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6 INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS
7

8 **UNITED STATES DISTRICT COURT**

9 **CENTRAL DISTRICT OF CALIFORNIA**

10 **DOTSTER, INC., GO DADDY**
SOFTWARE, INC., and eNOM,
11 **INC.,**

12 **Plaintiffs,**

13 **v.**

14 **INTERNET CORPORATION**
FOR ASSIGNED NAMES AND
15 **NUMBERS,**

16 **Defendant.**

17 **Case No. CV03-5045 JFW (MANx)**

18 **DECLARATION OF DANIEL E.**
HALLORAN IN SUPPORT OF
DEFENDANT'S OPPOSITION TO
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION

19 Date: September 29, 2003

20 Time: 1:30 p.m.

21 Courtroom: 16

22 {Original date: October 6, 2003}

23 **Before the Hon. John F. Walter**

1 I, Daniel E. Halloran, declare:

2 1. I am an attorney admitted to the State Bar of California, and I am the
3 Chief Registrar Liaison and Acting Secretary of defendant Internet Corporation for
4 Assigned Names and Numbers ("ICANN"). I have worked for ICANN since May
5 2000. I have personal knowledge of the matters set forth herein and am competent
6 to testify to those matters. I make this declaration in support of ICANN's
7 Opposition to Plaintiffs' Motion for Preliminary Injunction.

8 2. This litigation concerns a proposal by VeriSign to offer a Wait Listing
9 Service ("WLS") for the .com and .net top level domains of the Internet. In order to
10 understand the WLS and the plaintiffs separate contracts with ICANN (known as
11 the Registrar Accreditation Agreements ("RAA")), it is first necessary to
12 understand the manner in which the Internet's domain name system works.

13 **I. THE INTERNET**

14 3. The Internet is a vast network of interconnected computers and
15 computer networks. Every computer connected directly to the Internet has a unique
16 number. These numbers, which are known as Internet Protocol ("IP") addresses,
17 are necessary for computers to communicate with each other over the Internet. An
18 example of an IP address might be: 98.27.241.30.

19 4. Because IP addresses can be cumbersome and difficult for Internet
20 users to remember or to use, the IP address system has been overlaid with a more
21 user-friendly system of "domain names," which associates a unique alpha-numeric
22 character string with a specific IP number.

23 5. Internet domain names consist of a string of "domains" separated by
24 periods. "Top level" domains, or "TLDs", are found to the right of the last period
25 and include (among others) the domains ".com," ".gov," ".net" and ".biz," which
26 are sometimes referred to as "generic" TLDs (known as "gTLDs"), and domains
27 assigned to countries or sovereign bodies such as .us, .fr, and .uk, referred to as
28 "country code" TLDs (known as "ccTLDs"). "Second level" domains ("SLDs")

1 are those immediately to the left of the top level domains, such as “uscourts” in
2 “uscourts.gov.”

3 6. There are approximately 250 different top level domains, including
4 both gTLDs and ccTLDs, administered and operated by numerous different entities,
5 both inside and outside of the United States. There are over 50 million total SLDs
6 within all the various TLDs.

7 7. Because domain names are essentially “addresses” that allow
8 computers connected to the Internet to communicate with each other, each domain
9 name must be unique, even if it differs from another domain name by only one
10 character (*e.g.*, “uscourts.com” is different from “uscourt.com” or “us-courts.com”).
11 A given domain name, therefore, can be registered to only one entity or person.

12 8. VeriSign is the “registry” for the SLDs in .com and .net TLDs. A
13 registry operates like a phone book, keeping a comprehensive listing of all
14 registered domain names and making sure that no two domain names are exactly
15 alike. Thus, VeriSign maintains the definitive directory that associates registered
16 domain names in these TLDs with the corresponding IP addresses of the respective
17 domain name servers. These domain name servers are independent of the registry
18 and, accordingly, beyond its control. The domain name servers, in turn, associate
19 the domain names with resources such as websites and email systems on the
20 Internet.

