNS also uses a hierarchical naming system. In order to read a domain name, a user must look from right-to-left. Thus, "www.interNIC.net" consists of: "net" the top-level domain ("TLD"); "interNIC" the second-level domain; and "www" the third-level domain. A "domain" includes the specified domain level and all levels under it. Hence, the domain "interNIC.net" includes: "interNIC.net"; "www.interNIC.net"; and "email.interNIC.net".

12. This hierarchy allows responsibility for data maintenance to be allocated among many entities. Responsibility for maintenance of each hierarchical level is allocated by dividing the Internet into "zones." A DNS zone begins at the top of a domain and extends down until the zone administrator has chosen to delegate responsibility to someone else. For instance, the zone operator for "interNIC.net" maintains control of that domain level and can delegate control of "www.interNIC.net" to another operator.

13. By combining both the hierarchical network with the hierarchical naming process, a user's computer is able to obtain the IP address corresponding to the requested domain name if that domain name exists. If the domain name does not exist, most users receive an error message.

### REGISTERING A DOMAIN NAME

14. A consumer (or "registrant") who wishes to register a domain name in the .net TLD must contact one of the more than 350 competitive ICANN-accredited "registrars," which in turn contacts VeriSign, the .net Registry Operator, to see if the domain name is available. If the name is available, VeriSign delegates the domain name to the registrant through the registrar. VeriSign, pursuant to the .net agreement, cannot deal directly with registrants but, rather, must work through registrars that are accredited by ICANN.

15. This system was developed to promote a competitive environment for domain name registration services. Each Registry Operator, including VeriSign, is obligated by the Registry Agreement to treat all ICANN-accredited registrars on equivalent and non-discriminatory terms.

#### ICANN'S ROLE IN THE MANAGEMENT OF THE DOMAIN NAME SYSTEM

16. Because the Internet arose primarily through research conducted or funded by the U.S. government, much of the DNS historically was operated by government agencies or private persons or entities under agreements with those agencies. In 1997, the President of the United States directed the Secretary of Commerce to privatize the DNS. After soliciting public comment, the U.S. Department of Commerce ("DOC") issued in 1998 a "White Paper" stating that "the U.S. Government is prepared to recognize, by entering into agreement with, and to seek international support for, a new, not-for-profit corporation formed by private sector Internet stakeholders to administer policy for the Internet name and address system."

17. In response to the U.S. government's challenge, in October 1998, a broad coalition of the Internet's business, technical, academic, and user communities formed ICANN. ICANN, is a non-profit, public-benefit (charitable), private-sector corporation, based in California but consisting of several internationally representative bodies (ICANN's board of directors, for example, presently includes 13 individuals from 11 countries and 5 continents). ICANN has been recognized by the U.S. and other governments, as well as by technical standards-development bodies and other private-sector entities involved in the Internet's operation, as the global consensus entity to coordinate technical management of the DNS. ICANN's mission is to coordinate the operation of the DNS based on policies that are developed by the diverse stakeholder communities of the global Internet through a broadly representative, bottom-up, consensus-based process. In November 1998, ICANN and the DOC entered into a Memorandum of Understanding ("MOU") in which they agreed to work together to manage the transition of the DNS from government oversight to private-sector oversight through ICANN. The MOU has been amended and extended six times, with the most recent sixth amendment being signed on September 17, 2003, providing for a three-year extension.

18. Prior to ICANN's existence, Network Solutions, Inc. ("NSI") had contracted with the U.S. government through a Cooperative Agreement under which NSI maintained various DNS-coordination services (including operation of various TLD registries). Under this Cooperative Agreement, NSI was the operator of, *inter alia*, both the .com and .net registries.

19. As a result of the anticipated formation of ICANN, on October 7, 1998, NSI and DOC renegotiated and entered Amendment 11 to the Cooperative Agreement, which stated, among other things, that: (1) NSI would be allowed to continue to operate the .com, .net, and .org TLDs without immediate rebid; and (2) NSI would recognize and assist in the formation of NewCo. (later identified as ICANN).

20. NSI initially failed to meet its obligations under Amendment 11 including, among other things, its obligation to recognize and assist ICANN. After considerable debate, on November 10, 1999, ICANN, NSI, and DOC replaced the existing NSI agreement with four separate categories of agreements: (1) a NSI/ICANN registry agreement covering the operation by NSI of the .com, .net, and .org registries; (2) a NSI/ICANN registrar accreditation agreement; (3) Amendment 19 to NSI/DOC Cooperative Agreement, ensuring that DOC would regain its contractual authority in the event of a failure of ICANN; and (4) Amendment 1 to ICANN/DOC MOU, conforming this document to the new agreements.

21. In March 2000, VeriSign acquired NSI for stock valued at that time at \$21 billion and subsequently changed the name of the NSI registry division to "VeriSign Global Registry Services." This was part of VeriSign's stated plan "to establish VeriSign as the world's preeminent Internet infrastructure company." Following the acquisition, a series of disputes arose between ICANN and VeriSign regarding the November 1999 registry agreement. VeriSign contended, among other things, that it could: (1) provide registry services to registrars that were not accredited by ICANN; and (2) that it was free to charge fees for services other than those explicitly provided for in the registry agreement. These disputes were ultimately resolved in May 2001 when ICANN and VeriSign negotiated revised agreements that were approved by the ICANN Board and DOC. The revisions broke the registry agreement into three separate agreements: the 2001 .org Registry Agreement (which expired in 2002<sup>2</sup>); the 2001 .com Registry Agreement; and the agreement at issue in this arbitration, the 2001 .net Registry Agreement (the ".net agreement").

#### THE 2001 .NET REGISTRY AGREEMENT

22. Under the .net agreement, ICANN has appointed VeriSign as the sole Registry Operator of the .net TLD. The .net agreement allows VeriSign to charge registrars certain fees. In exchange, VeriSign has agreed to comply with a number of obligations under the .net agreement.

