

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

POOL.com INC.

Plaintiff

- and -

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

Defendant

---

---

**MOTION RECORD OF THE MOVING PARTY,  
INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS**

---

---

DAVIES WARD PHILLIPS & VINEBERG LLP  
Barristers & Solicitors  
1 First Canadian Place  
Suite 4400  
Toronto, ON M5X 1B1

Matthew P. Gottlieb (LSUC #32268B)  
Andrea L. Burke (LSUC #37761L)  
Tel: 416.863.0900  
Fax: 416.863.0871

Solicitors for the Moving Party,  
Internet Corporation for Assigned Names and  
Numbers

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

POOL.com INC.

Plaintiff

- and -

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

Defendant

**NOTICE OF MOTION**  
(Returnable March 16, 2004)

The Defendant, Internet Corporation for Assigned Names and Numbers ("ICANN"), will make a motion to a Judge on March 16, 2004, at 10:00 a.m. or as soon after that time as the motion can be heard, at 161 Elgin Street, Ottawa, Ontario.

PROPOSED METHOD OF HEARING:

The motion is to be heard orally.

THE MOTION IS FOR:

1. an Order staying or dismissing this Action;
2. the Defendant's costs on the motion on a substantial indemnity scale; and
3. such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

- (a) this Court lacks jurisdiction over ICANN because, among other things, ICANN is a United States corporation, is not resident in Ontario, does not conduct business in Ontario and has no assets in Ontario;
- (b) this Court lacks jurisdiction over the subject matter of this Action, which has no real and substantial connection to Ontario because, among other things, all of the events relevant to the Action as set out in the Statement of Claim arise in California, not Ontario;
- (c) in the alternative, California, and not Ontario, is the convenient forum for the trial of this Action because, among other things, virtually all, if not all, of the evidence and witnesses relevant to the Action are in California and the issue of whether ICANN acted improperly must be determined by a consideration of several agreements, all of which must, by their terms, be considered by the Courts of California;
- (d) Rules 17.06 and 21.01(3)(a) of the *Rules of Civil Procedure*; and
- (e) such other and further relief as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (i) the Affidavit of Daniel E. Halloran, sworn September 8, 2003; and
- (ii) the Supplementary Affidavit of Daniel E. Halloran, sworn September 23, 2003;

- (iii) the Second Supplementary Affidavit of Daniel E. Halloran, sworn January 21, 2004; and
- (iv) such further and other material as counsel may advise and this Honourable Court may permit.

Date: January 23, 2004

**DAVIES WARD PHILLIPS & VINEBERG LLP**  
1 FIRST CANADIAN PLACE  
SUITE 4400  
TORONTO, ON M5X 1B1

Matthew P. Gottlieb (LSUC #32268B)  
Andrea L. Burke (LSUC #37761L)  
Tel: 416.863.0900  
Fax: 416.863.0871

Solicitors for the Defendant

TO: OSLER HOSKIN & HARCOURT LLP  
50 O'Connor Street  
Suite 1500  
Ottawa, ON K1P 6L2

K. Scott McLean  
Monica Song  
Tel: 613.787.1029  
Fax: 613.235.2867

Solicitors for the Plaintiff

POOL.com INC.

and

Plaintiff

INTERNET CORPORATION FOR ASSIGNED  
NAMES AND NUMBERS  
Defendant

Court File No: 03-CV-24621

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Ottawa

**NOTICE OF MOTION**

**DAVIES WARD PHILLIPS & VNEBERG LLP**  
1 FIRST CANADIAN PLACE  
SUITE 4400  
TORONTO, ON M5X 1B1

Matthew P. Gottlieb (LSUC #32268B)  
Andrea L. Burke (LSUC #37761L)  
Tel: 416.863.0900  
Fax: 416.863.0871

Solicitors for the Defendant

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

POOL.com INC.

Plaintiff

- and -

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

Defendant

**AFFIDAVIT OF DANIEL E. HALLORAN  
(sworn September 5, 2003)**

I, DANIEL E. HALLORAN, of the City of Los Angeles, in the State of California, in the United States of America, MAKE OATH AND SAY:

1. I am an attorney admitted to the State Bar of California, and am the Chief Registrar Liaison and Acting Secretary of the Defendant, Internet Corporation for Assigned Names and Numbers ("ICANN"). I have been an employee of ICANN since 2000. As such, I have knowledge of the matters to which I hereinafter depose, except where I have stated such matters to be based on information and belief, in which case, I verily believe such information to be true.

2. I am swearing this Affidavit in support of ICANN's motion for an Order staying or dismissing this action on jurisdictional grounds. As is set out in detail below:

(a) this Court lacks jurisdiction over ICANN because, among other things, ICANN is a corporation incorporated under the laws of the State of

California within the United States, has no presence in Ontario, does not conduct business in Ontario and has no assets in Ontario;

- (b) this Court lacks jurisdiction over the subject-matter of this Action, which has no real and substantial connection to Ontario because, among other things, all of the events relevant to the Action as set out in the Statement of Claim arise in California, in the United States, not Ontario; and
- (c) California, and not Ontario, is the convenient forum for the trial of this Action because, among other things, virtually all, if not all, of the evidence and witnesses relevant to the Action are in California and the issue of whether ICANN acted improperly must be determined by a consideration of several agreements, all of which are, by their terms, governed by the laws of the State of California, and require that actions brought under such agreements be brought in the courts of the State of California.

**ICANN Does Not Reside or Carry On Business in Ontario**

3. ICANN is a not-for-profit corporation that was organized under the laws of the State of California in 1998. As is explained below, pursuant to delegation from the United States Department of Commerce, ICANN is responsible for administering certain aspects of the Internet's domain name system (the "DNS").

4. ICANN's principal place of business is in Marina Del Rey, which is in Los Angeles County, California in the United States. ICANN has no offices or facilities other than those in Marina Del Rey.

5. ICANN does not engage in any acts or activities in Ontario, provided that ICANN has accredited five registrars resident in the Province of Ontario.

6. ICANN has no assets or real estate in the Province of Ontario or at all in Canada. It is not registered to do business in Ontario (or any other Canadian province). It does not solicit any business in Ontario (or any Canadian province), it does not sell any goods or services in Ontario (or Canada). (In fact, ICANN actually does not sell anything at all.) ICANN does not have a bank account in Ontario (or Canada), and it does not have any employees in Ontario (or Canada).

7. ICANN maintains several websites that provide information regarding its Internet-coordination activities, including the websites at <http://www.icann.org>, <http://www.iana.org> and <http://www.internic.net>. All of these websites are operated from web servers physically located in Los Angeles County, California. The websites contain a wealth of information about ICANN, about ICANN constituent groups and about the projects that ICANN has undertaken in connection with the Internet. The websites also contain links to other information that is related to ICANN's activities. As explained above, ICANN does not offer anything for sale on any of its websites.

**The Subject-matter of the Action has No Substantial Connection to Ontario**

8. In order to understand the subject-matter in this Action, one must have an understanding of (i) how the Internet and, specifically, the Internet's DNS operates, and (ii) ICANN and its authority and responsibilities with respect to the Internet's DNS.



**(a) The Internet and DNS**

9. The Internet is a network of computers and computer networks that allows computers around the world to communicate with each other quickly and efficiently over a variety of physical links. For the Internet to function effectively, each computer connected to the Internet must have a unique identifier, or address, so as to allow the computers to communicate with each other.

10. These addresses are, in fact, lengthy numerical codes known as Internet Protocol ("IP") numbers or addresses. For example, an IP number might be 192.234.223.142, which is the address for the City of Ottawa's website.

11. Because IP numbers are long and difficult to remember, the IP address system has been overlaid by a more "user-friendly" system of "domain names". The system associates a "domain name" (a string of characters) with the IP number. For example, the domain name for the City of Ottawa's website host computer is "city.ottawa.on.ca".

12. In accordance with the Internet's DNS, Internet domain names consist of a string of "domains" separated by periods. The "top-level" domains, or "TLDs" are found to the right of the last period and include, among others, ".com", ".gov" and ".net", which are also known as generic TLDs, or "gTLDs".

13. There are approximately 250 different TLDs which are administered and operated by different entities around the world. Some TLDs are country code specific, such as ".uk" for the United Kingdom and ".ca" for Canada. The country specific domains are known as "ccTLDs".

14. The domain names for each TLD are maintained, monitored and controlled by a company, each called a "registry" or "registry operator". There is one registry for each TLD. A registry operates like a phone book, keeping a comprehensive listing of each registered domain name within the relevant TLD and its corresponding IP address.

15. Individuals seeking to register domain names do not deal with ICANN or registry operators but, instead, deal with third-party "registrars". It is the "registrars" that, in turn, deal with the appropriate registry on these individuals' behalf to register the domain names. Registrars are companies that register domain names on behalf of the public and co-ordinate the registration of the domain names in the DNS with the appropriate registry. Currently, approximately 170 registrars worldwide are engaged in dealing with customers and, in turn, requesting that various registry operators make registrations of domain names in the TLDs they operate.

**(b) ICANN's Role in the DNS**

16. Historically, much of the Internet's DNS was overseen by United States government agencies or by third-parties pursuant to agreements with U.S. government agencies. In 1997, the President of the United States directed the United States Secretary of Commerce to privatize the DNS.

17. In response to the government's direction, a broad coalition of the Internet's business, technical, academic and user communities formed ICANN in November 1998. At that time, ICANN signed a memorandum of understanding ("MOU") with the U.S. Department of Commerce to transition the administration of the Internet

from government to the private sphere. Pursuant to the MOU, the U.S. Department of Commerce retains responsibility for general oversight of ICANN's activities. A copy of the MOU, as amended to date, is attached hereto as Exhibit "A".

18. Thus, 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 development entity to coordinate technical management of the DNS.

19. In accordance with its authority under the MOU, ICANN has entered into agreements (generally, a "Registry Agreement") with operators for most of the 14 gTLDs (a few gTLDs such as .gov and .mil operate under legacy arrangements under the direct auspices of the U.S. government.) Pursuant to a Registry Agreement, the basic obligations of a registry operator of a gTLD are to maintain a database of domain names within the particular TLD (such as .com or .net) it operates and respond to millions of queries from computers seeking to translate those domain names to IP numbers.

20. Whereas ICANN has a significant role in developing and implementing registration policies with respect to the gTLDs, ICANN's role in the coordination of the country specific TLDs, the ccTLDs, is limited to the delegation of responsibility for operation of ccTLDs to responsible trustees for the respective local Internet community, and ensuring global interoperability. Each ccTLD is operated on behalf of the local Internet community with the manager and/or supporting organization having a direct

responsibility to the local Internet community, and to the global Internet community through ICANN.

21. The internationally recognized delegee of the Canadian ccTLD, the .ca registry, is the Canadian Internet Registration Authority ("CIRA") located in Ottawa, Ontario. CIRA is a not-for-profit Canadian corporation.

22. In order to become a gTLD registrar, a company must be accredited by ICANN. ICANN accredits registrars by entering into a form agreement with each of them (each, a "Registrar Accreditation Agreement"). The current form of Registrar Accreditation Agreement is posted on the ICANN website at <http://www.icann.org/registrars/ra-agreement-17may01.htm>. An example of a Registrar Accreditation Agreement is attached hereto as Exhibit "B". Under a Registrar Accreditation Agreement, a corporation is granted permission to register domain names for the public in specifically named TLDs.

23. Each Registrar Accreditation Agreement contains a provision which states that the Registrar Accreditation Agreement is deemed to have been entered into in California and also contains a provision that any litigation which arises between the registrar and ICANN must be conducted in California. Specifically, clause 5.6 of the Registrar Accreditation Agreement states:

"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."

24. Each Registrar Accreditation Agreement also contains an express exclusion of obligations to non-parties to the agreement. Specifically, clause 5.10 of the Registrar Accreditation Agreement states:

"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."

25. ICANN has entered into Registrar Accreditation Agreements with five Ontario-based companies on terms identical to those ICANN has entered into with all other registrars.

26. In summary, when an individual or company wishes to register or attempt to register a specific domain name in a gTLD, it may contact an ICANN-accredited registrar. It advises the registrar of the domain name that it wishes to register. Upon receiving the information, the registrar contacts the appropriate registry to inquire as to whether the domain name is available or is currently registered by someone else. If the domain name is not currently registered by someone else, the registrar will be able to register the domain name on behalf of its customer. If the domain name is currently registered by someone else, the registrar will not be able to register that domain name on behalf of its customer.

**(c) Pool.com**

27. In the Statement of Claim, the plaintiff, Pool.com Inc. ("Pool.com"), alleges that it is an Ontario corporation engaged in the business of operating a "backorder" service for registered and soon-to-be-deleted domain names in the ".com" and ".net" gTLDs of the Internet's DNS.

28. Pool.com is not an ICANN-accredited registrar but, on information and belief, operates through a network of ICANN-accredited registrars in competing to acquire, for its customers, domain names that have not yet been renewed by their owners within the time required for renewal and have therefore been dropped or deleted out of the relevant TLD. Pool.com has no relationship or business dealings whatsoever with ICANN.

29. Based on my review of Pool.com's website, I understand that if the right to register a domain name is successfully acquired for a single customer, Pool.com charges the customer a (US) \$60.00 fee. However, if two or more of its customers have back-ordered a particular domain name, Pool.com requires the customers to hold a three-day auction to compete for the domain name. After three days, the domain name registration is awarded to the highest bidder who must pay the amount of its winning bid to Pool.com.

30. Although Pool.com was incorporated in Ontario, it appears that Pool.com conducts its business entirely in U.S. dollars. On its website, Pool.com explicitly states: "[A]ll prices, fees, and bids are in U.S. dollars". Copies of web-pages from Pool.com's website are attached hereto as Exhibit "C".

**(d) The Wait List System ("WLS")**

31. Notwithstanding the fact that Pool.com has not entered into any agreement with ICANN, and has no relationship or dealings whatsoever with ICANN, it appears to base its entire claim on the allegation (that is factually incorrect) that ICANN breached its contractual obligations to registrars under the Registrar Accreditation

Agreements (none entered into with Pool.com, but with ICANN-accredited registrars) by authorizing the registry operator of the ".com" and ".net" gTLDs to implement a "wait list" system for the registration of newly-deleted domain names. The "wait list" system which is at the heart of Pool.com's claim is explained below.

32. Domain names are registered for a limited period of time. If that period expires without renewal of the domain name, the registration may be deleted and following certain automatic renewal and grace periods, the domain name again becomes available for registration by the first person who requests registration. Currently, several registrars offer services to the public that attempt to register expired domain names almost immediately after they become available for re-registration.

33. I understand that in the .com and .net gTLDs alone, more than 800,000 domain names are deleted each month and become available for registration by registrants through the approximately 170 ICANN-accredited registrars. Those registrars seeking to register a recently deleted domain name on a customers' behalf do so by programming their systems to transmit continuous automated "add" domain name commands to the registry for a particular deleted domain name in an effort to be the first registrar to request registration of the domain name following its deletion. This tactic is utilized simultaneously by multiple registrars seeking multiple domain names, and often the same domain names, in excess of 100 million "add" commands being submitted to the .com registry per day.

34. Consumers who want to register a deleted or soon-to-be-deleted domain name under the current system need to sign up and, in many cases, pay for multiple

registrars in advance to try and register the newly deleted domain name on their behalf. Under this system, a consumer can never be certain that it will obtain the rights to a particular domain name if the domain name is deleted from the registry, even if the consumer signs up with multiple registrars currently offering this type of service.