21 9. A domain name does not exist until it is registered in the registry’s
22 master database. The individual or organization that requests the specific
23 registration of a domain name is referred to as the “registrant.” Prospective
24 registrants must register desired domain names through companies that act as
25 domain name “registrars” for the .com and .net TLDs. A registrar is responsible for
26 selling these domain names and coordinating those operations with registries.
27 Registrars provide direct services to registrants and prospective registrants.
28 Registrars have a contractual relationship with registrants and keep all information

1 as to the registrant. Typically, those contracts last one or two years, and at the end
2 of that term, the consumer is given the option to renew the contract so as to retain
3 that particular domain name. Neither ICANN nor VeriSign (in its capacity as a
4 registry) has a contractual or other relationship with a registrant.

5 10. Registering, transferring, and deleting a domain name requires
6 interaction between a registrar and the registry. This interaction is highly structured
7 and automated, and it takes place through a Registry-Registrar Protocol (“RRP”).
8 Registry-registrar communications occur over a secure electronic connection. The
9 registry’s role is entirely passive and automated – namely to process registrars’
10 domain name registration requests on behalf of registrants, comparing those
11 requests against the registry tables of registered domain names to prevent duplicate
12 registrations of the same domain name and registering the domain name in the
13 registry database if it is not already registered.

14 11. Registrars initiate all changes to the registry database with respect to a
15 particular domain name record by issuing electronic commands to the registry, such
16 as “add,” “check,” “delete,” “transfer,” and “renew,” all as more fully described in
17 the RRP.

18 12. Registrars submit their registrants’ registration requests to the
19 applicable TLD registry to determine if a requested domain name is available for
20 registration, *i.e.*, that the domain name is not already registered to someone else. In
21 connection with VeriSign’s operation of the registry for the .com and .net TLDs, if
22 a requested domain name is not already in the registry’s database, the registry’s
23 computer will record the new domain name, the corresponding nameservers
24 associated with the new domain registration, and the name of the registrar
25 effectuating the registration for the customer-registrant, in its master database. The
26 registration process is then complete.

1 **II. ICANN**

2 13. ICANN is a not-for-profit corporation that was organized under
3 California law in 1998. ICANN is responsible for administering certain aspects of
4 the Internet's domain name system.

5 14. In November 1998, the United States Department of Commerce
6 (“DOC”) first entered into a Memorandum of Understanding (“MOU”) with
7 ICANN. The MOU granted ICANN responsibility for, among other things, the
8 technical management of the domain name system. A true and correct copy of the
9 MOU, as amended to date, is attached hereto as Exhibit 1. ICANN continues to
10 operate today pursuant to the MOU, which provides the context for most of
11 ICANN’s activities. The DOC, however, retains ultimate approval over many of
12 these activities, as explained in the MOU.

13 15. Pursuant to the MOU, ICANN has entered into Registrar Accreditation
14 Agreements (“RAA”) with registrars that permits those registrars to sell the right to
15 use domain names in a particular domain (such as ".com," ".net," and ".biz").
16 ICANN has entered into separate but identical Registrar Accreditation Agreements
17 with more than 170 Internet domain name registrars. Only ICANN-accredited
18 registrars can register domain names in gTLDs. A true and correct copy of the
19 standard Registrar Accreditation Agreement is attached hereto as Exhibit 2.

20 **III. VERISIGN'S WAIT LISTING SERVICE**

21 16. Beginning in late 2001, VeriSign proposed to offer the WLS at the
22 registry level. The WLS would operate by permitting ICANN-accredited registrars
23 who contracted with VeriSign to offer the service, acting on behalf of customers to
24 place reservations for currently registered domain names in the .com and .net top-
25 level domains. It is important to note that the offering of WLS is a voluntary
26 service that can be offered by registrars contracted with VeriSign. That is, a
27 registrar can be ICANN-accredited to register names in both the .com and .net
28 gTLDs, and decide not to elect to offer WLS. Only one reservation would be

1 accepted for each registered domain name. Each reservation would be for a one-
2 year period. WLS reservations for names would be accepted on a first-come/first-
3 served basis, with the opportunity for renewal. VeriSign would charge the registrar
4 a fee, which would be no higher than \$24.00 for a one-year reservation and would
5 be the same for all registrars. The registrar's fee to the customer would be
6 established by the registrar, not VeriSign. In the event that a registered domain
7 name is not renewed and is thus to be deleted from the registry, VeriSign would
8 check to determine whether a reservation for the name is in effect, and if so would
9 automatically register the name to the customer. Or, if there were no reservation,
10 VeriSign would simply delete the name from the registry, so that the name is
11 returned to the pool of names equally available for registration through all
12 registrars, also on a first-come/first-served basis.

