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VERISIGN, INC. and  
7 NETWORK SOLUTIONS, INC.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF LOS ANGELES

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

18 Plaintiffs,

19 v.

20 INTERNET CORPORATION FOR ASSIGNED )  
NAMES AND NUMBERS, a California )  
21 Corporation; VERISIGN, INC., a Delaware )  
Corporation; NETWORK SOLUTIONS, LLC, )  
22 a Limited Liability Company of unknown origin; )  
NETWORK SOLUTIONS, INC., a Delaware )  
23 Corporation; ENOM, INCORPORATED, a )  
Nevada Corporation; ENOM, INC., a Washington )  
24 Corporation; and DOES 1-10, inclusive; )

25 Defendants.  
26  
27  
28

Case No. SC 082479

**REQUEST FOR JUDICIAL NOTICE  
BY DEFENDANTS VERISIGN, INC.  
AND NETWORK SOLUTIONS, INC.  
IN SUPPORT OF DEMURRERS TO  
COMPLAINT**

Date: November 16, 2004

Time: 8:30 a.m.

Department: F

Judge: Hon. Gerald Rosenberg

Action Filed: August 4, 2004

1 Defendants VERISIGN, INC. ("VeriSign") and NETWORK SOLUTIONS, INC. ("NSI"),  
2 in support of their concurrently filed Demurrers to Complaint, hereby request, pursuant to Evidence  
3 Code sections 452 and 453 and other pertinent provisions and authorities specified below, that the  
4 Court take judicial notice of the following documents:

5 1. The First Amended Complaint filed by the instant Plaintiffs in the case of  
6 *Registersite.com v. Internet Corp. for Assigned Names and Numbers*, No. CV 04-1368 ABC (CWx)  
7 (U.S. District Court, C.D. Cal., filed Apr. 8, 2004), a certified copy of which is attached hereto as  
8 Exhibit A, pursuant to Evidence Code section 452(d);

9 2. The Memorandum of Points and Authorities of VeriSign and NSI in Support of  
10 Motion To Dismiss the First Amended Complaint for Failure To State a Claim Pursuant to Federal  
11 Rule of Civil Procedure 12(b)(6) filed in the case of *Registersite.com*, No. CV 04-1368 ABC (CWx)  
12 (U.S. District Court, C.D. Cal., filed May 28, 2004), a certified copy of which is attached hereto as  
13 Exhibit B, pursuant to Evidence Code section 452(d);

14 3. The Order Re: Defendants' Motions To Dismiss in the case of *Registersite.com*, No.  
15 CV 04-1368 ABC (CWx) (U.S. District Court, C.D. Cal., filed July 12, 2004), a certified copy of  
16 which is attached hereto as Exhibit C, pursuant to Evidence Code sections 452(c)-(d); and

17 4. "Next Registration Rights" advertisement, a true and correct computer printout of  
18 which is attached hereto as Exhibit D. In their Complaint in this action, Plaintiffs quote from this  
19 document, which they allege is an "NSI" advertisement for "NSI's branding of the VeriSign WLS  
20 service" (*see* Compl. ¶¶ 6.6, 8.6), and Plaintiffs predicate several of their purported causes of action  
21 in the Complaint herein upon statements contained in this document (*see id.* ¶¶ 6.5-6.6, 6.8-6.9, 8.6-  
22 8.11, 8.15, 8.17, 10.4, 10.6-10.7). Under the circumstances, this Court may consider this entire  
23 advertisement in deciding the pending Demurrers of VeriSign and NSI, because materials  
24 referenced in, but not attached to, a complaint are proper subjects of judicial notice on demurrer.  
25 *See Edgar Rice Burroughs, Inc. v. Metro-Goldwyn-Mayer, Inc.*, 205 Cal. App. 2d 441, 450-52  
26 (1962) (trial court properly considered motion pictures referenced in, but not attached to, the  
27 complaint in sustaining demurrer); *cf. Haskell v. Time, Inc.*, 857 F. Supp. 1392, 1396-98 (E.D. Cal.  
28

1 1994) (on motion to dismiss UCL claim for failure to state a claim, examining allegedly misleading  
2 communication that was partially quoted in the complaint).

3 Plaintiffs do not (and cannot) dispute the authenticity of the advertisement, nor that it is the  
4 advertisement quoted in their Complaint herein. In fact, Plaintiffs did not oppose VeriSign and  
5 NSI's request that the federal court take judicial notice of *this same advertisement* in deciding their  
6 motion to dismiss Plaintiffs' federal pleading in the predecessor action to this case –  
7 *Registersite.com v. Internet Corp. for Assigned Names and Numbers*, No. CV 04-1368 ABC (CWx)  
8 (U.S. District Court, C.D. Cal.). (Ex. B at 10 n.6.) Moreover, because the advertisement may be  
9 accessed over the Internet at <https://www.nextregistrationrights.com/backorder.sn>, its authenticity is  
10 “not reasonably subject to dispute” and its contents are “capable of immediate and accurate  
11 determination by resort to sources of reasonably indisputable accuracy.” Evid. Code § 452(h).  
12 Indeed, the fact that anyone can verify the contents of the advertisement by visiting the Web site  
13 where it appears is an independent basis for taking judicial notice of the existence and contents of  
14 the advertisement. *Walt Rankin & Assocs. v. City of Murrieta*, 84 Cal. App. 4th 605, 623-24 & n.12  
15 (2000) (Web site's contents may be judicially noticed).

16  
17 DATED: October 4, 2004.

ARNOLD & PORTER LLP  
RONALD L. JOHNSTON  
LAURENCE J. HUTT  
SUZANNE V. WILSON  
JAMES S. BLACKBURN

20  
21 By: 

22 LAURENCE J. HUTT  
23 Attorneys for Defendants VeriSign,  
Inc. and Network Solutions, Inc.

24 #333436

# **Exhibit A**



ORIGINAL

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FILED BY FAX

11 UNITED STATES DISTRICT COURT  
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

INTERNET CORPORATION FOR  
ASSIGNED NAMES AND NUMBERS,  
a California corporation; VERISIGN,  
INC., a Delaware Corporation;  
NETWORK SOLUTIONS, INC., a  
Delaware Corporation; ENOM, INC., a  
Washington Corporation; ENOM  
FOREIGN HOLDINGS  
CORPORATION, a Washington  
Corporation; and DOES 1-10, inclusive;

Defendants.

Case No. CV04-1368 ABC (CWx)

FIRST AMENDED COMPLAINT  
FOR:

- (1) Violations of California  
Business & Professions Code  
§§ 17200, *et seq.*
- (2) Sherman Act, § 1, Unlawful  
Tying Arrangement
- (3) Intentional Interference with  
Prospective Economic  
Advantage
- (4) Declaratory Relief, 28 U.S.C.  
§ 201; and
- (5) Breach of Contract

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CENTRAL DISTRICT OF CALIF.

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1 Plaintiffs REGISTERSITE.COM, an assumed name of ABR PRODUCTS  
2 INC., NAME.COM, LLC, R. LEE CHAMBERS COMPANY LLC which does  
3 business as DOMAINSTOBESEEN.COM, FIDUCIA LLC, SPOT DOMAIN, LLC,  
4 !\$6.25 DOMAINS! NETWORK, INC., which does business as ESITE  
5 CORPORATION, AUSREGISTRY GROUP PTY LTD., and ! \$ ! BID IT WIN IT,  
6 INC. (collectively "Plaintiffs") file this First Amended Complaint against defendants  
7 INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS,  
8 VERISIGN, INC., NETWORK SOLUTIONS, INC., ENOM, INC. and DOES 1-  
9 10, inclusive (collectively "Defendants"), and allege as follows:

## 11 I. NATURE OF THE CASE

12 1.1. This lawsuit concerns an exploitative and fraudulent new "service" that  
13 defendant Verisign, Inc. ("Verisign"), through its agents eNom, NSI and DOES 1-  
14 10, inclusive (collectively the "Participating Registrars"), plans to foist upon  
15 unsuspecting consumers in the United States and worldwide. Verisign's so-called  
16 *Wait Listing Service* ("WLS") purports to give consumers, for an annual fee, the  
17 right to be "first in line" on the "waiting list" for currently-registered <.com><sup>1</sup> and  
18 <.net> domain names. Inherent in the nature of the service is that a consumer will  
19 receive no benefit from purchasing a WLS "subscription" *unless and until* the  
20 current registrant of the domain name (the "subscribed domain name") decides to  
21 abandon it, which is unlikely. In any event, that decision is beyond the defendants'  
22 control, and the "service" is nothing more than an illegal lottery in which most  
23 consumers will receive nothing for their money.

24 1.2. Even if defendants' WLS scheme were permissible (which it is not),  
25 the Participating Registrars' failure to disclose the likelihood of "winning" (*i.e.*, of  
26 obtaining the subscribed domain name as a result of the subscription) renders their  
27

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28 <sup>1</sup>Domain names are surrounded by caret symbols (*i.e.*, "< >") herein for the purpose of  
distinguishing them. However, the caret symbols are not a part of the domain name itself.

1 sale of WLS subscriptions misleading and deceptive to consumers. Plaintiffs  
2 therefore bring this action on behalf of themselves and on behalf of the people of the  
3 State of California to enjoin defendants from implementing their unlawful plan.

4 1.3. Disclosing the likelihood that a WLS subscription will be successful  
5 would not suffice to make the Participating Registrars' advertising for WLS  
6 subscriptions fair. Participating Registrars NSI and eNom (which act as Verisign's  
7 agents in selling WLS subscriptions) are advertising WLS subscriptions to  
8 consumers as a form of "insurance" that will "protect" their domain names. Current  
9 domain name registrants, who depend on defendants to preserve their rights and  
10 investments in their domain names, or to refrain from interfering with those rights,  
11 will have little choice but to purchase WLS subscriptions in the face of such a  
12 threatening "offer".

13 1.4. The plaintiffs are domain name registrars accredited by defendant  
14 Internet Corporation for Assigned Names and Numbers ("ICANN"). Plaintiffs each  
15 offer a service to assist consumers in registering expired domain names. None of  
16 the plaintiffs charges a fee for its service unless and until it actually registers a  
17 domain name on behalf of its customer. The plaintiffs do not make any spurious  
18 "guarantees" about their services in marketing materials or elsewhere.

19 1.5. ICANN has authorized Verisign to implement the WLS. Verisign has  
20 the technical ability to offer the WLS by virtue of its role as the operator of the  
21 authoritative database of domain names for each of <.com> and <.net>. In that role,  
22 Verisign has no ownership interest in the domain names in the database, and its *de*  
23 *facto* control over all <.com> and <.net> domain names does not give it any interest  
24 in those domain names. A WLS subscription is a contingent future interest in a  
25 domain name, and by selling WLS subscriptions Verisign (through Participating  
26 Registrars) is selling contingent future interests in property that it *does not own*.

27 1.6. Verisign's conduct is analogous to that of a bank selling  
28 "subscriptions" to its customers' accounts. A bank holds the authoritative records

1 for its customers' accounts, and could therefore sell "subscriptions" whereby at the  
2 exact moment an account would otherwise become "unclaimed" by operation of  
3 law, ownership would be transferred to the subscriber. This would obviously be  
4 improper; the fact that the bank is in a position to declare its subscriber the rightful  
5 owner of an account does not give it the right to do so.

6 1.7. Just as banks are required to transfer unclaimed funds to the  
7 government, Verisign is required to delete expired domain names, rendering them  
8 available for registration by any registrar. This obligation is contained in (among  
9 other things) the agreement that each Plaintiff, like all registrars in <.com> and  
10 <.net>, entered into with Verisign. Verisign will breach those agreements by  
11 launching the WLS.

12 1.8. Defendants' conduct as alleged herein violates the California Unfair  
13 Trade Practices Act, Bus. & Prof. Code § 17200 *et. seq.*, as well as the Sherman  
14 Act, 15 U.S.C. § 1 *et. seq.*, the FTC Act, 15 U.S.C. § 41 *et. seq.*, and the California  
15 Consumers Legal Remedies Act, Civ. Code § 1750 *et. seq.*. In addition, the WLS  
16 constitutes an illegal lottery pursuant to California Penal Code section 319.

17 1.9. This lawsuit seeks to enjoin the defendants' proposed unfair and  
18 unlawful WLS activities, and in the event defendants launch the WLS, to recover  
19 the damages Plaintiffs will suffer as a result.

## 20 21 **II. THE PARTIES**

22 2.1. Plaintiff ABR PRODUCTS INC. ("ABR Products") is a New York  
23 corporation doing business as REGISTERSITE.COM, with its principal place of  
24 business at 2 Tamarck Circle, Fishkill, New York 12524.

25 2.2. Plaintiff NAME.COM, LLC ("Name.com") is a Wyoming limited  
26 liability company with its principal place of business at 360 Franklin St., Denver,  
27 CO 80218.

28 2.3. Plaintiff R. LEE CHAMBERS COMPANY LLC

1 (“domainstobeseen.com”) is a Tennessee Limited Liability Company doing business  
2 as “domainstobeseen.com” with its principal place of business at 6441 Bonny Oaks  
3 Drive, Suite “C”, Chattanooga, TN 37416-3537.

4 2.4. Plaintiff FIDUCIA LLC, (“Fiducia”) is a Nevada limited liability  
5 company with its principal place of business at 12-14 Vilandes St., Riga, LV-1010,  
6 Latvia.

7 2.5. Plaintiff SPOT DOMAIN, LLC (“Spot Domain”) is a Wyoming limited  
8 liability company with its principal place of business at 1539 Platte St., Denver, CO  
9 80202.

10 2.6. Plaintiff !\$6.25 DOMAINS! NETWORK, INC. (“Esite”) is a Delaware  
11 corporation doing business as Esite, with its principal place of business at 7711  
12 O'Connor Blvd, Suite 416, Round Rock, TX 78681.

13 2.7. Plaintiff AUSREGISTRY GROUP PTY LTD. (“AusRegistry Group”)  
14 is an Australian Proprietary Limited Company with its principal place of business  
15 located at Level 6, 10 Queens Rd., Melbourne, Victoria, Australia.

16 2.8. Plaintiff \$ ! BID IT WIN IT, INC. (“BidItWinIt”) is a Minnesota  
17 corporation with its principal place of business at 5400 Vernon Ave. S, Suite 218,  
18 Minneapolis, MN 55436.

19 2.9. Defendant INTERNET CORPORATION FOR ASSIGNED NAMES  
20 AND NUMBERS (“ICANN”) is a California corporation with its principal place of  
21 business at 4676 Admiralty Way, Suite 330, Marina Del Rey, California 90292-  
22 6601. Defendant Verisign could not offer, and defendants eNom and NSI could not  
23 sell, WLS subscriptions but for ICANN’s approval of the WLS. ICANN has  
24 therefore aided and abetted the conduct of defendants Verisign, eNom and NSI  
25 alleged herein, and is responsible for same as a principal pursuant to California  
26 Penal Code section 31.

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

1 Road, Mountain View, California 94043.

2 2.11. Defendant NETWORK SOLUTIONS, INC. ("NSI") is a Delaware  
3 corporation registered to do business, and which does business, in the state of  
4 California, with its registered office located in the city and county of Los Angeles at  
5 818 West Seventh Street, Los Angeles, California 90017, with its principal place of  
6 business located at 505 Huntmar Park Drive, Herndon, Virginia, 20170-5139.  
7 Defendant Verisign acquired NSI in March 2000. Defendant Verisign sold 85% of  
8 NSI's registrar division in October 2003, and currently retains a 15% ownership  
9 interest in NSI's registrar division.

10 2.12. Defendant ENOM, INC. is a terminated Washington corporation with  
11 its principal place of business in Washington, but which regularly conducts business  
12 in Los Angeles, California. This lawsuit arises out of ENOM, INC.'s ability to sell  
13 domain names as a registrar pursuant to a Registrar Accreditation Agreement  
14 executed in Los Angeles County. The Washington Secretary of State records  
15 indicate that ENOM, INC. has been dissolved, and is no longer validly existing and  
16 in good standing.

