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15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 VERISIGN, INC., a Delaware
corporation,

18 Plaintiff,

19 v.

20 INTERNET CORPORATION FOR
21 ASSIGNED NAMES AND
22 NUMBERS, a California corporation;
DOES 1-50,

23 Defendants.

Case No. CV 04-1292 AHM (CTx)

**DECLARATION OF BENJAMIN R.
TURNER IN OPPOSITION TO
SPECIAL MOTION TO STRIKE OF
DEFENDANT INTERNET
CORPORATION FOR ASSIGNED
NAMES AND NUMBERS**

Date: May 17, 2004
Time: 10:00 a.m.
Courtroom: 14 – Spring Street Bldg.
Hon. A. Howard Matz

[Memorandum of Points and Authorities;
Evidentiary Objections; Appendix of
Exhibits; Declarations; and [Proposed] Order
concurrently filed and lodged herewith]

1 I, Benjamin R. Turner, declare:

2
3 1. I know all of the following facts of my own personal knowledge and, if
4 called and sworn as a witness, would competently testify thereto.

5 2. I am the Vice President of Naming and Directory Services, a division of
6 VeriSign, Inc. ("VeriSign"). I run the business unit of VeriSign, Inc. ("VeriSign")
7 that operates VeriSign's .com registry. I have been employed by VeriSign and its
8 predecessor, Network Solutions, Inc., since 1997.

9 3. As Vice President of Naming and Directory Services, I am familiar with the
10 history and organization of VeriSign; the structure and development of the Internet
11 domain name system; the function and operation of registries and registrars within
12 that system; the structure, organization, and operation of the VeriSign registry for
13 .com; and the history, development, testing, and operation of the Site Finder, Wait
14 List Service ("WLS"), and Internationalized Domain Names ("IDN") services offered
15 by VeriSign. As part of my duties and responsibilities for VeriSign, I also stay
16 generally informed about the contents of documents posted on the Internet discussing
17 Site Finder, WLS, and IDN.

18
19 **I. THE INTERNET DOMAIN NAME SYSTEM**

20 4. To understand VeriSign's Site Finder, Wait Listing, and Internationalized
21 Domain Name services, it is first necessary to understand the manner in which the
22 domain name system works. The Internet is a vast network of interconnected
23 computers and computer networks. Every computer connected directly to the Internet
24 has a unique address. These addresses, which are known as Internet Protocol ("IP")
25 numbers, are necessary for computers to "communicate" with each other over the
26 Internet. An example of an IP number might be: 98.27.241.30.

1 5. Because IP numbers can be cumbersome and difficult for Internet users to
2 remember or to use, the IP number system has been overlaid with a more "user-
3 friendly" system of domain names. This overlay associates a unique alpha-numeric
4 character string – or "domain name" – with a specific IP number.

5 6. Domain names consist of a string of "domains" separated by periods. "Top
6 level" domains, or "TLDs", are found to the right of the period and include (among
7 others) the domains ".com," ".net" and ".biz," which are sometimes referred to as
8 "generic" TLDs (known as "gTLDs"). "Second level" domains ("SLDs") are those
9 immediately to the left of the top level domains, such as "uscourts" in "uscourts.gov."

10 7. There are approximately 250 different top level domains, which are
11 administered and operated by numerous different entities, both inside and outside of
12 the United States. Some of these top level domains are referred to as country code
13 TLDs (known as "ccTLDs"), including, for example, ".uk" (United Kingdom) and
14 ".de" (Germany). There are over 50 million second-level domains within the various
15 TLDs.

16 8. Because domain names are essentially "addresses" that allow computers
17 connected to the Internet to communicate with each other, each domain name must be
18 unique, even if it differs from another domain name by only one character (e.g.,
19 "uscourts.com" is different from "uscourt.com" or "us-courts.com"). A given domain
20 name can be registered to only one entity.

21 9. As the "registry" for the SLDs in the .com gTLD, VeriSign maintains the
22 definitive directory that associates registered domain names in these TLDs with the
23 corresponding IP numbers of the respective domain name servers. These domain
24 name servers are independent of the registry and, accordingly, beyond its control.
25 The domain name servers, in turn, associate the domain names with resources such as
26 websites and email systems on the Internet.

1 10. A domain name does not exist until it is created and registered in the
2 registry's master database. The individual or organization that creates and registers a
3 specific domain name is a "registrant." Registrants do not have direct access to the
4 VeriSign registry. Instead, prospective registrants must register domain names they
5 have created through any one of over 100 private and public companies located
6 throughout the United States and the world that act as domain name "registrars" for
7 the .com gTLD. Registrars provide direct services to registrants and prospective
8 registrants, such as processing domain name registrations. The VeriSign registry has
9 no contractual or other relationship with a registrant and has no information on or
10 knowledge of who the registrant of a domain name is. Registrars have a contractual
11 relationship with registrants and keep all information regarding the registrants.

12 11. Registering, transferring, and deleting a domain name requires interaction
13 between a registrar and the registry. This interaction is highly structured and
14 automated, and takes place through a Registry-Registrar Protocol ("RRP"). Registry-
15 registrar communications occur over a secure electronic connection. The registry's
16 role is entirely passive and automated -- namely to process registrars' domain name
17 registration requests on behalf of registrants, comparing those requests against the
18 registry tables of registered domain names to prevent duplicate registrations of the
19 same domain name, and registering the domain name in the registry database if it is
20 not already registered.

21 12. Registrars initiate all changes to the registry database with respect to a
22 particular domain name record by issuing electronic commands to the registry, such
23 as "add," "check," "delete," "transfer," and "renew," all as more fully described in
24 the Registry-Registrar Protocol. VeriSign can only register domain names in its
25 database in response to requests from registrars.

26 13. Registrars submit their customers' ("registrants'") registration requests to
27 the applicable TLD registry to determine if a requested domain name is available for
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1 registration, *i.e.*, that the domain name is not already registered to someone else. In
2 connection with VeriSign's operation of the registry for the .com gTLD, if a
3 requested domain name is not already in the registry's database, the registry's
4 computer will record the new domain name, the corresponding IP number(s) of
5 associated domain name servers, and the name of the registrar effectuating the
6 registration for the customer-registrant, in its master database. The registration
7 process is then complete. As the Registry, VeriSign receives this limited registration
8 data from all registrars and propagates certain of this data to a special constellation of
9 computers, known as "TLD Zone servers," specifically dedicated to these TLDs
10 ("DNS zone servers").
11

12 II. ICANN

13 14. ICANN has entered into written registry agreements with VeriSign for the
14 ".com" gTLD. In addition to these registry agreements, ICANN has entered into
15 agreements for the operation of registries for other gTLDs, including newly
16 established TLDs such as ".museum," ".biz," ".info" and others that have come into
17 existence since 1999. There are also numerous other TLDs, including the country-
18 code TLDs, of which approximately 230 out of 244 have no agreement and are not
19 overseen by ICANN.

20 15. Also, ICANN has entered into separate Registrar Accreditation
21 Agreements with more than 100 domain name registrars. These agreements contain
22 certain standard terms applicable to every ICANN-accredited registrar. Only
23 ICANN-accredited registrars can register domain names in TLDs subject to an
24 agreement with ICANN. ICANN has posted the Registrar Accreditation Agreement
25 on its website at www.icann.org. A copy of the Registrar Accreditation is submitted
26 concurrently as Exhibit 17.
27
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1 16. In addition, VeriSign has entered into separate Registry Registrar
2 Agreements with each registrar accredited by ICANN to register domain names in the
3 .com and .net gTLDs. A blank Registry Registrar Agreement is submitted
4 concurrently as Exhibit 18.
5

6 **III. VeriSign**

7 17. The .com gTLD registry was originally operated by Network Solutions,
8 Inc. ("NSI"), which was acquired by VeriSign in 1999. On or about May 25, 2001,
9 VeriSign, which had succeeded to the registry business of NSI, entered into a new
10 written registry agreement with ICANN for .com (the "2001 Registry Agreement"),
11 which agreement superseded a 1999 registry agreement with NSI.