13 17. VeriSign has proposed to implement the WLS for a twelve-month trial.
14 At the end of the trial, VeriSign would evaluate whether the WLS was a service that
15 should be continued, in discussion with ICANN. In the event the WLS is not
16 continued, reservations extending beyond the trial would be honored.

17 18. In order to provide this service and charge a fee, VeriSign is required
18 by its registry agreement with ICANN to obtain ICANN's approval to modify that
19 agreement, which requires a modification to the registry agreement for the offering
20 of any new registry service for which a fee will be charged. In addition, the MOU
21 between ICANN and the U.S. Department of Commerce, requires ICANN to
22 submit for DOC approval any material change to the .com and .net registry
23 agreements between ICANN and VeriSign.

1 **IV. EFFECT OF THE WLS**

2 19. The WLS does not affect current domain name registrations at all. An
3 existing registrant will continue to be the registrant of its domain name for so long
4 as it continues to renew the domain name in a timely fashion and to meet the
5 requirements of its chosen registrar. A WLS subscription matures into an actual
6 domain name registration only when a domain name is finally deleted by the
7 registry after the end of all applicable grace periods after receiving a specific
8 request from a registrar to delete a domain name.

9 20. The WLS will not change the manner in which a deleted domain name
10 is processed when there is no WLS subscription for the domain name. At the end
11 of the grace period, if the domain name has not been redeemed or renewed, the
12 deletion of the domain name is effectuated by the registry and the domain name
13 ceases to exist in the registry database until and if registered again at some time in
14 the future. In the absence of a WLS subscription, the deleted domain name
15 becomes available for creation and registration through any ICANN-accredited
16 registrar on a first-come/first-served basis, just as it was before the WLS.

17 21. However, if the deleted domain name is the subject of a WLS
18 subscription, the domain name is automatically added to the registry database,
19 using the WLS data supplied by the registrar sponsoring the WLS subscription at
20 the time the subscription was created. The WLS “subscriber” then becomes the
21 new registrant of the domain name. The registry, through its automated system,
22 notifies the subscription registrar, which updates its registration record to reflect the
23 new domain name registrant. The subscription is cleared from WLS, and a new
24 WLS subscription order can be placed for that domain name through any accredited
25 registrar.

26 22. All ICANN-accredited registrars will have an equal opportunity, at the
27 same wholesale price, to participate in the WLS. Registrars also have the option of
28 not participating, since the WLS is an entirely optional service. Indeed, some

1 registrars may elect not to offer the WLS, while others might invest substantial
2 resources marketing their WLS services. Those registrars that elect to offer WLS
3 services likely will compete on the basis of price, among other things. And those
4 registrars who elect not to participate in the WLS may still register, delete, transfer
5 or otherwise make registered domain names available in the secondary market (*e.g.*,
6 auctions, person-to-person transactions, etc.). ICANN has no input into or control
7 over whether registrars participate in the WLS; each registrar will make its own
8 decision.

9 23. Registrars participating in WLS will be in brisk competition with each
10 other with respect to offering the WLS. The WLS services at the registrar level
11 might be differentiated through customer service, marketing, registrar value-added
12 services, or other creative actions, and through retail pricing. Moreover, registrars
13 can offer the WLS in conjunction with or to support other recently deleted domain
14 name services with ample differentiation as between those services. Registrars may
15 also elect to continue to offer the deleted domain services they offer currently, in
16 competition with the WLS.