17 2.13. Defendant ENOM FOREIGN HOLDINGS CORPORATION is a  
18 Washington corporation with its principal place of business in Washington.  
19 Plaintiffs are informed and believe, and on that basis allege, that ENOM FOREIGN  
20 HOLDINGS CORPORATION has assumed all liability, rights and obligations of  
21 Defendant ENOM, INC., or is an alter-ego of Defendant ENOM, INC., which has  
22 been dissolved, and is no longer validly existing and in good standing.  
23 Consequently, Plaintiffs sue ENOM FOREIGN HOLDINGS CORPORATION both  
24 for its own acts giving rise to the claims alleged herein, and as the alter-ego and  
25 successor-in-interest to the liability of ENOM, INC. Together, ENOM, INC. and  
26 ENOM FOREIGN HOLDINGS CORPORATION will be referred to herein as  
27 "eNOM" (in the singular form, though identifying both defendants).

28 2.14. Defendants NSI and eNom are agents of defendant Verisign.

1 Defendants NSI and eNom are each authorized by Verisign to accept "pre-orders"  
2 for WLS subscriptions, and each has agreed to sell WLS subscriptions on Verisign's  
3 behalf. Defendants NSI and eNom are each authorized to bind Defendant Verisign  
4 as Verisign's agent.

5 2.15. Plaintiffs are domain name registrars. Each Plaintiff is empowered to  
6 be a domain name registrar by virtue of a contract into which that Plaintiff entered  
7 with defendant ICANN. Said contract between ICANN and each respective  
8 Plaintiff provides that such contract is "made . . . at Los Angeles, California, USA."  
9 Additionally, said contract provides that disputes arising under or in connection with  
10 that contract shall be resolved in Los Angeles, California. Each Plaintiff owns at  
11 least one domain name in <.com> or <.net>, and is a consumer of domain names to  
12 that extent.

13 2.16. DOES 1-10, inclusive, are ICANN-accredited domain name registrars,  
14 each of which has agreed to sell WLS subscriptions on Verisign's behalf. The true  
15 names of defendants DOES 1 through 10, inclusive, are unknown to Plaintiffs, who  
16 therefore sue said defendants by such fictitious names. Plaintiffs are informed and  
17 believe, and on such information and belief allege, that each of the defendants sued  
18 herein as a DOE is legally responsible in some manner for the events and  
19 happenings alleged herein, and that the damages to Plaintiffs and members of the  
20 general public as herein alleged were proximately caused by such DOE Defendants'  
21 conduct. Plaintiffs will ask leave of this Court to amend this complaint to insert the  
22 true names and capacities of DOES 1-10 in place and instead of the fictitious names  
23 when the same become known to Plaintiffs.

### 24 25 **III. JURISDICTION AND VENUE**

26 3.1. This Court has jurisdiction over this action pursuant to  
27 28 U.S.C. § 1331, 28 U.S.C. § 1337, 15 U.S.C. § 26, and 15 U.S.C. § 57b.

28 3.2. This Court has personal jurisdiction over the defendants to this action

1 because they have each engaged in business transactions and wrongful conduct in  
2 the state of California and specifically in this judicial district, and the claims alleged  
3 herein arise out of those transactions and conduct. Additionally, each of the  
4 defendants has systematic and continuous contacts with the state of California.

5 3.3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and (c)  
6 because defendant ICANN is a corporation organized under the laws of the state of  
7 California, with its principal place of business in Los Angeles County, California.  
8 Defendants Verisign and NSI each maintain their registered office in Los Angeles,  
9 California. eNom is a corporation doing business in California, and this action  
10 arises out of wrongful acts committed by all defendants in this judicial district and  
11 which subject the defendants to personal jurisdiction here. Additionally, the contract  
12 between Plaintiffs and defendant ICANN that forms the basis of Plaintiffs' breach of  
13 contract claim against ICANN states that venue for any litigation concerning the  
14 contract will be a court located in Los Angeles, California, USA. Similarly,  
15 defendants Verisign, NSI, and eNOM have entered into contracts with ICANN,  
16 directly related to the claims alleged herein, providing for this Court as the exclusive  
17 venue for a lawsuit relating to the contract.

#### 18 IV. FACTS

##### 19 A. THE DOMAIN NAME SYSTEM

20 4.1. The Internet is an interconnected network of computer networks.

21 4.2. Each computer connected to the Internet has a unique 32 bit number  
22 assigned to it called an Internet protocol address (an "IP address"). The IP address  
23 is represented by four decimal numbers (octets) separated by periods. For example,  
24 the IP address identifying the computer which hosts the web site for defendant  
25 ICANN is 192.0.34.163.

26 4.3. The IP address system is an integral part of a communications protocol  
27 known as TCP/IP (*i.e.*, Transmission Control Protocol (TCP) and Internet Protocol  
28 (IP)) which was developed in part in the 1970s and integrated and completed in or



1 around 1982. Communications over the Internet are made possible in large part  
2 because of the development of the TCP/IP communication protocol.

3 4.4. In or around November 1983, the "domain name system" (or "DNS")  
4 was developed. The domain name system allows the use of user-friendly  
5 alphanumeric domain names, such as <example.com>, to identify computers on the  
6 Internet instead of harder-to-remember IP addresses. The domain name system  
7 operates through a series of databases that "resolve" or link domain names with the  
8 IP addresses with which they are associated.

9 **B. THE DOMAIN NAME HIERARCHY**

10 4.5. The DNS defines a hierarchical name space divided into zones, each of  
11 which has authority over the zones below it. The top zone is divided into top-level  
12 domains, or "TLDs". Each TLD is divided into second-level domains. Second-  
13 level domains can be further divided into third-level domains, and so on.

14 4.6. In the domain <www.example.com>, <.com> is the top-level domain,  
15 <example.com> is the second level domain, and <www.example.com> is the third  
16 level domain, also referred to as the "hostname." There can be any number of hosts  
17 named "www", but there can only be one host named "www" in <example.com>  
18 (or any particular second-level domain). Similarly, although there can only be one  
19 second-level domain <example.com>, there can be as many second-level domains  
20 named "example" as there are TLDs (e.g., <example.info>, <example.us>, etc.).

21 4.7. The top-level domain name space of the DNS includes fourteen  
22 "generic" top-level domains (e.g., <.com>, <.net>, <.biz>, etc.), two hundred forty-  
23 three (243) two-letter country code domains (e.g., <.uk>, <.cc>, etc.), and one top  
24 level domain (i.e., <.arpa>) reserved for Internet infrastructure purposes.

25 ///

26 ///

27 ///

28 ///

1 **C. REGISTRANTS, REGISTRIES, AND REGISTRARS**

2 4.8. A “registrant” is a person who registers a domain name. A registrant  
3 has the exclusive right to use the domain names it registers during the registration  
4 period.

5 4.9. A “registry” is an organization responsible for maintaining the  
6 authoritative database of domain registrations and domain name/IP address<sup>2</sup> pairs  
7 for a top-level domain space. This database is known as the “zone file”. The  
8 registry is often referred to as a “registry operator” and the zone file is referred to as  
9 the “registry”. There can be only one registry for each top-level domain. Verisign  
10 is the registry operator for the <.com> and <.net> TLDs.

11 4.10. A “registrar” acts as an interface between registrants and the registry  
12 operator, registering, renewing, transferring and deleting domain names on behalf of  
13 consumers by issuing the appropriate commands to the registry. Only registrars  
14 accredited by defendant ICANN can register domain names in <.com> and <.net>.  
15 Plaintiffs are ICANN-accredited registrars, as are defendants eNom and NSI.

16 4.11. From a sales standpoint, a registry sells domain names to registrars on  
17 a wholesale basis. Registrars, in turn, sell those domain names to registrants on a  
18 retail basis. Registrars bill and collect fees from registrants for domain names.  
19 Registries almost always charge per-domain fees to registrars.

20 **D. HISTORY OF gTLD<sup>3</sup> DOMAIN NAME ADMINISTRATION**

21 4.12. Today’s Internet has its origins in a network called the ARPANET,  
22 which was launched by the Department of Defense in 1969. ARPANET was  
23 superceded by NSFNET, a network developed by the National Science Foundation  
24 (the “NSF”) in 1990. NSFNET began allowing commercial activity in 1992, and  
25

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26 <sup>2</sup>The registry actually matches domain names with nameservers, which in turn match domain names  
27 with IP addresses, but that distinction is not relevant to this Complaint.

28 <sup>3</sup>gTLD means generic top-level domain (such as <.com> and <.net>), which is not to be confused  
with a ccTLD, a country code top-level domain (such as <.uk> or <.ca>).

1 thus evolved into today's Internet.

2 4.13. In 1993, NSF signed a cooperative agreement with defendant NSI  
3 under which NSI became the exclusive registrar for second-level domains in  
4 <.com>, <.net>, <.org>, and <.edu> , as well as the exclusive registry operator for  
5 each of those top-level domains. Pursuant to that agreement, NSI registered domain  
6 names in <.com> and <.net> (among other TLDs) to registrants on a first-come,  
7 first-served basis. NSI remained both registry operator and sole registrar in those  
8 TLDs until 1999.

9 4.14. On June 10, 1998, the Clinton administration issued a policy statement  
10 on electric commerce known as the "White Paper". The White Paper called upon  
11 the private sector to create a new, not-for-profit corporation to assume  
12 responsibility, over time, for the management of certain aspects of the DNS. The  
13 White Paper identified four specific functions to be performed by this new  
14 corporation, which included development of "policies for . . . the establishment of  
15 domain name registries and domain name registrars and the terms, including  
16 licensing terms, applicable to new and existing gTLDs and registries under which  
17 registries, registrars, and gTLDs are permitted to operate." The White Paper also  
18 articulated the fundamental policies that would guide United States participation in  
19 the transfer of DNS management responsibility to the private sector: ① stability;  
20 ② competition; ③ private, bottom-up coordination; and ④ representation.

21 4.15. The White Paper listed a number of tasks to be undertaken on a  
22 priority basis, including in particular the creation and organization of a new, not-for-  
23 profit corporation ("NewCo") to manage the DNS and the rapid introduction of  
24 competition in the provision of domain name registration services. The Department  
25 of Commerce committed to enter into an agreement with NSI by which NSI would  
26 agree to take specific actions, including commitments as to pricing and equal access,  
27 designed to permit the development of competition in domain name registration.

28 4.16. In fulfillment of the commitment expressed in the White Paper, on

1 October 7, 1998, the Department of Commerce and NSI entered into Amendment  
2 11 to their existing Cooperative Agreement. Among other things, Amendment 11  
3 provided for the development, deployment, and licensing by NSI (under a license  
4 agreement to be approved by the Department of Commerce) of a mechanism to  
5 allow multiple registrars to submit registrations for the gTLDs for which NSI acted  
6 as the registry (the "Shared Registration System," or "SRS").

7 **E. THE FORMATION OF DEFENDANT ICANN**

8 4.17. Defendant Internet Corporation for Assigned Names and Numbers was  
9 formed in September 1998. ICANN is a not for profit California corporation  
10 organized without members. According to its bylaws, the board of directors of  
11 ICANN controls it.

12 4.18. In November 1998, the Department of Commerce entered into a  
13 Memorandum of Understanding with ICANN that recognized ICANN as NewCo  
14 and specifically contemplated ultimate transition of management responsibility to  
15 ICANN. In the Memorandum of Understanding, ICANN expressly agreed to abide  
16 by principles of stability, competition, private, bottom-up coordination, and  
17 representation.

18 4.19. On September 28, 1999 the U.S. Department of Commerce, NSI, and  
19 ICANN announced a series of tentative agreements among them (including a  
20 Registrar Accreditation Agreement and a Registry-Registrar Agreement) concerning  
21 operation of the <.com>, <.net>, and <.org> top-level domains in a competitive  
22 environment. Those agreements were approved by ICANN's Board of Directors on  
23 November 4, 1999 and signed by ICANN, the Department of Commerce, and NSI  
24 on November 10, 1999.

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1 **F. DOMAIN NAME EXPIRATION AND DELETION**

2 4.20. As the total number of domain names registered in <.com> and <.net>  
3 has grown past thirty million, the pool of unregistered names<sup>4</sup> has been reduced  
4 accordingly. As early as 1999, news media were reporting a "shortage" of domain  
5 names in <.com>.

6 4.21. In April 1999, for example, in an article entitled "Domain Name List is  
7 Dwindling," *Wired News* reported:

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

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

15 The result: The once-fierce pace of domain name registration is slowing.  
16 In the last month, only about 100 new dictionary-word .com domains  
have been snatched up.<sup>5</sup>

17 4.22. As the number of registered domain names increases, not only the  
18 quantity but the quality of available unregistered names decreases.

19 4.23. The shortage of desirable domain names in <.com> and <.net> is  
20 alleviated to some degree by the number of registered domain names that expire  
21 because they are not renewed by their current registrants.

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23  
24  
25 <sup>4</sup>The pool of unregistered domain names is equal to all possible second-level domain names minus  
26 the sum of (i) registered domain names and (ii) domain names the registration of which is prohibited by law  
27 or policy (such as <example.com>, which is reserved for demonstration pursuant to RFC 2606). Because  
a domain name only exists as such if it appears in the registry, the phrase "unregistered domain names" is  
something of an oxymoron. It is used herein for simplicity nonetheless.

28 <sup>5</sup>McCullogh, Declan, *Domain Name List is Dwindling*, *Wired News*, April 14, 1999  
<http://www.wired.com/news/technology/0,1282,19117,00.html> (last accessed February 21, 2004).

1 4.24. Expired domain names<sup>6</sup> are a critical resource for registrars and  
2 consumers. Approximately 800,000 domain names expire each month and are  
3 returned, at least momentarily, to the pool of unregistered domains available for  
4 registration. In light of the shortage of desirable domain names, competition for  
5 expired domain names can be fierce.

6 **G. THE DOMAIN NAME DELETION PROCESS**

7 4.25. Domain names are registered for fixed periods from a minimum of one  
8 year to a maximum of ten years with most registrars, and up to 100 years with  
9 Defendant NSI, in one year increments.

10 4.26. As the end of the registration period (the "expiry date") approaches,  
11 the registrar associated with the domain name (the "sponsoring registrar") typically  
12 sends the registrant one or more reminders that the domain name will expire unless  
13 the domain name renewal fee is paid.

14 4.27. If the registrant renews the domain name, the registrar sends a  
15 command to the registry to extend the expiry date by the number of years for which  
16 the registrant has renewed. The domain name remains in active status until the next  
17 expiry date.

18 4.28. If the registrant does not renew the domain name by the expiry date,  
19 the registry automatically adds one year to the expiry date and debits the sponsoring  
20 registrar's account \$6.00 for the one-year renewal.

21 4.29. Although different registrars have different policies regarding  
22 expiration, most provide a "grace period" after the expiry date during which a  
23 domain name can be renewed and reactivated, albeit often at a higher fee. If the  
24 registrant renews the domain name during the grace period, the domain name returns  
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26 <sup>6</sup> "Expired domain names" is also an oxymoron. As used herein, "expired" domain names are  
27 assumed to have been deleted from the registry, and therefore do not exist as domain names. Although an  
28 expired domain name is technically no different from any other unregistered domain name, as a practical  
matter they are distinct. Among other things, the marketing tools employed in connection with expired  
domain names are inapplicable to other unregistered domain names.

1 to active status until the next expiry date.

2 4.30. If the registrant does not renew the domain within the grace period  
3 provided by the sponsoring registrar (if any), the sponsoring registrar sends a  
4 "delete" command to the registry within forty-five (45) days following the expiry  
5 date, and the registry credits the \$6.00 renewal fee back to the sponsoring  
6 registrar's account. The forty-five day period during which the sponsoring registrar  
7 may cancel a domain name and receive a credit for the registration fee is referred to  
8 as the "Auto-Renew Grace Period."

9 4.31. Upon receipt of a "delete" command, the registry places the domain  
10 name on Redemption Period (RP) status for thirty (30) days, during which it can be  
11 recovered by the registrant upon payment of a recovery fee determined by the  
12 sponsoring registrar (typically over \$100). This period is referred to as the  
13 "Redemption Grace Period." Domain names in RP status do not appear in the zone  
14 file (and thus cannot be accessed via the Internet). The RGP was implemented in  
15 January 2003 to prevent domain names from being lost as a result of unintentional  
16 non-renewal.