35. Beginning in 2001, VeriSign, Inc. ("VeriSign") (the registry operator of the .com and .net gTLDs) proposed to offer a wait-list service (the "WLS") at the registry level with respect to domain names within the .com and .net gTLDs. The WLS would operate by permitting ICANN-accredited registrars, acting on behalf of customers, to place reservations for currently registered domain names in the .com and the .net gTLDs. The WLS would only permit one wait-list reservation to be accepted for each registered domain name. Each reservation would be for a one-year period and reservations would be accepted on a first come, first served basis, with the opportunity for renewal. VeriSign would charge the registrar a fee, which would be no higher than \$24.00 for a one-year reservation. The registrar's fee to the customer would be established by the registrar, not VeriSign. In the event that a registered domain name is not renewed and is deleted from the registry, VeriSign would check to determine whether a reservation for the domain is in effect and register the deleted domain name to the customer with the reservation or, if there is no reservation, VeriSign would delete the name from the registry so that the name is returned to the pool of names equally available for re-registration through all registrars on a first come, first served basis.

36. VeriSign has proposed to implement the WLS for a twelve-month trial beginning no sooner than October, 2003. At the end of the trial, ICANN and VeriSign would evaluate whether the service should be continued.



37. Unlike the current system, under the WLS, a consumer would simply have to sign up with any one registrar to be placed on the waiting list for the .com or .net TLD, which would guarantee the consumer the right to be next in line to register the domain name, should it be deleted.

38. VeriSign's proposed WLS has been the subject of review and discussion within the ICANN community for almost two years. On August 23, 2002, the ICANN Board of Directors determined that the WLS "promotes consumer choice" and that the "option of subscribing to a guaranteed 'wait-list' service is a beneficial option for consumers". Therefore, the Board of Directors approved a resolution authorizing the President and General Counsel of ICANN to negotiate appropriate revisions to VeriSign's registry agreements to allow for the offering of the WLS.

39. On March 10, 2002, a group of ICANN's accredited registrars issued a position paper opposing the WLS and urging ICANN to prevent its implementation. On September 12, 2002, after the Board resolved to authorize VeriSign to offer the WLS, certain registrars filed a request for reconsideration of the Board's decision. On May 20, 2003, ICANN's Reconsideration Committee determined that the registrars' request lacked merit and recommended that the Board take no action on it. After further consideration, the ICANN Board confirmed its decision of August 23, 2002.

40. Prior to the implementation of the WLS, several events must occur. First, VeriSign must reach an agreement with ICANN to modify the .com and .net registry agreements between VeriSign and ICANN. This has not yet occurred. Second, in accordance with the MOU, the U.S. Department of Commerce must approve any

modification to the agreements governing VeriSign's registry services with respect to .com and .net. This also has not yet occurred. Third, if and when the U.S. Department of Commerce's approval is obtained, VeriSign would still have to undertake the significant technical and operational tasks of implementing the WLS. Based on statements made by VeriSign, I understand that the earliest the WLS service could be launched is October 27, 2003.

**(e) The California Action**

41. There is a proceeding already underway in California with respect to the WLS which raises, in essence, the identical issues raised by Pool.com in this Action (as described below).

42. On July 16, 2003, three registrars accredited by ICANN filed a Complaint for injunctive and other relief against ICANN in the United States District Court, Central District of California, Civil Action No. CV-03-5045JFW (MANx) (the "California Action") regarding the WLS. A true copy of the Complaint in the California Action is attached hereto as Exhibit "D". The plaintiffs in the California Action have alleged that ICANN's authorization of VeriSign to go forward with offering the WLS constituted a breach of ICANN's obligations under the Registrar Accreditation Agreements entered into with each of the plaintiff registrars.

43. On July 16, 2003, the plaintiffs in the California Action filed a motion for a temporary restraining order and an order to show cause for a preliminary injunction preventing the implementation of the WLS.

44. In response to the plaintiffs' motion, ICANN filed an opposition and affidavits that make clear why the proposed WLS does not breach the Registrar Accreditation Agreements entered into with the plaintiffs and why the request for injunctive relief was without merit.

45. By Order dated July 18, 2003, the Honorable John F. Walter, United States District Judge of the United States District Court, Central District of California denied the plaintiffs' request for a temporary restraining order and preliminary injunction. A copy of the Order is attached hereto as Exhibit "E".

46. On August 6, 2003, ICANN filed its answer to the Complaint in the California Action. A copy of ICANN's answer is attached hereto as Exhibit "F".

47. The plaintiffs in the California Action have advised ICANN's attorneys that they intend to file a motion for a preliminary injunction on September 8, 2003 and intend to seek to schedule the hearing of the motion on October 6, 2003. A Scheduling Conference in the California Action has been set for October 27, 2003.

48. The California Action involves an analysis and interpretation of the Registrar Accreditation Agreement and the appropriateness of ICANN's actions under the Registrar Accreditation Agreement as they relate to the WLS. The plaintiffs in the California Action are Washington and Arizona corporations that have recognized that the appropriate jurisdiction for their action is California, as is required by the Registrar Accreditation Agreement.

**(f) The Present Action**

49. Pool.com has commenced the present action for, among other things, an interim and permanent injunction preventing the implementation of the WLS, a declaration that the authorization of the WLS is invalid, a declaration that the conduct of ICANN with respect to the WLS is an "intentional and wrongful interference with the trade and commercial prospects" of Pool.com and requesting general, special, punitive and exemplary damages.

50. The "wrongful interference" complained of in this case includes an alleged breach by ICANN of its obligations under the Registrar Accreditation Agreements (to which Pool.com, lacking accreditation by ICANN, is *not* a party) by, among other things, failing to establish a "consensus" for the WLS, and failing to seek review by an Independent Review Panel (provided for in ICANN's by-laws) to determine whether a consensus has been achieved.

51. In essence, Pool.com's claim is based upon the issue of whether ICANN breached its Registrar Accreditation Agreements and policies thereunder by virtue of authorizing VeriSign to offer the WLS. This question will be determined by the Courts of California in the California Action. The question of whether ICANN properly authorized VeriSign to offer the WLS has absolutely no connection whatsoever with Ontario and is an issue that deals entirely with ICANN's rights and obligations under its various agreements with various parties, agreements that properly will be interpreted by the Courts of California and by their own terms require them to be interpreted by the Courts of California. Respectfully, whether ICANN acted in accordance with its grant of delegated powers from the United States Department of Commerce in accordance with

the MOU, and in accordance with the various Registry Agreements and Registrar Accreditation Agreements is not a question for the Courts of Ontario, but is a question for the Courts of California.

52. ICANN's counsel obtained a copy of the Corporation Profile Report for Pool.com. This document confirms that Pool.com was incorporated on May 12, 2003, more than 2 years *after* VeriSign first proposed the WLS and approximately 9 months *after* the ICANN Board of Directors approved a resolution authorizing VeriSign to implement the WLS. It is noteworthy that not only is Pool.com not an ICANN-accredited registrar and not party to any agreement or relationship with ICANN, but its claims are founded upon actions taken by ICANN well in advance of Pool.com's incorporation and the commencement of its business. A copy of the Corporation Profile Report for Pool.com is attached as Exhibit "G".

**Ontario is not the Convenient Forum**

53. It would be highly inconvenient for ICANN to defend this Action in Ontario for the following reasons:

- (a) based upon my review of the Statement of Claim, I anticipate that while Pool.com may have one or two Ontario resident witnesses, the key witnesses will be the current and former staff and management of ICANN who would speak to ICANN's obligations under the Registrar Accreditation Agreements and to ICANN's role and responsibilities in connection with the Internet's DNS, all of whom are resident in California;
- (b) virtually all, if not all of the relevant documents and evidence are located in California;

- (c) ICANN is a California-based not-for-profit corporation that has limited resources and no business activities in Canada; and
- (d) Pool.com's action is predicated on a question governed by California law, namely whether or not ICANN has breached the Registrar Accreditation Agreements. Litigating a question governed by California law in the Ontario Courts will render this case unduly expensive and burdensome for ICANN, requiring, amongst other things the filing of expert evidence going to this question.

### **Summary**

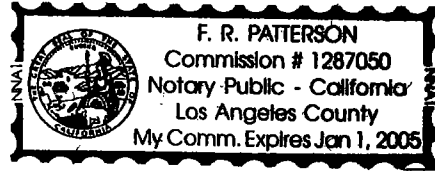
54. Given the following things, amongst others, I believe that the Superior Court of Justice of the Province of Ontario does not have jurisdiction over ICANN or over the subject-matter of this action:

- (i) ICANN is headquartered in California and only carries on business there;
- (ii) ICANN has no assets or employees in Ontario and does not carry on business in Ontario;
- (iii) ICANN has no connections to Ontario other than having accredited five registrars located in Ontario, under agreements governed by California law which contain a clause providing that the Courts of California have exclusive jurisdiction with respect to any disputes arising under the agreements;

- (iv) ICANN has no relationship with the plaintiff resident in Ontario, contractual or otherwise, and
- (v) there is a parallel proceeding in California where the key issue raised in this Action, which is a matter governed by California law, will be determined by the California Courts.

55. In the alternative, I believe that Ontario is not a convenient forum to adjudicate the dispute between Pool.com and ICANN and that California is clearly the more appropriate and convenient forum.

State of California, County of LOS ANGELES } ss.  
 Subscribed and sworn to before me on September 8, 2003



F. R. Patterson  
 (Name of Notary)  
 F. R. Patterson

Daniel E. Halloran  
 DANIEL E. HALLORAN

POOL.com INC.  
Plaintiff

and

INTERNET CORPORATION FOR ASSIGNED  
NAMES AND NUMBERS  
Defendant

Court File No: 03-CV-24621

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Ottawa

**AFFIDAVIT OF DANIEL E. HALLORAN  
(sworn September 5, 2003)**

**DAVIES WARD PHILLIPS & VINEBERG LLP**  
1 FIRST CANADIAN PLACE  
SUITE 4400  
TORONTO, ON M5X 1B1

Matthew P. Gottlieb (LSUC #32268B)  
Andrea L. Burke (LSUC #37761L)  
Heidi Rubin (LSUC #46082P)  
Tel: 416.863.0900  
Fax: 416.863.0871

Solicitors for the Defendant



24

MEMORANDUM OF UNDERSTANDING BETWEEN  
THE U.S. DEPARTMENT OF COMMERCE  
AND  
INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

I. PARTIES

This document constitutes an agreement between the U.S. Department of Commerce (DOC or USG) and the Internet Corporation for Assigned Names and Numbers (ICANN), a not-for-profit corporation.

II. PURPOSE

A. Background

On July 1, 1997, as part of the Administration's Framework for Global Electronic Commerce, the President directed the Secretary of Commerce to privatize the management of the domain name system (DNS) in a manner that increases competition and facilitates international participation in its management.

On June 5, 1998, the DOC published its Statement of Policy, *Management of Internet Names and Addresses*, 63 Fed. Reg. 31741(1998) (Statement of Policy). The Statement of Policy addressed the privatization of the technical management of the DNS in a manner that allows for the development of robust competition in the management of Internet names and addresses. In the Statement of Policy, the DOC stated its intent to enter an agreement with a not-for-profit entity to establish a process to transition current U.S. Government management of the DNS to such an entity based on the principles of stability, competition, bottom-up coordination, and representation.

B. Purpose

Before making a transition to private sector DNS management, the DOC requires assurances that the private sector has the capability and resources to assume the important responsibilities related to the technical management of the DNS. To secure these assurances, the Parties will collaborate on this DNS Project (DNS Project). In the DNS Project, the Parties will jointly design, develop, and test the mechanisms, methods, and procedures that should be in place and the steps necessary to transition management responsibility for DNS functions now performed by, or on behalf of, the U.S. Government to a private-sector not-for-profit entity. Once testing is successfully completed, it is contemplated that management of the DNS will be transitioned to the mechanisms, methods, and procedures designed and developed in the DNS Project.

In the DNS Project, the parties will jointly design, develop, and test the mechanisms, methods, and procedures to carry out the following DNS management functions:

- a. Establishment of policy for and direction of the allocation of IP number blocks;
- b. Oversight of the operation of the authoritative root server system;
- c. Oversight of the policy for determining the circumstances under which new top level domains would be added to the root system;
- d. Coordination of the assignment of other Internet technical parameters as needed to maintain universal connectivity on the Internet; and

e. Other activities necessary to coordinate the specified DNS management functions, as agreed by the Parties.

The Parties will jointly design, develop, and test the mechanisms, methods, and procedures that will achieve the transition without disrupting the functional operation of the Internet. The Parties will also prepare a joint DNS Project Report that documents the conclusions of the design, development, and testing.

ICANN has determined that this project can be done most effectively with the participation of ICANN. ICANN has a stated purpose to perform the described coordinating functions for Internet names and addresses and is the organization that best demonstrated that it can accommodate the broad and diverse interest groups that make up the Internet community.

### C. The Principles

The Parties will abide by the following principles:

#### 1. Stability

This Agreement promotes the stability of the Internet and allows the Parties to plan for a deliberate move from the existing structure to a 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.

#### 2. Competition

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

#### 3. Private, Bottom-Up Coordination

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

#### 4. Representation.

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

### III. AUTHORITIES

26

A. DOC has authority to participate in the DNS Project with ICANN under the following authorities:

- (1) 15 U.S.C. § 1525, the DOC's Joint Project Authority, which provides that the DOC may enter into joint projects with nonprofit, research, or public organizations on matters of mutual interest, the cost of which is equitably apportioned;
- (2) 15 U.S.C. § 1512, the DOC's authority to foster, promote, and develop foreign and domestic commerce;
- (3) 47 U.S.C. § 902, which specifically authorizes the National Telecommunications and Information Administration (NTIA) to coordinate the telecommunications activities of the Executive Branch and assist in the formulation of policies and standards for those activities including, but not limited to, considerations of interoperability, privacy, security, spectrum use, and emergency readiness;
- (4) Presidential Memorandum on Electronic Commerce, 33 Weekly Comp. Presidential Documents 1006 (July 1, 1997), which directs the Secretary of Commerce to transition DNS management to the private sector; and
- (5) Statement of Policy, *Management of Internet Names and Addresses*, (63 Fed. Reg. 31741(1998) (Attachment A), which describes the manner in which the Department of Commerce will transition DNS management to the private sector.

B. ICANN has the authority to participate in the DNS Project, as evidenced in its Articles of Incorporation (Attachment B) and Bylaws (Attachment C). Specifically, ICANN has stated that its business purpose is to:

- (i) coordinate the assignment of Internet technical parameters as needed to maintain universal connectivity on the Internet;
- (ii) perform and oversee functions related to the coordination of the Internet Protocol (IP) address space;
- (iii) perform and oversee functions related to the coordination of the Internet domain name system, including the development of policies for determining the circumstances under which new top-level domains are added to the DNS root system;
- (iv) oversee operation of the authoritative Internet DNS root server system; and
- (v) engage in any other related lawful activity in furtherance of Items (i) through (iv).

#### IV. MUTUAL INTEREST OF THE PARTIES

Both DOC and ICANN have a mutual interest in a transition that ensures that future technical management of the DNS adheres to the principles of stability, competition, coordination, and representation as published in the Statement of Policy. ICANN has declared its commitment to these principles in its Bylaws. This Agreement is essential for the DOC to ensure continuity and stability in the performance of technical management of the DNS now performed by, or on behalf of, the U.S. Government. Together, the Parties will collaborate on the DNS Project to achieve the transition without disruption.