23. One of those obligations is to provide Registry Services. "Registry Services" generally are defined in the .net agreement as including "services provided as an integral part of the operation of the Registry TLD, including all subdomains in which Registered Names are registered." The agreement also provides a non-exhaustive list of potential categories of Registry Services that "include: receipt of data concerning registration of domain names and nameservers from registrars, provision to registrars of status information relating to the Registry TLD, dissemination of TLD zone files, operation of the Registry TLD zone servers, dissemination of contact and other information concerning domain name

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<sup>2</sup> Prior to the expiration of the .org Registry Agreement, ICANN initiated a process to accept applications for a successor operator of that registry. The 2001 .org Registry Agreement prevented VeriSign from seeking to become that successor operator, and a contract to operate the .org registry was eventually signed by Public Interest Registry on December 2, 2002. A similar process is underway to select the successor operator for the .net registry once the 2001 .net Registry Agreement expires on June 30, 2005. VeriSign is eligible to compete for that contract and has indicated that it intends to do so.



and nameserver registrations in the Registry TLD, and such other services required by ICANN in the manner provided in Subsections 4.3 through 4.6."

24. This particular listing of services was included to: (a) identify particular services that are necessarily Registry Services, and (b) illustrate the types of services that fall within the general definition of "Registry Services." The list was not intended to be exhaustive. A service that is provided as an integral part of the .net TLD is a Registry Service even though that service is not expressly listed.

25. Registry Services generally must meet the performance and functional specifications established by ICANN and initially set forth in Appendices C (functional specifications) and D (performance specifications) to the .net agreement, although those specifications are not exhaustive.

26. Additionally, any Registry Service introduced by VeriSign must comply with all new and revised specifications and policies established by ICANN pursuant to paragraph 4 of the .net agreement.

27. The .net agreement further requires, among other things, that VeriSign:

- obtain ICANN's written consent to amend Appendix G before charging a fee to anyone for Registry Services not already listed on Appendix G;
- obtain ICANN's written consent before using hyphens in the third and fourth character positions of a domain name;
- maintain only those means of public, query-based access to domain name registrations that comply with the ICANN-prescribed protocol;
- not register all otherwise unregistered domain names;
- take reasonable steps to protect Personal Data from loss, misuse, unauthorized disclosure, alteration, or destruction; and
- not exploit its position to the detriment of the Internet community.

28. VeriSign has other obligations as well, including an obligation to treat all registrars equally and not discriminate against any registrar. VeriSign's conduct, as described below, indicates that VeriSign is willing to ignore a number of its obligations.

29. The .net agreement sets forth detailed requirements for how VeriSign provides Registry Services. But because it was contemplated that changes in technology may lead to additional Registry Services, the agreement contains mechanisms for VeriSign to request and ICANN to approve the terms under which additional Registry Services may be provided.

30. Should any dispute arise between the parties concerning the parties' rights and obligations under the agreement, either party may initiate arbitration pursuant to paragraph 5.9 of the .net agreement.

31. Where an arbitration panel finds that VeriSign has certain obligations under the .net agreement and VeriSign subsequently or concurrently violates those obligations, ICANN may terminate the .net agreement if VeriSign fails to cure its violation within "a period of time stated in the arbitration decision, or if no period is stated, fifteen business days."

VERISIGN REFUSES TO RECOGNIZE ITS OBLIGATIONS  
UNDER THE 2001 .NET REGISTRY AGREEMENT

32. VeriSign refuses to recognize its contractual commitments under the .net agreement. VeriSign has taken the position that the Wildcard service it introduced and threatens to reintroduce, as well as three other services that it presently operates in the .net registry -- ConsoliDate, the International Domain Name service, and the Wait Listing Service -- are not Registry Services and are not subject to *any* of the terms and conditions of the .net agreement.

33. VeriSign's position and actions taken in furtherance of that position are inconsistent with material provisions of the .net agreement and collectively demonstrate that VeriSign is willing to exploit its role as the monopoly Registry Operator of the .net registry to the detriment of the Internet community, including consumers of name registration services.

1. VeriSign's Wildcard Service

a. Wildcards In The Domain Name System

34. When most web users type in an address that has not been registered in the registry, the user's computer receives an "error" message or a "page cannot be displayed" message that states in effect that the Internet web site does not exist. Some users will see a search results page generated by their browser or ISP. If, instead, a Registry Operator wanted to redirect the Internet user to an Internet page containing content supplied by the Registry Operator, the Registry Operator can insert what is known as a "wildcard" into the zone file, which contains, among other things, the domain names specifically registered by Internet users. The wildcard causes an Internet user who types in an address that is not specifically registered to be redirected to an Internet page established and controlled by the Registry Operator.

35. Wildcards are instructions to the nameservers for recognizing queries for domain names within the nameserver's zone that are not listed with that nameserver. A wildcard works by entering a record labeled "\*" in a specified zone. The "wildcard" will then direct the nameserver to positively return any query by a user's computer that is within that zone but not matched by any specifically registered domain name.

36. Without a wildcard, the reply from the nameserver would be positive (RCODE = 0) if a specifically registered domain name exists. For a non-existent domain name, or a domain name the nameserver refuses to provide for any other reason, the reply would be negative (RCODE = 1 through 5), and an error message would be transmitted back to the user's computer. By implementing a wildcard, however, the non-existent domain names now return a positive answer (RCODE = 0) with the IP address of the wildcard Internet page. In fact, with a wildcard all queries to the nameserver will return a positive answer (RCODE = 0) because wildcards cannot discern between different protocols, transports, or services (i.e., web, e-mail, TCP, UDP).

37. Without substantial communication with the Internet community, including open and transparent testing and evaluation, the introduction of a wildcard into a widely-used TLD would have a negative effect on a number of Internet functions and could potentially have adverse effects on the TLD, the DNS, and the Internet. This is particularly true where a wildcard has never been implemented.

b. VeriSign Deploys A Wildcard Service In The .Net Zone.

38. From its inception in 1985, the .net zone has never used a wildcard. However, on September 15, 2003, VeriSign, with virtually no warning to the Internet community and without seeking the approval from ICANN required under the .net agreement, inserted a wildcard in the .net zone.<sup>3</sup>

39. Where once a user received an error page, VeriSign's wildcard instead returned the domain name address of a VeriSign-operated web site called "Site Finder" (the "Wildcard service") that linked the Internet user to alternative choices, a search engine, and paid-for advertisements. The effect of this wildcard was that any computer that requested a domain name not otherwise present in the .net zone (including reserved names, names in non-hostname or "improper" format, unregistered names, and registered but inactive names) was directed to the Wildcard service.

40. Upon implementation of the Wildcard service, there was immediate widespread expression of concern about the impact these changes would have on the security and stability of the Internet, the DNS, and the .net TLD.