12 18. Pursuant to the 2001 .com Registry Agreement, ICANN recognized
13 VeriSign as the "sole operator" of the .com gTLD registry, and VeriSign undertook to
14 operate the .com gTLD registry in accordance with the terms of the 2001 Registry
15 Agreement and to pay certain registry-level fees to ICANN. Since a registry
16 maintains the authoritative database of second level domain names and IP addresses
17 within a TLD, there necessarily can be only one registry for each TLD. VeriSign is
18 that sole registry for the .com gTLD. Based on my job responsibilities, I am in a
19 position to know of VeriSign's performance of its obligations under the 2001 .com
20 Registry Agreement. To the best of my knowledge VeriSign has fully performed and
21 continues to perform all of its obligation under that agreement.

22 19. VeriSign competes with the registries of other TLDs. Indeed, VeriSign's
23 commercial and competitive success in operating the .com registry depends in
24 substantial part on its ability to offer services that are attractive to its customers,
25 which include the *registrars* of second level domain names, and to end-users. To
26 serve these customers better and to preserve its competitive position vis-à-vis other
27 TLD registries, VeriSign is continually seeking to provide a variety of new value-
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1 added services that registrars can offer to their customers, or that their customers can
2 use, to enhance the value and attractiveness for registrants and registrars of second
3 level domain names in the .com gTLD.
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5 **IV. VeriSign's Wait List Service ("WLS")**

6 **A. The Purpose of WLS**

7 20. WLS was conceived by VeriSign to fulfill a demand for an orderly and
8 reliable means for domain name registrants, through their selected, participating
9 registrars, to become the "next in line" to register a currently registered domain name
10 within the .com TLD, in the event the current registration of that domain name were
11 to be deleted. Also, WLS was conceived to protect the .com registry TLD, and
12 registrar access to the .com registry TLD, that was being jeopardized by the efforts of
13 some registrars to be the first to register deleted domain names, as more fully
14 described below.

15 21. In the .com gTLD more than 600,000 domain names are deleted each
16 month and become available for creation and registration by registrants through any
17 of the over 100 ICANN-accredited registrars. Few of these are re-registered within
18 milliseconds of when they become available, often by a minority of individuals and
19 entities who operate as domain name speculators, "stockpiling" domain names, or
20 who register a recently deleted domain name to capture prior "traffic" associated with
21 that domain name. As explained below, this number is disproportionate to the "add"
22 transactions submitted to register these domain names.

23 22. Those registrars seeking to register a recently deleted domain name
24 through one of their "back order" programs have done so by programming their
25 systems to transmit literally continuous automated "add" domain name commands to
26 the registry for a particular domain name in an effort to be the first registrar to request
27 the domain name. Since this tactic is followed simultaneously by multiple registrars
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1 seeking multiple domain names, and often the same domain names, either
2 individually or in concert with each other, the cumulative effect of these “add storms”
3 has been to overwhelm the registry, threatening or delaying the registry’s receipt and
4 performance of other registrar commands, such as to register new domain names,
5 jeopardizing the stability and operation of the registry and negatively impacting
6 registrars who do not participate in such activity.

7
8 **B. Technical Description of WLS**

9 23. As conceived and created, WLS does not change the existing way in which
10 registrations occur within the .com gTLD registry and does not alter the way in which
11 the registry operates, only what transpires after a registrar’s “delete” command to the
12 registry has been effectuated. The WLS server is separate and independent of the
13 registry. Furthermore, WLS is not essential to the operation or functioning of the
14 registry; the registry has been and is fully functional without WLS.

15 24. Pursuant to its agreements with ICANN and with accredited registrars,
16 VeriSign does not delete a domain name until it receives a specific “delete” command
17 from the registrant’s sponsoring registrar directing it to do so. Even then, VeriSign
18 follows an established procedure and timetable in effectuating the delete command in
19 the registry’s database. In the absence of a delete command from the sponsoring
20 registrar, and even if the expiration date for a registered domain name has been
21 reached, the registry automatically renews the registration of the domain name.
22 Specifically, after a registration or an automatic renewal, the registrar has 45 days
23 within which to cancel the registration. Following a registrar’s submission of a delete
24 command to the registry, the deleting registrar still has the 30-day Redemption Grace
25 Period within which to renew the domain name before the deletion command is
26 actually effectuated in the registry. Thereafter, there is a five-day “pending delete
27 period” before the deletion is complete in the registry’s database.

1 25. In the event a prospective registrant inquires about registering a domain
2 name that is already created and registered, the registrant's registrar will submit a
3 WLS subscription order to check to determine whether a WLS Subscription exists
4 for the desired domain name. If there is no existing WLS subscription for the domain
5 name, then -- using an interface separate from and independent of the shared
6 registration system used to add, delete, and transfer domain names and the .com
7 registry database -- the registrar submits a WLS subscription order for that domain
8 name, and the domain name is identified in the WLS database as being a
9 "subscribed" domain name.

10 26. With WLS, only one subscription will be accepted for each registered
11 domain name on a first-come/first-served basis, and each subscription is valid for a
12 one-year period. Should the requested domain name be deleted and become available
13 for creation and registration during the one-year subscription period, the holder of the
14 subscription will become the registrant of the domain name.

15 27. WLS Subscriptions are not available from the registry to registrants, only
16 through ICANN-accredited registrars, who submit WLS subscription orders directly
17 to VeriSign's .com registry. Registrars are thus the direct customers of the VeriSign
18 .com registry for WLS.

19 28. WLS does not affect current domain name registrations at all. A registrant
20 will continue to be the registrant of its domain name indefinitely, so long as it
21 continues to renew the domain name in a timely fashion and to meet the requirements
22 of its chosen registrar. A WLS subscription matures into a domain name registration
23 only when a domain name is finally deleted by the registry after the end of the
24 Redemption Grace Period.

25 29. WLS entails no change to the "delete" command, as specified in the
26 Registry-Registrar Protocol, a copy of which is incorporated into Appendix C of the
27 2001 .com Registry Agreement, which is submitted concurrently as Exhibit 19. At
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1 the end of the Redemption Grace Period, if the domain name has not been redeemed
2 or renewed, the deletion of the domain name is effectuated by the registry and the
3 domain name ceases to exist. In the absence of a WLS subscription, the domain
4 name then becomes available for creation and registration through any ICANN-
5 accredited registrar on a first-come/first-served basis, just as it was before WLS. If
6 there is no WLS subscription for a deleted name, any registrar can register the name
7 for the standard \$6.00 annual fee.

8 30. However, if the deleted domain name is the subject of a WLS subscription,
9 the domain name is automatically added to the registry database, using the WLS data,
10 or pre-registration, supplied by the registrar sponsoring the WLS subscription at the
11 time the subscription was created. The WLS "subscriber" then becomes the new
12 registrant of the domain name. The registry, through its automated system, notifies
13 the subscription registrar, who updates its registration record to reflect the new
14 domain name registrant. The subscription is cleared from WLS, and a new WLS
15 subscription order can be placed for that domain name through any accredited
16 registrar.

17 31. VeriSign decided to offer WLS to its registrar customers because it offers
18 value, certainty, and efficiency, for registrants and prospective registrants. It is the
19 best way to maximize consumer value for such a service.

20 32. All ICANN-accredited registrars will be given an equal opportunity, at an
21 equal wholesale price, to participate in WLS. At the same time, registrars have the
22 option of not participating. WLS is an entirely optional service. It is not essential to
23 the operation of the registry. Even if they elect not to participate in WLS, registrars,
24 on behalf of their clients, may still register, delete, transfer or otherwise make
25 registered domain names available in the secondary market (e.g. auctions, person-to-
26 person transactions, etc.), or offer all the deleted domain services offered currently, as
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1 they have done before WLS. ICANN does not restrict these back-order activities of
2 registrars.

3 33. Accordingly, registrars participating in WLS will still be in brisk
4 competition with each other with respect to offering the WLS and other pre-existing
5 back-order services offered by registrars. In fact, WLS services at the registrar level
6 can be differentiated through customer service, marketing, registrar value-added
7 services, or other creative actions, and through "retail" price. Moreover, registrars
8 can offer WLS in conjunction with or to support other recently deleted domain name
9 services with ample differentiation as between those services.