17 **V. THE PLAINTIFFS' "WAIT-LISTING SERVICES"**

18 24. Presently, several registrars, including the three plaintiffs, provide their
19 own forms of "wait list services" at the registrar level, although these services are
20 much different than the WLS. According to plaintiffs, about 50 of the 170 ICANN-
21 accredited registrars offer some type of "wait list service." Under each of these
22 services, a consumer who wants to register this name may sign up in advance, and
23 in many cases pay in advance, for the opportunity to try to obtain that name when
24 and if it is deleted at some point in the future. Upon receiving such a request from a
25 consumer, the relevant registrar would then watch for the particular name to be
26 deleted and, if and when that happened, immediately attempt to register it.
27 However, none of these services can provide a customer with any certainty that a
28 particular domain name will be registered to it (if and when the name is deleted

1 from the registry) because there may be numerous registrars that have sold to
2 different customers the chance to obtain the right to use the very same deleted
3 name, and only one of those registrars will be successful in registering that name
4 for its customer.

5 25. In contrast to the various “wait list services” offered by plaintiffs and
6 other registrars, the WLS would permit a consumer to sign up with any
7 participating registrar to be placed on the waiting list for a particular name if there
8 was not already a WLS registration for that name, and such a registration would
9 guarantee that consumer the right to register that particular name should it
10 subsequently be deleted. None of the “wait list services” presently offered by any
11 registrar can provide this type of guarantee.

12 **VI. CONSENSUS POLICIES**

13 26. Plaintiffs mischaracterize the proposed new WLS as a change in
14 "policy" for ICANN, and assert that because instituting the WLS is a policy, it falls
15 within the requirements of section 4 of the Registrar Accreditation Agreement,
16 which mandates that certain consensus activities must take place before a new
17 policy or specification is adopted and implemented.

18 27. Under subsection 4.1 of the RAA, all ICANN-accredited registrars
19 agree to comply with new or revised "policies" that apply to all registrars and are
20 developed during the term of the agreement, provided they are established
21 according to a consensus process described in subsection 4.3 and on topics
22 prescribed in subsection 4.1.2. Registrars thus contractually agree that, through this
23 process, they may be compelled to take action in compliance with a duly-
24 established Consensus Policy without an amendment to their RAAs.

25 28. Although not defined in section 4.3.1, section 4.3.5 of the RAA makes
26 clear what qualifies as a policy, which are those policies with far-reaching effect
27 and binding on *all* accredited registrars.
28

1 29. ICANN has only two consensus policies affecting the ICANN-
2 accredited registrars that are currently in effect, while two proposed policies are still
3 working their way through the steps laid out in 4.3.1 of the RAA. For example, the
4 procedure set forth in 4.3.1 was used for the WHOIS Data Reminder Policy
5 ("WDRP"). The WDRP requires that, at least annually, a registrar must present to
6 the registrant the current Whois information, and remind the registrant that
7 provision of false Whois information can be grounds for cancellation of their
8 domain name registration. Registrants must review their Whois data, and make any
9 corrections.

10 30. The proposed new WLS is clearly not a policy that requires the
11 "Consensus Policy" process. It is a service to be offered by VeriSign pursuant to
12 the amendment of the agreement VeriSign has entered into with ICANN. ICANN
13 is not requiring registrars to abide by, adopt, offer, or implement this proposed new
14 service.

15 31. To be clear, the WLS does not involve changes to Plaintiffs'
16 obligations nor does it impose *any* obligations on any registrars. A registrar is free
17 to participate in the WLS or not — just as a registrar is free to participate in a
18 current form of wait listing service or not. Indeed, while some registrars do offer a
19 current form of wait listing service, most do not. As noted above, about fifty of the
20 approximately 170 accredited registrars are involved in some kind of wait list
21 service for newly-deleted or soon-to-be deleted domain names. Even plaintiffs do
22 not assert that *all* registrars would be affected by the implementation of the WLS.