41. On September 19, 2003, the Internet Architecture Board ("IAB"), which is the committee of the Internet Engineering Task Force ("IETF") whose responsibilities include architectural oversight of the protocols and procedures used by the Internet, preliminarily concluded that the changes made by VeriSign had a variety of negative impacts on third parties and applications, including: (1) eliminating the display of "page not found" in the local language and character set of the users when given incorrect URLs rooted under the .net TLD, and instead causing those browsers to display an English language search page

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<sup>3</sup> VeriSign inserted the wildcard in .com zone as well. Its power to do so in the .com registry is the subject of the litigation (referenced in footnote 1) that VeriSign originally filed in federal district court in California and subsequently re-filed in state court after the federal court lawsuit was dismissed with prejudice.

from a web server run by VeriSign; (2) causing all mail to non-existent hostnames in the .net TLD to flow to VeriSign's server, and various other effects on certain e-mail programs and servers; (3) eliminating the ability of some applications to inform their users as to whether a domain name is valid before actually sending a communication, whether to a network printer configuration tool or an e-mail client; (4) rendering inoperable or ineffective certain spam filters; (5) affecting interaction with other protocols in a number of ways; (6) adversely affecting the performance of certain automated tools dependent on receiving RCODE = 3 responses; (7) in some cases (where volume-based charging is applicable) increasing the user cost simply by increasing the size of the response to an incorrectly entered domain name; (8) creating a single point of failure that is likely to be attractive to deliberate attacks; (9) raising serious privacy issues; (10) interfering with standard approaches to reserved names; and (11) generating undesirable workarounds by affected third parties.

42. The combination of these effects, according to the IAB, "had widesweeping effects on other users of the Internet far beyond those enumerated by [VeriSign], created several brand new problems, and caused other internet entities to make hasty, possibly mutually incompatible and possibly deleterious (to the internet as a whole) changes to their own operations in an attempt to react to the change."

43. As a result of the IAB study, and overwhelming expressions of concern from the Internet community at-large, on September 19, 2003, ICANN asked VeriSign to voluntarily suspend the Wildcard service until more information could be gathered on the impact of these changes. On September 21, 2003, VeriSign refused to honor ICANN's request. Instead, VeriSign stated that "it would be premature to decide on any course of action." During an interview with CNET News.com, VeriSign spokesman Brian O'Shaughnessy refused to "disclose what changes [VeriSign] might make to address technical complaints about its SiteFinder service."

44. Following VeriSign's refusal, on September 22, 2003, the ICANN Security and Stability Advisory Committee ("SSAC"), consisting of approximately 20 technical experts from industry and academia, preliminarily confirmed the IAB's concerns and issued a statement concluding that:

VeriSign's change appears to have considerably weakened the stability of the Internet, introduced ambiguous and inaccurate responses in the DNS, and has caused an escalating chain reaction of measures and countermeasures that contribute to further instability.

VeriSign's change has substantially interfered with some number of existing services which depend on the accurate, stable, and reliable operation of the domain name system.

Many email configuration errors or temporary outages which were benign have become fatal now that the wildcards exist.

Anti-spam services relied on the RCODE 3 response to identify forged email originators.

In some environments the DNS is one of a sequence of lookup services. If one service fails the lookup application moves to the next service in search of the desired information. With this change the DNS lookup never fails and the desired information is never found.

VeriSign's action has resulted in a wide variety of responses from ISPs, software vendors, and other interested parties, all intended to mitigate the effects of the change. The end result of such a series of changes and counterchanges adds complexity and reduces stability in the overall domain name system and the applications that use it. This sequence leads in exactly the wrong direction. Whenever possible, a system should be kept simple and easy to understand, with its architectural layers cleanly separated.

The SSAC also announced and then held a public meeting in Washington, D.C. on October 7, 2003, to allow interested parties to present factual information relevant to the security and stability aspects of the Wildcard service.

45. ICANN also received communications from the Internet Society, the Generic Names Supporting Organization Registry Constituency ("GNSO"), the .au Domain Administration (the operator of the .au (Australia) TLD), AFNIC (the operator of the .fr (France) TLD), Public Interest Registry (the operator of the .org TLD), and Melbourne IT (the then operator of the .com.au (Australia) Level Domain) on this subject, all expressing concerns about the impact and appropriateness of these changes and calling for VeriSign to voluntarily suspend its Wildcard service.

46. Other companies involved in providing infrastructure on the Internet also expressed concern. For example, Tucows Inc. (the largest wholesale provider of .com and .net domain names and the supplier of domain name registration services to more than 5,000 ISPs, webhosting companies, and other Internet firms around the world) directed a letter to ICANN's attention stating: "Tucows shares ICANN's concerns about the impacts of Verisign's imposed changes and Verisign's procedural failures. The best interests of all the members of the Internet community - the various registries and registrars, the intermediary service providers and the end users - will be well served by [ICANN's] decision." Tucows also stated that "[o]n 26 September 2003, Tucows polled its resellers to measure the extent of the operation disruption [believed to be caused by the Wildcard service]. The results are conclusive.

- 69% of respondents have experienced negative operations impacts.
- 50% are responding to calls from their end customers....
- Fully 96% of them consider it important or very important to resolve the issue.

- Over 90% do not believe that VeriSign should offer the SiteFinder service."

47. As a result of the concerns raised by the Internet operational community, ICANN established a comment list to keep abreast of the impact that VeriSign's Wildcard service was having on the Internet community as a whole. The list received a significant number of comments from users, operators, and members of the business community, whose scope and magnitude of concerns expressed would, in and of itself, counsel for a return to the prior operation of .net until all issues were reviewed and evaluated by those affected and those, like ICANN, charged with promoting DNS security and stability.

48. On October 3, 2003, ICANN issued a formal demand to VeriSign, stating that: "[g]iven the magnitude of the issues that have been raised, and their potential impact on the security and stability of the Internet, the DNS and the .com and .net top level domains, VeriSign must suspend the changes to the .com and .net top-level domains introduced on 15 September 2003 by 6:00 PM PDT on 4 October 2003. Failure to comply with this demand by that time will leave ICANN with no choice but to seek promptly to enforce VeriSign's contractual obligations."