#### V. RESPONSIBILITIES OF THE PARTIES

##### A. General.

1. The Parties agree to jointly participate in the DNS Project for the design, development, and testing of the mechanisms, methods and procedures that should be in place for the private sector to manage the functions delineated in the Statement of Policy in a transparent, non-arbitrary, and reasonable manner.
2. The Parties agree that the mechanisms, methods, and procedures developed under the DNS Project will ensure that private-sector technical management of the DNS shall not apply standards, policies, procedures or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause and will ensure sufficient appeal procedures for adversely affected members of the Internet community.
3. Before the termination of this Agreement, the Parties will collaborate on a DNS Project Report that will document ICANN's test of the policies and procedures designed and developed pursuant to this Agreement.
4. The Parties agree to execute the following responsibilities in accordance with the Principles and Purpose of this Agreement as set forth in section II.

B. DOC. The DOC agrees to perform the following activities and provide the following resources in support of the DNS Project:

1. Provide expertise and advice on existing DNS management functions.
2. Provide expertise and advice on methods and administrative procedures for conducting open, public proceedings concerning policies and procedures that address the technical management of the DNS.
3. Identify with ICANN the necessary software, databases, know-how, other equipment, and intellectual property necessary to design, develop, and test methods and procedures of the DNS Project.
4. Participate, as necessary, in the design, development, and testing of the methods and procedures of the DNS Project to ensure continuity including coordination between ICANN and Network Solutions, Inc.
5. Collaborate on a study on the design, development, and testing of a process for making the management of the root server system more robust and secure. This aspect of the DNS Project will address:
  - a. Operational requirements of root name servers, including host hardware capacities, operating system and name server software versions, network connectivity, and physical environment.
  - b. Examination of the security aspects of the root name server system and review of the number, location, and distribution of root name servers considering the total system performance, robustness, and reliability.
  - c. Development of operational procedures for the root server system, including formalization of contractual relationships under which root servers throughout the world are operated.

6. Consult with the international community on aspects of the DNS Project.
7. Provide general oversight of activities conducted pursuant to this Agreement.
8. Maintain oversight of the technical management of DNS functions currently performed either directly, or subject to agreements with the U.S. Government, until such time as further agreement(s) are arranged as necessary, for the private sector to undertake management of specific DNS technical management functions.

C. ICANN. ICANN agrees to perform the following activities and provide the following resources in support of the DNS Project and further agrees to undertake the following activities pursuant to its procedures as set forth in Attachment B (Articles of Incorporation) and Attachment C (By-Laws), as they may be revised from time to time in conformity with the DNS Project:

1. Provide expertise and advice on private sector functions related to technical management of the DNS such as the policy and direction of the allocation of IP number blocks and coordination of the assignment of other Internet technical parameters as needed to maintain universal connectivity on the Internet.
2. Collaborate on the design, development and testing of procedures by which members of the Internet community adversely affected by decisions that are in conflict with the bylaws of the organization can seek external review of such decisions by a neutral third party.
3. Collaborate on the design, development, and testing of a plan for introduction of competition in domain name registration services, including:
  - a. Development of procedures to designate third parties to participate in tests conducted pursuant to this Agreement.
  - b. Development of an accreditation procedure for registrars and procedures that subject registrars to consistent requirements designed to promote a stable and robustly competitive DNS, as set forth in the Statement of Policy.
  - c. Identification of the software, databases, know-how, intellectual property, and other equipment necessary to implement the plan for competition;
4. Collaborate on written technical procedures for operation of the primary root server including procedures that permit modifications, additions or deletions to the root zone file.
5. Collaborate on a study and process for making the management of the root server system more robust and secure. This aspect of the Project will address:
  - a. Operational requirements of root name servers, including host hardware capacities, operating system and name server software versions, network connectivity, and physical environment.

- b. Examination of the security aspects of the root name server system and review of the number, location, and distribution of root name servers considering the total system performance; robustness, and reliability.
- c. Development of operational procedures for the root system, including formalization of contractual relationships under which root servers throughout the world are operated.

- 6. Collaborate on the design, development and testing of a process for affected parties to participate in the formulation of policies and procedures that address the technical management of the Internet. This process will include methods for soliciting, evaluating and responding to comments in the adoption of policies and procedures.
- 7. Collaborate on the development of additional policies and procedures designed to provide information to the public.
- 8. Collaborate on the design, development, and testing of appropriate membership mechanisms that foster accountability to and representation of the global and functional diversity of the Internet and its users, within the structure of private- sector DNS management organization.
- 9. Collaborate on the design, development and testing of a plan for creating a process that will consider the possible expansion of the number of gTLDs. The designed process should consider and take into account the following:

- a. The potential impact of new gTLDs on the Internet root server system and Internet stability.
- b. The creation and implementation of minimum criteria for new and existing gTLD registries.
- c. Potential consumer benefits/costs associated with establishing a competitive environment for gTLD registries.
- d. Recommendations regarding trademark/domain name policies set forth in the Statement of Policy; recommendations made by the World Intellectual Property Organization (WIPO) concerning: (i) the development of a uniform approach to resolving trademark/domain name disputes involving cyberspiracy; (ii) a process for protecting famous trademarks in the generic top level domains; (iii) the effects of adding new gTLDs and related dispute resolution procedures on trademark and intellectual property holders; and recommendations made by other independent organizations concerning trademark/domain name issues.

- 10. Collaborate on other activities as appropriate to fulfill the purpose of this Agreement, as agreed by the Parties.

#### D. Prohibitions.

- 1. ICANN shall not act as a domain name Registry or Registrar or IP Address Registry in competition with entities affected by the plan developed under this Agreement. Nothing, however, in this Agreement is intended to prevent ICANN or the USG from taking reasonable steps that are necessary to protect the operational stability of the Internet in the event of the financial failure of a Registry or Registrar or other

emergency.

2. Neither Party, either in the DNS Project or in any act related to the DNS Project, shall act unjustifiably or arbitrarily to injure particular persons or entities or particular categories of persons or entities.

3. Both Parties shall act in a non-arbitrary and reasonable manner with respect to design, development, and testing of the DNS Project and any other activity related to the DNS Project.

#### VI. EQUITABLE APPORTIONMENT OF COSTS

The costs of this activity are equitably apportioned, and each party shall bear the costs of its own activities under this Agreement. This Agreement contemplates no transfer of funds between the Parties. Each Party's estimated costs for the first six months of this Agreement are attached hereto. The Parties shall review these estimated costs in light of actual expenditures at the completion of the first six month period and will ensure costs will be equitably apportioned.

#### VII. PERIOD OF AGREEMENT AND MODIFICATION/TERMINATION

This Agreement will become effective when signed by all parties. The Agreement will terminate on September 30, 2000, but may be amended at any time by mutual agreement of the parties. Either party may terminate this Agreement by providing one hundred twenty (120) days written notice to the other party. In the event this Agreement is terminated, each party shall be solely responsible for the payment of any expenses it has incurred. This Agreement is subject to the availability of funds.

---

Joe Sims  
Counsel to ICANN  
Jones, Day, Reavis & Pogue  
1450 G Street N.W.  
Washington, D.C. 20005-2088

---

J. Beckwith Burr  
Associate Administrator, NTIA  
U.S. Department of Commerce  
Washington, D.C. 20230

---

### **PARTIES ESTIMATED SIX MONTH COSTS**

#### **A. ICANN**

Costs to be borne by ICANN over the first six months of this Agreement include: development of Accreditation Guidelines for Registries; review of Technical Specifications for Shared Registries; formation and operation of Government, Root Server, Membership and Independent Review Advisor Committees; advice on formation of and review of applications for recognition by Supporting Organizations; promulgation of conflicts of interest policies; review and adoption of At-Large membership and elections

processes and independent review procedures, etc; quarterly regular Board meetings and associated costs (including open forums, travel, staff support and communications infrastructure); travel, administrative support and infrastructure for additional open forums to be determined; internal executive, technical and administrative costs; legal and other professional services; and related other costs. The estimated six month budget (subject to change and refinement over time) is \$750,000 - 1 million.

## B. DOC

Costs to be borne by DOC over the first six months of this Agreement include: maintenance of DNS technical management functions currently performed by, or subject to agreements with, the U.S. Government, expertise and advice on existing DNS management functions; expertise and advice on administrative procedures; examination and review of the security aspects of the Root Server System (including travel and technical expertise); consultations with the international community on aspects of the DNS Project (including travel and communications costs); general oversight of activities conducted pursuant to the Agreement; staff support equal to half-time dedication of 4-5 full time employees, travel, administrative support, communications and related other costs. The estimate six month budget (subject to change and refinement over time) is \$250,000 - \$350,000.

---

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

Page Updated 31-December-99.

(c) 1999 The Internet Corporation for Assigned Names and Numbers. All rights reserved.



32



# Registrar Accreditation Agreement

(17 May 2001)

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

---

## Index

Section 1. Definitions

Section 2. ICANN Obligations

Section 3. Registrar Obligations

Section 4. Procedures for Establishment or Revision of Specifications and Policies

Section 5. Miscellaneous Provisions

### Appendices:

.aero Appendix

.biz Appendix

.com Appendix

.coop Appendix

.info Appendix

.museum Appendix

.name Appendix

.net Appendix

.org Appendix

.pro Appendix

Logo License Appendix

## 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.

34

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:

35

- 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

36

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

37

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.

38

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.



40

**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.

41

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.

42

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

43

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

44

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);

45

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. 4b

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.

47

## 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

49

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

50

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]

51

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: \_\_\_\_\_

---

.AERO APPENDIX

52

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

53

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\_\_

**.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: \_\_\_\_\_  
Paul Twomey  
President and CEO

By: \_\_\_\_\_  
Name:  
Title:

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

54

---

**.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\_\_

---

**.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

55

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



56

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

By: \_\_\_\_\_  
Name:  
Title:

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

**.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\_\_

57

---

## .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

58

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

By: \_\_\_\_\_  
 Name:  
 Title:

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

**.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:

59

- 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.

60

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\_\_

**.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:

61

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,

62

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:

63

1. ICANN Accredited Registrar

2.



---

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

Page Updated 15-May-2003

©2001, 2002, 2003 The Internet Corporation for Assigned Names and Numbers. All rights reserved.



64



There are 20,505 Domains Deleting To

[Affiliates](#) | [Registrars](#) | [Domain Professionals](#) | [Press Releases](#) |

[About Us](#) | [Help](#) | [Log](#)

## Unable to Get the Domain You Want?

Let Pool.com get if for you! Tell us what you want and we will monitor expiring and deleted domains every day, 365 days a year. When your domains become available, Pool.com will immediately attempt to secure your domains utilizing our proprietary acquisition software.

**1** Enter your desired domain name (or keywords):

**2** Choose an extension:

com  net  org  biz

**3**

**Over 20,000 Domains  
Delete Each Day!**

[View the Entire List](#)

### More from Pool.com

**FREE Keyword Alerts**  
We will notify you of domains that match your Keyword and provide the opportunity to immediately backorder those domains for FREE.

**Pool.com Affiliates**  
A unique program that rewards its Affiliates with 25% commission.

**Domain Professionals**  
A new approach to domain backordering designed with domain professionals in mind.

## You Pay Only When We Deliver!

There's NO RISK and NO UPFRONT FEES. You pay only when we successfully secure a domain for you. We charge a low US\$60 fee which includes a 1 year domain registration. In the case of a domain backordered by multiple users, a short auction will take place and the winning bid replaces our standard fee.


[Free Domain List](#) | [Free Backorder](#) | [Free Keyword Alert](#)

[Privacy](#) | [Terms and Conditions](#) | [Contact Us](#) | [FAQs](#) | [Site Map](#)



Copyright © 2003 Pool.com, All Rights Reserved. Please read our Privacy Policy and Terms and Conditions of Use. By using this Website, you agree to be bound by the terms and conditions in each of these statements.  
Website optimized for Internet Explorer



 There are 20,505 Domains Deleting To

[Affiliates](#) | [Registrars](#) | [Domain Professionals](#) | [Press Releases](#) |

[About Us](#) | [Help](#) | [Log](#)

#### QUICK LINKS:

- [Top 10 Questions](#)
- [General Information](#)
- [Account Information](#)
- [Auction and Bidding](#)
- [Backorders](#)
- [Keyword Alerts](#)
- [Pending Delete List](#)
- [Payments](#)
- [Domain Registration](#)

## Frequently Asked Questions (FAQs)

### Top 10 Questions

#### 1. What does Pool.com do?

Pool.com provides a backorder service for registered and soon to be deleted domains. If a registered domain is not renewed, the registry will delete it after a certain waiting period. At that point in time the domain becomes available to the general public to be registered again. Pool.com allows its users to identify (eg, backorder) the domains that they want. Utilizing proprietary acquisition software, Pool.com attempts to secure these domains on behalf of our users when they become available.

#### 2. How much does it cost?

All of Pool.com's services, which include backorders, keyword alerts, and searches of the Pending Delete List are FREE for our registered users. If Pool.com does secure a domain that you have backordered, you will either be charged a US\$60 acquisition fee or the amount of your winning bid for the domain if it goes to auction and you are the winning bidder.

#### 3. Why do you have an auction system?

Auctions only occur when more than one user has backordered a particular domain. Pool.com believes that everyone should have an equal chance of acquiring the domains they want, not just the insiders with knowledge of how the system works. The auction approach allows multiple users interested in the same domain to equally compete for the domain and judge their bids based on the value and importance of the domain to their own business needs. The bidding starts at \$60 US (our standard fee) and lasts for three days. NOTE: All auctions in Pool.com are closed. Only the users that backordered a domain prior to its acquisition by Pool.com will be allowed to bid for the domain.

#### 4. How do I bid for a domain?

Go to the Auctions page. Under Domains I'm Bidding On, click the Bid Now! link beside the domain on which you wish to bid. Enter your Maximum Bid amount (the most you are willing to pay) for the domain and click Submit. Pool.com will use this amount to automatically bid (proxy bid) on your behalf. IMPORTANT! Your maximum bid amount cannot be cancelled or retracted. You can only increase a subsequent maximum or incremental bid.

#### 5. What is Proxy Bidding?

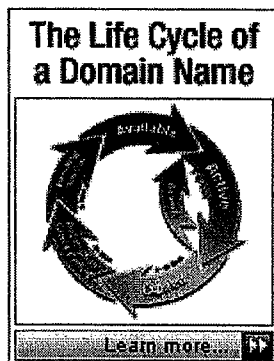
When you place a bid you are entering the maximum amount that you are willing to pay for a domain. If someone places a bid higher than the current price, Pool.com will then bid automatically, on your behalf and at the lowest possible bid increments until your maximum bid amount is reached. This continues until another bidder exceeds your maximum bid, or until you win the auction. You will be notified by e-mail each time your maximum bid has been surpassed by another bidder. If you have been outbid, you can return to the auction to place a higher maximum bid amount. The minimum bid in any auction is \$60 US.

#### 6. Who can participate in an auction?

All auctions in Pool.com are closed. Only the users that backordered a domain in advance of Pool.com securing the domain can participate in the domain auction.