23 32. Furthermore, there is nothing in the Registrar Accreditation Agreement
24 that requires ICANN to act only by consensus when ICANN amends a registry
25 agreement or takes other actions that do not impose some type of policy or
26 obligation on all registrars; if that was the case, all agreements entered into by
27 ICANN with various parties involved in the registration of domain names and
28 operation of the relevant domain name registries would be suspect since they were

1 not the basis of consensus policymaking. The consensus policy language in the
2 RAA limits what policies ICANN can require registrars to follow; the language
3 (and the RAAs generally) has no effect at all on actions taken under, or
4 modifications made to, ICANN's agreements with third parties, such as registries.

5 33. Under plaintiffs' interpretation, registrar consensus would be required
6 before ICANN could enter into any agreement with a third party that might affect
7 domain name registration, transfer, oversight, et al. in any respect. Yet, ICANN did
8 not approve the plaintiffs' decision to offer their own form of "wait-listing
9 services," nor did the plaintiffs even ask ICANN whether those services could be
10 offered under the RAA.

11 34. The consensus policy process applies in limited situations and similar
12 provisions to those of Section 4.1 of the RAA exist in other ICANN agreements.
13 For example, Article 4, of the forms of unsponsored TLD agreements ICANN has
14 entered into with gTLD registry operators — such as the operators of the .com, .biz
15 and .name registries — contains, in Section 4.1, a provision mirroring that of
16 Section 4.1 of the RAA. And Article 4 of the forms of sponsored TLD agreements
17 ICANN has entered into with TLD registry operators contains similar provisions
18 regarding development of consensus policies by ICANN. None of these other
19 agreements between ICANN and registries or ICANN and registrars envision usage
20 of the consensus policy procedure every time a registry or registrar contemplates a
21 new product.

22 35. Contrary to the inference that plaintiffs seek to leave with the Court,
23 ICANN has been clear from the beginning of the WLS process that neither ICANN
24 nor the Names Council, which includes the Registrar Constituency (of which
25 plaintiffs are a part), has ever taken the position that an amendment to Verisign's
26 Registry Agreement to allow the WLS requires a Consensus Policy under the terms
27 of the RAA. For example, ICANN's General Counsel recommended, in his first
28 analysis of Verisign's request for an amendment to its Registry Agreement, "that the

1 Board *establish* the following procedure for obtaining public comment to illuminate
2 its consideration of [the WLS]" because such procedures did not already exist.
3 Attached hereto as Exhibit 3 is a true and correct copy of the April 17, 2002
4 General Counsel's analysis. Subsequently, the Transfers Task Force issued a Final
5 Report, which was adopted by the Names Council (which includes the Registrar
6 Constituency), that assumed the Consensus Policy procedure of the RAA did not
7 apply. Attached hereto as Exhibit 4 is a true and correct copy of the Transfers Task
8 Force's Final Report. The General Counsel's second analysis of the WLS, which
9 detailed the various steps ICANN was voluntarily taking to develop consensus on
10 the WLS (if a consensus was possible), makes no reference to an RAA requirement.
11 Attached hereto as Exhibit 5 is a true and correct copy of the August 22, 2002
12 General Counsel's analysis. The Board's final resolution on the WLS, which sets
13 forth a thorough discussion of why the Board reached its decision on the WLS
14 makes no mention of a contractually required consensus policy process. Attached
15 hereto as Exhibit 6 is a true and correct copy of Resolution 02-5. ICANN's
16 Reconsideration Committee later clearly stated the WLS was not a consensus policy
17 issue. Attached hereto as Exhibit 7 is a true and correct copy of the May 20, 2003
18 Reconsideration Committee response. ICANN's General Counsel communications
19 with plaintiff Dotster's counsel (true and correct copies of which are attached hereto
20 as Exhibits 8 and 9) reiterated this point:

21 "As noted in Reconsideration Committee
22 recommendation RC 02-5, the Board's action was not
23 taken pursuant to subsection 4.3.1. This point is not in
24 dispute: both your 9 September 2002 letter and
25 recommendation RC 02-5 are in full agreement on this.
26 In fact, the Board's action on VeriSign's Wait-Listing
27 Service proposal was not taken pursuant to any provision
28 of Dotster's Registrar Accreditation Agreement, and does

1 not create any obligation of Dotster under the Registrar
2 Accreditation Agreement."