49. Within hours of ICANN's demand letter, VeriSign stated that "[a]s a consequence of the public position ICANN has taken in this matter, including its demand that VeriSign shut down Site Finder, VeriSign feels that it has no alternative but to temporarily suspend the Site Finder service." VeriSign also commented that, "[a]s of the launch of Site Finder, 11 other TLD registries already offered such a service." However, VeriSign neglected to mention that of these eleven, only one (.museum) is currently subject to a contractual agreement with ICANN, and that TLD is an extremely limited TLD with only a small number of registrants, compared to the .com and .net TLDs, which have with millions of registrants. In addition, VeriSign ignored the fact that the implementation of the wildcard in the .museum TLD, as well as within the other TLDs, occurred in a manner significantly different than the manner in which VeriSign implemented a wildcard in the .net TLD.

50. For instance, important distinctions between the .net TLD and the .museum TLD (which is currently operated pursuant to a contract with ICANN) include:

- The .museum wildcard was developed in extensive consultation with the museum community;
- There was full public notice of the implementation of the wildcard both prior to its authorization and as a component of the .museum operational policies;
- The prior notice of the wildcard fully complied with the IAB guidelines, which requires formal consent from all of those to which have been delegated part of the zone;

- The size of the .museum TLD is several orders of magnitude smaller than .net, and any comparison of the disruptive potential for wildcard implementation between the two must be similarly weighted;

51. None of these distinctions was present in VeriSign's abrupt implementation of its Wildcard service into the .net TLD. Moreover, unlike VeriSign, the operator of the .museum TLD, MuseDoma, stated that if ICANN determines that the wildcard is problematic, MuseDoma would work with the ICANN community to resolve the issue or, if necessary, terminate use of the wildcard altogether.

52. Following VeriSign's letter agreeing to "temporarily suspend" its Wildcard service, on October 6, 2003, VeriSign issued a statement addressing the IAB Commentary. VeriSign's statement gave only a cursory review of the technical concerns raised in the commentary and completely ignored all non-technical concerns (including ICANN's statement that implementation of the .net Wildcard service violated VeriSign's duty under the .net agreement).

53. On October 7, 2003, following protest by VeriSign, the SSAC public meeting regarding the implementation of wildcards in the .net TLD occurred as scheduled. A number of organizational and corporate users also listed specific technical issues that they faced with the implementation of the Wildcard service. Although presented with harsh criticism, VeriSign "made clear ... that it had no intention of turning Site Finder off for good." When asked by Stephen Crocker, one of the Internet's original architects and the ICANN committee's chairman, why the wildcard was introduced in the first place without giving network operators any warning, Verisign failed to provide an answer, but simply hinted to "concerns of proprietary information and competitive advantage."

c. SSAC's Final Report Regarding VeriSign's Wildcard Service

54. Following a second SSAC public meeting on October 15, 2003, an ALAC-organized public briefing and discussion on wildcard services on October 27, 2003, and lengthy public dialogue, the SSAC issued its final report regarding VeriSign's Wildcard service on July 9, 2004.

55. The SSAC found that:

- VeriSign introduced changes to the NET and COM registries that disturbed a set of existing services that had been functioning satisfactorily. Names that were mistyped, had lapsed, had been registered but not delegated, or had never been registered in DNS were resolved as if they existed. As a consequence, certain e-mail systems, spam filters and other services failed resulting in direct and indirect costs to third parties, either in the form of increased network charges for some classes of users, a reduction in performance, or the creation of work required to compensate for the consequent failure.
- The changes violated fundamental Internet engineering principles by blurring the well-defined boundary between architectural layers. VeriSign targeted the Site

Finder service at Web browsers, using the HTTP protocol, whereas the DNS protocol, in fact, makes no assumptions – and is neutral – regarding the protocols of the queries to it. As a consequence, VeriSign directed traffic operating under many protocols, and thus, more control was moved toward the center and away from the periphery, violating the long-held end-to-end design principle.

- The mechanisms proposed by VeriSign to ameliorate the undesirable effects of their diversion on protocols other than HTTP put VeriSign in the implementation path of every existing and future protocol that uses DNS. For every such protocol, it would be necessary to consult with VeriSign to figure out how to simulate the response of the protocol to "no such domain." This is an unacceptable invasion of clear layering.
- Despite a long period of internal research and development, the system was brought out abruptly. The abruptness of the change violated accepted codes of conduct (well-known to VeriSign) that called for public review, comment and testing of changes to core systems; this process exists to ensure that changes are introduced with minimal disruption to existing services and hence with minimal disruption to the security and stability of the Internet. It also precluded the possibility that administrators, IT departments, ISPs and other intermediaries on whom end users rely might be adequately prepared to deal with the consequences.
- In response, workarounds and patches were introduced quickly, cumulatively reducing the overall coherence of the system and again violating the established practices of public evaluation, testing, discussion and review before core services are implemented and deployed. These workarounds further blurred the functional layers intrinsic to the Internet's robust architecture and in some instances created additional -- and unintended -- harmful effects.
- Information about intended e-mail senders and receivers was necessarily accepted by VeriSign's servers without the knowledge or consent of either sender or receiver.
- The behavior of end users redirected to the Web site was observed by a program embedded in the Site Finder service, and users could neither accept it, reject it nor substitute another, similar service for it.
- The cycles of changes and responses collectively undermined expectations about reliable behavior and in so doing reduced trust in the security and stability of the system.

d. VeriSign's Wildcard Service Violates The 2001 .Net Registry Agreement.

56. VeriSign's Wildcard service is a "Registry Service" and its introduction is constrained by VeriSign's contractual commitments under the .net agreement. The redirection of requests for nonexistent domain names to the VeriSign web page is a "service[] provided as an integral part of" the .net registry. The service is plainly integral



because it involves a wildcard inserted in the .net zone file itself. Moreover, only VeriSign has the power to implement the Wildcard service by virtue of its position as operator of the .net registry. The examples listed in the "Registry Services" definition confirm that the implementation of a wildcard in the .net zone file constitutes a Registry Service. Those examples include "dissemination of TLD zone files," "operation of the Registry zone servers," and, perhaps most squarely on point, "dissemination of . . . information concerning domain name . . . registrations in the Registry TLD."