#### 7. How do I know if I have won an auction?

When an auction ends the highest bidder (user with the highest maximum bid) wins the auction. Pool.co



66

will then send an email to the winning bidder within two hours. The email confirms that they have won the domain and what price they paid. At that point, the domain is transferred to the 'Auctions I've Won' list on their Auction page.

#### 8. How can I pay for a domain?

Payment for domains is by credit card only. Please ensure your credit card information is correctly entered in the credit card section of your Account Preferences. Payments are due immediately when Pool.com acquires a domain on your behalf or when you win an auction.

#### 9. How do I create a free Pool.com account?

Click the Login link located at the top of Pool.com. Click Create Account and fill out the required fields. IMPORTANT! The information you provide will be used to register (Whois information with the acquiring registrar) any domains that Pool.com acquires on your behalf. Please ensure that your contact information is correct and up to date.

#### 10. Why would I use Pool.com?

Easy. It's a **NO RISK** and **FREE** way to backorder the domains you want. Unlike other services, You only pay when we deliver. There are no upfront payments and we make it as easy as we can for you to find a backorder the domains you want with a suite of free services. We have also implemented an auction system to avoid the first-come first-served approach. This approach allows everyone who is interested in domain to have an equal opportunity to acquire it.

[Back to Top](#)

## General Information

#### What does Pool.com do?

Pool.com provides a backorder service for registered and soon to be deleted domains. If a registered domain is not renewed, the registry will delete it after a certain waiting period. At that point in time the domain becomes available to the general public to be registered again. Pool.com allows its users to identify (eg, backorder) the domains that they want. Utilizing proprietary acquisition software, Pool.com attempts to secure these domains on behalf of our users when they become available.

#### How much does it cost?

All of Pool.com's services, which include backorders, keyword alerts, and searches of the Pending Deleted List are FREE for our registered users. If Pool.com does secure a domain that you have backordered, you will either be charged a US\$60 acquisition fee or the amount of your winning bid for the domain if it goes to auction and you are the winning bidder.

#### Do you offer refunds?

Pool.com Backorder, Keyword Alert and Search services are provided free of charge and are therefore not subject to refunds. Fees are only applied when a domain has been acquired for you or you successfully win an auction. The acquisition fee of US\$60 or the amount of your winning bid are not refundable.

#### Why do you have an auction system?

Auctions only occur when more than one user has backordered a particular domain. Pool.com believes that everyone should have an equal chance of acquiring the domains they want, not just the insiders with knowledge of how the system works. The auction approach allows multiple users interested in the same domain to equally compete for the domain and judge their bids based on the value and importance of the domain to their own business needs. The bidding starts at US \$60 (our standard fee) and lasts for three days. NOTE: All auctions in Pool.com are closed. Only the users that backordered a domain prior to its acquisition by Pool.com will be allowed to bid for the domain.

#### Do you guarantee your services?

Pool.com's free backorder, search and keyword alert services are offered on a best effort basis. We do guarantee that if we secure a domain that you had previously backordered, you will be given the opportunity to acquire that domain.

[Back to Top](#)

## Account Information

### How do I create a free Pool.com account?

Click the Login link located at the top of Pool.com. Click Create Account and fill out the required fields. **IMPORTANT!** The information you provide will be used to register (Whois information with the acquiring registrar) any domains that Pool.com acquires on your behalf. Please ensure that your contact information is correct and up to date.

### Who can sign up for Pool.com's services?

Anyone may register with Pool.com. As a registered user you may backorder and create keyword alerts. Only users who provide a valid credit card will be able to acquire or bid on domains.

### How do I manage my Account preferences?

All aspects of your account can be managed through the Preferences page located within your account.

### What if I forget my password?

In the event that you misplace or forget your password, click the "Forgot Password" link located on the Login page. Answer the Secret Questions correctly. Pool.com will send you your password to the email address listed in your account. Pool.com recommends that you login-in and change your password.

### How can I change my Secret Questions?

Login to your account. Click the Preferences tab and go to the Security section and click the edit button. Enter the answers to your existing security questions. Enter your new answers in the space provided.

### Will I be spammed?

Pool.com does not sell or distribute our user list to any email direct marketers. Depending on the services to which you subscribe, you will receive from Pool.com explicitly identified email notifications regarding the status of backordered domains, keyword alerts, auctions/biddings and confirmations of domain purchase. **IMPORTANT!** Your contact information including email address will be forwarded to the acquiring registrar to populate the Whois data for any domain that you register through Pool.com. Whois information is public information and widely available. Pool.com recommends that upon acquiring a domain that you update the Whois data to avoid spamming of your Pool.com email.

[Back to Top](#)

## Auction and Bidding

### Why does a domain go up for auction?

A domain may be backordered by more than one Pool.com user. In these cases, when Pool.com successfully secures such a domain it automatically goes up for auction. Only the users that previously backordered the domain are allowed to place bids for the domain. These users then have an equal opportunity to bid for the domain. Pool.com believes this is the fairest approach to domains that are backordered by multiple users.

### What if I am the only one who backordered a domain?

If Pool.com secures a domain and you are the only user who backordered it then you automatically acquire the domain and will be charged the US \$60 acquisition fee.

### Who can participate in an auction?

All auctions in Pool.com are closed. Only the users that backordered a domain in advance of Pool.com securing the domain can participate in the domain auction.

### Will I be notified when an auction begins?

Yes. Individuals that have backordered a domain will be notified via email when the auction begins.

68

**How long does an auction last?**

Auctions last approximately three days. They start after Pool.com successfully acquires the domain from registry and end at 1600 hrs GMT on the third day after the acquisition.

**When does Pool.com secure domains?**

Pool.com typically attempts to secure domains during a two hour period starting at around 1600 hrs GMT each day.

**Where can I view the auction status?**

Login and click on the Auction tab. This will display active auctions in which you are participating, domain that you have recently won through auctions and domains that you have lost.

**What happens after the auction ends?**

Once the auction ends, no more bids are accepted and the highest bidder is declared the winner. Pool.com will notify the high bidder by email shortly after the auction ends.

**How do I bid for a domain?**

Go to the Auctions page. Under Domains I'm Bidding On, click the Bid Now! link beside the domain on which you wish to bid. Enter your Maximum Bid amount (the most you are willing to pay) for the domain and click Submit. Pool.com will use this amount to automatically bid (proxy bid) on your behalf. **IMPORTANT!:** Your Maximum Bid amount cannot be cancelled or retracted. You can only *increase* a subsequent maximum or incremental bid.

**Can I retract an unwanted maximum bid?**

No. Bids are legally binding agreements to purchase a domain for an agreed upon price of up to your Maximum Bid. Pool.com recommends that you take your time when placing a bid.

**Will I be notified if I am outbid during an auction?**

Yes. As a courtesy to auction participants, Pool.com sends email alerts to the current high bidder if their Maximum Bid amount is outbid.

**What is Proxy Bidding?**

When you place a bid you are entering the maximum amount that you are willing to pay for an domain. If someone places a bid higher than the current price, Pool.com will then bid automatically, on your behalf and at the lowest possible bid increments until your maximum bid amount is reached. This continues until another bidder exceeds your maximum bid, or until you win the auction. You will be notified by e-mail each time your maximum bid has been surpassed by another bidder. If you have been outbid, you can return to the auction to place a higher maximum bid amount. The minimum bid in any auction is US \$60.

**Will my Maximum Bid amount be made public?**

A current high bidder's maximum bid amount will remain "private" which means it will not be viewable to other bidders in the Bid History until the auction closes.

**How much to do I have to bid?**

All bids start at US \$60 which is the basic acquisition fee charged by Pool.com. Bids are restricted to current price plus the bid increment. The bid increment varies depending on the current price. Any amount may be bid as long as it is greater than the Current Price + Bid Increment.

**Is there a limit on bid amounts?**

Pool.com is establishing a policy for high bids.

**How do I know if I am winning?**

The current price will be highlighted in green in the Domains I'm Bidding On list on the Auction page. At the time you place your bid, Pool.com will confirm that you are the current high bidder

69

**How do I know if I have won an auction?**

When an auction ends the highest bidder (user with the highest maximum bid) wins the auction. Pool.co will then send an email to the winning bidder within two hours. The email confirms that they have won the domain and what price they paid. At that point, the domain is transferred to the 'Auctions I've Won' list on their Auction page.

**What happens if no one bids?**

There is always an initial bid of \$60. The user who backordered the domain in question first is considered to have made this first bid of \$60. If no other user places a bid, then they would be the winning bidder.

**What if the winning bidder fails to pay?**

If the winning bidder in an auction is unable to pay within 24 hours after the close of that auction, Pool.co will automatically award the domain to the next highest bidder. In this case, Pool.com will attempt only once to charge the next user's credit card. If successful, the domain will be registered in the user's name and they will be notified. If this user is unable to pay, Pool.com will automatically refer to the next highest bidder and repeat this process.

[Back to Top](#)

## Backorders

**What is a backorder?**

A backorder is a request to acquire a currently registered domain when that domain becomes available again. Typically, if a registered domain is not renewed, it is eventually deleted and made available to the general public.

**What information do I enter?**

To backorder a domain you need to enter the domain name and the TLD extension (com or net). You do NOT enter the "www" prefix. For example, if you wanted www.pool.com you would enter "pool.com".

**What TLDs does Pool monitor?**

Pool.com monitors the dot-COM and dot-NET TLDs. Pool.com is considering adding additional TLDs to our portfolio.

**What if I backorder a domain that is available?**

If you attempt to backorder a domain that is currently available, Pool.com indicate in the backorder list that domain is available for registration versus backorder.

**How does Pool.com acquire domains?**

When a backordered domain becomes available to the general public Pool.com attempts to acquire it on behalf of our clients using our proprietary acquisition software. We work with ICANN accredited registrar partners to secure these domains from the registry.

**Will I be contacted if Pool.com successfully acquires a domain on my behalf?**

Yes. Pool.com will notify you by email when a domain is successfully acquired on your behalf. Typically, the email is sent out within 2 hours after you have acquired the domain. The domain is also added to your 'Successful Backorders' list. In the case where more than one user had backordered the domain, you will be notified that the domain has been acquired and has now gone to auction.

**How do I backorder a domain?**

Backorder boxes are conveniently located throughout Pool.com's website, including the homepage and the Backorder page once you are logged into your account. To backorder, simply enter the domain in the box provided and click Backorder Now! Also, the Keyword Alert emails and the Pending Deletes search functions have links that allow you to immediately backorder a highlighted domain.

70

**What's the latest time that I can place a backorder?**

Pool.com attempts to secure backordered domains each day at approximately 1700 hrs GMT (2:00 pm eastern time). You must have saved your backorders at least one half (1/2) hour in advance of this time if you want any domains from that drop.

**How do I view and change my backorders?**

Log into your Pool.com account. Click the Backorders tab. Your list of backordered domains will be displayed

**How do I delete a backorder?**

Log into your Pool.com account. Click the Backorders tab. Your list of backordered domains will be displayed. Each domain has a delete button beside it. Click on this button to delete the domain.

**Can more than one user backorder a domain?**

Yes. A domain can be backordered by more than one user. If this situation occurs and Pool.com successfully secures the domain, then the domain will go into the Pool.com auction process.

**Can anyone see my backorders?**

No. Your backorders are private. In fact, Pool.com also keeps private the fact that a domain has been backordered further ensuring your business privacy.

[Back to Top](#)

## Keyword Alerts

**What is a Keyword Alert?**

Pool.com offers you a complementary tool to save you time and eliminate the need to constantly check when domains containing specific keywords are scheduled to become available. Every day, Pool.com will compare your keywords to the to the updated Pending Deletes List. Any matches are summarized and delivered to you as an email alert.

**Is there any fee associated with the Keyword Alert service?**

No. Our Keyword Alert service is free for Pool.com users.

**How do I manage my Keyword Alerts?**

Log into your Pool.com account. Click the Keywords tab. Your list of Keyword(s) will be displayed.

[Back to Top](#)

## Pending Deletes List

**What is the Pending Deletes List?**

The Pending Delete List consists of domains that are deleted and will become available to the general public within the next five days. This fiveday list contains approximately 100,000 domains that are guaranteed to become available. Each day, approximately 20,000 domains that were added four days previously drop off (become available) the list and become available for registration. At the same time, on day's worth of domains are added to the list and will drop in four days time. Pool.com users can search th list in a number of ways using the advanced filter options provided. Best of all, domains can be backordered directly from the Pending Deletes List.

**Are there any costs associated with viewing the Pending Delete List?**

No. The Pending Delete List is a complementary tool provided to Pool.com users. If you find a domain in the Pending Delete List that you would like to backorder, simply click Backorder Now associated with the domain. It is only when Pool.com successfully acquires the domain on your behalf that you are assessed either an acquisition free of \$60 or your winning bid.

71

[Back to Top](#)

## Payments

### How do I pay for domain purchases?

Payment for domains is by credit card. This information needs to be correctly entered in the credit card section in your Account Preferences. Incomplete or inaccurate information could lead to you losing a backordered domain

### What currency does Pool.com use?

All prices, fees and bids are in US dollars.

### When is payment for a domain due?

Payments are due immediately upon Pool.com acquiring a domain on your behalf or when you win an auction

### What happens if I fail to pay?

If Pool.com is unable to collect payment for a domain, we will notify you by email and you will have 24 hours to remedy the situation and arrange payment. After 24 hours you will forfeit the domain and it may offered to another user. At our discretion, Pool.com may also freeze your account which would cause you to be removed from any ongoing auctions, prevent you from joining any new auctions and prevent you from acquiring any new domains.

[Back to Top](#)

## Domain Registration

### What are 'acquiring' and 'selling' registrars?

Pool.com has established partnerships with participating registrars to assist in the acquisition and registration of domains. An acquiring registrar is a registrar that successfully acquires a backordered domain on behalf of Pool.com. A selling registrar is a registrar through which a user has backordered a particular domain (e.g., chosen the backorder button).

### Who is the registrar for the domains that I acquire through Pool.com?

The acquiring registrar will be the registrar for any domains that they acquire on behalf of Pool.com. We identify this registrar on the Successful Backorder page. You may transfer any domain to another preferred registrar pursuant to the rules that govern that TLD.

### How do I get access to the domains I acquire?

When you acquire a domain, Pool.com passes your contact details in your account to the acquiring registrar who has the domain. The acquiring registrar will create an account for you and you will be contacted by them 24-48 hours after you have acquired the domain. The acquiring registrar will provide you account and password information.

### How long is the registration term?

All domains acquired by Pool.com will be registered for a term of one (1) year on behalf of our users. The cost of this term is included in the Pool.com acquisition fee.

[Back to Top](#)

*Last Modified June 09, 2003.*

[Free Domain List](#) | [Free Backorder](#) | [Free Keyword Alert](#)

---

[Privacy](#)[Terms and Conditions](#)[Contact Us](#)[FAQs](#)[Site Map](#)

---

Copyright © 2003 Pool.com, All Rights Reserved. Please read our [Privacy Policy](#) and [Terms and Conditions of Use](#).