17 4.32. If the registrant does not redeem the domain name within the RGP, the  
18 registry changes the domain name to "Pending Delete" status, where it remains for  
19 five (5) days. When in Pending Delete status, the domain name's status cannot be  
20 changed by either a registrar or the registry, and the domain name will be deleted.  
21 On the sixth day after being placed on Pending Delete status, the domain name is  
22 deleted from the registry.

23 4.33. Domain names are deleted from the registry in a batch process that  
24 takes place once a day (the "Batch Delete"). Approximately 20,000 domain names  
25 are deleted each day in the Batch Delete. All registrars have equal access to deleted  
26 (*i.e.*, unregistered) domain names.

27 4.34. During a Batch Delete, many registrars compete to register expired  
28 domain names on behalf of their customers. Each competing registrar sends a series

1 of "add" commands to the registry for each of the domains it is attempting to  
2 register. The first competing registrar to have its command accepted for a given  
3 domain name registers that domain name. A desirable domain name that is deleted  
4 during a Batch Delete will often be re-registered within a few milliseconds of being  
5 deleted by the registry.

#### 6 **H. COMPETITION FOR EXPIRED DOMAIN NAMES**

7 4.35. Consumers who wish to obtain a domain name that is currently  
8 registered can choose from many different companies that will assist them in doing  
9 so. The various business models include fixed price, first-come-first-serve, auction,  
10 and brokering. The services that compete for expiring domain names are known as  
11 "backorder" services.

12 4.36. Many (if not most) ICANN-accredited domain name registrars offer  
13 backorder services in some form. There are typically at least 100 registrars  
14 competing to be the first to register desirable domain names as they are deleted from  
15 the registry.

16 4.37. Currently, each registrar providing backorder services offers its  
17 customers whatever services it thinks best, at whatever prices it chooses to set.  
18 Prices for domain names registered after being deleted in the Batch Delete can range  
19 from less than ten dollars to tens of thousands of dollars.

20 4.38. Registrars offering backorder services are in no way precluded from  
21 registering expired domain names, as all registrars have equal access to the entire  
22 pool of unregistered domain names, including expired domain names.

#### 23 **I. PLAINTIFFS' SERVICES**

24 4.39. Plaintiffs each offer a service to assist consumers in registering domain  
25 names immediately upon expiration. More than ninety percent (90%) of the domain  
26 name orders Plaintiffs receive from consumers relate to domain names that are  
27 scheduled to be deleted, rather than to active, currently-registered domain names.

28 4.40. Plaintiffs charge no annual or other fees for their services unless and



1 until a domain name is registered on the customer's behalf, in which case the  
2 customer is charged a \$60 registration fee. If multiple orders have been placed for  
3 the same domain name, the domain name is sold at an auction in which only those  
4 who placed backorders are allowed to participate. Because plaintiffs do not charge  
5 their customers unless the customers obtain a domain, customers can (and do) place  
6 backorders on dozens if not hundreds of domain names, thereby greatly increasing  
7 the likelihood that they will obtain at least one of the domain names they order.

8 4.41. Plaintiffs make no guarantee that any backorder will be successful, and  
9 plaintiffs' customers understand that plaintiffs are competing with other registrars to  
10 be the first to register expired domain names. Plaintiffs' auction model insures that  
11 each domain name successfully registered will ultimately be registered to the person  
12 who places the highest value on it based on their own business needs.

13 4.42. Plaintiffs also offer their customers, at no charge, various valuable  
14 services relating to expired domain names. Such services include, but are not  
15 limited to, daily e-mail notification of soon-to-be-available domain names and e-mail  
16 notification of soon-to-be-available domain names containing user specified  
17 keywords.

18 4.43. Currently, there are several models for the sale of expired domain  
19 names. One company<sup>7</sup> charges customers an annual subscription fee of  
20 approximately \$70 per domain name before it expires. Other of Plaintiffs'  
21 competitors charge lower subscription fees, or one-time fees, or charge high  
22 recurring fees to monitor a large number of domain names. Consumers now have  
23 substantial choice in domain name back-ordering. The WLS will eliminate that  
24 choice.

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28 <sup>7</sup>Specifically, SnapNames, which is a company providing services similar to those offered by  
Plaintiffs. Plaintiffs have no relation to SnapNames and believe that its service is illusory similar to the  
WLS. Verisign has agreed to license SnapNames's technology to power the WLS,

1     **J.     THE PROPOSED VERISIGN WAIT LISTING SERVICE**

2             4.44. Defendant Verisign operates the <.com> registry by virtue of having  
3     acquired NSI in March 2000. In October 2003, Verisign sold 85% of the NSI  
4     registrar to a private investment group, but retained the NSI registry (and 15% of the  
5     NSI registrar).

6             4.45. Verisign cannot offer registry services in <.com> and <.net> without  
7     the approval of ICANN and the Department of Commerce. In March 2002,  
8     Verisign requested ICANN's permission to launch the WLS.

9             4.46. If the WLS is implemented, accredited registrars who choose to offer  
10    the WLS will be able to subscribe (on behalf of customers) to currently registered  
11    <.com> and <.net> domain names. Only one WLS subscription will be accepted for  
12    each domain name, and each WLS subscription will be for a one-year period. WLS  
13    subscriptions will be accepted on a first-come/first-served basis.

14            4.47. Verisign will charge the registrar a \$24.00 fee for each WLS  
15    subscription placed. Consequently, Verisign will generate \$30.00 per domain name,  
16    instead of the \$6.00 fee it currently generates. The registrar's fee to its customer  
17    will be established by the registrar, but is estimated to be around \$40.00.

18            4.48. Before deleting registered domain names from the registry, Verisign  
19    will first check to determine whether a subscription has been placed for the name. If  
20    there is a reservation, Verisign will not delete the name, but instead will assign the  
21    name to the registrar who placed the reservation, charging the \$6.00 annual  
22    registration fee to the registrar. The registrar will then register the name to its  
23    customer, charging a fee determined by agreement of the registrar and customer.

24            4.49. If there is no reservation, Verisign will delete the name from the  
25    registry, so that the name is returned to the pool of names available for re-  
26    registration through all registrars on a first-come, first-served basis.

27            4.50. The WLS will initially be offered for a one-year trial period. At the end  
28    of the year, ICANN and Verisign will evaluate whether the service should be

1 continued. In the event the WLS is not continued, subscriptions extending beyond  
2 the trial period will be honored. Effectively, the one-year trial will last for two years  
3 (to accommodate one-year subscriptions purchased on the last day of the one year  
4 trial). Although Verisign will allow only one WLS subscription per domain name  
5 during the trial period, it has expressed its desire to offer a "deeper subscription  
6 queue"<sup>8</sup> in the future (e.g., second in line, third in line, etc.).

7 **K. CONSUMER CHOICE IN EXPIRED DOMAIN NAMES WILL END**

8 4.51. If the WLS is implemented, the only expired domain names that will be  
9 deleted from the registry are those for which no one is willing to pay the  
10 (approximate) \$40 retail price of a WLS subscription.

11 4.52. Verisign's control of the registry precludes any possibility of  
12 competition in WLS services. No registrar will be able to offer a service that  
13 charges a fee only if it succeeds in registering a domain name on the customer's  
14 behalf, or that charges a one-time fee rather than an annual fee; nor will registrars be  
15 allowed to auction expired domain names in a fair and equitable manner. By  
16 imposing an annual \$24 per domain name subscription fee, Verisign precludes those  
17 business models.

18 4.53. If the WLS is implemented, Plaintiffs will be prevented from offering  
19 the services they currently provide. Several of the Plaintiffs derive their entire  
20 revenue from services relating to expired domain names, and will be put out of  
21 business if the WLS is implemented. Others, if not put out of business, will lose  
22 their primary source of revenue and the entire goodwill associated with their  
23 businesses and business models.

24 4.54. For consumers, the replacement of a "pay if successful" model with an  
25 annual subscription model is a significant loss. The "pay if successful" model is the  
26 market's successful attempt at accommodating the fact that most currently  
27

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28 <sup>8</sup>Domain Name Wait Listing Service proposal by Defendant Verisign dated January 28, 2002, at  
page 6.

1 registered domains will be renewed, and that backorders on currently-registered  
2 names are therefore of inherently uncertain value (and of no value at all with respect  
3 to certain domain names).

4 **L. VERISIGN WILL PROVIDE NO VALUE TO CONSUMERS PURCHASING WLS**

5 4.55. If WLS subscriptions are distributed randomly among all domain  
6 names, only about 23% will result in the consumer obtaining the domain name to  
7 which such consumer subscribes, because only 23% of domain names are deleted  
8 each year.

9 4.56. But, WLS subscriptions are unlikely to be distributed randomly among  
10 all domain names. Rather, WLS subscriptions are likely to be purchased on the  
11 most desirable domain names, and are unlikely to be purchased on the least  
12 desirable domain names. Shorter domain names are commonly considered more  
13 desirable than longer domain names, and domain names that are words in the  
14 English language are commonly considered more desirable than domain names that  
15 are not words in the English language.

16 4.57. The likelihood that a domain name will not be renewed from the  
17 registry varies according to (among other things) the number of years that it has  
18 already been registered, the number of characters it contains, and whether or not it is  
19 a word in the English language. In general, the longer a domain name has already  
20 been registered, and the shorter it is, the less likely it is to be allowed to expire.  
21 Domain names that are words in the English language are less likely to be allowed  
22 to expire than domain names that are not.

23 4.58. Less than five percent (5%) of domain names that have been registered  
24 for three years or more, and are less than five characters (not including the TLD), or  
25 that are words in the English language, are allowed to expire. Consequently, of  
26 WLS subscriptions on the most desirable domain names, ninety five percent (95%)  
27 of consumers will never obtain the domain names to which they subscribe.

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1   **M.    ICANN’S CONSIDERATION OF THE WLS PROPOSAL**

2           4.59. Verisign first made its WLS proposal in December, 2001 by sending it  
3 to the ICANN Registrar Constituency, which represents the stakeholders who  
4 would be most directly impacted by the WLS proposal. The reaction from the  
5 members of the Registrar Constituency was overwhelmingly negative. On  
6 March 10, 2002, the Registrars Constituency adopted a resolution opposing  
7 implementation of the WLS and urging ICANN to withhold permission for its  
8 implementation.

9           4.60. Verisign then submitted the WLS proposal to the ICANN board, in the  
10 form of a request to amend Appendix G of the <.com> and <.net> registry  
11 agreements to allow it to offer the service. On April 17, 2002, ICANN general  
12 counsel Louis Touton, in an analysis of the WLS for the Board of Directors, noted  
13 that “ICANN has not yet developed a well-defined procedure for considering  
14 requests by registry operators to amend Appendix G to allow charging for an  
15 additional registry service.” Recognizing that “action on [Verisign]’s proposal may  
16 serve as a model for future actions,” Mr. Touton cautioned the Board that “it is  
17 important to carefully consider the process that should be followed.”

18           4.61. After noting that the registry operator is in a sole-source position in  
19 providing registry services and that its position as such “carries with it the potential  
20 for various types of harm to the legitimate interests of others,” Mr. Touton  
21 concluded that “[u]nder [the] circumstances, and given the existing conceptual  
22 approach of ICANN to seek consensus where possible, it is my judgment that *the*  
23 *Board should not seek to decide how to deal with this request without invoking the*  
24 *formal consensus development processes* currently established within ICANN”  
25 (emphasis added).

26           4.62. On April 22, 2002, the Board considered Mr. Touton’s analysis, and  
27 resolved to solicit community comment on Verisign’s request. The Board also  
28 requested the Names Council to coordinate within the Domain Name Supporting

1 Organization (“DNSO”), an ICANN constituency concerned with DNS issues, a  
2 task force (the “Task Force”) to prepare and submit its recommendations regarding  
3 the WLS.

4 4.63. The Task Force consulted the various constituents whose interests  
5 would be impacted by the WLS and determined that the *consensus was*  
6 *overwhelmingly opposed* to implementing the WLS. On July 12, 2002, the Task  
7 Force recommended that the Board “*reject* Verisign’s request to amend its  
8 agreement to enable it to introduce its proposed WLS,” and “*reject* Verisign’s  
9 request to trial the WLS for 12 months.” (emphasis added).

10 4.64. On August 23, 2002, despite the opposition of the Registrar  
11 Constituency, the Task Force, and the vast majority of constituents who expressed  
12 their opinions on the ICANN web site, the ICANN Board adopted a resolution  
13 authorizing ICANN’s President and General Counsel to negotiate with VeriSign for  
14 the establishment of WLS.

15 4.65. The ICANN Board approved the amendments necessary for Verisign  
16 to offer the WLS on March 6, 2004.

17 4.66. Plaintiffs are informed and believe that the Department of Commerce  
18 intends to “rubber stamp” the WLS proposal without giving it meaningful  
19 substantive consideration, and that Verisign will not be materially delayed in  
20 implementing the WLS as a result of the requirement that it secure Department of  
21 Commerce approval.

22 4.67. Plaintiffs are informed and believe, and on that basis allege, that  
23 Verisign plans to launch the WLS no more than thirty (30) days after the  
24 Department of Commerce and the ICANN Board give final approval of the  
25 amendments to Appendix G to the registry agreements.

26 4.68. Defendants eNom and NSI are currently advertising the WLS and are  
27 accepting “pre-orders” for WLS subscriptions on their Web sites.

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1  
2 **V. FIRST CAUSE OF ACTION**  
3 **UNFAIR TRADE PRACTICES ACT**  
4 **BUSINESS & PROFESSIONS CODE § § 17200 *ET SEQ.***  
5 **(Against All Defendants)**

6 5.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through  
7 4.68 above as though fully set forth herein.

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

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

15 5.4. The activity proscribed under Business & Professions Code § 17200  
16 includes anything that can properly be called a business practice and that at the  
17 same time is forbidden by law.

18 5.5. California Penal Code § 319 defines a lottery as follows:

19 "A lottery is any scheme for the disposal or distribution of property by  
20 chance, among persons who have paid or promised to pay any valuable  
21 consideration for the chance of obtaining such property or a portion of it,  
22 or for any share or any interest in such property, upon any agreement,  
23 understanding, or expectation that it is to be distributed or disposed of by  
24 lot or chance, whether called a lottery, raffle, or gift-enterprise, or by  
25 whatever name the same may be known."

26 5.6. California Penal Code § 320 provides that "Every person who  
27 contrives, prepares, sets up, proposes, or draws any lottery, is guilty of a [crime]."

28 5.7. California Penal Code § 321 criminalizes the act of selling or otherwise  
conveying the chance to win a prize in a lottery. Specifically, Penal Code § 321  
provides:

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

1 5.8. California Penal Code § 322 makes it a crime for any person to merely  
2 assist with a lottery. Specifically, Penal Code § 322 provides that:

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

7 5.9. Lotteries are illegal in California and in every other state in this  
8 country<sup>9</sup>.

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



1           5.10. The WLS constitutes a “lottery” pursuant to Penal Code § 319.

2 Domain names are a form of intangible personal property, and the WLS will allocate  
3 domain names to certain WLS subscribers. This constitutes “distributing property”.

4           5.11. Defendants’ WLS distribution of domain names is by chance.

5           5.12. Whether a WLS subscriber will be awarded the domain name  
6 subscribed is not within the control of the WLS subscriber and will not depend on  
7 the WLS subscriber’s skill.

8           5.13. WLS subscribers will pay ample consideration for a chance to obtain  
9 property in this manner; defendants eNom and NSI are accepting “pre-orders” for  
10 WLS subscriptions at \$35 and \$39 annually, respectively. Each of the elements of  
11 an illegal lottery is therefore established.

12           5.14. The WLS is a business practice.

13           5.15. As described above, the WLS is unlawful and unfair.

14           5.16. Neither the illegal WLS lottery enterprise, nor any part of it, constitutes  
15 a charitable raffle.