57. Should VeriSign choose to reintroduce its Wildcard service, as VeriSign has publicly stated it intends to, the Wildcard service would be inconsistent with several material provisions in the .net agreement, including but not limited to the following:

- The .net agreement expressly incorporates the nameserver operation requirements of Internet Standard 13 (which includes RFC 1034 and RFC 1035) as binding functional specifications with which VeriSign must comply in its operation of the .net TLD. Whereas RFC 1035 specifies "3" as the appropriate RCODE response for a requested domain name that does not exist within the zone file, VeriSign's Wildcard service results in an RCODE "0" response, which is only to be used where the requested domain name does exist. VeriSign's Wildcard service displaces the ordinary RCODE response for nonexistent domain names and thus violates the functional specifications set out in paragraphs 3.1-3.2 and Appendix C of the .net agreement.
- Reintroduction of VeriSign's Wildcard service would violate paragraph 5.20 and Appendix G of the .net agreement because VeriSign charges a fee for its referrals from its Wildcard service that is not listed on Appendix G.
- Reintroduction of VeriSign's Wildcard service would violate paragraphs 3.5.3, 3.5.4, and 3.6, and Appendix X of the .net agreement because the Wildcard service improperly registers all otherwise unregistered domain names.
- Reintroduction of VeriSign's Wildcard service would violate paragraph 3.10 of the .net agreement because the Wildcard service constitutes a means of public, query-based access to domain name registrations maintained by VeriSign that does not comply with the ICANN-prescribed protocols.
- Reintroduction of VeriSign's Wildcard service would violate paragraph 3.12 of the .net agreement because the Wildcard service does not take reasonable steps to protect Personal Data -- as defined in the .net agreement -- from loss, misuse, unauthorized disclosure, alteration or destruction.
- As discussed below, reintroduction of VeriSign's Wildcard service would violate the Code of Conduct that is attached as Appendix I to the .net agreement.

2. VeriSign's ConsoliDate Service

a. ConsoliDate Timeline of Events

58. At or about the beginning of 2003, VeriSign informed ICANN that it was interested in implementing "ConsoliDate" in the .net registry. For a fee, ConsoliDate allows a registrant (such as a company with a large portfolio of domain names) to add from 1 to 364 days to an existing domain name registration term in order to create a single anniversary date for its entire .net domain name registration portfolio.

59. ICANN informed VeriSign that ConsoliDate was a Registry Service. VeriSign did not dispute this assertion.

60. ICANN provisionally authorized the introduction of ConsoliDate and designated a maximum price that VeriSign could charge for ConsoliDate.

61. On February 25, 2003, the ICANN Board approved draft amendments to Appendices C and G of the .net agreement and allowed ICANN's General Counsel to negotiate and approve additional conforming amendments in order to incorporate ConsoliDate.

62. Before any amendment becomes effective, VeriSign must agree in writing to the amendment and it must be approved by the DOC. ICANN requested on various occasions that VeriSign begin discussions to change the current language of the .net agreement to incorporate ConsoliDate.

63. VeriSign failed to do so. Instead, VeriSign has chosen to operate ConsoliDate without contractual authorization.

b. VeriSign's Continued Operation Of ConsoliDate Violates The 2001 .Net Registry Agreement.

64. ConsoliDate is a "Registry Service" and its introduction is constrained by VeriSign's contractual commitments under the .net agreement. It allows registrants (such as companies with large portfolios of domain names) to synchronize the expiration dates of the domain registrations by adding any number of days to a registration's term from 1 to 364 days. In other words, ConsoliDate is nothing more than a part-year domain name registration. ConsoliDate is a "service[] provided as an integral part of" the .net registry. Only VeriSign has the power to implement ConsoliDate by virtue of its position as operator of the .net registry. And ConsoliDate falls within the examples listed in the "Registry Services" definition, including "receipt of data concerning registrations of domain names and nameservers from registrars," "operation of the Registry zone servers" and, "dissemination of . . . information concerning domain name . . . registrations in the Registry TLD."

65. VeriSign has breached paragraphs 3.4.2-3.4.3 and Appendices G and F of the .net agreement because VeriSign is charging a fee for ConsoliDate without executing the necessary amendments to Appendices G and F.

66. VeriSign has breached paragraphs 3.1-3.2 and Appendix C of the .net agreement because ConsoliDate uses a "SYNC" command, and fails to support a grace period to renew domain names, without executing the necessary amendments to Appendix C.

### 3. VeriSign's International Domain Names Service

#### a. International Domain Names Service Timeline of Events

67. In or about November 2000, VeriSign began offering multilingual domain names that were later stored in a third-level domain testbed environment created in concert with an Internet Engineering Task Force ("IETF") working group. Multilingual domain names allowed users of the Internet to use non-ASCII (non-English) character sets to register domain names.

68. VeriSign charged users for registration of multilingual domain names in this environment and approximately thirty registrars signed-up to be a part of this testbed.

69. Shortly thereafter, VeriSign changed the name of the service from multilingual domain names to International Domain Names ("IDN").

70. On March 1, 2001, ICANN and VeriSign announced a proposal to modify the existing Registry Agreement (which then combined com/net/org). Part of the discussion relating to this modification was that the then-existing Registry Agreement did not have a provision constraining the use of IDNs. VeriSign agreed that ICANN could place such constraints, and these constraints are now present in Appendix K of the current .net agreement.

71. One of these constraints is reserving domain names having labels with hyphens in the third and fourth character positions from initial registration within the .net TLD without ICANN's express written consent. IDN necessarily requires the use of hyphens in these positions in order for the DNS to decipher whether the computer is referring to IDN names or regular ASCII (English) names.

72. Controversy quickly emerged in East Asia with regard to VeriSign's testbed, based in part on the large numbers of inappropriate Chinese, Japanese, and Korean domain names registered within the testbed. For example, one user had registered the domain name of the Japanese Emperor (which is considered blasphemous by traditional Japanese cultural standards). Registration of inappropriate domain names was one of a number of growing problems that IDNs were creating. As a result, from the beginning of 2001 to approximately June 2003, there were discussions on various ways to institute procedures that would avoid these types of problems.

73. An ICANN working group was initially formed to aid this process, and in late 2001, a broader committee was formed within the Internet community to develop appropriate procedures for implementation of IDN.

74. In March 2003, at an ICANN Board meeting, the committee presented six points (four mandatory and two advisory) for implementation of IDN. VeriSign agreed with these points but took the position that ICANN should not require VeriSign to commit to them.