10
11 **C. The Benefits of WLS for the Internet, for Registrars, and for**
12 **Consumers**

13 34. Even without WLS, several registrars and others have been providing
14 wait-listing type services of various kinds at the registrar level. In essence, these
15 services watch for a desired domain name to be deleted and immediately seek to
16 register it with the registry. To do so successfully, they must be the *first* registrar
17 (among the many that may be seeking the same domain name for their respective
18 customers) to submit a registration request to the registry for the domain name after it
19 has been deleted. The services therefore have to engage in a high-tech "race" with
20 other registrars to "grab" a deleted domain name just as soon as it becomes available,
21 by running automated or robotic "scripts" that continuously query the registry
22 database by submitting "add" commands for domain names that will be deleted in an
23 attempt to register the desired domain name. Their results for customers are entirely
24 hit-or-miss and often provide for a confusing and exploitative experience for
25 consumers.

26 35. In the process, however, these registrar-level services have technically
27 harmful effects, because the robotic "add storms" cause enormously high (and ever-
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1 increasing) registry database loads, threatening the stability of the registry database
2 and the provision of services to registrars. Moreover, this method of operation is
3 highly inefficient. Substantial registry resources are necessary to support, handle, and
4 respond to the automated "add" inquiries of the registrars trying to register recently
5 deleted domain names, a function for which the registry systems were not designed
6 and which ultimately draws resources and efficiency from the system designed to
7 serve all registrars for all domain name registration functions.

8 36. The non-WLS system for registering deleted domain names gives registrars
9 the incentive to inundate the registry system with domain name queries and "add"
10 commands without regard to the cost to, or the impact on, the registry infrastructure,
11 other registrars, or the functioning of the Domain Name System.

12 37. WLS has the effect of reducing system load for these constant checks of
13 target domain names. The excessive demand on operational resources of the registry
14 for all registrars will be reduced, and system access will be retained at a reasonable
15 and safe level. WLS also preserves the operational resources of registrars. Once a
16 domain name is under WLS subscription, registrars no longer need to engage in the
17 inefficient process of making continuing, constant checks for the WLS-subscribed
18 domain name. This may be the reason a majority of registrars, as measured by
19 market share, have indicated their approval of WLS, not to mention that the majority
20 of registrars do not employ the robotic tools that bombard the registry database.

21 38. The benefits of WLS extend not only to VeriSign's direct customers
22 (registrars) but also to end-users (registrants and prospective registrants). WLS
23 provides a simple, fair, low-cost and easy to understand procedure for registering
24 recently deleted domain names. The registrar services for registering deleted domain
25 names have low efficacy rates. They offer mere "chances" at registering a domain
26 name that is already registered by someone else. WLS, on the other hand, provides a
27 100% certainty that if the domain name is deleted, the domain name will be
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1 registered to the WLS subscriber, with the attendant business certainty for the WLS
2 subscriber of knowing it is "first in line" or pre-registered for a particular domain
3 name should it become available. The benefit to the consumer by a registrar offering
4 this service is apparent.

5
6 **D. WLS Would Not Impact Current Processes for**
7 **Registering Recently Deleted Names.**

8 39. Current processes for registering deleted domain names are unaffected by
9 WLS. The current registrar technology will still be available for all domain names
10 for which there is not an active WLS subscription.

11 40. WLS does not impact to any degree the ability of end-users to register new
12 (currently unregistered) domain names in the .com TLD through any of the more than
13 100 existing ICANN-accredited registrars for the .com and .net TLDs.

14 41. Furthermore, even with WLS, vigorous competition will still exist among
15 registrars, just as it does now, to get prospective registrants to use a given registrar for
16 the purpose of inquiring about the availability of domain names and placing WLS
17 subscriptions, or using competitive recently deleted domain name services.

18
19 **V. HISTORY OF VERISIGN'S ATTEMPTS TO LAUNCH WLS**

20 42. The history of VeriSign's attempts to launch WLS spans more than 2 and
21 one half years, and, despite ICANN's multiple purported "approvals" of WLS during
22 that time, ICANN has still not authorized VeriSign actually to initiate WLS. Over
23 this period, ICANN was quick to seize control of VeriSign's voluntary efforts to
24 discuss the WLS concept with registrars, but had no defined or established process
25 for reviewing WLS, much less any open and transparent process for doing so. Worse
26 yet, due to the length of time that has elapsed since VeriSign first proposed WLS,
27 registrars and others who initially supported and expressed interest in participating in
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1 WLS have used the concept, and designed and already launched their own
2 competitive services. These same registrars are now attempting to block VeriSign's
3 launch of WLS, while VeriSign is still stymied by ICANN from operating WLS.

4 43. I, or other employees of VeriSign working on WLS under my supervision
5 and reporting to me in the normal course of business, have been personally present
6 during and participated in ICANN meetings during that period at which WLS was
7 discussed, including, but not limited to, the meetings discussed in the following
8 paragraphs of this declaration.

9
10 **A. Early History**

11 44. Discussion of the concepts underlying WLS began in September 2001, at
12 ICANN's meetings in Montevideo, Uruguay, in an open session among registrars,
13 registries, and other interested parties. VeriSign presented the original WLS proposal
14 on December 30, 2001. VeriSign made the proposal to solicit input concerning WLS
15 and to assess whether sufficient marketplace interest existed for such an offering.
16 The proposal resulted in VeriSign's receipt of considerable feedback. VeriSign
17 addressed and responded to that feedback, publicly issuing revised WLS proposals on
18 in early 2002.

19 45. On March 10, 2002, the Registrar Constituency of ICANN's Domain
20 Name Supporting Organization (DNSO) issued a *Position Paper Regarding the*
21 *Proposed Wait Listing Service (WLS)*, dated March 10, 2002, available at
22 www.icann.org/bucharest/rc-wls-position-paper-10mar02.htm, opposing the
23 implementation of WLS. In a subsequent posting on the ICANN website, *VGRS*
24 *Analysis of Comments on WLS Proposal*, dated March 20, 2002, and available at
25 www.icann.org/bucharest/vgrs-wls-comment-analysis-20mar02.htm, VeriSign shared
26 feedback it had received regarding WLS.

1 46. At about this point in the chronology, ICANN began to insert itself into
2 what had been an informal dialogue between VeriSign, and registrars and other
3 interested parties, and ICANN promptly sought to take control over the discussions
4 and progress of WLS. However, ICANN had (and still has) no defined process in
5 place to address WLS or any other value-added services offered by registry operators.
6 In an effort to expedite the launch of WLS and to avoid what initially appeared to be
7 a potential dispute over the price that VeriSign intended to charge for a WLS
8 subscription, VeriSign, on March 21, 2002, through a letter posted on ICANN's
9 website at www.icann.org/minutes/report-vgrs-wls-17apr02.htm, requested a pricing
10 amendment to Appendix G to cover WLS. WLS nonetheless became trapped in
11 ICANN "processes" from which it has still not emerged.

12 47. On April 15, 2002, ICANN's General Counsel sent VeriSign an email, a
13 true and correct copy of which is submitted concurrently as Exhibit 20. This email
14 states that there are "many different contingencies" within ICANN and that the
15 process for approving new registry services was "not fully-chartered waters."
16 ICANN thus presupposed that WLS is a "registry service" as defined in the 2001
17 .com Registry Agreement, even though it is not a necessary function of the .com
18 gTLD registry and even though it operates outside the registry and only after a
19 registrar's "delete" command has been executed. VeriSign responded the same day.
20 A true and correct copy of VeriSign's email is submitted concurrently as Exhibit 21
21 hereto. Concerned that "the process could drag on indefinitely," VeriSign's email
22 states that "We have been extremely patient with a process that has been very time-
23 consuming for us and others."

24 48. On April 17, 2002, Louis Touton, ICANN's then General Counsel, issued
25 an analysis of VeriSign's WLS, available at www.icann.org/minutes/report-vgrs-wls-17apr02.htm, stating that WLS was a registry service because it is a service that
26 VeriSign "is enabled to provide on a sole-source basis by virtue of its appointment as
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1 a [registry operator].” That is not, however, the definition of “registry services” in
2 the 2001 .com Registry Agreement.