16           5.17. The Defendants and each of them have contrived, prepared, set up,  
17 proposed, and/or drawn the lottery in the illegal WLS lottery enterprise.

18 Accordingly, the Defendants and each of them are guilty of a crime pursuant to  
19 Penal Code § 320.

20           5.18. The Defendants and each of them have sold or transferred to would-be  
21 registrants the chance to register a currently-registered domain name, and  
22 understood or represented the same to be such a chance, depending upon the  
23 decision of the current registrant to renew the domain name, which Defendants do  
24 not control. Consequently, the Defendants, and each of them, are guilty of a crime  
25

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26 Wn. App. 455, 628 P.2d 829 (1980); **West Virginia**: W.Va. Code §§29-22A-1, 61-10-11 (2000); *State ex.*  
27 *Rel. Mountaineer Park, Inc. v. Polan*, 190 W.Va. 276, 438 S.E.2d 308 (1993); **Wisconsin**: Wis. Stat.  
28 §§945.01(5)(a), (b), 945.02 (2000); **Wyoming**: Wyo. Stat. Ann §6-7-101(a)(iii) (1998); **District of Columbia**:  
D.C. Code §22-1501 (1999); *National Conference on Legalizing Lotteries, Inc. v. Farley*, 68 App. D.C. 319,  
96 F.2d 861, 863 (D.C.Cir. 1938).

1 pursuant to Penal Code § 321.

2 5.19. The Defendants and each of them have aided or assisted in setting up,  
3 managing, or drawing the lottery in the WLS lottery enterprise. Thus, the  
4 Defendants, and each of them, are guilty of a crime pursuant to Penal Code § 322.

5 5.20. By engaging in the conduct alleged herein, the Defendants, and each of  
6 them, are liable to Plaintiffs and members of the general public for violating  
7 Business & Professions Code § 17200 *et seq.*

8  
9 **VI. SECOND CAUSE OF ACTION**  
10 **UNFAIR TRADE PRACTICES ACT**  
**BUSINESS & PROFESSIONS CODE § § 17200 ET SEQ.**  
**(Against Verisign, eNom, NSI, and DOES 1-10, Inclusive)**

11 6.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through  
12 5.20 above as though fully set forth herein.

13 6.2. Plaintiffs assert this cause of action on their own behalf and on behalf  
14 of the general public, acting as a private attorney general under California's Unfair  
15 Trade Practices Act, California Business & Professions Code § § 17200 *et seq.*

16 6.3. The activity proscribed under Business & Professions Code § 17200  
17 includes anything that can properly be called a business practice and that at the  
18 same time is forbidden by law.

19 6.4. The Consumers Legal Remedies Act, Civ. Code § 1750 *et seq.*,  
20 provides in relevant part:

21 The following unfair methods of competition and unfair or deceptive acts  
22 or practices undertaken by any person in a transaction intended to result  
23 or which results in the sale or lease of goods or services to any consumer  
24 are unlawful:

25 (17) Representing that the consumer will receive a rebate, discount, or  
26 other economic benefit, if the earning of the benefit is contingent on an  
27 event to occur subsequent to the consummation of the transaction.

28 Civ. Code § 1770.

6.5. Defendant Verisign, both itself and acting by and through the  
Participating Registrars, is representing to consumers that they will receive an

1 economic benefit (*i.e.*, the right to register a valuable domain name), the earning of  
2 which is contingent on an event to occur subsequent to the consummation of the  
3 transaction (*i.e.*, the unlikely event the current registrant abandons the subscribed  
4 domain name, which occurs after the WLS subscription is purchased).

5 6.6. In its advertising for its "Next Registration Rights" service, NSI states:

6 Next Registration Rights is a new service from Network Solutions that  
7 lets you order a .com or .net domain name that is already registered. *If the*  
8 *domain name becomes available during your subscription period*, the  
9 registration is yours.

10 (Emphasis added).

11 6.7. Similarly, in its advertising for its "First Dibs" service, eNom states:

12 With eNom's First Dibs service, you can back-order ANY .COM or .NET  
13 domain name, even if it is currently registered by someone else. We  
14 monitor the status of your desired domain name 24 hours a day, 365 days  
15 a year and *if the domain becomes available*, since you have First Dibs,  
16 you become the registered owner of the domain name. It's that simple.

17 (Emphasis added).

18 6.8. The advertisements described above, which are published by their  
19 respective authors on the Internet, are intended to result in the sale of WLS  
20 subscriptions to consumers.

21 6.10. The acts alleged herein are unfair and detrimental to consumers, and  
22 have no countervailing benefit for competition.

23 6.11. By engaging in the conduct alleged herein, Verisign, eNom and NSI  
24 are violating, or unless enjoined will violate, the Consumers Legal Remedies Act,  
25 Civ. Code § 1750 *et. seq.*, and said violation constitutes a violation of Business &  
26 Professions Code § 17200 *et seq.* as a result.

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1  
2 **VII. THIRD CAUSE OF ACTION**  
3 **UNFAIR TRADE PRACTICES ACT**  
4 **BUSINESS & PROFESSIONS CODE § § 17200 *ET SEQ.***  
5 **(Against eNom)**

6 7.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through  
7 6.11 above as though fully set forth herein.

8 7.2. Plaintiffs assert this cause of action on their own behalf and on behalf  
9 of the general public, acting as a private attorney general under California's Unfair  
10 Trade Practices Act, California Business & Professions Code § § 17200 *et seq.*

11 7.3. Business & Professions Code § 17200 imposes a duty to avoid making  
12 false or misleading statements of fact to the public when marketing, soliciting,  
13 advertising, or otherwise inducing the public to enter into any obligation.

14 7.4. False and misleading statements of fact include omissions of material  
15 fact which, by the exercise of reasonable care, should be known to affect the  
16 average consumer's decision as to whether to enter into such obligation.

17 7.5. As a business that is advertising, promoting, and soliciting the  
18 opportunity for potential registrants to purchase WLS subscriptions, eNom has an  
19 obligation to fully disclose to potential subscribers all material facts which would  
20 reasonably affect the potential registrants' decision as to whether to purchase a  
21 WLS subscription.

22 7.6. Defendant eNom is currently advertising to consumers, and taking  
23 "pre-orders" for "First Dibs", eNom's branding of the Verisign WLS service.  
24 Nowhere in any part of eNom's advertising, or elsewhere in the sales process, does  
25 eNom disclose the likelihood that a subscriber will obtain the domain name to which  
26 it subscribes.

27 7.7. eNom expressly disclaims any guarantee that any particular WLS  
28 subscription will be available when the service launches. Indeed, eNom advises its  
customers that it is not obligated to even attempt to obtain WLS subscriptions on the  
customer's behalf when the WLS launches, and may claim any of the domain names

1 requested by consumers as eNOM's own should it choose to do so:

2 When VeriSign's Wait List Service ("WLS") goes live and begins  
3 accepting orders from the public, eNom will attempt to acquire the WLS  
4 subscription on some or all of the domain names which the ETPs bid on.  
5 If eNom succeeds in acquiring a WLS subscription with respect to one of  
6 these domains, then eNom will award the First Dibs subscription to the  
7 highest bidder unless eNom had listed the domain name itself, in which  
8 case eNom will award itself the First Dibs subscription.

6 7.8. Orders for "First Dibs" subscriptions cannot be cancelled, and by  
7 placing an order the customer authorizes eNom to charge his credit card if the  
8 subscription sought is available.

9 7.9. Although eNom fails to disclose the likelihood that a First Dibs  
10 subscription will be successful, the tone of its advertising certainly suggests that  
11 optimism would be appropriate:

12 If you were given the opportunity to have ANY domain name, which  
13 name would you choose?

14 7.10. eNom's express and implied misrepresentations and omissions of  
15 material fact are, or by the exercise of reasonable care should be, known to eNom to  
16 affect the average consumer's decision as to whether to purchase a WLS  
17 subscription.

18 7.11. For example, eNom's failure to disclose the likelihood that a WLS  
19 subscription will be successful creates a false assumption in the mind of consumers  
20 that WLS subscriptions will result in the actual registration of domain names.

21 7.12. The truth that eNOM should disclose to consumers is that most  
22 subscriptions will not result in the actual registration of any domain name.

23 7.13. eNom's failure to disclose such material facts in its advertisements,  
24 solicitations, promotions, and marketing for WLS subscriptions constitutes false and  
25 misleading statements to the public.

26 7.14. Consumers are likely to be deceived by the acts and omissions  
27 described herein, which are unfair and deceptive and have no countervailing benefit  
28 for competition.

1        7.15. By engaging in the conduct alleged herein, eNom is violating, and  
2 unless enjoined will continue to violate, Business & Professions Code § 17200 *et*  
3 *seq.*, and consumers and Plaintiffs have been and will continue to be harmed as a  
4 result.

5  
6                    **VIII. FOURTH CAUSE OF ACTION**  
7                    **UNFAIR TRADE PRACTICES ACT**  
8                    **BUSINESS & PROFESSIONS CODE § § 17200 *ET SEQ.***  
9                    **(Against Verisign and NSI)**

10        8.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through  
11 7.15 above as though fully set forth herein.

12        8.2. Plaintiffs assert this cause of action on their own behalf and on behalf  
13 of the general public, acting as a private attorney general under California's Unfair  
14 Trade Practices Act, California Business & Professions Code § § 17200 *et seq.*

15        8.3. Business & Professions Code § 17200 imposes a duty to avoid making  
16 false or misleading statements of fact to the public when marketing, soliciting,  
17 advertising, or otherwise inducing the public to enter into any obligation.

18        8.4. False and misleading statements of fact include omissions of material  
19 fact which, by the exercise of reasonable care, should be known to affect the  
20 average consumer's decision as to whether to enter into such obligation.

21        8.5. As businesses advertising, promoting, and soliciting the opportunity for  
22 potential registrants to purchase WLS subscriptions, Verisign and NSI have the  
23 obligation to fully disclose to potential subscribers all material facts which would  
24 reasonably affect the potential registrants' decision as to whether to purchase a WLS  
25 subscription.

26        8.6. Defendant NSI is currently advertising to consumers, and taking "pre-  
27 orders" for "Next Registration Rights", NSI's branding of the Verisign WLS service.  
28 Nowhere in any part of NSI's advertising, or elsewhere in the sales process, does  
NSI disclose the likelihood that a subscriber will obtain the domain name to which it  
subscribes.

1        8.7. The pre-orders cannot be cancelled, and by placing an order the  
2 customer authorizes NSI to charge its credit card if the WLS subscription sought is  
3 available.

4        8.8. Defendant Verisign, on its Web site, provides sample sales and  
5 marketing materials such as Web site pages and product information sheets to  
6 registrars who wish to sell WLS subscriptions, and that are intended to be used by  
7 such registrars in soliciting consumers to purchase WLS subscriptions. The sales  
8 and marketing materials do not include any disclosure of the likelihood that a WLS  
9 subscription will succeed. In addition, in the materials, WLS subscriptions are  
10 presented in such a way that they are virtually indistinguishable from actual domain  
11 registrations.

12        8.9. NSI expressly disclaims any guarantee that any particular WLS  
13 subscription will be available when the service launches.

14        8.10. Defendant NSI, on its Web site <nextregistrationrights.com>,  
15 represents that "[t]his new service is superior to traditional back-order services,  
16 which are not administered by the .com/.net registry and frequently accept more  
17 than one name per backorder."

18        8.11. The factual representation that the service is "superior" is material and  
19 is misleading, given that Plaintiffs do not charge for their services unless they  
20 register a domain name on the customer's behalf, whereas NSI will charge \$35 per  
21 year, per domain regardless of whether it obtains the subscribed domain name.

22        8.12. The representations and omissions as alleged herein are likely to  
23 deceive consumers and cause harm to plaintiffs including loss of goodwill.

24        8.13. For example, defendants' failure to disclose the likelihood that a WLS  
25 subscription will be successful creates a false assumption in the mind of consumers  
26 that WLS subscriptions will result in actual domain name registrations.

27        8.14. The truth that Verisign and NSI fail to disclose, but should disclose, is  
28 that most WLS subscriptions will not result in the registration of any domain name.

1 8.15. NSI and Verisign's failure to disclose such material facts in their  
2 respective advertisements, solicitations, promotions, and marketing for WLS  
3 subscriptions constitutes false and misleading statements to the public.

4 8.16. Consumers are likely to be deceived by the acts and omissions  
5 described herein, which are unfair and deceptive and have no countervailing benefit  
6 for competition.

7 8.17. By engaging in the conduct alleged herein, NSI and Verisign are  
8 violating, and unless enjoined will continue to violate, Business & Professions Code  
9 § 17200 *et seq.*, and consumers and Plaintiffs have been and will continue to be  
10 harmed as a result.

11  
12 **IX. FIFTH CAUSE OF ACTION**  
13 **UNFAIR TRADE PRACTICES ACT**  
14 **BUSINESS & PROFESSIONS CODE § § 17200 *ET SEQ.***  
15 **(Against All Defendants)**

16 9.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through  
17 8.17 above as though fully set forth herein.

18 9.2. Plaintiffs assert this cause of action on their own behalf and on behalf  
19 of the general public, acting as a private attorney general under California's Unfair  
20 Trade Practices Act, California Business & Professions Code § § 17200 *et seq.*

21 9.3. California Business & Professions Code § 17200, *et seq.* declares  
22 unfair competition unlawful and defines unfair competition as, *inter alia*, "any  
23 unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue  
24 or misleading advertising . . ."

25 9.4. Verisign, through eNom and NSI, is accepting WLS subscriptions  
26 without regard to whether the subscribed domain name is due to expire during the  
27 subscription period.

28 9.5. Verisign does not suggest that consumers be advised to check the  
expiration date of any domain for which they are purchasing a WLS subscription.

9.6. ICANN approved the WLS for a one-year trial without requiring



1 Verisign to disclose (or to require registrars to disclose) that consumers may not  
2 have the opportunity to renew their WLS subscriptions after the one-year trial  
3 period.

4 9.7. By selling WLS subscriptions that *cannot* result in a domain name  
5 (because the expiration date of the domain name falls later than the trial subscription  
6 period), Verisign and its agents eNom and NSI are defrauding consumers.

7 9.8. By selling WLS subscriptions (through the Participating Registrars),  
8 Verisign is impliedly representing that a WLS subscriber has a likelihood of  
9 obtaining the subscribed domain name as a result of the WLS subscription. In  
10 connection with WLS subscriptions that cannot result in the subscriber obtaining the  
11 domain name (among other WLS subscriptions) this representation will be false, and  
12 Verisign and the Participating Registrars know, or should know, that it will be false.

13 9.9. Consumers are likely to be deceived by the acts and omissions  
14 described herein, which are unfair and deceptive.

15 9.10. By engaging in the conduct alleged herein, defendants are liable to  
16 Plaintiffs and members of the general public for violating Business & Professions  
17 Code § 17200 *et seq.*

18  
19 **X. SIXTH CAUSE OF ACTION**  
20 **UNFAIR TRADE PRACTICES ACT**  
**BUSINESS & PROFESSIONS CODE § § 17200 ET SEQ.**  
**(Against Verisign, eNom and NSI)**

21 10.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through  
22 9.10 above as though fully set forth herein.

23 10.2. Plaintiffs assert this cause of action on their own behalf and on behalf  
24 of the general public, acting as a private attorney general under California's Unfair  
25 Trade Practices Act, California Business & Professions Code § § 17200 *et seq.*

26 10.3. California Business & Professions Code § 17200, *et seq.* declares  
27 unfair competition unlawful and defines unfair competition as, *inter alia*, "any  
28 unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue

1 or misleading advertising . . .”

2 10.4. Defendants eNom and NSI are currently accepting “pre-orders” for  
3 WLS subscriptions. Said subscriptions are being advertised by eNom and NSI as,  
4 among other things, “protection” against inadvertent loss of domain names.

5 10.6. Since the implementation of the Redemption Grace Period in <.com>  
6 and <.net> on January 25, 2003, registrants have at least a thirty (30) day period  
7 after the expiry date during which they can recover their domain names. During the  
8 Redemption Grace Period, neither the Web site nor any e-mail addresses associated  
9 with the domain name are operational, thus giving registrants clear notice that their  
10 domain name requires attention.