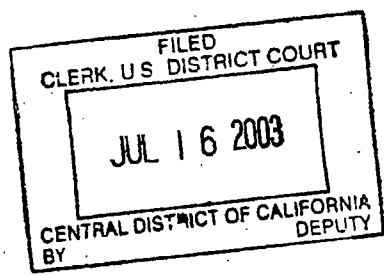


By using this Website, you agree to be bound by the terms and conditions in each of these statements.  
Website optimized for Internet Explorer

72

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Stuart M. Brown (SBN 170028)  
PRESTON GATES & ELLIS LLP  
222 SW Columbia Street  
Suite 1400  
Portland, OR 97201-6632  
Telephone: (503) 228-3200  
Facsimile: (503) 248-9085  
Email: [sbrown@prestongates.com](mailto:sbrown@prestongates.com)



Kathleen O. Peterson (SBN 124791)  
Aaron M. McKown (SBN 208781)  
PRESTON GATES & ELLIS LLP  
1900 Main Street, Suite 600  
Irvine, CA 92614  
Telephone: (949) 253-0900  
Facsimile: (949) 253-0902  
Email: [aaronm@prestongates.com](mailto:aaronm@prestongates.com)

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**JFW**  
**(MANx)**

DOTSTER, INC., a Washington corporation, GO DADDY SOFTWARE, INC., an Arizona corporation, and eNOM, INC., a Washington corporation

Case No. **- 03-5045**

Plaintiffs,

**COMPLAINT:**

v.

- (1.) DECLARATORY JUDGMENT**
- (2.) BREACH OF CONTRACT**
- (Demand for Jury Trial)**

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, a California corporation,

Defendant.

Plaintiffs, Dotster, Inc., Go Daddy Software, Inc., and eNOM, Inc. (collectively, "Plaintiffs") file this Complaint against Defendant Internet Corporation for Assigned Names and Numbers ("Defendant") and allege as follows:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**JURISDICTION**

1. This Court has jurisdiction over this action pursuant to the provisions of 28 U.S.C. § 1332(a)(1) and 28 U.S.C. § 2201, as there is complete diversity of citizenship between the parties and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

**VENUE**

2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and (c), as the defendant is a corporation organized under the laws of the state of California. Additionally, the contract between Plaintiffs and Defendant that forms the basis of this litigation states that venue for any litigation concerning the contract will be a court located in Los Angeles, California, USA.

**PARTIES AND PERSONAL JURISDICTION**

3. Plaintiff, Dotster, Inc., is a Washington corporation with its principal place of business in the State of Washington.

4. Plaintiff, Go Daddy Software, Inc., is an Arizona corporation with its principal place of business in the State of Arizona.

5. Plaintiff, eNOM, Inc. is a Washington corporation with its principal place of business in the State of Washington.

6. Defendant is a California non-profit corporation with its principal place of business in Marina Del Ray, California. Defendant is the entity charged with technical management of the Internet's addressing system, known as the domain name system (the "DNS").

7. The breach of the Plaintiffs' Registrar Accreditation Agreements alleged in this Complaint occurred and arose in the Central District of California.

8. The value of each Plaintiffs' interest that will be affected by this action is greater than \$75,000.

////

**ALLEGATIONS COMMON TO ALL CLAIMS**

**Background of the Domain Name System**

1  
2  
3 9. Each computer connected to the Internet is identified by a unique numeric  
4 code, known as an Internet Protocol address, or IP address. A computer's IP address  
5 denotes both its physical and virtual location.

6 10. In order to locate a particular computer, its IP address must be determined.  
7 However, IP addresses can contain up to 12 digits, and can be difficult to remember.  
8 For that reason, Internet-connected computers can also be located by a domain name,  
9 an alphanumeric phrase which is tied to a specific IP address (a "Domain").

10 11. The United States Department of Commerce has delegated authority to  
11 administer the DNS to Defendant.

12 12. Defendant has delegated its authority for registering Domains to certain third  
13 parties, referred to as Registries. Two Registries include VeriSign Global Registry  
14 Services, a division of VeriSign, Inc., (which is the Registry responsible for  
15 managing the top level domains (or TLDs) .COM and .NET), and The Public Interest  
16 Registry, (which is the Registry responsible for managing the .ORG TLD).

17 13. A corporation that is approved by Defendant to register Domains for the  
18 public and enters into a Registrar Accreditation Agreement (an "Accreditation  
19 Agreement") with Defendant is known as a Registrar. Registrars are responsible to  
20 register Domains through Registries with Defendant. Plaintiffs are all Registrars. An  
21 individual or corporation wishing to register a particular Domain, and thereby obtain  
22 the right to control that Domain, must do so through a Registrar. The Registrar then  
23 provides the individual or corporation's information to the applicable Registry, who  
24 assigns the particular domain to the individual or corporation (a "Registrant").

25 14. Domains are registered for a limited period of time. If that period expires  
26 without renewal by the Registrant, the Domain registration is deleted and the Domain  
27 again becomes available for registration by the first Registrant who requests  
28

1 registration. Currently, several Registrars offer services that allow a potential  
2 Registrant to attempt to register expired Domains almost immediately after their  
3 expiration.

4 **The Registrar Accreditation Agreement**

5 15. As Registrars, each Plaintiff has entered into an identical Accreditation  
6 Agreement with Defendant. In connection with the Accreditation Agreement, each  
7 Plaintiff has paid accreditation fees to Defendant in an amount greater than \$75,000.  
8 Under the Accreditation Agreement, Registrars are granted the right to register  
9 Domains in accordance with Defendant's procedures. The most recent version of the  
10 Accreditation Agreement is dated May 2001 and is attached hereto as Plaintiffs'  
11 Exhibit 1 and incorporated herein by this reference. All Registrars are required to sign  
12 the Accreditation Agreement without modification. Defendant and all Plaintiffs are  
13 party to the Accreditation Agreement.

14 16. The Accreditation Agreement obligates each Registrar to comply with  
15 Defendant's existing specifications and policies regarding the DNS. Section 4.1.1 of  
16 the Accreditation Agreement specifies that Registrars are only required to comply  
17 with additional specifications and policies that are established by Defendant as  
18 Consensus Policies.

19 17. Section 4.3 of the Accreditation Agreement provides that a new specification  
20 or policy can only become official policy of Defendant, and thereby bind Registrars, if  
21 a consensus can be reached among Internet stakeholders, including Registrars such as  
22 Plaintiffs. Adoption of a Consensus Policy requires three steps: first, an action by  
23 Defendant's Board of Directors ("Board") establishing the specification or policy;  
24 second, a recommendation adopted by at least a two-thirds vote of the council of the  
25 Defendant-appointed supporting organization (which is Defendant's term for a formal  
26 committee within its structure) to which the matter is delegated; and third, the  
27 preparation of a written report and supporting materials that document the extent,  
28

1 nature and intensity of agreement and disagreement among impacted groups.

2 18. The Accreditation Agreement allows a Registrar to dispute the existence of a  
3 "consensus" by seeking review of the issue by an Independent Review Panel  
4 established under Defendant's bylaws. If the Panel concludes that a consensus does  
5 exist, and the Registrar continues to dispute the presence of a consensus, the  
6 Accreditation Agreement provides that a Registrar may file suit (or initiate arbitration)  
7 in Los Angeles, California to contest the issue, and the Registrar may seek specific  
8 performance of the requirement that a consensus be obtained under Section 5.1 of the  
9 Accreditation Agreement.

10 19. Section 2.3 of the Accreditation Agreement states:

11 "With respect to all matters that impact the rights, obligations, or role of  
12 Registrar, ICANN shall during the Term of this Agreement:

13 2.3.1 exercise its responsibilities in an open and transparent  
14 manner;

15 2.3.2 not unreasonably restrain competition and, to the  
16 extent feasible, promote and encourage robust competition;

17 2.3.3 not apply standards, policies, procedures or practices  
18 arbitrarily, unjustifiably, or inequitably and not single out  
19 Registrar for disparate treatment unless justified by  
20 substantial and reasonable cause; and

21 2.3.4 ensure, through its reconsideration and independent  
22 review policies, adequate appeal procedures for Registrar, to  
23 the extent it is adversely affected by ICANN standards,  
24 policies, procedures or practices."

25 20. If a Registrar feels that compliance by Defendant with any of the above  
26 obligations is an issue, Section 5.1 of the Accreditation Agreement allows the  
27 Registrar to initiate a lawsuit or arbitration requesting specific performance.  
28

**The Current System for Registering Expiring Domains**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

21. Domains may be registered for differing lengths of time. When the registration period for a Domain expires, the Domain goes back into the pool of available Domains unless the existing Registrant renews the registration.

22. When a Domain Registrant fails to renew his or her Domain, the Registrar with whom the Domain is registered has up to 45 days from the date the registration expires to send a "delete command" to the Registry.

23. After the delete command has been sent to the Registry, the Registry then places the Domain on a 30-day redemption grace period ("Redemption Period"). During the Redemption Period, the Domain Registrant can either decide to renew the Domain by filling out a form to retain ownership of the Domain and complete a renewal or to take no action and allow the Domain to be deleted, as described below.

24. If a Domain Registrant takes no action to renew the Domain and intends to allow the Domain to expire, once the Redemption Period ends, the Domain enters a "Pending Delete" status. When the Domain enters the Pending Delete status, the Domain is placed on a pending delete report, which is updated daily by the Registry for Registrars to download, should they wish to do so. The pending delete report is the complete list of all .COM and .NET Domains that are scheduled to be deleted on a particular day. The Pending Delete status lasts for five days. At the end of the five days, the Domain is deleted in a batch delete process, which takes place at 11am PST and usually lasts for less than one hour (the "Batch Delete"). There are typically approximately 25,000 Domains deleted daily in the Batch Delete. Currently, there are approximately 45 active, highly competitive Registrars using their connections to the Registry to obtain such Domains during Batch Deletes.

25. Due to the fierce competition between Registrars, the Registry has set up specialized equipment the Registrars use for the purpose of registering Domains that are being deleted. Such equipment is generally referred to as the "Batch Pool." The

1 Batch Pool provides equal access for all Registrars attempting to register the Domains  
2 that are being deleted.

3 26. During a Batch Delete, each competing Registrar sends a command from  
4 their computers to the Registry computers attempting to register wanted Domains in  
5 the Batch Pool. The first competing Registrar to have their command accepted for the  
6 wanted Domain registers the Domain for its customer. A desirable Domain that is  
7 deleted during a Batch Delete will generally be re-registered within a few milliseconds  
8 of it being deleted by the Registry.

9 27. Potential Domain Registrants can choose from many different models  
10 offered by Registrars to obtain Domains during a Batch Delete, including, among  
11 other models, fixed price, first-come-first-serve, auction models, or contacting a  
12 Domain reseller.

13 28. Currently, each Registrar that attempts to obtain Domains during the Batch  
14 Delete sets its own pricing and has its own recommendations as to which is the best  
15 model for potential Domain Registrants. Potential Domain Registrants can register  
16 Domains deleted during the Batch Delete process from as low as \$8.75 to as high as  
17 thousands of dollars.

18 **Proposed Changes to the Existing Systems**

19 29. VeriSign Global Registry Services, a division of VeriSign, Inc. ("VeriSign")  
20 is the Registry that maintains the central registries for the .COM and .NET Domains.  
21 In addition, VeriSign, Inc.'s wholly owned subsidiary, Network Solutions, Inc., is a  
22 Registrar. Each Registrar that registers .COM or .NET Domains can only do so  
23 through VeriSign, which receives \$6 for each such Domain registration.

24 30. In late 2001, VeriSign proposed a change to Defendant's policies called  
25 Wait Listing Service or WLS. This change requires the approval of Defendant.

26 31. Under VeriSign's WLS proposal, a potential Registrant who wishes to  
27 register a Domain that is already registered can pay a fee for the opportunity to  
28



1 register that Domain if and when the current registration expires (that is the potential  
2 Registrant would obtain the Domain only if the current Registrant did not renew its  
3 registration). The WLS is a first-come first-served service, and only one WLS  
4 subscription may be purchased per Domain. Under the WLS, a Domain that is being  
5 deleted by the Registry would be checked to determine if a WLS subscription had  
6 been purchased for that Domain. If a WLS subscription has been purchased, the  
7 Domain would be generally registered to the WLS subscription holder. VeriSign  
8 would administer the WLS program, and would receive \$24 for each WLS  
9 subscription, plus the standard \$6 registration fee, should the WLS subscription result  
10 in the Domain being registered by the WLS subscription holder.

11 32. Under the proposed WLS, a person seeking to register an expiring Domain  
12 (at least one that has any commercial value) must not only pay the WLS subscription  
13 fee in order to obtain that expiring Domain, but would be forced or coerced to pay the  
14 additional \$6 registration fee to VeriSign to register the Domain. In essence, the WLS  
15 subscription fee and the registration fee are tied together. For Domains of any value, a  
16 Potential Registrant cannot purchase one without purchasing the other.

17 33. Currently, many Registrars (including Plaintiffs) have competing  
18 services that offer functionality similar to WLS, but those services are able to compete  
19 to register a Domain that is being deleted only after the Domain has been deleted by  
20 the Registry. As those signed up for VeriSign's proposed WLS would have the "first  
21 shot" to register an expiring name, WLS would effectively replace the various "waiting  
22 list" services currently available through the various Registrars including those offered  
23 by Plaintiffs, creating a monopoly run by VeriSign in place of the currently  
24 competitive services offered by Plaintiffs and other Registrars.

25 34. VeriSign's position as the operator of the .COM and .NET Registries  
26 would allow it to operate WLS. A Registrar such as any of the Plaintiffs would not be  
27 able to implement a universal system such as WLS.

28

## Reaction To Proposed WLS

1  
2  
3 35. When the WLS was proposed by VeriSign, opposition was expressed by  
4 virtually all Registrars, and by a substantial number of other Internet stakeholders, on  
5 the grounds that WLS would restrict or eliminate competition in the provision of  
6 services to potential Registrants of expiring Domain , and increase prices to potential  
7 Registrants.

8 36. A Task Force of the Domain Name Supporting Organization ("Task Force"),  
9 a Supporting Organization of Defendant, was asked by the Defendant's Board of  
10 Directors to prepare a report and recommendations on WLS. The Task Force  
11 consulted the various constituents and determined that the consensus was  
12 overwhelmingly opposed to implementing the WLS, and recommended that the Board  
13 deny the WLS proposal, on the grounds that it would restrain competition, add to  
14 VeriSign's monopoly on the .COM and .NET Registries, and not benefit consumers.

15 37. After intense lobbying by, or on behalf of VeriSign, the Task Force was  
16 persuaded to include in its report conditions that should be placed on WLS, should the  
17 Board approve it. Specifically, the Final Report of the Task Force stated:

18  
19 **"TR-TR Preferred Recommendation: Recommendation to deny  
the WLS:**

- 20 A. The ICANN board move with all haste to implement and  
21 actively enforce the proposed Redemptions Grace Period for  
22 Deleted Names policy and practice
- 23 B. The ICANN Board reject Verisign's request to amend its  
24 agreement to enable it to introduce its proposed WLS.
- 25 C. The ICANN Board reject Verisign's request to trial the WLS  
26 for 12 months." (emphasis added).

27 The Task Force's final report, dated as of July 14, 2002, is attached as Plaintiffs'  
28

1 Exhibit 2 and is incorporated herein by this reference.

2 38. On August 23, 2002, Defendant's Board, in contravention of the Task Force  
3 recommendation that WLS not be adopted or implemented, and the consensus of the  
4 various constituencies in opposition to WLS, adopted a resolution authorizing  
5 Defendant's President and General Counsel to negotiate with VeriSign for the  
6 establishment of WLS. That resolution is attached as Plaintiffs' Exhibit 3 and is  
7 incorporated herein by this reference.