75. On June 20, 2003, ICANN published revisions of the committee's six points with VeriSign's participation. The publication was entitled "Guidelines for the Implementation of Internationalized Domain Names." VeriSign again stated that it agreed with the guidelines but believed that it should not have to commit to them. All other Registry Operators seeking to implement IDN (.cn, .jp, .tw, .info, .org, and .museum) agreed to abide by the guidelines and were authorized in writing by ICANN to use IDN. VeriSign never formally agreed to the guidelines.

76. IDN is currently functioning in the .net TLD without ICANN's formal written approval.

b. VeriSign's Continued Operation Of the International Domain Names Service Violates The 2001 .Net Registry Agreement.

77. IDN allows for the registration of domain names in non-ASCII (non-English) character sets. As such, IDN is a "Registry Service" in the same way that registration of any other domain name is a "Registry Service" and its introduction is equally constrained by VeriSign's contractual commitments under the .net agreement. IDN is a "service[] provided as an integral part of" the .net registry. VeriSign only has the power to implement IDN by virtue of its position as operator of the .net registry. In addition, VeriSign has stated in a DNSO presentation that it "processes IDN transactions through the Shared Registration System in the same first-come/first-served manner as with all registrations of com/net/org." VeriSign also states on its web site that the IDNs appear in WHOIS, a public, query-based access to domain name registrations specifically provided for in the .net agreement. Thus, IDNs also fall within the examples listed in the "Registry Service" definition, including, "operation of the Registry zone servers" and "dissemination of . . . information concerning domain name . . . registrations in the Registry TLD."

78. Under Appendix K of the .net agreement, VeriSign is obligated to reserve domain names having labels with hyphens in the third and fourth character positions ("Tagged Domain Names") from initial (i.e., other than renewal) registration within the .net TLD, except to the extent that ICANN otherwise expressly authorizes in writing.

79. Subject to the requirements of paragraph 2.1 of the .net agreement, ICANN is entitled to establish conditions on any authorization it may have for VeriSign to accept initial registrations of Tagged Domain Names.

80. In operating IDN, VeriSign has accepted initial registrations of Tagged Domain Names without, and beyond the extent of, ICANN's express written authorization because VeriSign refuses to be bound by the "Guidelines for the Implementation of Internationalized Domain Names" created through the Internet community consensus building process.

81. As such, VeriSign's current introduction of IDNs in the .net TLD is in breach of paragraph 5.20 and Appendix K of the .net agreement.

82. Additionally, VeriSign has breached paragraph 5.20 and Appendix G of the .net agreement because VeriSign is charging a fee for IDNs not listed on Appendix G.

#### 4. VeriSign's Wait Listing Service

##### a. Wait Listing Service Timeline of Events

83. Domain name subscriptions typically are for one or two years. At the end of that term, some domain name registrants elect not to renew their subscriptions, which causes those names to be deleted from the registry and permits others to register those names.

84. Some time ago, VeriSign proposed to offer a Wait Listing Service ("WLS") which allows a prospective domain name registrant to submit a request for an expired domain name on a first-come, first-serve basis through any of the more than 350 ICANN-accredited registrars for a domain name currently registered in the .net registry. If the domain name is deleted (for example, because the current registrant of the domain name elected not to renew his or her registration), VeriSign would automatically register the domain name under the sponsorship of the registrar that placed the WLS subscription. Internet registrars could elect to offer WLS to consumers if they wished but would be under no obligation to do so.

85. In making its WLS proposal, VeriSign's Vice President of Internet Relations and Compliance, Registry, acknowledged on March 21, 2002, that an amendment to the .net agreement would be required in order for VeriSign to offer WLS because WLS was a "Registry Service."

86. After VeriSign submitted its WLS proposal to ICANN, ICANN solicited comment on the proposal from the Internet community. In August 2002, after receipt of those comments, ICANN's Board of Directors adopted a resolution authorizing ICANN's president and general counsel to negotiate amendments to its agreements with VeriSign to permit WLS to proceed. After various procedural reviews of that decision – including reconsideration at the requests of both registrars and VeriSign – the ICANN Board passed a resolution approving the results of the negotiations and authorized ICANN staff to seek the approval of the DOC (as required by ICANN's MOU with that agency) to amend the VeriSign registry agreements to permit WLS to be offered.

87. To complete WLS deployment without violating the .net agreement, VeriSign must further secure approval from the DOC and enter into formal written amendments to the .net agreement with ICANN. VeriSign has refused to do so.

b. VeriSign's Wait Listing Service Violates The 2001 .Net Registry Agreement As Currently In Effect.

88. WLS is a "Registry Service" and its introduction is constrained by VeriSign's contractual commitments under the .net agreement.

89. The offering of a reservation on a first-come, first-served basis for a domain name currently registered in the .net TLD is a "service[] provided as an integral part of" the .net registry. The service is plainly integral because it is a service that a registry operator is enabled to provide on a sole-source basis by virtue of its appointment as such by ICANN, rather than a service that is provided on a freely competitive basis. The proposed WLS is a registry service because, unlike the wait-listing services provided by certain registrars, it is implemented by bypassing the normal return of deleted names to the available pool and by instead assigning them to the registrar and customer holding the reservation. In this way, the proposed WLS would become integrated into the operation of the registry. It also clearly falls into the examples listed in the "Registry Service" definition, including "receipt of data concerning registrations of domain names and nameservers from registrars," and "dissemination of . . . information concerning domain name . . . registrations in the Registry TLD."

90. VeriSign's proposed implementation of WLS would violate paragraph 5.20 and Appendix G of the .net agreement as currently in effect, in that it would involve VeriSign charging for a Registry Service not specified in that Appendix.

91. VeriSign's proposed implementation of WLS would also violate paragraphs 3.1-3.2 and Appendix C of the .net agreement as currently in effect, in that it would be contrary to functional specifications contained in that Appendix.

5. VeriSign's November 2001 Volume Discount Program

a. November 2001 Volume Discount Program Timeline of Events

92. In or about November 2001, VeriSign initiated a "volume discount" program without giving prior notice to ICANN.

93. The program included payment of volume-based rebates to registrars of a portion of the price of domain-name registrations.

94. The rebates were calculated based on the percentage increase in domain names registered by the registrar as compared to the preceding month's registrations. As a result, smaller registrars were able to achieve larger rebates (e.g., if a registrar registered 50 domain names the first month and 100 domain names the following month, that would be a

100% increase, whereas a registrar who registered 1,000 domain names the first month and 1,500 domain names the next month would only demonstrate a 50% increase).