11 10.7. Domain names can only be deleted from the registry by the sponsoring  
12 registrar or, if all grace periods have elapsed, by the registry.

13 10.8. Plaintiffs are informed and believe, and on that basis allege, that  
14 defendant Verisign originated, authorized, approved, or was otherwise involved in  
15 the decision to market WLS subscriptions to domain name owners as a form of  
16 protection.

17 10.10. By causing registrars to represent that domain names need to be  
18 “protected” in this manner, Defendants are intentionally inculcating an unreasonable  
19 fear among domain name registrants regarding the likelihood of “unintentional  
20 expiration” and other harm that might befall a domain name at its registrar’s (or  
21 registry’s) hand. For the price of a single year’s WLS subscription, a registrant  
22 could renew a domain for three or more years, and in the event a domain name  
23 “unintentionally expires,” the registrant has ample time to retrieve it.

24 10.11. NSI is currently offering to consumers the ability to register domain  
25 names for one hundred years. There are no circumstances under which it would be  
26 fair to sell an unknowing WLS subscriber a subscription on a domain that is not  
27 scheduled to be deleted until 2104.

28 10.12. By selling WLS subscriptions to domain name holders (through the

1 Participating Registrars), Defendants are impliedly representing that there is a benefit  
2 to be obtained from doing so, and therefore that there is a reasonable likelihood that  
3 a registrant will need such protection. In fact, the likelihood of inadvertent deletion  
4 is impossibly low, and Defendants' representation is false. The defendants know, or  
5 should know, that it is false.

6 10.13. The acts and omissions described herein are unfair to consumers.

7 10.14. By engaging in the conduct alleged herein, Verisign, eNom and NSI  
8 are liable to Plaintiffs and members of the general public for violating Business &  
9 Professions Code § 17200 *et seq.*

10  
11 **XI. SEVENTH CAUSE OF ACTION**  
12 **UNFAIR TRADE PRACTICES ACT**  
13 **BUSINESS & PROFESSIONS CODE § § 17200 *ET SEQ.***  
14 **(Against All Defendants)**

15 11.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through  
16 10.14 above as though fully set forth herein.

17 11.2. Plaintiffs assert this cause of action on their own behalf and on behalf of  
18 the general public, acting as a private attorney general under California's Unfair  
19 Trade Practices Act, California Business & Professions Code § § 17200 *et seq.*

20 11.3. California Business & Professions Code § 17200, *et seq.* declares unfair  
21 competition unlawful and defines unfair competition as, *inter alia*, "any unlawful,  
22 unfair or fraudulent business act or practice and unfair, deceptive, untrue or  
23 misleading advertising . . ."

24 11.4. By offering to sell an interest in property, a seller impliedly represents  
25 that he has good and marketable title in the property he sells.

26 11.5. Domain names are a form of intangible personal property.

27 11.6. By registering a domain name in the registry, registrars grant Verisign a  
28 limited, non-transferable, non-exclusive license to, among other data, the domain  
name. The Registry-Registrar Agreement entered into between each ICANN-  
accredited registrar provides in relevant part :

1 2.5. License. Registrar grants VGRS as Registry a non-exclusive  
2 non-transferable limited license to the data elements consisting of the  
3 Registered Name, the IP addresses of nameservers, and the identity of the  
registering registrar for propagation of and the provision of authorized  
access to the TLD zone

4 11.7. Verisign's agreements with ICANN (to which Plaintiffs are not parties)  
5 similarly restricts Verisign's rights with regard to the domain names contained in the  
6 registry:

7 12. Rights in Data. Except as permitted by the Registry-Registrar  
8 Agreement, Registry Operator shall not be entitled to claim any intellectual  
9 property rights in data in the registry supplied by or through registrars. In  
10 the event that Registry Data is released from escrow under Section 9, any  
rights held by Registry Operator in the data shall automatically be licensed  
on a non-exclusive, irrevocable, royalty-free, paid-up basis to ICANN or  
to a party designated in writing by ICANN.

11 11.8. Defendant Verisign, through the Participating Registrars, is selling (in  
12 the guise of non-refundable, non-cancellable "pre-orders") contingent future interests  
13 in property in which neither Verisign nor the Participating Registrars has any  
14 ownership interest whatsoever.

15 11.9. Verisign has no authority to refuse to delete any expired domain name  
16 from the registry, much less to refuse to do so at the instruction of anyone willing to  
17 pay it \$24 per year. Verisign's WLS is no different than any other instance one can  
18 imagine in which a bailee or trustee decides to raffle off the property with which he  
19 has been entrusted, whether that be the valet parking attendant raffling off diners'  
20 cars or the coat check attendant raffling off their furs.

21 11.10. Neither ICANN nor the Department of Commerce has authority to  
22 approve Verisign's attempt to leverage its *de facto* control into *de jure* rights.

23 11.11. The acts and omissions described herein are unfair to consumers, and  
24 are likely to mislead consumers into believing that purchasing a WLS subscription  
25 gives them a legitimate right in a domain name, which it does not.

26 11.12. By engaging in the conduct alleged herein, Defendants are liable to  
27 Plaintiffs and members of the general public for violating Business & Professions  
28 Code § 17200 *et seq.*

1  
2 **XII. EIGHTH CAUSE OF ACTION**  
3 **UNFAIR TRADE PRACTICES ACT**  
4 **BUSINESS & PROFESSIONS CODE § § 17200 *ET SEQ.***  
5 **(Against Verisign, eNom and NSI)**

6 12.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through  
7 11.12 above as though fully set forth herein.

8 12.2. Plaintiffs assert this cause of action on their own behalf and on behalf of  
9 the general public, acting as a private attorney general under California's Unfair  
10 Trade Practices Act, California Business & Professions Code § § 17200 *et seq.*

11 12.3. California Business & Professions Code § 17200, *et seq.* declares unfair  
12 competition unlawful and defines unfair competition as, *inter alia*, "any unlawful,  
13 unfair or fraudulent business act or practice and unfair, deceptive, untrue or  
14 misleading advertising . . ."

15 12.4. The Federal Trade Commission Act, 15 U.S.C. § § 41 *et seq.*, declares  
16 unlawful "[u]nfair methods of competition in or affecting commerce, and unfair or  
17 deceptive acts or practices in or affecting commerce." 15 U.S.C. § 45.

18 12.5. A method of competition is unfair if it causes substantial injury to  
19 consumers that is not outweighed by any countervailing benefit to consumers that  
20 results from the practice, and that could not reasonably have been avoided by  
21 consumers.

22 12.6. Defendants' conduct as alleged herein, including but not limited to  
23 defendants' failure to disclose the likelihood that a WLS subscription will be  
24 successful, will cause substantial injury to consumers unless enjoined by this Court.  
25 Verisign estimates that it will ultimately sell (through registrars) approximately 1.5  
26 million WLS subscriptions per year, for which it will receive approximately 36  
27 million dollars per year. Even if only one consumer in a hundred purchases a WLS  
28 subscription that turned out to be worthless, it would amount to substantial harm.  
The number of consumers harmed is likely to be far greater than one in a hundred,  
and may be as high as two in three.

1        12.7. There is no overall countervailing benefit to consumers from  
2 defendants' conduct, indeed, the law is clear that consumers must be protected from  
3 such schemes. Unless the WLS is enjoined, defendants' scheme will more than  
4 quadruple the annual cost of a domain name for many consumers. To whatever  
5 extent Verisign may argue that consumers will prefer its WLS subscription service to  
6 Plaintiffs' pay-if-successful services, it should be noted that defendants' scheme  
7 replaces the traditional policy of "first-come, first-served" domain name allocation  
8 with one of "first-come, first-served provided you are willing to pay to stand in line  
9 while receiving no assurance that there is anything for sale." Plaintiffs' model puts all  
10 consumers on an equal playing field, whereas defendants' model favors the  
11 extremely wealthy. A "choice" is no benefit to those consumers who cannot afford  
12 it.

13        12.8. Defendants' failure to disclose the likelihood that a WLS subscription  
14 will be successful, and other conduct alleged herein, deprives consumers of the  
15 information they need to make an informed decision. Because defendants omit  
16 critical material information and actively misrepresent the nature and quality of the  
17 WLS, consumers cannot reasonably avoid the injury.

18        12.9. By engaging in the conduct alleged herein, defendants, and each of  
19 them, are liable to Plaintiffs and members of the general public for violating the FTC  
20 Act, 15 U.S.C. § 41 *et seq.*

21        12.10. By violating the FTC Act, defendants are also in violation of Business  
22 & Professions Code § 17200 *et seq.*

23  
24                                    **XIII. NINTH CAUSE OF ACTION**  
25                                    **SHERMAN ACT, § 1, UNLAWFUL TYING ARRANGEMENT**  
26                                    **(Against Verisign, eNom, NSI and DOES 1-10, Inclusive)**

27        13.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through  
28 12.10 above as though fully set forth herein.

13.2. A tying agreement is unreasonable *per se* if 1) there is a tie-in between

1 two distinct products or services; 2) the defendant has sufficient economic power in  
2 the tying market to impose significant restrictions in the tied product market; 3) a not  
3 insubstantial volume of commerce in the tied product market is affected; and 5) a  
4 "modicum of coercion" was exerted upon the purchaser by the seller of the tying  
5 item.

6 13.3. Consumers may register domain names at any ICANN accredited  
7 registrar, including plaintiffs. Consumers are free to transfer their registered domain  
8 names between registrars. Thus, consumers may register their domain names with  
9 one registrar, then transfer the domain names to another registrar to administer them.

10 13.4. WLS subscriptions are not transferable between registrars.

11 13.5. Each successful WLS subscription will result in a domain name  
12 registration. Domain registration fees are not included in the \$24 fee Verisign will  
13 charge registrars for each WLS subscription sold.

14 13.6. Each consumer who purchases a WLS subscription will be required to  
15 agree to purchase any resulting domain name registration from the same registrar  
16 from whom he purchased the WLS subscription.

17 13.7. The requirement that WLS subscriptions and resulting domain name  
18 registrations be purchased from the same registrar is imposed on registrars by  
19 Verisign.

20 13.8. WLS subscriptions and domain name registrations are separate, distinct  
21 services. Verisign's aggregation of WLS subscriptions and domain name  
22 registrations does not serve to facilitate competition by promoting product quality,  
23 but amounts to no more than a naked effort to impede competition on the merits.

24 13.9. Verisign exercises market power with respect to registry services for  
25 the <.com> and <.net> TLDs, including WLS subscriptions. Indeed, Verisign will  
26 be the sole provider of WLS subscriptions. Consumers will be unable to purchase a  
27 WLS subscription without agreeing to purchase a domain registration if the  
28 subscription is successful.

1        13.10. By compelling registrars to compel their customers to purchase a  
2 domain name registration with each WLS subscription, Verisign will impose  
3 significant restrictions on competition in the market for domain name registrations.

4        13.11. VeriSign's WLS will unreasonably restrain commerce in domain name  
5 registration services, and will in fact eliminate consumer choice in such services with  
6 respect to the transactions affected. Among other things, registrars who do not offer  
7 WLS subscriptions will not be able to register for any consumer any domain name  
8 obtained via a WLS subscription.

9        13.12. In addition, the registrar who offers the lowest price for WLS  
10 subscriptions will not necessarily be the registrar who offers the lowest price on  
11 domain name registrations, but consumers will be compelled to purchase domain  
12 name registration from that registrar nonetheless.

13        13.13. By denying registrars who choose not to sell WLS subscriptions the  
14 opportunity to register domain names that result from those subscriptions, Verisign's  
15 tying requirement undermines the goal of free competition in domain name  
16 registrations stated in the White Paper. Verisign's tying requirement strongly favors  
17 larger registrars, to the disadvantage of smaller registrars, and favors registrars that  
18 offer WLS subscriptions over those who do not.

19        13.14. Defendant NSI, still benefitting from its previous monopoly status, is  
20 the largest registrar. NSI sponsors nearly one-fourth of all registered domain names  
21 in <.com> and <.net>, more than twice as many as its nearest competitor.

22        13.15. Defendant NSI charges \$34.99 for a one-year domain registration.  
23 Plaintiff Registersite.com charges \$10.00 for the same service. Consumers who  
24 purchase WLS subscriptions from NSI will, if those subscriptions are successful, be  
25 precluded from choosing to register their domain names with Plaintiff  
26 Registersite.com or anyone other than NSI.

27        13.16. A not insubstantial volume of commerce in the tied product market will  
28 be affected by Verisign's tying agreement.



1 13.17. Verisign owns 15% of NSI and has an economic interest in restricting  
2 registrars' ability to compete with NSI for domain name registrations.

3 13.18. Verisign brazenly touts this anti-competitive conduct as a benefit of  
4 offering WLS:

5 Generate New Registrations

6 WLS can increase your new .com and .net registration and renewal  
7 business. Every time one of your customers' subscriptions is fulfilled, you  
8 become the registrar of record.<sup>10</sup>

9 13.19. Registrars cannot offer WLS subscriptions in any manner other than  
10 that described herein. Registrars cannot sell, and consumers cannot purchase, WLS  
11 subscriptions unless they agree to Verisign's tying agreement.

12 13.20. Verisign's tying agreement is intended to, and is likely to, harm  
13 registrars who do not offer WLS subscriptions. There is no technical reason for  
14 tying the two products, and there is no competitive or other benefit gained as a result  
15 of aggregating the products.

16 13.21. ICANN, by authorizing Verisign's unlawful tying agreement, has  
17 conspired with Verisign to restrict competition in a manner that favors registrars that  
18 agree to offer WLS subscriptions.

19 13.22. Registrars cannot offer WLS subscriptions in any manner other than  
20 that described herein. Registrars cannot sell, and consumers cannot purchase, WLS  
21 subscriptions unless they agree to Verisign's tying agreement.

22 **XIV. TENTH CAUSE OF ACTION**  
23 **INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**  
24 **(Against Verisign)**

25 14.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through  
26 13.22 above as though fully set forth herein.

27 14.2. On repeated occasions beginning in January 2002 and continuing

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

1 through the present, defendant Verisign has made false and defamatory statements  
2 regarding Plaintiffs and Plaintiffs' services, including statements comparing  
3 Plaintiffs' services unfavorably to the WLS.

4 14.3. Defendant Verisign has stated that Plaintiffs' services do not offer  
5 consumers any guarantee, and has represented that the WLS does offer consumers  
6 such a guarantee. Verisign's statements in this regard are false and defamatory.

7 14.4. At the time Defendants made the false and defamatory statements  
8 referenced herein, Plaintiffs had beneficial economic relationships with their  
9 respective customers that were likely to continue generating revenue in the future.

10 14.5. Verisign knew that Plaintiffs had such relationships and that Plaintiffs  
11 had an expectancy of future economic benefit from such relationships. Verisign's  
12 conduct was designed to disrupt these economic relationships, and did in fact disrupt  
13 those economic relationships.

14 14.6. In particular, Verisign engaged in a campaign intended to discredit  
15 Plaintiffs' services in the eyes of ICANN, the United States Senate, and consumers,  
16 among others, in order to obtain approval for its WLS service.

17 14.7. As a proximate result of Verisign's wrongful conduct, ICANN  
18 approved the WLS, and customers have been deterred from doing business with  
19 Plaintiffs. Plaintiffs goodwill has irreparably suffered, as have the beneficial  
20 economic relationships Plaintiffs had each developed with their respective customers.  
21 As a consequence of Verisign's conduct, which was independently wrongful as  
22 described hereinabove, Plaintiffs have suffered damages in an amount to be  
23 determined at trial.

24 14.8. Plaintiffs are informed and believe and on that basis allege that  
25 Verisign's conduct was willful, fraudulent, malicious and oppressive, thereby  
26 entitling plaintiffs to punitive damages in an amount to be established at trial.

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**XV. ELEVENTH CAUSE OF ACTION  
DECLARATORY RELIEF, 28 U.S.C. § 201  
(Against Verisign)**

15.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through 14.8 above as though fully set forth herein.