3 49. In the same document, Mr. Touton also recommends that the ICANN
4 Board “should not seek to decide how to deal” with WLS “without invoking the
5 formal consensus development processes” This recommendation that ICANN
6 proceed in respect of WLS via a “consensus policy” appears to be a recognition that
7 WLS is not a “registry service.” However, ICANN never followed through with the
8 steps necessary to adopt a “consensus policy” under the 2001 .com Registry
9 Agreement, and ICANN does not even purport to have adopted a “consensus policy”
10 with respect to WLS. Thus, not only did ICANN inject itself into WLS, but it could
11 not decide what course to follow for its own supposed “processes” and never adopted
12 a “consensus policy.”

13 50. On April 21, 2002, VeriSign submitted a report available at
14 www.icann.org/minutes/response-vgrs-wls-21apr02.htm that responded to the Mr.
15 Touton’s analysis. A true and correct copy of that report is submitted concurrently as
16 Exhibit 22 hereto. In the report, VeriSign points out that it was improper for ICANN
17 management unilaterally to declare WLS a “policy” matter, that VeriSign had
18 voluntarily sought feedback and comment from registrars, and that it was concerned
19 about further delays in the implementation of WLS. VeriSign also questioned the
20 propriety and fairness of submitting WLS to various bodies within ICANN for
21 consideration.

22 51. Nonetheless, the next day, on April 22, 2002, the ICANN Board, in a
23 *Preliminary Report* posted at www.icann.org/minutes/prelim-report-22apr0.htm,
24 resolved (in Resolutions 02.53 to 02.56) to initiate review processes and directed the
25 DNSO, one of ICANN’s constituent bodies, to undertake a comprehensive review of
26 WLS. In response to the resolution, the Names Council, the executive part of the
27 DNSO, and its Transfer Task Force, a group dominated by known critics of VeriSign
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1 and potential competitors of WLS, engaged in extensive discussions and outreach
2 efforts concerning WLS. Notwithstanding VeriSign's objections concerning the
3 legitimacy of ICANN's supposed "process," VeriSign attempted to cooperate. In an
4 email dated May 16, 2002, posted at [www.dnso.org/clubpublic/nc-](http://www.dnso.org/clubpublic/nc-transfer/Arc00/msg00183.html)
5 [transfer/Arc00/msg00183.html](http://www.dnso.org/clubpublic/nc-transfer/Arc00/msg00183.html) and submitted concurrently as Exhibit 23, VeriSign
6 stated that it "neither supports nor accepts a legitimate role for the Council or its task
7 force" but that nevertheless, it made "extensive efforts to consult and to participate in
8 thorough consultations."

9 52. For example, on May 21-22, 2002, VeriSign made a presentation and
10 responded to questions during two teleconference meetings of the DNSO Transfer
11 Task Force. And as stated in a *Preliminary Report* of the ICANN Board dated June
12 28, 2002 and posted at www.icann.org/minutes/prelim-report-28jun02.htm, VeriSign
13 once again made presentations regarding WLS and responded to questions in public
14 forums at ICANN meetings in Bucharest, Romania, on June 27, 2002.

15 53. On July 14, 2002, the Task Force issued its final report, posted at
16 www.dnso.org/dnso/notes/20020714.Tftransfer-WLS-report.html and
17 www.dnso.org/notes/NCFinal-report-WLS.html, in which it repeats its preliminary
18 recommendation; that ICANN not authorize an amendment to the registry agreement
19 that ICANN had contended was a necessary prerequisite to VeriSign's offering WLS
20 or, in the alternative, that ICANN impose conditions on any implementation of WLS.
21 As described in the Minutes of the ICANN Board dated August 23, 2002 and posted
22 at www.icann.org/minutes/minutes-23aug02.htm, on July 24, 2002, the Names
23 Council of the DNSO adopted the task force report and transmitted it to the ICANN
24 Board.

1
2 **B. ICANN's Imposition of Conditions on WLS**

3 54. On August 22, 2002, Louis Touton, ICANN's General Counsel, posted
4 for comment on the ICANN website, at [www.icann.org/minutes/report-vgrs-wls-](http://www.icann.org/minutes/report-vgrs-wls-22aug02.htm)
5 [22aug02.htm](http://www.icann.org/minutes/report-vgrs-wls-22aug02.htm), the *Second Analysis of VGRS' Request for Amendment to the Registry*
6 *Agreement*, stating that the .com registry agreement had to be amended because WLS
7 involves "a new registry (sole-source) service for a fee." Again, that is not the
8 definition of "registry services" under the 2001 .com Registry Agreement, as
9 discussed more fully in the separate declaration of Phil Sbarbaro.

10 55. On August 23, 2002, acting in light of the Task Force report and the
11 General Counsel's analysis of that report, the ICANN Board, in minutes posted at
12 www.icann.org/minutes/minutes-23aug02.htm, approved a resolution
13 (Resolution 02.100), effectively rejecting WLS unless VeriSign complied with six
14 specified conditions, imposed largely to address the stated concerns of registrars
15 offering services that would be in competition with WLS. A true and correct copy of
16 that resolution is submitted concurrently as Exhibit 24 hereto. Those conditions
17 restricted the operation of WLS, prescribed procedures for WLS, delayed the
18 implementation of WLS, and made the implementation of WLS more costly and less
19 profitable. To comply with those conditions, VeriSign had to incur engineering and
20 other expenses to modify WLS and defer further the launch of WLS.

21
22 **C. VeriSign's Request for Reconsideration**

23 56. After the ICANN Board's August 23, 2002 Resolution, in an effort to
24 avoid conflict and move toward an expeditious conclusion of a process that had
25 already lasted more than eight months by this time, VeriSign tried to comply with the
26 conditions. However, that proved to be even more difficult and costly than the
27 conditions themselves suggested, because as VeriSign subsequently explained to
28

1 ICANN its plans to satisfy the conditions, ICANN would alter or change the
2 conditions, not only creating a moving target but making compliance more costly and
3 burdensome, and in some cases impossible.

4 57. On October 1, 2002, VeriSign wrote to ICANN's outside counsel, Joe
5 Sims, responding to the Board's August 23rd resolution and disputing that ICANN
6 "has any legitimate authority for appending 'conditions' on to the service." Without
7 conceding that ICANN had any authority to impose conditions on WLS, VeriSign
8 asked that three of the six conditions be reconsidered and deleted. A true and correct
9 copy of that letter is submitted concurrently as Exhibit 25 hereto. Receiving no
10 response to the October 1st letter, VeriSign sent another letter to ICANN on October
11 14, 2002, emphasizing that the "delay is costing our industry income and causing
12 some of or employees' jobs to be in question." A true and correct copy of that letter
13 is submitted concurrently as Exhibit 26 hereto. In response to an intervening
14 suggestion by ICANN, on October 16, 2002, VeriSign sent ICANN a more formal
15 version of its October 1, 2002 letter, a copy of which is posted at
16 www.icann.org/correspondence/sbarbaro-letter-to-sims-16oct0.htm. A true and
17 correct copy of that letter is submitted concurrently as Exhibit 27 hereto.

18 58. ICANN treated this letter as a "reconsideration request," and docketed the
19 October 16th letter as Reconsideration Request 02-6, a copy of which is posted at
20 www.icann.org/committees/reconsideration/verisign-request-16oct02.htm. Despite
21 VeriSign's urging prompt action in the foregoing letters, seven more months elapsed
22 before any substantive response was forthcoming on the "reconsideration request."
23 Specifically, on May 20, 2003, ICANN's Reconsideration Committee made
24 recommendations on VeriSign's "reconsideration request," available at
25 www.icann.org/committees/reconsideration/rc02-6.htm. A true and correct copy of
26 the recommendations is submitted concurrently as Exhibit 28 hereto. Of the three
27 conditions that VeriSign challenged, the Committee recommended a slight
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1 modification of one of the conditions, and effectively denied the remainder of the
2 request, leaving the conditions in place.

3 59. Pursuant to the Reconsideration Committee's recommendation, on June 2,
4 2003, in a *Preliminary Report* posted at [www.icann.org/minutes/prelim-report-](http://www.icann.org/minutes/prelim-report-02jun03.htm)
5 [02jun03.htm](http://www.icann.org/minutes/prelim-report-02jun03.htm), the ICANN Board adopted the recommendation (Resolution 03.79) and
6 amended its August 23, 2002 resolution to authorize the President and General
7 Counsel of ICANN to negotiate revisions of the .com registry agreement subject to an
8 again slightly modified version of the six conditions (Resolution 03.80).