95. The equivalent access provisions of the .net agreement prohibit VeriSign from having different thresholds for different registrars.

96. ICANN raised the concern with VeriSign that the program violated the equivalent access provisions of the .net agreement and suggested that VeriSign change the program accordingly.

97. VeriSign subsequently ended its volume discount program after three months.

b. VeriSign's November 2001 Volume Discount Program Violated The 2001 .Net Registry Agreement.

98. VeriSign's November 2001 Volume Discount Program violated paragraphs 3.4.2, 3.4.3. and 3.5 and Appendix W of the .net agreement.

6. VeriSign's Throttling Of Registry-Registrar Agreements

a. Timeline Of Events

99. In or around September 2004, VeriSign began restricting the ability of ICANN-accredited registrars to gain access to the Shared Registration System (the "SRS") operated by VeriSign under the .net agreement. This conduct violates paragraph 3.1 and Appendix F of the agreement.

100. Paragraph 3.1 of the .net agreement requires VeriSign to enter into Registry-Registrar Agreements (RRAs) and promptly provide accredited registrars with access to the SRS. Specifically, the RRA, which is attached as Appendix F to the .net agreement, states:

2.1 System Operation and Access. Throughout the Term of this Agreement, [VeriSign] shall operate the System and provide Registrar with access to the System enabling Registrar to transmit domain name registration information for the Registry TLD to the System . . . .

101. This obligation to provide ICANN-accredited registrars with access to the SRS is absolute and unqualified and arises immediately upon VeriSign reasonably assuring itself that the applying entity in fact has been accredited. The .net agreement does not allow VeriSign unilaterally to restrict or constrain the ability of accredited registrars to gain such access for any reason.

102. Notwithstanding this obligation, VeriSign has publicly announced that it will limit the rate at which newly-accredited registrars are allowed access to the SRS. ICANN has received reports that in fact a large number of registrars already have been blocked in their efforts to gain access to the SRS.

b. VeriSign's Throttling of Registry-Registrar Agreements Violates The 2001 .Net Registry Agreement.

103. VeriSign's unilateral action to limit the rate at which ICANN-accredited registrars are allowed access to the SRS is inconsistent with paragraph 3.1 and Appendix F of the .net agreement and amounts to a material breach of that agreement.

7. VeriSign's Collective Actions Have Violated The Clear Meaning And Spirit Of The 2001 .Net Registry Agreement Code Of Conduct.

104. The .net agreement obligates VeriSign to comply with the Code of Conduct, attached as Appendix I to the .net agreement.

105. The clear meaning of the Code of Conduct, as demonstrated in its preamble, requires VeriSign to carry out its duties as registry operator in a manner that will not compromise the Internet community's trust in VeriSign.

106. This obligation, when construed in light of the agreement as a whole, necessarily includes a general requirement that VeriSign will refrain from exploiting its position as the monopoly operator of the .net registry by using its position to secure financial benefits to the detriment of the Internet community.

107. The manner in which VeriSign has chosen to implement the Wildcard service, ConsoliDate, IDN, WLS, and the 2001 Volume Discount Program, as well as VeriSign's deliberate failure to immediately process Registry-Registrar Agreements, all demonstrate that VeriSign has ignored this obligation.

**ICANN'S CLAIMS AGAINST VERISIGN  
AND REQUEST FOR RELIEF**

REQUEST FOR DECLARATION OF THE PARTIES' RIGHTS AND OBLIGATIONS  
UNDER THE 2001 .NET REGISTRY AGREEMENT

108. Claimant ICANN hereby incorporates and adopts by reference each and every allegation set forth in the preceding paragraphs of the Request as though fully set forth herein.

109. The .net agreement constitutes a valid and binding contract between ICANN and VeriSign.

110. All of the terms of the .net agreement are just and reasonable to VeriSign, and the consideration for VeriSign's obligations under the .net agreement, to the extent relevant to this action, is fair and adequate to VeriSign.

111. ICANN has duly and properly performed, and continues to duly and properly perform, all of its obligations under the .net agreement, except for any terms that it is prevented or otherwise excused from performing.



112. An actual controversy has arisen and now exists between ICANN and VeriSign relating to the parties' rights and obligations under the .net agreement in that ICANN contends, and VeriSign disputes, the following:

#### Registry Services Definition

- "Registry Services", as defined in paragraph 1.16 of the .net agreement, means all services provided as an integral part of the .net TLD, other than those services excluded from the definition by the last sentence of paragraph 1.16 of the agreement.
- A service that is provided as an integral part of the .net TLD is a Registry Service even though that service may not be expressly listed in the second sentence of paragraph 1.16 of the .net agreement. In listing particular services that are included in the definition, the second sentence of paragraph 1.16 of the agreement serves: (a) to identify particular services that are necessarily Registry Services within the definition of paragraph 1.16, and (b) to illustrate the types of services that fall within the general definition of "Registry Services" stated in the first sentence of paragraph 1.16.
- A service that is provided as an integral part of the .net TLD is a Registry Service even though that service may not be subject to the specifications and functionality provisions of Appendices C and D to the agreement.

#### Additional Obligation

- Appendix G of the .net agreement prohibits VeriSign from charging for any Registry Service not specified in Appendix G.

#### Wildcard Service

- VeriSign's Wildcard service, as implemented on September 15, 2003, is a Registry Service within the meaning of the .net agreement.
- VeriSign's operation of its Wildcard service, as implemented on September 15, 2003, violates paragraphs 3.1-3.2 and Appendix C of the .net agreement because the Wildcard service is inconsistent with the functional specifications contained in that Appendix.
- In charging a fee for its referrals from its Wildcard service, as implemented on September 15, 2003, VeriSign violates paragraph 5.20 and Appendix G of the .net agreement.
- VeriSign's operation of its Wildcard service, as implemented on September 15, 2003, violates paragraphs 3.5.3, 3.5.4, and 3.6 and Appendix X of the .net agreement.

- VeriSign's operation of its Wildcard service, as implemented on September 15, 2003, violates paragraph 3.10 of the .net agreement.
- VeriSign's operation of its Wildcard service, as implemented on September 15, 2003, violates paragraph 3.12 of the .net agreement.