15.2. Verisign is contractually obligated to delete expired domain names in response to a “delete” command sent by the sponsoring registrar, and will breach that obligation if the WLS is launched.

15.3. Plaintiffs have each entered an agreement with Verisign (the “Registry-Registrar Agreement”) that governs Registrars’ use of, and Verisign’s provision of, the Shared Registration System. Each Plaintiff is a party to the Registry-Registrar Agreement with Verisign, which is attached hereto as Exhibit A and incorporated herein by this reference.

15.4. Section 2.1 of the Registry-Registrar Agreement obligates Verisign to provide registrars with access to the registry according to a specific protocol known as the “Registry-Registrar Protocol”:

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

15.5. Section 4.3.3 of the RRP defines the “DEL” command, which “allows a registrar to delete (cancel the registration) of a domain name or delete a name server.”

15.6. Section 4.3.3.1 of the RRP specifies who is authorized to issue a “DEL” command: “Authorized User: The current registrar of a domain name MAY use the DEL command to delete a domain name from the System.”

15.7. The RRP does not permit anyone other than the current registrar of a domain name to delete a domain name from the system.

15.8. Verisign’s obligation to provide domain name deletion functionality is also set forth in section 3.1 of the Registry-Registrar Agreement:

1 Registrar, using the RRP, APIs and Software, as well as updates and  
2 redesigns thereof, will be able to invoke the following operations on the  
3 System: . . . (iv) *cancel the registration of a domain name it has registered*  
4 . . . .

4 (Emphasis added).

5 15.9. Pursuant to section 3.1 of the Registry-Registrar Agreement, Verisign is  
6 obligated to enable registrars to cancel the registration of domain names they have  
7 registered in any updated or redesigned RRP.

8 15.10. If the WLS is implemented, Verisign will ignore registrar ‘delete’  
9 commands for domain names upon which a WLS subscription has been placed.

10 15.11. If the WLS is implemented, a registrar will not have the ability to  
11 “cancel the registration of a domain name it has registered” if a WLS subscription  
12 has been placed on that domain name.

13 15.12. If the WLS is implemented, registrar “delete” commands for domain  
14 names on which WLS subscriptions have been placed will not result in those  
15 domains becoming available for registration by any registrar.

16 15.13. The WLS is not a part of the RRP or the Shared Registration System,  
17 and implementation of the WLS will interfere with the functionality that Verisign is  
18 obligated to provide via the RRP and the Shared Registration System.

19 15.14. Each plaintiff has complied with its obligations under the Registry-  
20 Registrar Agreement, and no Plaintiff is in material breach of its obligations under  
21 the Registry-Registrar Agreement.

22 15.15. If the WLS is implemented, Verisign will materially breach its  
23 obligations under the Registry-Registrar Agreement, and by doing so will impair  
24 Plaintiffs’ ability to function as ICANN-accredited registrars and will cause Plaintiffs  
25 significant financial harm.

26 15.16. Verisign denies that implementation of the WLS would constitute a  
27 breach of its obligations under the Registry-Registrar Agreements, and an actual  
28 dispute exists between the parties with respect to Verisign’s obligation to delete

1 expired domain names for which a "delete" command is received from the Registrar.

2 **XVI. TWELFTH CAUSE OF ACTION**  
3 **BREACH OF CONTRACT**  
4 **(Against ICANN)**

5 16.1. Plaintiffs incorporate the allegations set forth in paragraphs 1.1 through  
6 15.16 above as though fully set forth herein.

7 16.2. As ICANN-accredited registrars, each Plaintiff has entered into an  
8 identical Accreditation Agreement with defendant ICANN. The Accreditation  
9 Agreement grants each registrar the right to register domain names in accordance  
10 with procedures established by ICANN and Verisign in consultation with the  
11 Department of Commerce.

12 16.3. All registrars are required to sign the Accreditation Agreement, which  
13 was drafted by ICANN, without alteration or modification. Each Plaintiff is a party  
14 to the Accreditation Agreement with ICANN dated May 2001 (the "2001 RAA"),  
15 which is attached hereto as Exhibit B and incorporated herein by this reference.

16 16.4. The Registrar Accreditation Agreement is one of several agreements  
17 among ICANN and other organizations involved in the Internet domain-name  
18 system. Those agreements are closely interrelated and operate cooperatively to  
19 implement those organizations' agreements to adhere to various policies developed  
20 through the private-sector, consensus-based process for management of the technical  
21 aspects of the Internet that has been established under the auspices of ICANN.<sup>11</sup>

22 16.5. The Registrar Accreditation Agreement includes language limiting the  
23 Registrars' obligation to implement ICANN-developed policies to those policies  
24 consistent with, and reasonably related to, the goals of ICANN as set forth in the  
25 White Paper.<sup>12</sup>

26 16.6. Consistent with that position, Section 2.3 of the 2001 RAA imposes

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27 <sup>11</sup>Register.com, Inc. v. Verio, Inc., 00-Civ-5747 (BSJ) Submission of Amicus Curiae Internet  
28 Corporation for Assigned Names and Numbers.

<sup>12</sup>Minutes of Meeting of ICANN Board of Directors, July 16 1999.

1 broad obligations of “stability, competition, bottom-up coordination, and  
2 representation” on ICANN in *all matters that impact registrars*, not only under the  
3 RAA, but in general:

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

6       2.3.1. exercise its responsibilities in an open and transparent manner;

7       2.3.2. not unreasonably restrain competition and, to the extent feasible,  
8 promote and encourage robust competition;

9       2.3.3. not apply standards, policies, procedures or practices arbitrarily,  
10 unjustifiably, or inequitably and not single out Registrar for disparate  
treatment unless justified by substantial and reasonable cause; and

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

13       16.7. Unless enjoined, the WLS will impact registrars’ right to delete domain  
14 names according to the RRP, by eliminating that right altogether as to domain names  
15 on which WLS subscriptions have been placed.

16       16.8. Because ICANN’s approval of the WLS impacts the rights of registrars,  
17 ICANN is obligated to refrain from acting arbitrarily, unjustifiably, or inequitably in  
18 policies, procedures and practices relating to the WLS.

19       16.9. ICANN’s mandate, and its stated goal, is to become an effective  
20 consensus development body for the entire Internet community in the areas for which  
21 it is responsible.

22       16.10. ICANN is required by its Bylaws, the 2001 RAA, and the  
23 Memorandum of Understanding to obtain consensus with respect to issues  
24 concerning domain name allocation.

25       16.11. ICANN is required by its bylaws and the Memorandum of  
26 Understanding to operate from the bottom-up; to foster and then recognize consensus  
27 rather than force it.

28       16.12. Consensus reached in ICANN’s constituent organizations should not

1 be disregarded or overturned by the ICANN Board.

2 16.13. ICANN did not obtain consensus that the WLS should be approved,  
3 and indeed ignored the consensus that it should not be approved.

4 16.14. By approving the WLS without obtaining consensus, ICANN acted  
5 unjustifiably, arbitrarily, inequitably, and unfairly, and in so doing breached its  
6 contractual obligations to each Plaintiff.

7 16.15. Section 2.3.3 of the 2001 RAA requires ICANN to treat all registrars  
8 equally. The Memorandum of Understanding between ICANN and the Department  
9 of Commerce requires ICANN to require Verisign to do the same.

10 16.16. Registrars who do not offer the WLS, whether because of the expense  
11 associated with implementing it or concern for potential liability to consumers, will  
12 not have equivalent access to the registry as do registrars who offer the WLS.

13 16.17. Specifically, registrars who do not offer the WLS will not be able to  
14 determine whether a WLS subscription has been purchased on a particular domain  
15 name, which information will be contained in the registry.

16 16.18. Nothing in the 2001 RAA or any other agreement allows ICANN to  
17 make equivalent access to the registry conditional on a registrar's offering additional  
18 services that they do not wish to offer, or on bearing the expense associated with  
19 offering such services.

20 16.19. By approving the WLS, ICANN acted breached its obligation to each  
21 Plaintiff under Section 2.3.3 of the 2001.

22 16.20. If the WLS is implemented, no registrar will be able to offer services  
23 based on competition for deleting domain names, and the current robust market for  
24 such services would be destroyed and replaced by a pseudo competitive market for  
25 WLS subscriptions in which Verisign would exact a \$24 fee on each transaction  
26 from all "competitors".

27 16.21. If the WLS is implemented, certain Plaintiffs will be forced out of  
28 business.

1       16.23. Unless enjoined, the WLS will unreasonably restrain competition, and  
2 ICANN's approval of the WLS constitutes a material breach of its obligation to  
3 foster competition established by section 2.3.2 of the Accreditation Agreement.

4       16.25. Section 5.1 of the 2001 RAA provides, "[w]hile this Agreement is in  
5 effect, either party may seek specific performance of any provision of this Agreement  
6 in the manner provided in Section 5.6 below, provided the party seeking such  
7 performance is not in material breach of its obligations."

8       16.26. Each Plaintiff has performed, and continues to perform, all of its  
9 obligations under its respective Accreditation Agreement, and none is in material  
10 breach of its obligations under that Accreditation Agreement.

11       16.27. ICANN's failure to perform its contractual obligations to Plaintiffs has  
12 caused, and continues to cause, significant damages to Plaintiffs, including without  
13 limitation loss of reputation and goodwill.

14       16.28. Each Plaintiff is entitled to a decree of specific performance compelling  
15 ICANN to fulfill its obligations under the 2001 RAA.

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1 **XIV. PRAYER FOR RELIEF**

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

3 1. On Plaintiffs' First and Second Causes of Action, for preliminary and  
4 permanent injunctions prohibiting Defendants, and each of them, from accepting  
5 consideration in exchange for the chance to register currently-registered domain  
6 names, unless those domain names are on "pending delete" status;

7 2. On Plaintiffs' Third and Fourth Causes of Action, for preliminary and  
8 permanent injunctions:

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

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

21 3. On Plaintiffs' Fifth Cause of Action, for preliminary and permanent  
22 injunctions prohibiting Verisign and its agents, sales representatives, and affiliates  
23 from selling WLS subscriptions for domains that are not scheduled to expire within  
24 the WLS subscription period during the one-year trial of the WLS;

25 4. On Plaintiffs' Sixth Cause of Action, for preliminary and permanent  
26 injunctions prohibiting Verisign and its agents, sales representatives, and affiliates  
27 from referring to WLS subscriptions as "protection", "insurance" or the equivalent in  
28 any sales, marketing, promotional or advertising materials; and prohibiting Verisign

1 and its agents, sales representatives, and affiliates from selling WLS subscriptions to  
2 the registrants of the domain names to which the WLS subscriptions apply;

3 5. On Plaintiffs' Seventh Cause of Action, for preliminary and permanent  
4 injunctions prohibiting Verisign and its agents, sales representatives, and affiliates  
5 from selling WLS subscriptions;

6 6. On Plaintiffs' Eighth Cause of Action, for preliminary and permanent  
7 injunctions ordering Verisign and its agents, sales representatives, and affiliates to  
8 conspicuously disclose the average likelihood that a WLS subscription will result in  
9 the subscriber obtaining the domain name in all advertising, marketing, and  
10 promotional materials, and on all WLS order forms;

11 7. On Plaintiffs' Ninth Cause of Action,

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

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

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

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

27 c. For treble damages and attorney's fees and costs as authorized by  
28 15 U.S.C. § 15;

- 1           8.     On Plaintiffs' Tenth Cause of Action:
- 2                 a.     For damages according to proof at trial;
- 3                 b.     For punitive damages according to proof at trial;
- 4           9.     On Plaintiffs' Eleventh Cause of Action, for a declaratory judgment that
- 5 Verisign will be in breach of the Registry-Registrar Agreements if it implements the
- 6 WLS because Verisign is obligated by the Registry-Registrar Agreements to delete
- 7 domain names from the registry at the direction of the sponsoring registrar;
- 8           10.    On Plaintiffs' Twelfth Cause of Action, for a judicial decree of specific
- 9 performance compelling ICANN to perform its obligations under each 2001
- 10 Registrar Accreditation Agreement.
- 11          11.    On all causes of action:
- 12                 a.     For attorneys' fees and costs; and
- 13                 b.     For such other and further relief as the Court may deem just and
- 14 proper.

15

16           Dated this 8<sup>th</sup> day of April, 2004.


17

18                                 Respectfully Submitted,

19                                 NEWMAN & NEWMAN,  
20                                 ATTORNEYS AT LAW, LLP

21

22                                 By:

23                                   
24                                 Derek A. Newman (190467)  
25                                 S. Christopher Winter (190474)  
26                                 Venkat Balasubramani (189192)  
27                                 Roger M. Townsend (*pro hac vice* pending)  
28

# **EXHIBIT A**



# Revised VeriSign .com Registry Agreement: Appendix F

Posted: 16 April 2001

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## Registry-Registrar Agreement

Note: The notice period in Section 3.3 shall be ninety (90) days only if a notice period for implementation of material changes to the Registry-Registrar Protocol, Application Program Interfaces, or reference client software applies to all unsponsored TLDs under Registry Agreement with ICANN. Otherwise, the notice period of Section 3.3 shall be sixty (60) days.

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### REGISTRY-REGISTRAR AGREEMENT

This Registry-Registrar Agreement (the "Agreement") is dated as of \_\_\_\_\_, \_\_\_\_\_ ("Effective Date") by and between VeriSign, Inc., a Delaware corporation, with a place of business located at 21345 Ridgetop Circle, Dulles, , Virginia 20166 ("VGRS"), and \_\_\_\_\_, a \_\_\_\_\_ corporation, with its principal place of business located at \_\_\_\_\_ ("Registrar"). VeriSign and Registrar may be referred to individually as a "Party" and collectively as the "Parties."

WHEREAS, multiple registrars provide Internet domain name registration services within the .com top-level domain wherein VGRS operates and maintains certain TLD servers and zone files;

WHEREAS, Registrar wishes to register second-level domain names in the multiple registrar system for the .com TLD.

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

## 1. DEFINITIONS

- 1.1. "DNS" refers to the Internet domain name system.
- 1.2. "ICANN" refers to the Internet Corporation for Assigned Names and Numbers.
- 1.3. "IP" means Internet Protocol.
- 1.4 "Registered Name" refers to a domain name within the domain of the Registry TLD, whether consisting of two or more (e.g., john.smith.name) levels, about which VGRS or an affiliate engaged in providing registry services maintains data in a registry database, arranges for such maintenance, or derives revenue from such maintenance. A name in a registry database may be a Registered Name even though it does not appear in a TLD zone file (e.g., a registered but inactive name).
- 1.5 "Registry TLD" means the .com TLD.
- 1.6. The "System" refers to the multiple registrar system operated by VGRS for registration of Registered Names in the Registry TLD.
- 1.7. A "TLD" is a top-level domain of the DNS.
- 1.8. The "Licensed Product" refers to the RRP, APIs, and software, collectively.

## 2. OBLIGATIONS OF THE PARTIES

- 2.1. System Operation and Access.** Throughout the Term of this Agreement, VGRS shall operate the System and provide Registrar with access to the System enabling Registrar to transmit domain name registration information for the Registry TLD to the System according to a protocol developed by VGRS and known as the Registry Registrar Protocol ("RRP").
- 2.2. Distribution of RRP, APIs and Software.** No later than three business days after the Effective Date of this Agreement, VGRS shall provide to Registrar (i) full documentation of the RRP, (ii) "C" and "Java" application program interfaces ("APIs") to the RRP with documentation, and (iii) reference client software ("Software") that will enable Registrar to develop its system to register second-level domain names through the System for the Registry TLD. If VGRS elects to modify or upgrade the APIs and/or RRP, VGRS shall provide updated APIs to the RRP with documentation and updated Software to Registrar promptly as such updates become available.

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

**2.4. Data Submission Requirements.** As part of its registration of all Registered Name registrations in the Registry TLD during the Term of this Agreement, Registrar shall submit the following data elements using the RRP concerning Registered Name registrations it processes:

2.4.1. The Registered Name being registered;

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

2.4.3. The corresponding host names of those nameservers;

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

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

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

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

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

holder that are consistent with Registrar's duties to VGRS hereunder.