9 60. Having attempted over the preceding years to work with ICANN and
10 avoid conflict and having already committed resources to meeting at least some of the
11 conditions ICANN purported to impose on WLS, VeriSign had no real choice at that
12 point but to try to stay the course and press for a conclusion to the ICANN "process"
13 Or abandon the service and never recoup the loss. However, in a letter to VeriSign
14 dated September 4, 2003, a copy of which is submitted concurrently as Exhibit 29,
15 ICANN informed VeriSign that even the conditions specified in the prior resolutions
16 were not sufficient to satisfy ICANN; ICANN sought to impose a new and more
17 onerous and costly condition on WLS relating to the scope and implementation of the
18 "blackout" period contemplated by one of the prior conditions. VeriSign pointed this
19 out to ICANN in a response on September 16, 2003, a copy of which is submitted as
20 Exhibit 30.

21 61. On January 26, 2004, in a letter posted at
22 www.icann.org/correspondence/jeffrey-to-lewis-26jan04.pdf, ICANN's General
23 Counsel wrote to VeriSign supposedly to document the conclusion of negotiations on
24 the WLS conditions. And on March 6, 2004, the ICANN Board, in a Resolution
25 posted at www.icann.org/minutes/rome-resolutions-06mar04.htm, approved the
26 results of those negotiations and authorized the President and General Counsel of
27
28

1 ICANN to negotiate amendments of the 2001 .com Registry Agreement. A true and
2 correct copy of that resolution is submitted concurrently as Exhibit 31 hereto.

3 62. There has been no apparent movement toward a conclusion by ICANN.
4 As of the date of this declaration, and even after the passage of more than 2 and one
5 half years, the situation remains that ICANN has not even approached VeriSign to
6 negotiate any amendment; no concrete amendment has been received by VeriSign;
7 and VeriSign has not approved any amendment to the agreement. Clearly, had
8 ICANN formed the Independent Review Panel required by section II.4.D of the 2001
9 .com Registry Agreement, VeriSign would have utilized that process during this
10 period to challenge ICANN's actions and inactions regarding WLS, including its
11 treatment of WLS as a "registry service" and its imposition of conditions on WLS,
12 among others.

13
14 **D. ICANN's Interference with WLS Has Damaged VeriSign**

15 63. Based upon the state of development and readiness, VeriSign would have
16 been ready to begin offering WLS to registrars and their customers in or around
17 August 2002, and would have done so, but for ICANN's course of conduct as
18 described above.

19 64. VeriSign has incurred substantial costs and expenses in development of
20 and preparation to launch WLS, which investment VeriSign has been unable to
21 recoup due to ICANN's actions. And the uncertainties surrounding ICANN's
22 continuing imposition of conditions and delays on WLS have meant that labor and
23 resources allocated to WLS are not being used productively. Based upon my review
24 of applicable figures and discussions with others at VeriSign with whom I regularly
25 work and on whom I rely for budget and accounting data, I estimate that the costs and
26 expenses VeriSign has already incurred attributable to WLS are in excess of \$3
27 million.

1 65. In addition, the delay since 2002 in launching WLS has resulted in the loss
2 of profits VeriSign would have derived from WLS. Based upon my review of
3 applicable figures and discussions with others at VeriSign with whom I regularly
4 work and on whom I rely for budget and accounting data, I estimate that WLS would
5 generated profits for VeriSign of approximately \$3 million per year, increasing to
6 approximately \$5.25 million per year by 2007.

7 66. To develop WLS, VeriSign also entered into a license agreement with
8 SnapNames, Inc., a privately held company in Portland, Oregon, which has
9 developed the patent pending "parallel registry technology" that makes WLS work.
10 ICANN's tactics have delayed the implementation of WLS and jeopardized
11 VeriSign's contractual commitment with SnapNames and threatened VeriSign's
12 ability to perform that contract. More particularly, due to the delay in the launch of
13 WLS, SnapNames has not paid VeriSign more than \$1 million that has already come
14 due under the contract.

15 67. Furthermore, ICANN's actions with respect to WLS have also resulted in
16 a material loss by VeriSign of good will and reputation that cannot be readily
17 calculated or compensated for in strict dollar terms. Part of this harm stems from the
18 fact that those registrars which had agreed to participate in WLS and made efforts to
19 promote the service among their customers are angry at VeriSign that WLS has not
20 been launched.

21 68. In the years since VeriSign first proposed WLS, increasing numbers of
22 registrars have begun offering backorder services, capitalizing on VeriSign's idea
23 without any ICANN intervention or efforts to control their offerings. Many of these
24 registrars are the same registrars on the very committees that reviewed and proposed
25 conditions for VeriSign's WLS service. VeriSign thus lost the opportunity to
26 capitalize on its concept and to bring WLS to fruition early, and thereby to enhance
27 its competitive position and revenues.

1
2 **VI. SITE FINDER**

3 **A. The Purpose of Site Finder**

4 69. Site Finder is an innovative service that improves the navigation
5 experience for Internet users by replacing frustrating error messages that offer no
6 useful information with a clear response that offers the user navigation assistance.

7 70. Research performed by WebSideStory (March 2003) indicates that more
8 than 65% of all Internet searches are conducted by typing a domain name directly
9 into a browser address window. Each day, more than 20 million of these queries in
10 the .com gTLD are for non-existent domain names. The user may have misspelled
11 the intended domain name, or the user may have spelled the domain name correctly
12 but the name may no longer be a current registered domain name in the .com zone
13 file.

14 71. Before Site Finder, when a user mistyped or input a non-existent second-
15 level domain name in the .com TLD into the address window of his browser, the
16 DNS would return a "non-existent domain" (NXDOMAIN) error, which triggered the
17 user's browser to provide an error message (sometimes known as an Error 404
18 message), such as "page not found." Like a "number not in service" or "number
19 disconnected" error message from the telephone company, the error message from the
20 DNS contained no useful information for the user. It did not provide any valuable
21 information to help the user navigate to the desired web address. But like the
22 telephone company's "forwarding number" message, Site Finder offers the user an
23 easy means to find the web address he is seeking.

24 72. Site Finder was designed to rectify that situation and is consistent with
25 VeriSign's desire to improve the end-user-experience on the Internet through value-
26 added services. Site Finder provides an Internet user who makes an error in typing a
27 web address, such that the second-level domain name of the address does not appear
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1 in the .com zone file, with a list of suggested alternative web addresses most similar
2 to the address the user actually entered.

3 73. According to statistically-significant market research, with which I am
4 familiar, two-thirds of Internet users surveyed responded favorably to a Site Finder
5 "help" page when asked about its usefulness.
6

7 **B. Description of Site Finder**

8 74. The Site Finder response provided a user-friendly help screen that includes
9 not only a clear message that what was entered could not be found but, also, such
10 information as (a) alternative web addresses the user may have been seeking, (b) a
11 search engine, and (c) links to contextually popular categories of websites the user
12 can search. Thus, the Site Finder response provided the user with helpful information
13 and options beyond a simple error message.

14 75. For example, with Site Finder, if a user looking for www.bookstore.com,
15 instead typed www.bokkstore.com into the address bar of his browser, rather than
16 getting an error message, the user got a web page (the Site Finder "help" page)
17 explaining that he did not reach the intended site: "We didn't find
18 'www.bokkstore.com.' There is no Web site at this address." A true and correct
19 copy of the Site Finder page is submitted concurrently as Exhibit 32 .

20 76. Immediately below this message, Site Finder offered the user a search
21 engine box where the user can enter a query and "search the web." Just below the
22 search box, Site Finder asked the user "Did you mean? – We did find these similar
23 Web addresses."

24 77. In this section of the page, Site Finder provided web addresses most
25 similar to the address the user actually entered. A "natural language" algorithm
26 performed spelling correction and other analysis to generate these suggestions. The
27 order of the links was determined by relevance of match to the name typed by the
28

1 end-user. In the above example, for the non-existent domain name
2 www.bookstre.net, Site Finder suggests: www.bookstore.com, www.bookstore.net,
3 www.booksite.com, and www.booksir.com.