8 39. On September 9, 2002, pursuant to Section 4.3.2 of the Accreditation  
9 Agreement, Plaintiff Dotster submitted a request for review under the Independent  
10 Review Policy requesting an independent review of Defendants' actions and disputing  
11 the presence of a Consensus as required by the Accreditation Agreement. In  
12 contravention of Defendant's then-current Bylaws, Defendant did not, and to  
13 Plaintiffs' knowledge has not, established the required Independent Review Panel.  
14 That Independent Review request is attached as Plaintiff Dotster's Exhibit 4.

15 40. On September 12, 2002, pursuant to Defendant's policies, Plaintiff Dotster  
16 submitted a Reconsideration Request ("Request") and formal request for review under  
17 Defendant's Reconsideration Request Policy, asking Defendant to reconsider its  
18 August 23 decision. Plaintiff Dotster's Request is attached as Plaintiffs' Exhibit 5 and  
19 is incorporated herein by this reference.

20 41. On May 20, 2003, Defendant issued a Recommendation on Dotster's  
21 request, recommending that the Board take no action on Dotster's request. Defendant  
22 also indicated that it was not obligated to institute an independent review of its  
23 actions, as requested by Plaintiff Dotster. That Recommendation is attached as  
24 Plaintiffs' Exhibit 6 and is incorporated herein by this reference.

25 42. On June 2, 2003, Defendant's Board adopted the Recommendation issued on  
26 May 20, and again authorized negotiations between itself and VeriSign toward the  
27 establishment of WLS. Upon information and belief, those negotiations continue.  
28

1 VeriSign has announced that it will begin implementation of the WLS on October 11,  
2 2003.

### 3 **Plaintiffs' Injuries**

4 43. Under the Accreditation Agreement, Defendant's liability to any Registrar  
5 for money damages resulting from any breach of the Accreditation Agreement by  
6 Defendant is limited to the amounts paid to Defendant as accreditation fees under the  
7 Accreditation Agreement. Although each Plaintiff has paid Defendant over \$75,000  
8 in Accreditation Fees, each Plaintiffs' damages, should the WLS be implemented, is  
9 far greater than those amounts. The implementation of WLS would eliminate a  
10 growing industry, and would reduce the choices available to consumers. Defendant's  
11 consideration of the WLS proposal has been arbitrary and capricious, and has violated  
12 its own written procedures in ignoring the overwhelming consensus of Internet  
13 stakeholders opposed to WLS.

14 44. Plaintiffs cannot be made whole from any damage claim against  
15 Defendant and will suffer irreparable harm if Defendant is not restrained from  
16 approving the implementation of WLS until it has complied with its obligations under  
17 the Accreditation Agreement. Additionally, if the WLS is implemented, Plaintiffs  
18 will not be able to maintain their present independent and competing systems for  
19 acquiring expiring Domains, so that when Defendant is required by this litigation to  
20 terminate the WLS until it has followed its consensus policy and considered the anti-  
21 competitive nature of the WLS (which will result in termination of the proposed  
22 WLS), Plaintiffs will be unable to return their systems to operational status.

23 45. Plaintiffs have no adequate remedy at law.

24 46. Plaintiffs are not, themselves, in default under the Accreditation Agreement.

### 25 **FIRST CLAIM FOR RELIEF**

#### 26 **(Declaratory Judgment)**

27 47. Plaintiffs reallege paragraphs 1 through 47 above.

28

1 48. The Accreditation Agreement between Plaintiffs and Defendant obligates  
2 Defendant to refrain from unreasonably restraining competition, and to promote and  
3 encourage robust competition in the Domain industry.

4 49. Implementation of WLS would essentially allow VeriSign to become the  
5 sole provider of services to potential Registrants seeking to register expiring Domain  
6 names thereby eliminating the robust competition for registering expiring Domains  
7 currently offered by a number of Registrars and it will virtually eliminate competition  
8 in the provision of services to potential Registrants seeking to register expiring  
9 Domain names. If WLS is implemented, each Plaintiff will suffer substantial  
10 monetary damages in excess of \$75,000.

11 50. The adoption of the WLS will unreasonably restrain competition in the  
12 breach of the Accreditation Agreements between Defendant and each of the Plaintiffs  
13 for which Plaintiffs have no immediate and adequate remedy at law.

14 51. Defendant's May 20 Recommendation denies that WLS restrains  
15 competition and rejects Plaintiff Dotster's arguments. Thus, an actual controversy  
16 exists between the parties concerning Defendant's contractual obligation to foster  
17 competition and avoid unreasonably restraining competition.

18 52. The Accreditation Agreements between Plaintiffs and Defendant obligate  
19 Defendant to establish proposed new policies and specifications only through a  
20 procedure that demonstrates that a consensus of Internet stakeholders agrees with the  
21 proposal. Approval of the WLS will require Defendant to amend the existing  
22 specifications and schedules of the Accreditation Agreements pertaining to the  
23 amounts that can be billed to those seeking Domains.

24 53. Defendant has disregarded the consensus requirements of the Accreditation  
25 Agreements, has denied that it must follow these requirements, has ignored that the  
26 consensus is opposed to implementation of the WLS, and is instead proceeding with  
27 private negotiations between itself and VeriSign, intended to culminate in the official  
28

1 launch of WLS on October 11, 2003. An actual dispute exists between the parties  
2 with respect to Defendant's obligation to follow its consensus procedures, and  
3 whether a consensus actually opposing implementation of the WLS.

4 54. Section 2.3.3 of the Accreditation Agreements between Plaintiffs and  
5 Defendant obligates Defendant to "not apply standards, policies, procedures or  
6 practices arbitrarily, unjustifiably, or inequitably" with respect to all matters that  
7 "impact the rights, obligations, or role of Registrar."

8 55. Defendant has breached its obligations under Section 2.3.3 of the  
9 Accreditation Agreement because there has been no justification for the  
10 implementation of the WLS, and results in harm to a substantial number of  
11 Registrars, including specifically Plaintiffs, and potential Domain Registrants.

12 56. For the above reasons, Plaintiffs seek, and are entitled to, a declaration of  
13 this Court that:

14 a. Defendant will be in breach of the Accreditation Agreements if it  
15 proceeds to approve the WLS because implementation of the WLS  
16 will unreasonably restrain competition in the provision of services  
17 to those potential Registrants attempting to register expiring  
18 Domain names; and that Defendant should deny VeriSign's WLS  
19 proposal on the grounds that it fails to promote and encourage  
20 robust competition, and violates Defendant's obligations under the  
21 Accreditation Agreement.

22 b. When deciding whether to approve WLS, Defendant is obligated to  
23 follow its consensus policy for the establishment of new  
24 specifications and policies, as detailed in the Accreditation  
25 Agreement; that a consensus has been established by the Task  
26 Force rejecting the proposed WLS; and that Defendant is  
27 contractually required to comply with the established consensus.  
28

1 57. Plaintiffs are entitled to a Temporary Restraining Order, preliminary  
2 injunction, and permanent injunction prohibiting Defendant from approving any  
3 further steps toward the implementation of WLS until such time as Defendant has  
4 complied with its contractual obligations.

5 **SECOND CLAIM FOR RELIEF**  
6 **(Specific Performance)**

7 58. Plaintiffs reallege paragraphs 1 through 56 above.

8 59. Section 2.3.1 of the Accreditation Agreements between Plaintiffs and  
9 Defendant obligates Defendant to “exercise its responsibilities in an open and  
10 transparent manner” with respect to all matters that “impact the rights, obligations, or  
11 role of Registrar.”

12 60. Defendant has breached Section 2.3.1 of the Accreditation Agreement by  
13 authorizing its General Counsel and President to negotiate exclusively with VeriSign  
14 to establish the implementation of WLS, a single-source provider of Domain “waiting  
15 list” services. The issues that Defendant and VeriSign are negotiating will  
16 dramatically impact Registrars, and the rights that they will have should WLS be  
17 implemented as scheduled.

18 61. These confidential negotiations prevent Registrars, including Plaintiffs, from  
19 meaningfully participating in discussions and decision-making that will impact  
20 Registrars’ rights. Such confidentiality also results in Defendant making decisions in  
21 an essential vacuum, without the benefit of input regarding the far-reaching, and  
22 potentially disastrous impacts that specific implementation decisions will have on  
23 Registrars, including Plaintiffs.

24 62. Section 2.3.2 of the Accreditation Agreements between Plaintiffs and  
25 Defendant obligates Defendant to “not unreasonably restrain competition and, to the  
26 extent feasible, promote and encourage robust competition” with respect to all matters  
27 that “impact the rights, obligations, or role of Registrar.”  
28

1           63. Currently, a robust and vibrant competition exists between approximately 45  
 2 Registrars to register Domains that are being deleted during Batch Deletes  
 3 (“Competing Registrars”). The Competing Registrars compete with regards to the  
 4 models that they use to attract potential Domain Registrants and with regards to the  
 5 technology that they have developed, and which continues to develop. For example,  
 6 Competing Registrars may use an auction model, a first-come, first-served model, or  
 7 work with domain resellers. Each model has unique benefits, different price-points,  
 8 and attracts a different type of potential Domain Registrant. Further, Competing  
 9 Registrars compete against one another to develop the most effective technology with  
 10 which to register expiring Domains.

11           64. Thus, Defendant has breached its obligations under Section 2.3.2 of the  
 12 Accreditation Agreement because implementation of the WLS would result in a  
 13 single-source, Registry service of obtaining expiring Domains, and would result in the  
 14 Competing Registrars’ services becoming “preempted” by the priority afforded to  
 15 WLS subscriptions to register an expiring Domain, should a WLS subscription be  
 16 purchased on such expiring Domain.

17           65. The WLS is unlike the services provided competitively by the Competing  
 18 Registrars, as it is implemented by bypassing the normal return of Domains being  
 19 deleted as part of the Batch Delete process and instead assigning them to the WLS  
 20 subscription holder.

21           66. Section 2.3.3 of the Accreditation Agreements between Plaintiffs and  
 22 Defendant obligates Defendant to “not apply standards, policies, procedures or  
 23 practices arbitrarily, unjustifiably, or inequitably” with respect to all matters that  
 24 “impact the rights, obligations, or role of Registrar.”

25           67. Defendant has breached its obligations under Section 2.3.3 of the  
 26 Accreditation Agreement because there has been no justification for the  
 27 implementation of the WLS, and results in harm to a substantial number of  
 28



1 Registrars, including specifically Plaintiffs, and potential Domain Registrants.

2 68. In permitting VeriSign to implement the WLS, Defendant failed to follow  
3 the Consensus Policy procedures it was contractually obligated to employ in its  
4 Accreditation Agreements with each of the Plaintiffs.

5 69. The Accreditation Agreements between Plaintiffs and Defendant obligates  
6 Defendant to establish any proposed new policy or specification through a procedure  
7 that demonstrates that a consensus of Internet stakeholders agrees with the proposal.  
8 Section 4.3 of the Accreditation Agreements provides the procedure for establishing a  
9 consensus policy.

10 70. As part of the consensus policy process, Defendant requested that the Task  
11 Force that it established present recommendations to Defendant's Board. The Task  
12 Force recommended that WLS not be implemented.

13 71. Defendant has disregarded the results of the Task Force's recommendations  
14 and other consensus-establishing requirements, and is now proceeding with private  
15 negotiations between itself and VeriSign, which are intended to culminate in the  
16 implementation of WLS. None of the Plaintiffs, nor any other Registrar or Internet  
17 stakeholders have been allowed to participate in these negotiations.

18 72. Defendant's failure to follow the consensus requirements outlined in the  
19 Accreditation Agreement constitutes a breach of the Accreditation Agreement.

20 73. Plaintiffs have performed all of their obligations under the Accreditation  
21 Agreement.

22 74. Defendant should be required to specifically perform the Accreditation  
23 Agreement, as required by Section 5.1 of the Accreditation Agreement, and should be  
24 required to:

- 25 a. In accordance with its obligations under Section 2.3.1 of the
- 26 Accreditation Agreement, fully inform all Registrars of the substance of
- 27 any ongoing negotiations between Defendant and VeriSign regarding the
- 28

1 WLS and to the extent required by the Accreditation Agreement, permit  
2 Registrars and other interested Internet stakeholders to participate in  
3 negotiations with Defendant and VeriSign regarding the implementation  
4 of WLS;

5 b. Act in accordance with its obligations under Section 2.3.2 of the  
6 Accreditation Agreement to promote competition by prohibiting the  
7 implementation of WLS in its present format;

8 c. Follow the consensus procedure provided for under the  
9 Accreditation Agreements and prohibit implementation of WLS until a  
10 consensus of Registrars approves implementation; and

11 d. Follow its own internal procedures in considering, and deciding on  
12 the merits of, Plaintiff Dotster's requests for review and reconsideration  
13 of implementation of the WLS.

14 75. The negotiations between Defendant and VeriSign, if allowed to proceed,  
15 will irreparably harm Plaintiffs. That harm is not fully remediable at trial. A  
16 temporary restraining order, preliminary injunction, and permanent injunction should  
17 be issued preventing Defendant from any steps toward implementation of the WLS,  
18 until such time as Defendant has complied with its contractual obligations.

19 WHEREFORE, Plaintiffs pray for relief against Defendant:

20 1. On Plaintiffs' First Claim for Relief, declaratory judgments as follows:

21 a. Defendant will be in breach of the Accreditation Agreements if it  
22 proceeds to approve the WLS because implementation of the WLS  
23 will unreasonably restrain competition in the provision of services  
24 to those potential Registrants attempting to register expiring  
25 Domain names; and that Defendant should deny VeriSign's WLS  
26 proposal on the grounds that it fails to promote and encourage  
27 robust competition, and violates of Defendant's obligations under  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

the Accreditation Agreement; and

- b. When deciding whether to approve WLS, Defendant is obligated to follow its consensus policy for the establishment of new specifications and policies, as detailed in the Accreditation Agreement, that a consensus has been established by the Task Force rejecting the proposed WLS, and that Defendant is contractually required to comply with the established consensus.

2. On Plaintiffs' Second Claim for Relief, an order of this court requiring Defendant to specifically perform the Accreditation Agreement, in particular requiring Defendant to:

- a. In accordance with its obligations under Section 2.3.1 of the Accreditation Agreement, fully inform all Registrars of the substance of any ongoing negotiations between Defendant and VeriSign regarding the WLS and to the extent required by the Accreditation Agreement, permit Registrars and other interested Internet stakeholders to participate in negotiations with Defendant and VeriSign regarding the implementation of WLS; and
- b. Follow its own internal procedures in considering, and deciding on the merits of, Plaintiff Dotster's requests for review and reconsideration of implementation of the WLS.

3. On Plaintiffs' First and Second Claims for Relief, injunctive relief restraining Defendant from conducting further negotiations with VeriSign, as argued in Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction that accompanies this filing.

////  
////

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

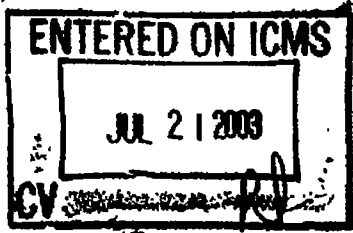
4. For such further additional relief as this court deems appropriate.

DATED this 15<sup>th</sup> day of July, 2003.

PRESTON GATES & ELLIS LLP

By 

Stuart M. Brown  
Aaron M. McKown  
Attorneys for Plaintiffs  
Dotster, Inc., Go Daddy  
Software, Inc., and eNOM, Inc.