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

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

**2.9. Transfer of Sponsorship of Registrations.** Registrar agrees to implement transfers of Registered Name registrations from another registrar to Registrar and vice versa pursuant to the Policy on Transfer of Sponsorship of Registrations Between Registrars appended hereto as Exhibit B.

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

**2.11. Compliance with Terms and Conditions.** Registrar agrees to comply with all other reasonable terms or conditions established from time to time, to assure sound operation of the System, by VGRS in a non-arbitrary manner and applicable to all registrars, including affiliates of VGRS, and consistent with VGRS's Cooperative Agreement with the United States Government or VGRS's Registry Agreement with ICANN, as applicable, upon VGRS's notification to Registrar of the establishment of those terms and conditions.

**2.12. Resolution of Technical Problems.** Registrar agrees to



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

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

**2.14. Prohibited Domain Name Registrations.** Registrar agrees to comply with the policies of VGRS that will be applicable to all registrars and that will prohibit the registration of certain domain names in the Registry TLD which are not allowed to be registered by statute or regulation.

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

### 3. LICENSE

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

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

Registrar agrees to employ the necessary measures to prevent its access to the System granted hereunder from being used to (i) allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass unsolicited, commercial advertising or solicitations to entities other than Registrar's customers; or (ii) enable high volume, automated, electronic processes that send queries or data to the systems of Registry Operator or any ICANN-Accredited Registrar, except as reasonably necessary to register domain names or modify

existing registrations.

**3.3. Changes to Licensed Materials.** VGRS may from time to time make modifications to the RRP, APIs or Software licensed hereunder that will enhance functionality or otherwise improve the System. VGRS will provide Registrar with at least ninety (90) days notice prior to the implementation of any material changes to the RRP, APIs or software licensed hereunder.

## **4. SUPPORT SERVICES**

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

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

## **5. FEES**

### **5.1. Registration Fees.**

(a) Registrar agrees to pay VGRS the non-refundable amounts of US\$ 6 for each annual increment of an initial domain name registration and US\$ 6 for each annual increment of a domain name re-registration (collectively, the "Registration Fees") registered by Registrar through the System.

(b) VGRS reserves the right to adjust the Registration Fees prospectively upon thirty (30) days prior notice to Registrar, provided that such adjustments are consistent with VGRS's Cooperative Agreement with the United States Government or its Registry Agreement with ICANN, as applicable, and are

applicable to all registrars in the Registry TLD. VGRS will invoice Registrar monthly in arrears for each month's Registration Fees. All Registration Fees are due immediately upon receipt of VGRS's invoice pursuant to a letter of credit, deposit account, or other acceptable credit terms agreed by the Parties.

**5.2. Change in Registrar Sponsoring Domain Name.** Registrar may assume sponsorship of an Registered Name holder's existing domain name registration from another registrar by following the policy set forth in Exhibit B to this Agreement.

(a) For each transfer of the sponsorship of a domain-name registration under Part A of Exhibit B, Registrar agrees to pay VGRS the renewal registration fee associated with a one-year extension, as set forth above. The losing registrar's Registration Fees will not be refunded as a result of any such transfer.

(b) For a transfer approved by ICANN under Part B of Exhibit B, Registrar agrees to pay VGRS US\$ 0 (for transfers of 50,000 names or fewer) or US\$ 50,000 (for transfers of more than 50,000 names).

Fees under this Section 5.2 shall be due immediately upon receipt of VGRS's invoice pursuant to a letter of credit, deposit account, or other acceptable credit terms agreed by the Parties.

**5.3. Pro-Rata Charges for ICANN Fees.** Registrar agrees to pay to VGRS, within ten (10) days of VGRS's invoice, a portion of any variable registry-level fees paid by VGRS to ICANN, pro-rated among all registrars sponsoring registrations in the Registry TLD based on their relative numbers of domain-name registrations sponsored.

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

## 6. MISCELLANEOUS

## 6.1. Term of Agreement and Termination.

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

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

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

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

**(e) Termination in the Event that Successor Registry Operator is Named.** This Agreement shall terminate in the event that the U.S. Department of Commerce or ICANN, as appropriate, designates

another entity to operate the registry for the Registry TLD.

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

**(g) Effect of Termination.** Upon expiration or termination of this Agreement, VGRS will, to the extent it has the authority to do so, complete the registration of all domain names processed by Registrar prior to the date of such expiration or termination, provided that Registrar's payments to VGRS for Registration Fees are current and timely. Immediately upon any expiration or termination of this Agreement, Registrar shall (i) transfer its sponsorship of Registered Name registrations to another licensed registrar(s) of the Registry, in compliance with Exhibit B, Part B, or any other procedures established or approved by the U.S. Department of Commerce or ICANN, as appropriate, and (ii) either return to VGRS or certify to VGRS the destruction of all data, software and documentation it has received under this Agreement.

**(h) Survival.** In the event of termination of this Agreement, the following shall survive: (i) Sections 2.5, 2.6, 6.1(g), 6.2, 6.6, 6.7, 6.10, 6.12, 6.13, 6.14, and 6.16; (ii) the Registered Name holder's obligations to indemnify, defend, and hold harmless VGRS, as stated in Section 2.15; (iii) the surety's obligations under the Surety Instrument described in Section 2.13 with respect to matters arising during the term of this Agreement; and (iv) Registrar's payment obligations as set forth in Section 5 with respect to fees incurred during the term of this Agreement. Neither Party shall be liable to the other for damages of any sort resulting solely from terminating this Agreement in accordance with its

terms but each Party shall be liable for any damage arising from any breach by it of this Agreement.

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

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

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

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

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

**6.7. Dispute Resolution; Choice of Law; Venue.** The Parties shall attempt to resolve any disputes between them prior to resorting to litigation. This Agreement is to be construed in accordance with and governed by the internal laws of the Commonwealth of Virginia, United States of America without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the Commonwealth of Virginia to the rights and duties of

the Parties. Any legal action or other legal proceeding relating to this Agreement or the enforcement of any provision of this Agreement shall be brought or otherwise commenced in any state or federal court located in the eastern district of the Commonwealth of Virginia. Each Party to this Agreement expressly and irrevocably consents and submits to the jurisdiction and venue of each state and federal court located in the eastern district of the Commonwealth of Virginia (and each appellate court located in the Commonwealth of Virginia) in connection with any such legal proceeding.

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

if to Registrar:

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with a copy to:

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if to VGRS:

General Counsel  
VeriSign, Inc.  
1350 Charleston Road  
Mountain View, California 94043  
Telephone: 1/650/961/7500  
Facsimile: 1/650/961/8853; and

General Manager



Business Affairs Office  
VeriSign Registry  
21345 Ridgetop Circle  
Dulles, Virginia 20166  
Telephone: 1/703/948/3200  
Facsimile: 1/703/421/2129; and

Deputy General Counsel  
VeriSign, Inc.  
505 Huntmar Park Drive  
Herndon, Virginia 20170  
Telephone: 1/703/742/0400  
Facsimile: 1/703/742/7916

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

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

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

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

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

**6.14. Intellectual Property.** Subject to Section 2.5 above, each Party will continue to independently own its intellectual property, including all patents, trademarks, trade names, service marks, copyrights, trade secrets, proprietary processes and all other forms of intellectual property.

**6.15. Representations and Warranties**

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

**(b) VGRS.** VGRS represents and warrants that: (1) it is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware, (2) it has all requisite corporate power and authority to execute, deliver and perform its

obligations under this Agreement, (3) the execution, performance and delivery of this Agreement has been duly authorized by VGRS, and (4) no further approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by VGRS in order for it to enter into and perform its obligations under this Agreement.

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

**6.16. Indemnification.** Registrar, at its own expense and within thirty (30) days of presentation of a demand by VGRS under this paragraph, will indemnify, defend and hold harmless VGRS and its employees, directors, officers, representatives, agents and affiliates, against any claim, suit, action, or other proceeding brought against VGRS or any affiliate of VGRS based on or arising from any claim or alleged claim (i) relating to any product

or service of Registrar; (ii) relating to any agreement, including Registrar's dispute policy, with any Registered Name holder of Registrar; or (iii) relating to Registrar's domain name registration business, including, but not limited to, Registrar's advertising, domain name application process, systems and other processes, fees charged, billing practices and customer service; provided, however, that in any such case: (a) VGRS provides Registrar with prompt notice of any such claim, and (b) upon Registrar's written request, VGRS will provide to Registrar all available information and assistance reasonably necessary for Registrar to defend such claim, provided that Registrar reimburses VGRS for its actual and reasonable costs. Registrar will not enter into any settlement or compromise of any such indemnifiable claim without VGRS's prior written consent, which consent shall not be unreasonably withheld. Registrar will pay any and all costs, damages, and expenses, including, but not limited to, reasonable attorneys' fees and costs awarded against or otherwise incurred by VGRS in connection with or arising from any such indemnifiable claim, suit, action or proceeding.

**6.17. Entire Agreement; Severability.** This Agreement, which includes Exhibits A, B, and C, constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes any prior agreements, representations, statements, negotiations, understandings, proposals or undertakings, oral or written, with respect to the subject matter expressly set forth herein. If any provision of this Agreement shall be held to be illegal, invalid or unenforceable, each Party agrees that such provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. If necessary to effect the intent of the Parties, the Parties shall negotiate in good faith to amend this Agreement to replace the unenforceable language with enforceable language that reflects such intent as closely as possible.

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

VeriSign, Inc.

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

[Registrar]

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

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

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

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## **Exhibit A Registrar's Dispute Policy**

[To be supplied from time to time by Registrar]

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## **Exhibit B Policy on Transfer of Sponsorship of Registrations Between Registrars**

### **A. Holder-Authorized Transfers.**

#### **Registrar Requirements.**

The registration agreement between each Registrar and its Registered Name holder shall include a provision explaining that a Registered Name holder will be prohibited from changing its Registrar during the first 60 days after initial registration of the domain name with the Registrar. Beginning on the 61st day after the initial registration with the Registrar, the procedures for change in sponsoring registrar set forth in this policy shall apply. Enforcement shall be the responsibility of the Registrar sponsoring the domain name registration.

For each instance where an Registered Name holder wants to change its Registrar for an existing domain name (i.e., a domain name that appears in a particular top-level domain zone file), the gaining Registrar shall:

- 1) Obtain express authorization from an individual who has the apparent authority to legally bind the Registered Name holder (as reflected in the database of the losing Registrar).
  - a) The form of the authorization is at the discretion of each gaining Registrar.

b) The gaining Registrar shall retain a record of reliable evidence of the authorization.

2) In those instances when the Registrar of record is being changed simultaneously with a transfer of a domain name from one party to another, the gaining Registrar shall also obtain appropriate authorization for the transfer. Such authorization shall include, but not be limited to, one of the following:

a) A bilateral agreement between the parties.

b) The final determination of a binding dispute resolution body.

c) A court order.

3) Request, by the transmission of a "transfer" command as specified in the Registry Registrar Protocol, that the Registry database be changed to reflect the new Registrar.

a) Transmission of a "transfer" command constitutes a representation on the part of the gaining Registrar that:

(1) the requisite authorization has been obtained from the Registered Name holder listed in the database of the losing Registrar, and

(2) the losing Registrar will be provided with a copy of the authorization if and when requested.

In those instances when the Registrar of record denies the requested change of Registrar, the Registrar of record shall notify the prospective gaining Registrar that the request was denied and the reason for the denial.

Instances when the requested change of sponsoring Registrar may be denied include, but are not limited to:

1) Situations described in the Domain Name Dispute Resolution Policy

- 2) A pending bankruptcy of the Registered Name holder
- 3) Dispute over the identity of the Registered Name holder
- 4) Request to transfer sponsorship occurs within the first 60 days after the initial registration with the Registrar

In all cases, the losing Registrar shall respond to the e-mail notice regarding the "transfer" request within five (5) days. Failure to respond will result in a default "approval" of the "transfer."

### **Registry Requirements.**

Upon receipt of the "transfer" command from the gaining Registrar, VGRS will transmit an e-mail notification to both Registrars.

VGRS shall complete the "transfer" if either:

- 1) the losing Registrar expressly "approves" the request, or
- 2) VGRS does not receive a response from the losing Registrar within five (5) days.

When the Registry's database has been updated to reflect the change to the gaining Registrar, VGRS will transmit an email notification to both Registrars.

### **Records of Registration.**

Each Registered Name holder shall maintain its own records appropriate to document and prove the initial domain name registration date, regardless of the number of Registrars with which the Registered Name holder enters into a contract for registration services.

### **Effect on Term of Registration.**

The completion by VGRS of a holder-authorized transfer under this Part A shall result in a one-year extension of the existing registration, provided that in no event shall the total unexpired term of a registration exceed ten (10) years.

## **B. ICANN-Approved Transfers.**

Transfer of the sponsorship of all the registrations sponsored by one registrar as the result of acquisition of that registrar or its assets by another registrar may be made according to the following procedure:

(a) The gaining registrar must be accredited by ICANN for the Registry TLD and must have in effect a Registry-Registrar Agreement with VGRS for the Registry TLD.

(b) ICANN must certify in writing to VGRS that the transfer would promote the community interest, such as the interest in stability that may be threatened by the actual or imminent business failure of a registrar.

Upon satisfaction of these two conditions, VGRS will make the necessary one-time changes in the registry database for no charge, for transfers involving 50,000 name registrations or fewer. If the transfer involves registrations of more than 50,000 names, VGRS will charge the gaining registrar a one-time flat fee of US\$ 50,000.

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## **Exhibit C Confidentiality Agreement**

THIS CONFIDENTIALITY AGREEMENT is entered into by and between VeriSign, Inc., a Delaware corporation, with a place of business located at 21345 Ridgetop Circle, Dulles, , Virginia 20166 ("VGRS"), and \_\_\_\_\_, a \_\_\_\_\_ corporation having its principal place of business in \_\_\_\_\_ ("Registrar"), through their authorized representatives, and takes effect on the date executed by the final party (the "Effective Date").

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

NOW, THEREFORE, the parties agree as follows:

### **1. Confidential Information**

1.1. "Confidential Information", as used in this Confidentiality Agreement, shall mean all information and materials including,



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

## **2. Confidentiality Obligations**

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

(a) The receiving party shall treat as strictly confidential, and use all reasonable efforts to preserve the secrecy and confidentiality of, all Confidential Information received from the disclosing party, including implementing reasonable physical security measures and operating procedures.

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

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

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

## **3. Restrictions On Use**

**3.1.** The receiving party agrees that it will use any Confidential

Information received under this Confidentiality Agreement solely for the purpose of providing domain name registration services as a registrar and for no other purposes whatsoever.

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

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

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

#### **4. Miscellaneous**

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

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

**4.3.** This Confidentiality Agreement may be terminated by either party upon breach by the other party of any its obligations hereunder and such breach is not cured within three (3) calendar days after the allegedly breaching party is notified by the disclosing party of the breach. In the event of any such termination for breach, all Confidential Information in the possession of the Parties shall be immediately returned to the disclosing party; the receiving party shall provide full voluntary

disclosure to the disclosing party of any and all unauthorized disclosures and/or unauthorized uses of any Confidential Information; and the obligations of Sections 2 and 3 hereof shall survive such termination and remain in full force and effect. In the event that the Registrar License and Agreement between the Parties is terminated, the Parties shall immediately return all Confidential Information to the disclosing party and the receiving party shall remain subject to the obligations of Sections 2 and 3.

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

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

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

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

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

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

**4.10.** Any obligation imposed by this Confidentiality Agreement may be waived in writing by the disclosing party. Any such waiver

shall have a one-time effect and shall not apply to any subsequent situation regardless of its similarity.

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

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

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

("Registrar")

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

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

Date: \_\_\_\_\_

VeriSign, Inc. ("VGRS")

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

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

Date: \_\_\_\_\_

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

Page Updated 16-April-2001

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## **EXHIBIT B**



# Registrar Accreditation Agreement

(17 May 2001)

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

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# Registrar Accreditation Agreement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **2. ICANN OBLIGATIONS.**

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

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



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

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

2.3.1 exercise its responsibilities in an open and transparent manner;

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

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

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

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

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

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

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

3.2.1.1 The name of the Registered Name being registered;

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

3.2.1.3 The corresponding names of those nameservers;

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

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

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

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

3.2.2 Within five (5) business days after receiving any updates from the Registered Name Holder to the data elements listed in Subsections 3.2.1.2, 3.2.1.3, and 3.2.1.6 for any Registered Name Registrar sponsors, Registrar shall submit the updated data elements to, or shall place those elements in the Registry Database operated by the Registry Operator.