4 78. These "Did you mean?" addresses are *not* sponsored, and VeriSign
5 receives absolutely no income when users click on these links to navigate to the web
6 site they intended to reach. Thus, rather than being left adrift by the old "error" page,
7 Site Finder helps the user to navigate to the desired site.

8 79. Finally, the Site Finder page also offered the user the option to "search
9 popular categories." These were links to both sponsored and unsponsored web sites
10 in categories of common interest to users generally, such as travel or shopping.

11 80. Like many other search sites, VeriSign could have derived revenue from
12 placing banner ads, pop-up ads, or other graphic advertising on the Site Finder page.
13 Indeed, many other TLD registries deploying wildcard and providing a Site Finder-
14 type response include such advertising and even try to sell the non-existent domain
15 name to the user. True and correct copies of these wildcard pages from the .cc, .cx,
16 .iu, .mp, .museum, nu, .ph, .td, .tk, .tv, and .ws registries are submitted concurrently
17 as Exhibit 33. VeriSign, however, opted not to have banner ads, pop-ups, or other
18 graphic advertising, because that is what research indicated people wanted.

19 20 **C. Operation of Site Finder**

21 81. Site Finder was not essential to the operation or functioning of the .com
22 gTLD registry; the registry has been and is fully functional without Site Finder. Just
23 as the DNS did and does produce a predictable and determinate response to domain
24 name queries without Site Finder; so too, with Site Finder, the DNS similar produced
25 a predictable and determinate response to domain name queries. Moreover, Site
26 Finder neither impacted nor affected any function of the registry or DNS.

1 82. Site Finder did change the specific response that a user would receive to a
2 DNS query for a domain name not in the zone file, but the response generated by Site
3 Finder was in full compliance with all applicable Internet protocol standards,
4 including those referenced in the 2001 .com Registry Agreement. Indeed, Site Finder
5 specifically incorporated DNS specifications that have been operative since 1987, and
6 that have contemplated, anticipated, and permitted the use of a wildcard.

7 83. The fact that Site Finder complied with all existing RFC's, the technical
8 specifications relating to the operation of the Internet, was even acknowledged by the
9 Internet Architecture Board ("IAB") that stated in a public report that Site Finder is
10 compliant with those specifications.

11 84. On or about September 12, 2003, I was present when a VeriSign colleague
12 briefed ICANN President Paul Twomey about ICANN's intended launch of Site
13 Finder. Mr. Twomey stated that it was not an issue and raised no objections to
14 deployment of a wildcard either on that occasion or immediately after the launch. He
15 evidently did not consider Site Finder to be a "registry service" under the 2001 .com
16 Registry Agreement.

17 85. VeriSign launched Site Finder in the .com TLD on September 15, 2003.
18 The clear market demand for Site Finder was demonstrated by the extent to which
19 users immediately utilized the navigation tools of the Site Finder service. During its
20 first week of operation, between September 15, 2003, and September 21, 2003,
21 Internet users visited the Site Finder page more than 62 million times. Users used the
22 "Did you mean" tool 1.5 million times, and they used the search tool more than
23 13 million times.

24
25 **D. ICANN's Site Finder's Suspension Deadline**

26 86. On September 19, 2003, based on purported and unsubstantiated
27 expressions of concern from the Internet community, ICANN asked VeriSign to
28

1 “voluntarily suspend” Site Finder. ICANN also requested advice from its Security
2 and Stability Advisory Committee and from the IAB with respect to Site Finder.
3 ICANN then posted this request as an *Advisory Concerning VeriSign’s Deployment*
4 *of DNS Wildcard Service* to its website at [www.icann.org/announcements/advisory-](http://www.icann.org/announcements/advisory-19sep03.htm)
5 [19sep03.htm](http://www.icann.org/announcements/advisory-19sep03.htm).

6 87. Because ICANN’s request was completely unsubstantiated, VeriSign
7 declined to suspend the service, explaining that “it would be premature to decide on
8 any course of action until we first have had an opportunity to collect and review the
9 available data.” A copy of a letter from Russell Lewis to Paul Twomey, the President
10 of ICANN, dated September 21, 2003, is available at
11 www.icann.org/correspondence/lewis-to-twomey-21sep03.htm and submitted as
12 Exhibit 34.

13 88. Also on September 19, 2003, just four days after VeriSign had launched
14 Site Finder, the Chairman of ICANN’s Security and Stability Advisory Committee
15 (“SECSAC”), Steve Crocker, circulated to committee members a draft report entitled
16 *Recommendations Regarding VeriSign’s Introduction of Wild Card Response to*
17 *Unregistered Domains within .com and .net*, a copy of which is submitted
18 concurrently as Exhibit 35. This draft report already includes the committee’s
19 supposed opinions and recommendations, but no facts, evidence, or analysis. Indeed,
20 a bracketed comment contained in the draft report reads, “This is where we need to
21 include the factual information to support the opinions and recommendations that
22 follow. PAUL VIXIE and SUZANNE AMONG OTHERS, please dump stuff into
23 this section.” The comment makes perfectly clear that SECSAC reached its
24 “conclusion” first and was going to look for evidence to support it later.

25 89. SECSAC issued its report from the above-referenced draft on September
26 22, 2003, and posted it at [http://www.icann.org/correspondence/secsac-to-board-](http://www.icann.org/correspondence/secsac-to-board-22sep03.htm)
27 [22sep03.htm](http://www.icann.org/correspondence/secsac-to-board-22sep03.htm). A copy of this report is submitted concurrently as Exhibit 36. This
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1 report side-steps the issue of “facts” altogether. Apparently because SECSAC was
2 unable to provide any supporting factual information, the report consists of opinions
3 and scaled back recommendations from the draft. The report does not include any
4 facts concerning the effects of Site Finder or any analysis supporting the report’s
5 opinions and recommendations, and it even acknowledges that SECSAC would meet
6 the following month to gather facts. Despite subsequent, repeated promises by
7 SECSAC that another report would be issued in November 2003, after almost seven
8 months, SECSAC has yet to issue that further report with facts to support its
9 conclusions. These actions were not open and transparent, but rather staged and
10 arbitrary.

11 90. By October 3, 2003, as detailed more fully in the Declaration of Scott
12 Hollenbeck, ICANN had not substantiated that Site Finder negatively impacted the
13 operation of the Internet. Nevertheless, that same day, October 3, 2003, ICANN
14 again insisted that VeriSign suspend Site Finder. It asserted in purely conclusory
15 terms that Site Finder had had “a substantial adverse effect on the core operation of
16 the DNS [and] on the stability of the Internet” ICANN stated that unless
17 VeriSign suspended Site Finder, “ICANN will be forced to take the steps necessary to
18 enforce VeriSign’s contractual obligations.” A copy of the letter from Paul Twomey
19 to Russell Lewis is available at [www.icann.org/correspondence/twomey-to-lewis-](http://www.icann.org/correspondence/twomey-to-lewis-03oct03.htm)
20 [03oct03.htm](http://www.icann.org/correspondence/twomey-to-lewis-03oct03.htm) and is submitted as Exhibit 37. At about the same time, ICANN posted
21 an *Advisory Concerning Demand to Remove VeriSign’s Wildcard* to
22 www.icann.org/announcements/advisory-03oct03.htm. A true and correct copy of
23 that advisory is submitted concurrently as Exhibit 38. VeriSign was not included in
24 any ICANN “processes” leading to the October 3 suspension notice, and any such
25 “processes” were hardly open and transparent.

26 91. After receiving ICANN’s October 3, 2003 letter, VeriSign concluded that
27 it had no practical choice but to suspend Site Finder. Otherwise, VeriSign faced the
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1 risk of ICANN's utilization of self-help remedies, including a declaration of breach
2 of the .com Registry Agreement and termination of the .com registry agreement.
3 Since VeriSign's operation of the .com registry represents approximately 20% of
4 VeriSign's total revenue, the termination of the .com registry agreement would have
5 ruinous financial effects for the company, and VeriSign therefore could not take the
6 risk of continuing to operate Site Finder.

7 92. VeriSign did orally request of ICANN a few day extension of its stated
8 deadline for the suspension of Site Finder, so that Site Finder could be
9 decommissioned in an orderly fashion. However, ICANN flatly rejected that request.