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

PRIORITY SEND

CIVIL MINUTES -- GENERAL

Case No. **CV 03-5045-JFW (MANx)**

Date: July 18, 2003

Title: **DOTSTER, INC., etc., et al. -v- INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, etc.**

**DOCKET ENTRY**

**PRESENT:**

**HONORABLE JOHN F. WALTER, UNITED STATES DISTRICT JUDGE**

**K. Leigh Ray  
Courtroom Deputy**

**None Present  
Court Reporter**

**ATTORNEYS PRESENT FOR PLAINTIFFS:**  
None

**ATTORNEYS PRESENT FOR DEFENDANTS:**  
None

**PROCEEDINGS (IN CHAMBERS):**

**ORDER DENYING PLAINTIFFS' REQUEST FOR TEMPORARY RESTRAINING ORDER, REQUEST FOR ISSUANCE OF AN ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION, AND REQUEST FOR EXPEDITED DISCOVERY**

On July 16, 2003, Dotster, Inc., Go Daddy Software, Inc., and eNOM, Inc. (collectively "Plaintiffs") filed a complaint against Internet Corporation For Assigned Names And Numbers ("ICANN") alleging two claims for relief: (1) Declaratory judgment; and (2) Specific performance. On the same day, Plaintiffs filed a Motion For Temporary Restraining Order, Preliminary Injunction, And Expedited Discovery. On July 17, 2003, ICANN filed a Preliminary Opposition To Plaintiffs' Motion For Temporary Restraining Order, Preliminary Injunction, And Expedited Discovery. Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that this matter is appropriate for decision without oral argument. After considering the moving and opposing papers and the arguments therein, the Court rules as follows:

**I. Standard**

In the Ninth Circuit, "preliminary injunctive relief is available to a party who demonstrates either (1) a combination of probable success and the possibility of irreparable harm, or (2) that serious questions are raised and the balance of hardships tips in its favor." *Arcamuzi v. Continental Airlines, Inc.*, 819 F.2d 935, 937 (9th Cir. 1987). "Under any formulation of the test, the moving party must demonstrate a significant threat of irreparable injury." *Id.* "Speculative

injury does not constitute irreparable injury sufficient to warrant granting a preliminary injunction." *Caribbean Marine Services Company, Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988); see also *Church v. City of Huntsville*, 30 F.3d 1332, 1337 (11th Cir. 1994) (holding that "[b]ecause injunctions regulate future conduct, a party has standing to seek injunctive relief only if the party alleges, and ultimately proves, a real and immediate—as opposed to a merely conjectural or hypothetical—threat of future injury"). It is "well-settled law that [i]njunctive relief will not be issued merely to allay the fears and apprehensions or to soothe the anxieties of the parties." *Cambell Soup Co. v. Conagra, Inc.*, 977 F.2d 86, 92 (3d Cir. 1992) (citations and quotations omitted). Thus, courts will not grant preliminary injunctive relief where "[multiple contingencies must occur before [the plaintiff's] injuries ripen into concrete harms." *Caribbean Marine Services*, 844 F.2d at 674; see also *Skelly v. Dockweiler*, 75 F. Supp. 11, 17 (S.D. Cal. 1947) (denying a preliminary injunction because the alleged damage was "not immediate, but remote and flowing from contingencies which have not arisen and may never arise").

## II. Discussion

In this case, Plaintiffs have failed to demonstrate a significant threat of irreparable injury. Plaintiffs argue that they will be irreparably injured when the Wait Listing Service ("WLS") proposed by Verisign, Inc. ("Verisign") is implemented. According to Plaintiffs' complaint, negotiations between ICANN and Verisign regarding the implementation of WLS are on ongoing. (Compl. ¶ 42.) The complaint also states that WLS will not be implemented until October 11, 2003, nearly three months from the date Plaintiffs filed their current motion. (*Id.*) Moreover, according to evidence submitted by Defendant, whether WLS will ever be implemented is dependent upon several contingencies: (1) Verisign would have to actually reach an agreement with ICANN; (2) the United States Department of Commerce would have to approve the agreement; and (3) Verisign would have to undertake the significant technical and operational tasks of implementing WLS. (Halloran Decl. ¶ 14.) Thus, assuming that Plaintiffs will actually be damaged from the implementation of WLS, such damage will not be immediate, but remote and flowing from contingencies which have not arisen and may never arise. Accordingly, the Plaintiffs have not demonstrated a significant threat of irreparable harm for purposes of obtaining a temporary restraining order.

## III. Conclusion

For the foregoing reasons, the Court DENIES Plaintiffs' request for temporary restraining order, request for issuance of an order to show cause re preliminary injunction, and request for expedited discovery. If Plaintiffs wish to pursue their request for injunctive relief, they should proceed by way of noticed motion. Any issues regarding discovery shall be addressed by the magistrate judge assigned to this case.

IT IS SO ORDERED.

The Clerk shall serve a copy of this Minute Order on all parties to this action.

COPY

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Jeffrey A. LeVee (SBN 125863)  
Emma Killick (SBN 192469)  
Eric P. Enson (SBN 204447)  
JONES DAY  
555 West Fifth Street, Suite 4600  
Los Angeles, CA 90013  
Telephone: (213) 489-3939  
Facsimile: (213) 243-2539

Attorneys for Defendant  
INTERNET CORPORATION FOR  
ASSIGNED NAMES AND NUMBERS

2003 AUG -6 AM 11:56  
CENTRAL DISTRICT OF CALIF.  
LOS ANGELES

FILED

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DOTSTER, INC., GO DADDY  
SOFTWARE, INC., and eNOM,  
INC.,

Case No. CV03-5045 JFW (MANx)

Plaintiffs,

DEFENDANT'S ANSWER

v.

INTERNET CORPORATION FOR  
ASSIGNED NAMES AND  
NUMBERS,

Defendant.

1 Defendant Internet Corporation for Assigned Names and Numbers  
2 ("ICANN"), in response to the complaint filed by plaintiffs Dotster, Inc., Go Daddy  
3 Software, Inc., and eNom, Inc. (collectively "Plaintiffs"), hereby answers Plaintiffs'  
4 complaint as follows:

5 1. ICANN is without knowledge or information sufficient to answer the  
6 allegations of paragraph 1 of the complaint and on that basis denies each and every  
7 allegation of paragraph 1.

8 2. ICANN admits the allegations of paragraph 2, except ICANN denies  
9 that Plaintiffs' contract with ICANN "forms the basis of this litigation."

10 3. ICANN is without knowledge or information sufficient to answer the  
11 allegations of paragraph 3 of the complaint and on that basis denies each and every  
12 allegation of paragraph 3 of the complaint.

13 4. ICANN is without knowledge or information sufficient to answer the  
14 allegations of paragraph 4 of the complaint and on that basis denies each and every  
15 allegation of paragraph 4 of the complaint.

16 5. ICANN is without knowledge or information sufficient to answer the  
17 allegations of paragraph 5 of the complaint and on that basis denies each and every  
18 allegation of paragraph 5 of the complaint.

19 6. ICANN admits that it is a California non-profit corporation with its  
20 principal place of business in Marina Del Rey, California. ICANN denies the  
21 remaining allegations of paragraph 6 of the complaint.

22 7. ICANN denies the allegations of paragraph 7 of the complaint.

23 8. ICANN denies the allegations of paragraph 8 of the complaint.

24 9. ICANN denies the allegations of paragraph 9 of the complaint.

25 10. ICANN denies the allegations of paragraph 10 of the complaint.

26 11. ICANN denies the allegations of paragraph 11 of the complaint and  
27 refers Plaintiffs to the Memorandum of Understanding between ICANN and the  
28 United States Department of Commerce, which speaks for itself.



1           12. ICANN denies the allegations of paragraph 12 of the complaint, except  
2 ICANN admits that it has entered into certain registry agreements, including an  
3 agreement with VeriSign.

4           13. ICANN denies the allegations of paragraph 13 of the complaint, except  
5 ICANN admits that it has entered into a Registrar Accreditation Agreement  
6 <http://www.icann.org/registrars/ra-agreement-17may01.htm> with each of the  
7 Plaintiffs.

8           14. ICANN denies the allegations of paragraph 14 of the complaint.

9           15. ICANN denies the allegations of paragraph 15 of the complaint, except  
10 ICANN admits that it has entered into a Registrar Accreditation Agreement  
11 <http://www.icann.org/registrars/ra-agreement-17may01.htm> with each of the  
12 Plaintiffs.

13           16. ICANN states that the terms of the Accreditation Agreements with  
14 Plaintiffs speak for themselves. On that basis, ICANN denies the allegations of  
15 paragraph 16 of the complaint.

16           17. ICANN states that the terms of the Accreditation Agreements with  
17 Plaintiffs speak for themselves. On that basis, ICANN denies the allegations of  
18 paragraph 17 of the complaint.

19           18. ICANN states that the terms of the Accreditation Agreements with  
20 Plaintiffs speak for themselves. On that basis, ICANN denies the allegations of  
21 paragraph 18 of the complaint.

22           19. ICANN states that the terms of the Accreditation Agreements with  
23 Plaintiffs speak for themselves. On that basis, ICANN denies the allegations of  
24 paragraph 19 of the complaint.

25           20. ICANN states that the terms of the Accreditation Agreements with  
26 Plaintiffs speak for themselves. On that basis, ICANN denies the allegations of  
27 paragraph 20 of the complaint.

28

1           21. ICANN denies the allegations of paragraph 21 of the complaint, except  
2 ICANN admits that domains may be registered for differing lengths of time.

3           22. ICANN denies the allegations of paragraph 22 of the complaint.

4           23. ICANN denies the allegations of paragraph 23 of the complaint, except  
5 ICANN admits that the redemption grace period has a duration of thirty days.

6           24. ICANN is without knowledge or information sufficient to answer the  
7 allegations of paragraph 24 of the complaint and on that basis denies each and  
8 every allegation of paragraph 24.

9           25. ICANN is without knowledge or information sufficient to answer the  
10 allegations of paragraph 25 of the complaint and on that basis denies each and  
11 every allegation of paragraph 25.

12           26. ICANN is without knowledge or information sufficient to answer the  
13 allegations of paragraph 26 of the complaint and on that basis denies each and  
14 every allegation of paragraph 26.

15           27. ICANN is without knowledge or information sufficient to answer the  
16 allegations of paragraph 27 of the complaint and on that basis denies each and  
17 every allegation of paragraph 27.

18           28. ICANN is without knowledge or information sufficient to answer the  
19 allegations of paragraph 28 of the complaint and on that basis denies each and  
20 every allegation of paragraph 28.

21           29. ICANN is without knowledge or information sufficient to answer the  
22 allegations of paragraph 29 of the complaint and on that basis denies each and  
23 every allegation of paragraph 29, except ICANN admits that the maximum price for  
24 a one-year initial or renewal registration of a domain name in .COM or .NET is  
25 currently US\$6.

26           30. ICANN denies the allegations of paragraph 30 of the complaint, except  
27 ICANN admits that VeriSign has proposed to offer a new service referred to as  
28 WLS.

1           31. ICANN denies the allegations of paragraph 31 of the complaint and  
2 states that the terms of the WLS have not been finalized.

3           32. ICANN denies the allegations of paragraph 32 of the complaint and  
4 states that the terms of the WLS have not been finalized.

5           33. ICANN is without knowledge or information sufficient to answer the  
6 allegations of paragraph 33 of the complaint and on that basis denies each and  
7 every allegation of paragraph 33.

8           34. ICANN denies the allegations of paragraph 34 of the complaint.

9           35. ICANN denies the allegations of paragraph 35 of the complaint, except  
10 ICANN admits that some opposition was expressed when WLS was proposed by  
11 VeriSign.

12           36. ICANN denies the allegations of paragraph 36 of the complaint and  
13 states that the report of the Task Force speaks for itself.

14           37. ICANN denies the allegations of paragraph 37 of the complaint and  
15 states that the report of the Task Force speaks for itself.

16           38. ICANN denies the allegations of paragraph 38 of the complaint and  
17 states that the resolution of the ICANN Board speaks for itself.

18           39. ICANN admits that Plaintiff Dotster's attorney sent a letter to ICANN  
19 on or about September 9, 2002, a letter including in its subject the words "Request  
20 for review under the Independent Review Policy," and states that the letter speaks  
21 for itself. ICANN denies the remaining allegations of paragraph 39 of the  
22 complaint.

23           40. ICANN admits that Plaintiff Dotster submitted a reconsideration  
24 request to ICANN on or about September 12, 2002, and states that the  
25 reconsideration request speaks for itself. ICANN denies the remaining allegations  
26 of paragraph 40 of the complaint.

27           41. ICANN admits that the Reconsideration Committee of its Board did  
28 issue a recommendation on Dotster's request on or about May 20, 2003, and states

1 that the recommendation speaks for itself. ICANN denies the remaining allegations  
2 of paragraph 41 of the complaint.

3 42. ICANN admits that it adopted resolution 03.78 adopting the  
4 recommendation of the Reconsideration Committee on June 2, 2003 regarding  
5 Dotster's May 20, 2003 request, and that the resolution speaks for itself. ICANN  
6 denies the remaining allegations of paragraph 42 of the complaint.

7 43. ICANN admits that ICANN's liability to a Registrar for a breach of an  
8 Accreditation Agreement is limited to the amounts paid to ICANN as accreditation  
9 fees. ICANN states further that the terms of the Accreditation Agreements with  
10 Plaintiffs speak for themselves. ICANN denies the remaining allegations of  
11 paragraph 43 of the complaint.

12 44. ICANN denies the allegations of paragraph 44 of the complaint.

13 45. ICANN denies the allegations of paragraph 45 of the complaint.

14 46. ICANN is without knowledge or information sufficient to answer the  
15 allegations of paragraph 46 of the complaint and on that basis denies each and  
16 every allegation of paragraph 46 of the complaint.

17 47. ICANN realleges and incorporates by reference its answers to  
18 paragraphs 1 through 46 above.

19 48. ICANN states that the terms of the Accreditation Agreements with  
20 Plaintiffs speak for themselves. On that basis, ICANN denies the allegations of  
21 paragraph 48 of the complaint.

22 49. ICANN denies the allegations of paragraph 49 of the complaint.

23 50. ICANN denies the allegations of paragraph 50 of the complaint.

24 51. ICANN states that its May 20, 2003 Recommendation speaks for itself  
25 and denies the remaining allegations of paragraph 51 of the complaint.

26 52. ICANN states that the terms of the Accreditation Agreements with  
27 Plaintiffs speak for themselves and denies the remaining allegations of  
28 paragraph 52 of the complaint.

1           53. ICANN admits that it is in negotiations with VeriSign concerning  
2 WLS and denies the remaining allegations of paragraph 53 of the complaint.

3           54. ICANN states that the terms of the Accreditation Agreements with  
4 Plaintiffs speak for themselves and denies the remaining allegations of  
5 paragraph 54 of the complaint.

6           55. ICANN denies the allegations of paragraph 55 of the complaint.

7           56. ICANN admits that Plaintiffs are seeking a declaration of the Court as  
8 alleged in paragraph 56 of the complaint, but denies that Plaintiffs are entitled to  
9 any relief and denies the remaining allegations of paragraph 56 of the complaint.

10          57. ICANN denies the allegations of paragraph 57 of the complaint.