3 36. Finally, ICANN's Board adopted the Reconsideration Committee's
4 position and made yet another clear statement that the WLS is not a consensus
5 policy issue. Attached hereto as Exhibit 10 is Resolution 02-6.

6 37. Furthermore, plaintiffs have never before taken the position that an
7 amendment to Verisign's Registry Agreement requires a consensus policy under the
8 terms of the RAA. In the Spring of 2001, ICANN and VeriSign proposed
9 modifications to VeriSign's Registry Agreement. Attached hereto as Exhibit 11 is a
10 true and correct copy of the March 1, 2001 proposed revisions to the VeriSign
11 agreement. ICANN sought public input regarding these proposed modifications.
12 Attached hereto as Exhibit 12 is a true and correct copy of the March 13, 2001
13 ICANN Board Meeting Minutes reflecting the public input sought and received
14 regarding the proposed changes to the VeriSign agreement. No consensus was
15 reached, but ICANN decided to proceed anyway and make these substantial
16 changes to VeriSign's Registry Agreement. Attached hereto as Exhibit 13 is a true
17 and correct copy of the April 2, 2001 Board Meeting Minutes approving the
18 revisions to the VeriSign agreement.

19 38. ICANN is a body that seeks to develop consensus wherever possible.
20 Indeed, that is its principal reason for existence. Attached hereto as Exhibit 14 is a
21 true and correct copy of ICANN's bylaws. Because the Internet is a global
22 resource, it is extremely difficult as a practical matter, and highly undesirable as a
23 conceptual matter, for the nations of the world to seek individually to set policy for
24 important technical elements of the Internet such as the Domain Name System.
25 Thus, the realistic options for appropriate coordination of technical aspects of the
26 Internet are a multinational treaty organization or a global private sector
27 organization like ICANN, where governments and private actors come together to
28 attempt where possible to create consensus policies that will allow the Internet to

1 continue to grow as an engine of global commerce and communication. For now,
2 the world has chosen the private sector route, on the theory that if that can succeed,
3 it will be more efficient and effective than a treaty organization.

4 **VII. DECISION TO PROCEED WITH WLS**

5 39. Because of its role, ICANN believed that it was appropriate to seek
6 public input regarding the WLS as an aid to its decisional process, and therefore it
7 invited input from various ICANN constituencies, including the Registrar
8 Constituency of which plaintiffs are a part.

9 40. This search for public input resulted in ICANN's "Registrar
10 Constituency" issuing a position paper opposing WLS and urging ICANN to
11 withhold permission for its implementation on March 10, 2002. The registrars
12 supporting the paper were those who already had their own version of a wait list
13 service in place, including the plaintiffs in this action. Several registrars that did
14 not offer such wait listing services dissented from the paper.

15 41. On August 23, 2002, the ICANN Board determined that the WLS
16 "promotes consumer choice" and that the "option of subscribing to a guaranteed
17 'wait list' service is a beneficial option for consumers." For these reasons, the
18 Board approved a resolution (Resolution 02-100), authorizing ICANN's President
19 and General Counsel to negotiate appropriate revisions to VeriSign's registry
20 agreements to allow for the offering of the WLS (with certain conditions, imposed
21 largely to address the stated concerns of registrars and other Domain Name
22 Supporting Organization constituencies). A true and correct copy of the Minutes of
23 the August 23, 2002 Special Meeting of the Board reflecting this resolution is
24 attached hereto as Exhibit 15.

25 42. On September 9, 2002, after the Board had approved the WLS,
26 counsel for Dotster, Inc. ("Dotster"), filed a letter and formal request for
27 reconsideration of the Board's decision regarding the WLS. As is its usual practice,
28 ICANN posted a copy of Dotster's letter on its website. A true and correct copy of

1 Mr. Brannon's letter is attached hereto as Exhibit 16. On May 20, 2003, ICANN's
2 Reconsideration Committee determined that Dotster's request lacked merit and
3 recommended that the Board take no action on it.

4 43. On July 16, 2003, plaintiffs initiated this litigation and filed a request
5 for a temporary restraining order, which the Court denied via its order of July 18,
6 2003.