10
11 **E. ICANN's Interference with Site Finder Damaged Verisign**

12 93. VeriSign incurred substantial costs and expenses in development of and
13 launch of Site Finder, which investment VeriSign has been unable to recoup due to
14 ICANN's actions. And the uncertainties surrounding any relaunch of Site Finder
15 have meant that labor and resources allocated to Site Finder are not being used
16 productively. Based upon my review of applicable figures and discussions with
17 others at VeriSign with whom I regularly work and on whom I rely for budget and
18 accounting data, I estimate that VeriSign invested in excess of \$5 million in capital
19 and \$ 2-3 million in labor costs on Site Finder.

20 94. There is no charge to the end-user for Site Finder. However, to operate
21 Site Finder, VeriSign had entered into binding formal contracts with third-parties.
22 The primary contract was with a pay-per-click provider who sells sponsored links in
23 the search results. Sponsors pay a certain amount of money per click on each of these
24 links, and the provider shares a percentage of this advertising revenue with VeriSign.
25 The suspension of Site Finder has resulted in the loss of profits VeriSign would have
26 derived from Site Finder through this and other contracts.

1 95. According to the Nielson / Net Ratings, there are about 580 million
2 Internet users worldwide, with 120 million users in the United States. In light of
3 figures received by VeriSign concerning Site Finder use for the period it was
4 operational, and based upon my review of applicable figures and discussions with
5 others at VeriSign with whom I regularly work and on whom I rely for budget and
6 accounting data, I estimate that Site Finder would have generated profit for VeriSign
7 of approximately \$12.75 million in 2004, increasing to approximately \$17 million by
8 2006.

9 96. Furthermore, VeriSign received a substantial upfront payment from this
10 provider against future payments that VeriSign would earn under the contract. I
11 understand from VeriSign's counsel that there is no protective order in force in this
12 action. The contract, however, contains a confidentiality provision, and I am
13 therefore unable to attach a copy of this contract to my declaration. Nonetheless, due
14 to the discontinuation of Site Finder, on or about October 4, 2003, the third party
15 provider terminated the contract with VeriSign and demanded that VeriSign return
16 the unearned portion of the upfront payment. VeriSign was bound to do so, and has
17 returned that amount. The contract was a particularly advantageous revenue-sharing
18 contract for VeriSign, the terms of which VeriSign would be unable to obtain again in
19 today's business climate, even if Site Finder were restarted.

20 97. ICANN was aware of the contract between VeriSign and this third-party
21 provider, as evidenced by reference to the third-party provider and its relationship to
22 VeriSign's Site Finder service in emails on ICANN's own listservs. Submitted
23 concurrently as Exhibit 39 are true and correct copies of these emails, which are
24 available at www.gnso.icann.org/mailing-lists/archives/registrars/msg00440.html;
25 [/msg00124](mailto:msg00124), [.msg00156](mailto:msg00156), and msg00335. The relationship had also been mentioned
26 and discussed in the industry trade publications, for example, in an article titled *A*
27 *Brief Analysis of the Sitefinder Contract*, was posted to www.icannwatch.org on
28

1 September 20, 2003. A true and correct copy of this article is submitted concurrently
2 as Exhibit 40.

3 98. Furthermore, ICANN's actions with respect to Site Finder have also
4 resulted in a material loss by VeriSign of good will and reputation that cannot be
5 readily calculated or compensated for in strict dollar terms.
6

7 **VII. Internationalized Domain Names (IDN)**

8 **A. The Purpose of IDN**

9
10 99. Initially, the vast majority of Internet users and domain name registrants
11 spoke English as their native language and used ASCII (English) character sets on
12 their computers. Today, however, the Internet is a tool used by more than 500
13 million people around the world. As the Internet grows, more and more users' native
14 languages will include non-ASCII (non-English) character sets. Currently, or in the
15 near future, this group will comprise the majority of Internet users.

16 100. However, languages represented in non-ASCII character sets are not
17 widely supported in the DNS. Second level domain names in the .com TLD, for
18 example, must be registered in ASCII characters.

19 101. IDNs meet this important need to allow the DNS to support users who
20 seek to access the Internet using their native language.

21 102. Specifically, IDNs are domain names represented by local language
22 characters, for example, <chinesecharacters>.com. Therefore, registrants can reach
23 the target audience of their webpages by communicating in their audience's (the end
24 users') preferred language. A user who speaks Mandarin Chinese, for example, can
25 type a web address that includes a registered second-level domain name within the
26 .com gTLD in Chinese, and upon resolution of the webpage will continue to see the
27
28

1 domain name in Chinese so they can recognize it and bookmark the site for future
2 use.

3
4 **B. Technical Description of IDN**

5 103. Beginning in November 2000, VeriSign began accepting IDN
6 registrations in a third-level testbed. By February 2003, there were over 900,000
7 names in VeriSign's IDN testbed.

8 104. VeriSign's business plan was to migrate these domain names from the
9 testbed into the .com TLD zone servers as soon as the necessary technical IDN
10 standard was published. This was necessary because while IDN makes possible the
11 use of non-ASCII character sets in users' native languages, the registered second-
12 level domain name within the .com gTLD must be in ASCII characters. To trigger
13 the translation of the domain name from ASCII characters to the corresponding non-
14 ASCII characters, these domain names include the prefix "bq--" in the testbed, and
15 will include the prefix "xn--" when IDN is launched.

16 105. In March 2003, the Internet Engineering Task Force ("IETF") published
17 three standards RFCs, 3490, 3491, and 3492, that together define the
18 Internationalizing Domain Names in Applications (IDNA) standard. Standards RFCs
19 are the specification documents of the Internet, and are available at [http://www.rfc-](http://www.rfc-editor.org)
20 [editor.org](http://www.rfc-editor.org). The IDNA standard requires that IDNs begin with the prefix "xn--."

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22 **C. ICANN's Refusal to Authorize VeriSign to Deploy IDN**

23 106. The 2001 .com Registry Agreement covers IDN only to the extent that it
24 demands that IDNs be standards-compliant and that Appendix K to the agreement
25 provides that "except to the extent ICANN otherwise expressly authorizes," VeriSign
26 must reserve "tagged domain names," *i.e.*, those "with hyphens in the third and fourth
27 character positions." Because the IDNA standard requires that IDNs begin with the
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1 prefix "xn--," formerly "bq--", VeriSign needed ICANN's approval under Appendix
2 K in order to offer IDN. Accordingly, with the approval of the IETF standard on
3 IDNs, on July 30, 2003, VeriSign therefore sought ICANN's authorization to use
4 domain names with an xn--" prefix to enable the .com gTLD registry to provide IDN
5 service, as other competing ccTLD registries that were not under contract with
6 ICANN already were or had publicly announced they intended to offer IDN service.

7 107. On or about February 4, 2003, ICANN's IDN Registry Implementation
8 Committee ("RIC") began work on establishing a set of guidelines for the
9 deployment of IDNs into TLDs around the globe. VeriSign was a participant in this
10 group.

11 108. The RIC worked to develop the guidelines for the purpose of promoting
12 uniformity among registry operators regarding certain aspects of their
13 implementations of the IDN standards published by the IETF. The guidelines were
14 intended to be just that -- guidelines, strictly voluntary and providing guidance or
15 suggestions but not legal requirements or operational directions.

16 109. Indeed, in a report titled *Standards for ICANN Authorization of*
17 *Internationalized Domain Name Registrations in Registries with Agreements*, ICANN
18 stated that its responsibility under Appendix K was "to expressly authorize the
19 registration of IDNA-compliant internationalized domain names, but ICANN's
20 mission does not include micromanaging registry-level implementation." The report
21 further states that its "basic premise" is to "take a light-handed approach" and that "it
22 would be a mistake for ICANN to pursue a burdensome and/or intrusive approach to
23 IDN implementation." This report is dated March 13, 2003, and is posted on
24 ICANN's website at www.icann.org/riodejaneiro/idn-topic.htm, and is submitted
25 concurrently as Exhibit 41.

26 110. But the March 13th report also proposes to impose the guidelines that
27 were being developed as points of voluntary guidance, as "mandatory requirements
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1 that the registries would be required to agree as the conditions for ICANN
2 authorization to begin accepting IDNA-compliant domain name registrations.”