#### ConsoliDate

- VeriSign's ConsoliDate service is a Registry Service within the meaning of the .net agreement.
- VeriSign has implemented the ConsoliDate service in violation of paragraphs 3.1-3.2 and Appendix C of the .net agreement because ConsoliDate is contrary to functional specifications contained in that Appendix.
- VeriSign's ConsoliDate service violates paragraph 3.4.3 and Appendix G of the .net agreement because VeriSign is charging a fee for ConsoliDate without executing the necessary amendment to Appendix G.
- VeriSign's ConsoliDate service violates paragraph 3.4.2 and Appendix F of the .net agreement because ConsoliDate is charging a fee for ConsoliDate without executing the necessary amendment to Appendix F.

#### International Domain Names

- VeriSign's IDN registration service is a Registry Service within the meaning of the .net Agreement.
- Under Appendix K of the .net agreement, VeriSign is obligated to reserve domain names having labels with hyphens in the third and fourth character positions ("Tagged Domain Names") from initial (i.e. other than renewal) registration within the .net TLD, except to the extent that ICANN otherwise expressly authorizes in writing.
- Subject to the requirements of paragraph 2.1 of the .net agreement, ICANN is entitled to establish conditions on any authorization it may give for VeriSign to accept initial registrations of Tagged Domain Names.
- In operating its IDN registration service, VeriSign has accepted initial registrations of Tagged Domain Names without, and beyond the extent of, ICANN's express written authorization.
- In operating its IDN registration service, VeriSign has violated the requirements of paragraph 5.20 and Appendix K of the .net agreement.

- In charging a fee for its IDN registration service, VeriSign has violated paragraph 5.20 and Appendix G of the .net agreement by charging for a Registry Service not specified in that Appendix.

#### Wait Listing Service

- VeriSign's WLS is a Registry Service within the meaning of the .net agreement.
- VeriSign's proposed implementation of WLS would breach paragraph 5.20 and Appendix G of the .net agreement as currently in effect, in that it would involve VeriSign charging for a Registry Service not specified in that Appendix.
- VeriSign's proposed implementation of WLS would violate paragraphs 3.1-3.2 and Appendix C of the .net agreement as currently in effect, in that it would be contrary to functional specifications contained in that Appendix.

#### 2001 Volume Discount Program

- VeriSign's November 2001 Volume Discount Program violates paragraphs 3.4.2, 3.4.3. and 3.5 and Appendix W of the .net agreement.

#### Throttling of Registry-Registrar Agreements

- VeriSign's unilateral action to limit the rate at which ICANN-accredited registrars are allowed access to the SRS is inconsistent with paragraph 3.1 and Appendix F of the .net agreement and amounts to a material breach.

#### Code of Conduct

- VeriSign's collective actions to date, as demonstrated in this Request, have violated the Code of Conduct, attached as Appendix I to the .net agreement.

#### Termination of the 2001 .Net Registry Agreement

- ICANN has the right to terminate the .net agreement, in accordance with paragraph 5.4 of the .net agreement, if VeriSign proceeds to offer Registry Services, including its Wildcard service, ConsoliDate, IDN, and WLS, without complying with the requirements of the agreement, including obtaining ICANN's approval.
- ICANN has the right to terminate the .net agreement, in accordance with paragraph 5.4.5 of the agreement, if the arbitration panel finds that VeriSign has certain obligations under the .net agreement and VeriSign subsequently or concurrently violates those obligations. In addition, ICANN has the right to take VeriSign's conduct, as alleged herein, into account in connection with the future appointment of operators for new and/or existing TLDs.

113. ICANN desires an arbitration declaration of the respective rights and obligations of the parties with respect to the .net agreement.

## **RELEVANT AGREEMENTS AND ARBITRATION AGREEMENT**

114. The relevant agreement to this arbitration is the 2001 .net Registry Agreement dated May 25, 2001 and its Appendices.

115. The parties have agreed to submit to arbitration all disputes arising from the 2001 .net Registry Agreement. Subsection 5.9 of the .net agreement states:

Disputes arising under or in connection with this Agreement, including requests for specific performance, shall be referred in the first instance to arbitration conducted as provided in this Subsection 5.9 pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce ("ICC"). The arbitration shall be conducted in the English language and shall occur in Los Angeles County, California, USA. There shall be three arbitrators: each party shall choose one arbitrator and, if the two arbitrators are not able to agree on a third arbitrator, the third shall be chosen by the ICC. 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 ICC 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 initiation of arbitration. Either party, if dissatisfied with the result of the arbitration, may challenge that result by bringing suit against the other party in a court located in Los Angeles, California, USA to enforce its rights under this Agreement. In all litigation involving ICANN concerning this Agreement (as provided in the remainder of this Subsection), 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 a temporary stay or injunctive relief from the arbitration panel or a court located in Los Angeles, California, USA, which shall not be a waiver of this arbitration agreement.

116. Claimant submits that the arbitration should be conducted in English as established in the 2001 .net Registry Agreement.

117. Claimant requests that three arbitrators resolve this case as agreed in the 2001 .net Registry Agreement. Claimant further requests that the ICC follow its standard procedures under Articles 8-12 of the ICC Rules governing the selection of an arbitration panel. ICANN nominates M. Scott Donahey as its arbitrator for confirmation by the Court pursuant to Article 8(4) of the ICC Rules. Mr. Donahey is a partner at the law firm of Tomlinson Zisko LLP located at:

200 Page Mill Road, Second Floor  
Palo Alto, California 94306, U.S.A.  
Telephone: (650) 325-8666  
Facsimile: (650) 324-1808

118. The place of arbitration shall be in Los Angeles County, California, USA, as set forth in the 2001 .net Registry Agreement.

119. Claimant submits that the arbitration will be governed by the laws of the state of California. The contract was entered into in the state of California, the parties' primary places of business are in the state of California, and the .net agreement provides that all disputes are to be resolved in the state of California.

120. Judgment upon the arbitrators' award may be entered and enforced through any competent court in Los Angeles, California, USA, as established in the 2001 .net Registry Agreement.

121. Claimant reserves the right to provide a more precise accounting of circumstances, to supplement and modify the claims set forth herein, and to submit further briefs, documents, schematic drawings, designs, exhibits and any other evidence at their own discretion in the course of the proceedings herein.

Dated: November 10, 2004

Respectfully submitted,

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Jeffrey A. LeVee, Esq.  
JONES DAY

ATTORNEYS FOR CLAIMANT  
Internet Corporation for Assigned Names and Numbers