7 **VIII. VERISIGN'S RECENT REPRESENTATIONS**

8 44. VeriSign has made public statements on its website and in other
9 communications providing a launch date for the WLS of October 27, 2003, stating
10 that its affiliate Network Solutions, Inc., is accepting pre-orders, and explaining that
11 it will begin testing of the WLS shortly. However, VeriSign has not yet reached an
12 agreement with ICANN to modify the .com and .net registry agreements between
13 VeriSign and ICANN, nor has the DOC approved this modification to the
14 agreements governing VeriSign's registry services, as required by the MOU. Once
15 these approvals occur — and ICANN and VeriSign continued to negotiate the
16 conditions for the offering of the WLS as recently as four days ago — VeriSign
17 would still then have to undertake the significant technical and operational tasks of
18 implementing the WLS, regardless of any testing it instigates now.

19 **IX. ADOPTING AND IMPLEMENTING THE WLS IS IN THE PUBLIC** 20 **INTEREST**

21 45. As noted above, several registrars and others have been providing
22 wait-listing type services of various kinds at the registrar level. In essence, these
23 services watch for a desired domain name to be deleted and immediately seek to
24 register it with the registry. To do so successfully, they must be the *first* registrar
25 (among the many that may be seeking the same domain name for their respective
26 customers) to submit a registration request to the registry for the domain name after
27 it has been deleted. The services therefore have to engage in a high-tech "race"
28 with other registrars to "grab" a deleted domain name just as soon as it becomes

1 available, by running automated or robotic “scripts” that continuously query the
2 registry database by submitting “add” domain name commands for domain names
3 that will, be deleted in an attempt to register the desired domain name. Their results
4 for customers are entirely hit-or-miss and often provide for a confusing and
5 exploitative experience for consumers.

6 46. In addition, when the registrars with wait list services attempt to win a
7 domain name that has just been deleted from a registry, they bombard the registry
8 database with "add" requests that actually clog the system and, in turn, actually
9 disadvantage the majority of registrars.

10 47. Thus, the benefits of the WLS extend not only to VeriSign’s direct
11 customers (registrars) but also to end-users (registrants and prospective registrants).
12 The WLS provides a simple, fair, low-cost and easy to understand procedure for
13 registering recently deleted domain names. By contrast, the wait list services
14 offered by registrars have low efficacy rates, and the consumers who pay money for
15 these services have no guarantee that they will get a particular domain name, even
16 if that name is not renewed by its current registrant. The WLS, on the other hand,
17 provides a 100% certainty that, if the domain name is deleted, the domain name
18 will be registered to the WLS subscriber, with the attendant certainty for the WLS
19 subscriber of knowing it is “first in line” or pre-registered for a particular domain
20 name should it become available.

21 **X. WHY A BOND IS NECESSARY**

22 48. Attached hereto as Exhibit 17 is a true and correct copy of an article
23 from The Business Journal, November 8, 2002, regarding Go Daddy's revenues.

24 49. Should an injunction issue, a bond is necessary because ICANN will
25 be dramatically affected by a preliminary injunction. Effectively, all contracts with
26 ICANN would be rewritten with the stroke of a pen, because anyone who has
27 agreed to the Consensus Policy procedures would have a veto over any ICANN
28 action that they believed was inconsistent with their private economic interests

1 50. A bond is also necessary to protect the public interest. ICANN is
2 entrusted with protecting the global Internet community. If ICANN is enjoined
3 from adopting and implementing the WLS at the expense of the public interest, then
4 it is the plaintiffs who should have to take the risk that the public interest will be
5 harmed. While the harm to the global Internet community is not measurable in
6 dollars, it is substantial and worthy of requiring the plaintiffs to post a bond. Under
7 these circumstances, a bond in the amount of \$25 million or more would not be
8 inappropriate.

9
10 I declare under penalty of perjury that the foregoing is true and correct. This
11 declaration was signed on 15 September 2003 at Los Angeles, California.

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13 _____

14 Daniel E. Halloran
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