3 111. On June 20, 2003 ICANN proceeded to use its approval authority
4 effectively to expand the scope of its authority under the registry agreements, by
5 publishing *Guidelines for the Implementation of Internationalized Domain Names*
6 and establishing the *Guidelines* as the gating requirement for approval under
7 Appendix K of the agreement between VeriSign and ICANN. A copy of the
8 *Guidelines* is posted at www.icann.org/general/idn-guidelines-20jun03.htm and is
9 submitted concurrently as Exhibit 42.

10 112. Concurrent with its publication of the *Guidelines*, ICANN published an
11 Announcement, *Deployment of Internationalized Domain Names*, available at
12 www.icann.org/announcements/announcement-20jun03.htm, attached hereto as
13 Exhibit 43, which states “registries seeking to deploy IDNs under their agreements
14 with ICANN will be authorized to do so on the basis of the Guidelines.”

15 113. These *Guidelines* imposed on VeriSign long-term, fixed obligations that
16 would require the implementation of costly and burdensome procedures over and
17 above compliance with the IDNA standard. If implemented by VeriSign, these
18 *Guidelines* would hinder it from solving operational inefficiencies and a lack of
19 propagation that market research has showed underlies a low level of IDN usage
20 worldwide.

21 114. On July 15, 2003, I wrote a letter to Paul Twomey requesting
22 authorization under Appendix K, on the basis of VeriSign’s compliance with the
23 IETF standards. VeriSign was ready to launch IDN at this time.

24 115. On July 30, 2003, Paul Twomey, the President of ICANN, sent me an
25 email responding to my letter. Mr. Twomey stated that while he believed “ICANN
26 should not micromanage VGRS’ implementation of IDNs,” he wanted “assurances
27 that VGRS will employ reasonable policies and practices that reduce the likelihood of
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1 massive cybersquatting and consumer confusion.” Mr. Twomey stated that “a
2 commitment to the Guidelines is a clearly acceptable way to give that assurance” but
3 that he was “open to other formulations.” See Exhibit 44 submitted concurrently.

4 116. Pursuant to Mr. Twomey’s July 30th invitation, on August 4, 2003,
5 VeriSign sent Mr. Twomey, as a basis for again requesting authorization to deploy
6 the IDN program into production, a draft letter outlining how VeriSign would be
7 addressing the ICANN guidelines. See Exhibit 45 submitted concurrently. And on
8 August 25, 2003, I and other representatives from VeriSign had a conference call
9 with ICANN staff to review VeriSign’s implementation plans regarding VeriSign’s
10 IDN program. On that call, we asked ICANN to explain the evaluation criteria for
11 approval. We were informed by ICANN that there were none and that approval was
12 based on staff opinion.

13 117. On September 8, 2003, I sent Paul Twomey another request to authorize
14 VeriSign’s IDN program, and asked for the expeditious written authorization under
15 Appendix K, to avoid a delay in VeriSign’s launch plans. I explained that imposition
16 of the *Guidelines* would not be appropriate and asked, if that were ICANN’s position,
17 for a written definition of the conditions and evaluation criteria and an explanation of
18 how VeriSign’s planned implementation would not comply with those conditions.
19 See Exhibit 46 submitted concurrently.

20 118. Although VeriSign’s planned implementation of IDN was fully-
21 compliant with the IETF’s IDNA standard, and VeriSign provided details of how it
22 was following the IETF standard and how VeriSign would implement the Guidelines,
23 ICANN refused to authorize VeriSign to offer IDN. Further, ICANN did not provide
24 the requested written definition of the conditions and evaluation criteria, but rather
25 formulated new and different verbal requirements not expressed in the Guidelines.
26 ICANN’s formulation and prescription of these requirements for VeriSign were not
27 open and transparent.

1 119. Had ICANN formed the Independent Review Panel described in section
2 II.4.D of the 2001 .com Registry Agreement, VeriSign would have utilized that
3 procedure to appeal ICANN's first refusal to authorize IDN and if necessary its
4 further actions.

5 120. On September 11, 2003, VeriSign sent a third letter requesting approval
6 as required by Appendix K and again requested the specific criteria used to gain such
7 approval. See Exhibit 47 submitted concurrently.

8 121. A written response again was not provided, but instead new and different
9 verbal requirements.

10 122. On October 13, 2003, VeriSign sent a fourth letter to ICANN requesting
11 approval of the IDN program as required by Appendix K. And again VeriSign
12 requested written criteria for approval. A copy of this letter is posted at
13 www.icann.org/correspondence/lewis-to-twomey-13oct03.htm, and attached hereto
14 as Exhibit 48 submitted concurrently.

15 123. In response, on November 13, 2003, Mr. Twomey asked VeriSign for a
16 summary of the key elements of its implementation. On November 17, 2003, I sent
17 Mr. Twomey a letter providing this summary. A copy of this letter is posted at
18 www.icann.org/correspondence/turner-to-twomey-17nov03.htm, and submitted
19 concurrently as Exhibit 49.

20 124. Based on this letter, Mr. Twomey provided verbal approval for
21 VeriSign's launch of IDN on December 11, 2003. To date, ICANN has not provided
22 the explicit written authorization VeriSign requested under Appendix K.

23 125. An ICANN website titled *Advisory Concerning Registry Request for*
24 *Authorization to Offer IDN Registrations*, posted at
25 www.icann.org/announcements/advisory-21oct03.htm, however, includes links to
26 several registries' requests for IDN authorization. It also includes, for every IDN
27 approved registry except VeriSign, links to ICANN's IDN authorization. To obtain
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1 their approvals, these competing registry operators merely stated that they “are
2 pleased to support the Guidelines” without any commitment to implement them or
3 details on their implementation. Even though VeriSign similarly expressed support
4 for the Guidelines, and even furnished detailed implementation plans, VeriSign still
5 does not have explicit written approval and posting of that approval on ICANN’s
6 website, over six months after these registry operators received their approvals.
7 Copies of these letters are submitted concurrently as Exhibit 50.

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9 **D. ICANN’s Refusal to Authorize IDN Harmed VeriSign**

10 126. VeriSign has been competitively harmed because during the time that
11 VeriSign has repeatedly sought ICANN’s authorization, both gTLD registry operators
12 (including .info and .org), and ccTLD registry operators (including .bz (Belize), .cc
13 (Cocos Islands), .cn (China), .jp (Japan), .kr (Korea), .nu (Niue), .tv (Tuvalu), and .tw
14 (Taiwan)), have proceeded to offer IDN. Those registries include four that have
15 contracts with ICANN and six that do not.

16 127. Furthermore, due to ICANN’s continued and repeated refusal and delay
17 to authorize VeriSign under Appendix K and VeriSign’s consequent inability to offer
18 IDN, several of the largest registrars, including Network Solutions, for .com domain
19 names decided not to gear up and offer the service, and simply have dropped out of
20 the IDN market, resulting in the loss of tens of thousands of IDN registrations.

21 128. VeriSign also has incurred substantial expenses in developing IDN,
22 which investments VeriSign has been unable to recoup due to ICANN’s refusal and
23 delay in authorizing VeriSign’s deployment of IDN, which has impaired VeriSign’s
24 ability to allocate its resources and employees efficiently, for example, in that
25 VeriSign scheduled resources and marketing plans around certain launch dates, but
26 has been left on stand-by waiting for ICANN authorization.

1 129. Had VeriSign been able to offer IDNs when it first requested
2 authorization in July 2003, that would have enhanced the value and attractiveness of
3 the .com TLD. ICANN's refusal and delay to authorize VeriSign to offer IDN has
4 negatively impacted the number of registrations in .com, particularly in non-English-
5 speaking countries. I or employees under my direction and supervision have
6 calculated the profit from IDN of \$1.1 million in 2004, and \$4.6 million in 2006.

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130. ICANN's refusal and delay also has resulted in a material loss by VeriSign of good will and reputation that cannot be readily calculated or compensated for in strict dollar terms. In fact, in February 2003, there were over 900,000 names in VeriSign's IDN testbed. As a result of ICANN's delay, there are now approximately only 400,000.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 29th day of April, 2004 at Dulles, Virginia


BENJAMIN R. TURNER