11          58. ICANN realleges and incorporates by reference its answers to  
12 paragraphs 1 through 57 above.

13          59. ICANN states that the terms of the Accreditation Agreements with  
14 Plaintiffs speak for themselves and denies the remaining allegations of  
15 paragraph 59 of the complaint.

16          60. ICANN denies the allegations of paragraph 60 of the complaint.

17          61. ICANN denies the allegations of paragraph 61 of the complaint.

18          62. ICANN states that the terms of the Accreditation Agreements with  
19 Plaintiffs speak for themselves and denies the remaining allegations of  
20 paragraph 62 of the complaint.

21          63. ICANN is without knowledge or information sufficient to answer the  
22 allegations of paragraph 63 of the complaint and on that basis denies each and  
23 every allegation of paragraph 63.

24          64. ICANN denies the allegations of paragraph 64 of the complaint.

25          65. ICANN denies the allegations of paragraph 65 of the complaint and  
26 states that the terms of WLS have not yet been finalized or approved.

27  
28

1           66. ICANN states that the terms of the Accreditation Agreements with  
2 Plaintiffs speak for themselves and denies the remaining allegations of  
3 paragraph 66 of the complaint.

4           67. ICANN denies the allegations of paragraph 67 of the complaint.

5           68. ICANN denies the allegations of paragraph 68 of the complaint.

6           69. ICANN states that the terms of the Accreditation Agreements with  
7 Plaintiffs speak for themselves and denies the remaining allegations of  
8 paragraph 69 of the complaint.

9           70. ICANN denies the allegations of paragraph 70 of the complaint.

10          71. ICANN admits that it is engaged in negotiations with VeriSign with  
11 respect to WLS and denies the remaining allegations of paragraph 71 of the  
12 complaint.

13          72. ICANN denies the allegations of paragraph 72 of the complaint.

14          73. ICANN is without knowledge or information sufficient to answer the  
15 allegations of paragraph 73 of the complaint and on that basis denies each and  
16 every allegation of paragraph 73.

17          74. ICANN denies the allegations of paragraph 74 of the complaint.

18          75. ICANN denies the allegations of paragraph 75 of the complaint.

19                                   **AFFIRMATIVE DEFENSES**

20                                   **FIRST SEPARATE AND ADDITIONAL DEFENSE**

21                                   **(Failure to State a Claim)**

22          76. The claims for relief in the complaint fail to state facts sufficient to  
23 constitute a cause of action against ICANN.

24                                   **SECOND SEPARATE AND ADDITIONAL DEFENSE**

25                                   **(Lack of Irreparable Injury)**

26          77. As to all causes of action contained in the complaint seeking injunctive  
27 relief, Plaintiffs have not suffered an irreparable injury.

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**THIRD SEPARATE AND ADDITIONAL DEFENSE**

**(Failure to Join a Necessary Party)**

78. As to all causes of action contained in the complaint, ICANN is informed and believes and on that basis alleges that, pursuant to Rule 12(b)(7) of the Federal Rules of Civil Procedure, Plaintiffs' claims are barred, in whole or in part, because Plaintiffs have failed to join a necessary or indispensable party under Rule 19 of the Federal Rules of Civil Procedure.

**FOURTH SEPARATE AND ADDITIONAL DEFENSE**

**(Failure to Mitigate)**

79. Plaintiffs have failed to mitigate any of their alleged damages.

**FIFTH SEPARATE AND ADDITIONAL DEFENSE**

**(Damages Limited by Contract)**

80. ICANN's obligation to pay damages to Plaintiffs, if any, is limited by the terms of the Accreditation Agreement that ICANN has with each of the Plaintiffs.

WHEREFORE, ICANN prays:

- 1. For a judgment of dismissal in ICANN's favor on all causes of action in the complaint;
- 2. For a declaration that ICANN has not breached the Accreditation Agreements with Plaintiffs;
- 3. For such other and further relief as the Court deems just and proper.

Dated: August 6, 2003

JONES DAY

By: Jeffrey A. LeVee  
Jeffrey A. LeVee

Attorneys for Defendant INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

I, Lynne Trotti, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 555 West Fifth Street, Suite 4600, Los Angeles, California 90013-1025. On August 6, 2003, I caused to be served a copy of the within document(s):

**DEFENDANT'S ANSWER**

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.
- by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

Kathleen O. Peterson  
PRESTON, GATES & ELLIS LLP  
1900 Main Street, Suite 600  
Irvine, California 92614  
Phone: (949) 253-0900

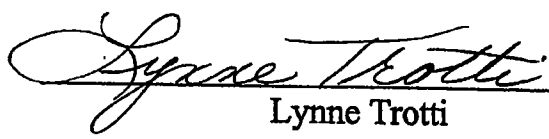
I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.



- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on August 6, 2003, at Los Angeles, California.

  
Lynne Trotti

Request ID: 005383874  
Transaction ID: 21617503  
Category ID: UN/E

Province of Ontario  
Ministry of Consumer and Business Services  
Companies and Personal Property Security Branch

Date Report Produced: 2003/08/25  
Time Report Produced: 11:42:58  
Page: 1

# CORPORATION PROFILE REPORT

<b>Ontario Corp Number</b>	<b>Corporation Name</b>	<b>Incorporation Date</b>
1561732	POOL.COM INC.	2003/05/12
		<b>Jurisdiction</b>
		ONTARIO
<b>Corporation Type</b>	<b>Corporation Status</b>	<b>Former Jurisdiction</b>
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE
<b>Registered Office Address</b>	<b>Date Amalgamated</b>	<b>Amalgamation Ind.</b>
43 AURIGA DRIVE	NOT APPLICABLE	NOT APPLICABLE
OTTAWA ONTARIO CANADA K2E 7Y8	<b>New Amal. Number</b>	<b>Notice Date</b>
	NOT APPLICABLE	NOT APPLICABLE
<b>Mailing Address</b>		<b>Letter Date</b>
NOT AVAILABLE		NOT APPLICABLE
	<b>Revival Date</b>	<b>Continuation Date</b>
	NOT APPLICABLE	NOT APPLICABLE
	<b>Transferred Out Date</b>	<b>Cancel/Inactive Date</b>
	NOT APPLICABLE	NOT APPLICABLE
	<b>EP Licence Eff.Date</b>	<b>EP Licence Term.Date</b>
	NOT APPLICABLE	NOT APPLICABLE
	<b>Number of Directors</b>	<b>Date Commenced</b>
	<b>Minimum      Maximum</b>	<b>In Ontario</b>
	00001      00010	NOT APPLICABLE
<b>Activity Classification</b>		<b>Date Ceased</b>
NOT AVAILABLE		<b>In Ontario</b>
		NOT APPLICABLE

Request ID: 005383874  
Transaction ID: 21617503  
Category ID: UNE

Province of Ontario  
Ministry of Consumer and Business Services  
Companies and Personal Property Security Branch

Date Report Produced: 2003/08/25  
Time Report Produced: 11:42:58  
Page: 2

# CORPORATION PROFILE REPORT

Ontario Corp Number: 1561732  
Corporation Name: POOL.COM INC.

Corporate Name History: POOL.COM INC.  
Effective Date: 2003/05/12

Current Business Name(s) Exist: NO  
Expired Business Name(s) Exist: NO

Administrator Name (Individual / Corporation): ROBERT HALL  
Address: 5508 WICKLOW DRIVE  
MANOTICK  
ONTARIO  
CANADA K2M 1C4

Date Began: 2003/05/12  
First Director: YES  
Designation: DIRECTOR  
Officer Type: [blank]  
Resident Canadian: Y

107

Request ID: 005383874  
Transaction ID: 21617503  
Category ID: UN/E

Province of Ontario  
Ministry of Consumer and Business Services  
Companies and Personal Property Security Branch

Date Report Produced: 2003/08/25  
Time Report Produced: 11:42:58  
Page: 3

# CORPORATION PROFILE REPORT

<b>Ontario Corp Number</b>	<b>Corporation Name</b>
1561732	POOL.COM INC.

<b>Last Document Recorded</b>		
<b>Act/Code</b>	<b>Description</b>	<b>Date</b>
BCA	ARTICLES OF INCORPORATION	1 2003/05/12

**THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.**

**ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON THE COMPANIES AND PERSONAL PROPERTY SECURITY BRANCH MICROFICHE.**

The issuance of this report in electronic form is authorized by the Director of Companies and Personal Property Security Branch.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

POOL.com INC.

Plaintiff

- and -

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

Defendant

**SUPPLEMENTARY AFFIDAVIT OF DANIEL E. HALLORAN  
(sworn September 23, 2003)**

I, DANIEL E. HALLORAN, of the City of Los Angeles, in the State of California, in the United States of America, MAKE OATH AND SAY:

1. I have read the Affidavit of Robert Hall sworn on September 17, 2003. While I disagree with many of the statements made in his Affidavit, including those dealing with the WLS, in this supplementary Affidavit I will deal with only those matters that go to the issue of the Court's jurisdiction. In this supplementary Affidavit, I will use the same defined terms as in my Affidavit sworn September 5, 2003.

2. Throughout his Affidavit, Mr. Hall erroneously states that ICANN conducts business in Ontario. This suggestion is completely wrong: First, ICANN does not conduct business in a traditional sense: It does not sell anything and does not provide services to consumers for a fee. ICANN is a not-for-profit corporation responsible, pursuant to a series of contracts with the United States Department of Commerce, for

administering certain aspects of the Internet's domain name system, or DNS. ICANN does not, contrary to Mr. Hall's Affidavit, "solicit" business and it does not "promote the sale" of anything, including domain names. Contrary to what is suggested by Mr. Hall, ICANN does not profit from -- or even sell -- registrations for individual domain names.

3. Second, neither ICANN nor its employees carry out any of ICANN's functions in Ontario. ICANN does not have employees in Ontario, ICANN employees do not travel to Ontario on business, ICANN has not held any "hearings" in Ontario (or anywhere), ICANN does not have offices in Ontario and ICANN has not held any meetings in Ontario.

4. It would appear that throughout his Affidavit, Mr. Hall attempts to state that because the Internet itself is "global", ICANN conducts business or activities in every jurisdiction, including Ontario. Again, this is simply not the case. While ICANN is involved in administering certain aspects of the DNS, as is set out in my earlier Affidavit and below, its staff carries out its responsibilities from California.

5. Also, in his Affidavit, Mr. Hall suggests that because there are Ontario-based accredited registrars, ICANN carries on business in Ontario. This statement is incorrect and shows a misunderstanding of how ICANN carries out its administrative functions. ICANN is located in California and has a passive website that can be accessed by Internet users anywhere in the world (including Ontario). A company can become accredited as a registrar by coming to California to do business with ICANN there. Specifically, the company must (and the few accredited Ontario-based registrars did): (a) go to the passive informational web site that ICANN operates in California; (b)

mail a hard-copy application to ICANN in California; (c) sign an accreditation agreement and forward it to ICANN for completion in California (all accreditation agreements are signed last by ICANN in California); and (d) enter an accreditation agreement that explicitly states that it is deemed to be made at Los Angeles, that disputes (between ICANN and the registrar) will be resolved in Los Angeles, and that with respect to all litigation involving ICANN, jurisdiction and exclusive venue for such litigation shall be Los Angeles. The relationship between ICANN and the accredited registrars makes it clear that ICANN's administrative functions are carried out in California and not, for example, in Ontario.

6. Specifically, in paragraph 31 of his Affidavit, Mr. Hall is, again, incorrect in his "understanding" that ICANN conducts business in Ontario:

- (a) ICANN does not solicit or offer registrar accreditation services. As part of its responsibilities, ICANN accredits registrars who, as is set out above, apply to be accredited by ICANN in California. The suggestion that ICANN actively solicits registrar accreditation is simply wrong;
- (b) while it may be that a large number of domain name registrations take place in Ontario through the five accredited registrars, ICANN plays absolutely no role in those registrations. While registrar contributions to ICANN are, to a degree, based on sales by registrars, ICANN does not sell registrations, or get involved with registration sales activities. Moreover, CIRA's voluntary contribution to ICANN constitutes a miniscule percentage of ICANN's total budget. All contributions to ICANN (from all

sources) are used to offset the costs of ICANN's activities and such contributions do not generate profits for ICANN;

- (c) ICANN does not promote the sale of domain name registrations or promote new top-level domains;
- (d) ICANN does not conduct any business in connection with the ".ca" ccTLD. ICANN plays no role in CIRA's administration of the ccTLD and ICANN does not involve itself in its operations. Moreover, the ".ca" ccTLD is not relevant to Pool.com's action against ICANN. The proposed WLS has nothing to do with ccTLDs, and Pool.com is not even in the business of dealing with the ".ca" ccTLD;
- (e) while ICANN has conducted board meetings at various locations in the world, no such meetings have ever been held in Ontario and, as stated above, ICANN's administrative functions are carried out from its offices in California;
- (f) ICANN has not been involved in any hearings in Toronto, Ontario; and
- (g) the fact that ICANN has representatives and retains consultants from different jurisdictions does not, in any way, change the fact that ICANN's administrative functions are carried on from California. Moreover, ICANN does not have any consultants from Ontario.

7. Also, contrary to what is stated by Mr. Hall, while it is clear that Pool.com is located in Ontario, the vast majority of people involved in and evidence concerning the WLS do not reside in Ontario and, in fact, reside in California. Indeed, according to Mr. Hall, Pool.com's lawsuit is based on contract amendment negotiations between



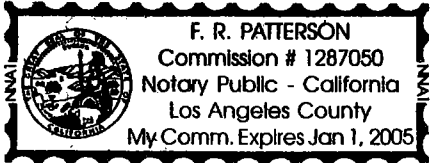
ICANN, a Marina del Rey, California corporation, and Verisign, Inc., a Mountain View, California corporation. It is beyond question that, in respect to the WLS, neither ICANN's staff nor its Board of Directors has taken any action whatsoever in Ontario.

8. Further, Mr. Hall states that the 37 documents identified in Exhibit "F" to his Affidavit are "relevant documents relating to ICANN's actions in relation to the WLS". While I do not agree with Mr. Hall's characterization of those documents, it is noteworthy that none of those documents was authored or prepared in Ontario. In fact, several of the documents were either authored in California or addressed to recipients in California.

9. Finally, Mr. Hall's Affidavit states that ICANN has not "entered into any contracts with Pool.com that are material to any issues in dispute in this action". In fact, ICANN has not entered into any contracts with Pool.com.

State of California, County of LOS ANGELES } ss.  
Subscribed and sworn to before me on September 23, 2003

F. R. Patterson  
(Name of Notary) F. R. PATTERSON



Daniel E. Halloran  
DANIEL E. HALLORAN

POOL.com INC.

and

INTERNET CORPORATION FOR ASSIGNED NAMES  
AND NUMBERS

Court File No: 03-CV-24621

Plaintiff

Defendant

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Ottawa

**SUPPLEMENTARY AFFIDAVIT OF  
DANIEL E. HALLORAN  
(sworn September 23, 2003)**

**DAVIES WARD PHILLIPS & VINEBERG LLP**  
1 FIRST CANADIAN PLACE  
SUITE 4400  
TORONTO, ON M5X 1B1

Matthew P. Gottlieb (LSUC #32268B)  
Andrea L. Burke (LSUC #37761L)  
Heidi Rubin (LSUC #46082P)  
Tel: 416.863.0900  
Fax: 416.863.0871

Solicitors for the Defendant