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

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

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

3.3.1.1 The name of the Registered Name;

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

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

3.3.1.4 The original creation date of the registration;

3.3.1.5 The expiration date of the registration;

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

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

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

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

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

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

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

comprehensive Registrar Whois search capability.

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

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

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

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

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

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

3.3.6.5 Registrar's access agreement may require

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

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

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

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

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

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

Operator or placed in the Registry Database under Subsection 3.2.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

reasonable steps to correct that inaccuracy.

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

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

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

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

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

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

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

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

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

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

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

4.1.2 in cases where:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 5. MISCELLANEOUS PROVISIONS.

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

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

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

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

5.3.2 Registrar:

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

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

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

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

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

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

5.3.7 Registrar becomes bankrupt or insolvent.

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



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

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

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

**5.6 Resolution of Disputes Under this Agreement.** Disputes arising under

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

#### 5.7 Limitations on Monetary Remedies for Violations of this Agreement.

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

damages for any violation of this Agreement.

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

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

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

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

If to ICANN, addressed to:

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

If to Registrar, addressed to:

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

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

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

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

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

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

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

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

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

[Registrar Name]

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

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

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

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## .AERO APPENDIX

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

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

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

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

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

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

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

ICANN

[Registrar Name]

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

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

Paul Twomey

Name:

President and CEO

Title:

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

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## .BIZ APPENDIX

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

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

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

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

ICANN

[Registrar Name]

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

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

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## .COM APPENDIX

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

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

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

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

ICANN

[Registrar Name]

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

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

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## .COOP APPENDIX

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

ICANN

[Registrar Name]

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

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

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## .INFO APPENDIX

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

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

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

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

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

ICANN

[Registrar Name]

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

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

---

## .MUSEUM APPENDIX

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ICANN

[Registrar Name]

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

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

#### .NAME APPENDIX

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

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

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

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

ICANN

[Registrar Name]

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

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

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### .NET APPENDIX

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

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

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

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

ICANN

[Registrar Name]

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

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

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### .ORG APPENDIX

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

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

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

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

ICANN

[Registrar Name]

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

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

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#### .PRO APPENDIX

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

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

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

ICANN

[Registrar Name]

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

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

## LOGO LICENSE APPENDIX

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

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

### LICENSE

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

### REGISTRATION AND ENFORCEMENT

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

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

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

## TERM AND TERMINATION

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

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

ICANN

[Registrar Name]

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

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

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

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

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

## TRADEMARKS:

1. ICANN Accredited Registrar

2.





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

Page Updated 15-May-2003

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DEPUTY CLERK  
CENTRAL DISTRICT OF CALIFORNIA  
U.S. DISTRICT COURT  
I hereby certify and declare that the foregoing is a true and correct copy of the original on file in my office, and in my legal custody.

I hereby attest and certify on 9/7/04  
that the foregoing document is a full, true  
and correct copy of the original on file in  
my office, and in my legal custody.

CLERK U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Theresa Mena  
DEPUTY CLERK

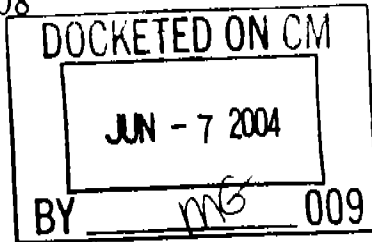


(1099)

# **Exhibit B**

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Attorneys for Defendants  
VERISIGN, INC. and  
NETWORK SOLUTIONS, INC.



2004 MAY 28 PM 2:35  
U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
LOS ANGELES

FILED

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

REGISTERSITE.COM, an Assumed  
Name of ABR PRODUCTS INC., a  
New York Corporation, et al.,

Plaintiffs,

v.

INTERNET CORPORATION FOR  
ASSIGNED NAMES AND  
NUMBERS, a California corporation;  
VERISIGN, INC., a Delaware  
Corporation; NETWORK  
SOLUTIONS, INC., a Delaware  
Corporation; ENOM, INC., a  
Washington Corporation; ENOM  
FOREIGN HOLDINGS  
CORPORATION, a Washington  
Corporation; and DOES 1-10,  
inclusive,

Defendants.

Case No. CV 04-1368 ABC (CWx)

**MEMORANDUM OF POINTS  
AND AUTHORITIES OF  
DEFENDANTS VERISIGN, INC.  
AND NETWORK SOLUTIONS,  
INC. IN SUPPORT OF MOTION  
TO DISMISS THE FIRST  
AMENDED COMPLAINT FOR  
FAILURE TO STATE A CLAIM  
PURSUANT TO FED. R.  
CIV. P. 12(b)(6)**

Date: July 12, 2004  
Time: 10:00 a.m.  
Courtroom: 680 – Roybal Fed. Bldg.  
Hon. Audrey B. Collins

[Notice of Motion and Motion filed  
concurrently herewith]

Defendants VeriSign, Inc. (“VeriSign”) and Network Solutions, Inc. (“NSI”) respectfully submit this joint memorandum in support of their Motion to Dismiss all claims asserted against them in the First Amended Complaint filed herein by Plaintiffs (the “Complaint” or “FAC”).

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15 U.S.C. § 45(a)(2) .....	18
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1     **I. INTRODUCTION**

2     Plaintiffs contend they are eight businesses that offer, among other things,  
3     services purportedly designed to assist persons in obtaining registrations for recently  
4     deleted Internet domain names in the event the prior registrant allowed the domain name  
5     registration to lapse and the domain name to be deleted.<sup>1</sup> They have filed a 51-page  
6     complaint based on a service, the Wait Listing Service (“WLS”), that VeriSign proposed  
7     over two years ago, but which is not launched or active. Nevertheless, Plaintiffs assert  
8     that WLS should be enjoined because it purportedly would harm competition and  
9     consumers. However, as Plaintiffs are aware, in another action filed last year in this  
0     Court by three registrars to block WLS, Judge Walter found that “WLS has the potential  
1     to benefit registries, registrars . . . and, *most importantly, the public.*”<sup>2</sup> *Dotster, Inc. v.*  
2     *Internet Corp. for Assigned Names & Numbers*, 296 F. Supp. 2d 1159, 1166 (C.D. Cal.  
3     2003) (emphasis added).

4     Viewed in the light most favorable to Plaintiffs, their allegations do not reflect  
5     any unlawful action by VeriSign or NSI. Plaintiffs have accused VeriSign and NSI –  
6     based solely on VeriSign’s *proposal* to implement WLS – of operating an “illegal  
7     lottery,” violating federal antitrust laws, and deceiving “consumers” about the value of  
8     WLS. Plaintiffs’ own Complaint reveals that these allegations are baseless. The facts  
9     alleged in the Complaint establish that by *proposing* to offer WLS, VeriSign and NSI  
0     have proposed no illegal lottery, have committed no antitrust violation, and have  
1     disrupted no existing business relationship between Plaintiffs and others, and that no

1     <sup>1</sup> In fact, at least two of the Plaintiffs, Esite and BidItWinIt, apparently have no active  
2     business operations and have *never* provided any domain name registration services.  
3     See <http://www.esite.com>; <http://www.biditwin.it>. In addition, AusRegistry Group  
4     does not even offer registration services to consumers. See  
5     <http://www.registrarsasia.com>.

6     <sup>2</sup> In the *Dotster* action, this Court denied a preliminary injunction motion brought by  
7     several registrars against ICANN that sought to enjoin the implementation of WLS. The  
8     *Dotster* action was later dismissed with prejudice. Certain Plaintiffs in this action,  
9     namely R. Lee Chambers Co. LLC and Fiducia LLC, are members of an organization  
0     called the Domain Justice Coalition (“DJC”), of which the *Dotster* plaintiffs also are  
1     members. The DJC publicly has claimed responsibility for the *Dotster* action. See  
2     <http://www.stopwls.com/lawsuit.html>.

1 According to Plaintiffs, ICANN is a not-for-profit corporation recognized by the  
2 U.S. Department of Commerce as the entity responsible for administering the domain  
3 name system. (*See generally id.* ¶¶ 4.12-4.19.)

4 **B. Plaintiffs' Registration of Recently Deleted Domain Names**

5 Plaintiffs allege that there currently are 258 TLDs, including fourteen "generic"  
6 domains (such as the .com, .net, and .gov TLDs) and 243 "country code" domains (such  
7 as .us and .uk). (*Id.* ¶¶ 4.5-4.7.) They assert that, as the total number of domain names  
8 registered in the .com and .net TLDs has grown, the quantity and quality of domain  
9 names available for registration in those TLDs has been reduced, resulting in a  
10 "shortage" of desirable domain names. (*Id.* ¶¶ 4.20-4.24.) According to Plaintiffs, the  
11 shortage of domain names is ameliorated by the number of registered domain names  
12 that expire because the registrations are not renewed by the current registrants. (*Id.*  
13 ¶ 4.23.) Plaintiffs allege that approximately 800,000 domain names expire each month  
14 and are returned, at least momentarily, to a supposed "pool" of unregistered domain  
15 names available for registration.<sup>4</sup> (*Id.* ¶ 4.24.)

16 Plaintiffs allege that domain names can be registered for periods from one to ten  
17 years. (*Id.* ¶ 4.25.) If not renewed at the end of the term, the domain name registration  
18 is deleted and is no longer included in the registry's master database. At that point, the  
19 domain name can be registered by anyone. (*Id.* ¶¶ 4.25-4.34.) According to the  
20 Complaint, when domain names expire, many registrars compete to register the names  
21 on behalf of their customers. (*Id.* ¶ 4.34.) Plaintiffs allege that, if the domain name is  
22 desirable, at least 100 registrars typically compete to register it, and it is often "re-  
23 registered" within a few milliseconds of being deleted. (*Id.* ¶¶ 4.34, 4.36.) To register  
24 a .com or .net domain name that is about to be deleted, each competing registrar sends a

25  
26 <sup>4</sup> Plaintiffs admit that references to a "shortage" or "pool" of "unregistered" or "expired"  
27 domain names is a misnomer. (FAC ¶ 4.24 n.6.) Domain names either are registered,  
28 and thus included in the registry's database, or are not registered and do not exist. (*Id.*)  
*See generally Smith v. Network Solutions, Inc.*, 135 F. Supp. 2d 1159, 1160-64 (N.D.  
Ala. 2001).

1 series of “add” commands to the particular TLD Registry (the .com and .net registries  
2 are operated by VeriSign). (*Id.* ¶ 4.34.) The first competing registrar to have its  
3 command accepted for a given domain name registers that name. (*Id.*)

4 Registrars offer their customers (*i.e.*, potential registrants) different types of  
5 services to obtain the registration of a recently deleted domain name. (*Id.* ¶¶ 4.35-  
6 4.38.) Unlike some registrars, Plaintiffs allegedly do not charge their customers for  
7 their services unless and until the requested domain name is registered. (*Id.* ¶ 4.40.)  
8 However, Plaintiffs admit that they accept multiple “orders” to register a given domain  
9 name and will auction that domain name off to the highest bidder if they are successful  
10 in registering the domain name after it has been deleted from the registry’s database.  
11 (*Id.*) Accordingly, a customer of Plaintiffs has no certainty that he or she will  
12 ultimately obtain registration of a selected domain name even if Plaintiffs are able to  
13 register the sought-after domain name. (*Id.* ¶ 4.41.) Further, while Plaintiffs reference  
14 a \$60 price point for their services, compared to \$24 for VeriSign’s, Plaintiffs  
15 acknowledge that there is no limit on the price of a domain name when it is auctioned  
16 off to the highest bidder. (*Id.*)

### 17 **C. VeriSign’s Proposed WLS**

18 Plaintiffs allege that VeriSign has proposed to permit registrars to offer potential  
19 registrants another option for registration of recently deleted domain names. (*See*  
20 *generally id.* ¶¶ 4.44-4.50, 4.59-4.68.) According to Plaintiffs, WLS would operate as  
21 follows: Registrars, acting on behalf of customers, could place “reservations” for  
22 currently-registered domain names in the .com and .net TLDs. (*Id.* ¶ 4.46.) Only one  
23 WLS “subscription” would be accepted for each domain name, and each subscription  
24 would last one year. (*Id.*) Subscriptions would be sold on a first-come, first-served  
25 basis, and subscribers would have the option to renew at the end of the subscription  
26 period. (*Id.* ¶¶ 4.46, 9.6.) For domain names with a WLS subscription, upon  
27 cancellation of the domain name registration and deletion of the domain name, the  
28 recently deleted domain name would automatically be registered through the registrar

1 that sold the WLS subscription to its customer, the WLS subscriber. (*Id.* ¶ 4.48.) WLS  
2 remains a proposal. The Complaint admits that WLS has not been implemented and is  
3 not available for registrars to sell to their customers at this time. (*Id.* ¶¶ 4.66-4.67.)

### 4 **III. ARGUMENT**

5 A complaint fails under Federal Rule of Civil Procedure 12(b)(6) if it either does  
6 not allege a cognizable legal theory or alleges insufficient facts under a cognizable legal  
7 theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

8 Although the Court must assume the truth of all properly pleaded allegations of fact,  
9 “conclusory allegations of law and unwarranted inferences are insufficient to defeat a  
10 motion to dismiss.” *Ove v. Gwinn*, 264 F.3d 817, 821 (9th Cir. 2001). On a  
11 Rule 12(b)(6) motion, a district court may consider documents attached to, or referred  
12 to in, the complaint, if they form the basis of the plaintiff’s claim, and may assume their  
13 contents are true. *United States v. Ritchie*, 342 F.3d 903, 907-08 (9th Cir. 2003).

14 Applying these standards, VeriSign and NSI respectfully submit that the  
15 Complaint fails to state any claim against them and, thus, should be dismissed.

#### 16 **A. Plaintiffs Lack Article III Standing To Maintain Their Seven UCL** 17 **Claims**

18 Plaintiffs lack standing in federal court to pursue all *seven* of their claims against  
19 VeriSign and NSI under the Unfair Competition Law, Cal. Bus. & Prof. Code  
20 §§ 17200-17210 (the “UCL”), because they allege no injury to themselves as a result of  
21 VeriSign’s and NSI’s allegedly wrongful conduct. “Article III of the Constitution . . .  
22 limits the jurisdiction of the federal courts to ‘cases and controversies,’ a restriction that  
23 has been held to require a plaintiff to show that he actually has been injured by the  
24 defendant’s challenged conduct.”<sup>5</sup> *Lee v. Am. Nat’l Ins. Co.*, 260 F.3d 997, 1001 (9th  
25 Cir. 2001). The Ninth Circuit has made clear that plaintiffs may not proceed in federal

26 <sup>5</sup> Plaintiffs bear the burden of establishing federal jurisdiction over their UCL claims.  
27 *See Schmier v. United States Court of Appeals for the Ninth Circuit*, 279 F.3d 817, 821  
28 (9th Cir. 2002). Moreover, “the standing doctrine’s injury requirement” is a “proper  
basis for the grant of a motion to dismiss.” *Id.* at 823.

1 court as “private attorneys general” under the UCL *unless* they have suffered  
2 “individualized injury as a result of the defendant’s challenged conduct.” *Id.* at 1001-  
3 02; *Toxic Injuries Corp. v. Safety-Kleen Corp.*, 57 F. Supp. 2d 947, 952, 957 (C.D. Cal.  
4 1999) (no jurisdiction over UCL claim absent “concrete and particularized” injury).

5 In their First, Second, and Fourth through Eighth Claims, Plaintiffs seek to  
6 vindicate alleged injuries to “consumers” (*i.e.*, WLS subscribers), a group that does not  
7 include them. Not one of Plaintiffs’ UCL claims alleges injury to Plaintiffs themselves:

- 8 • *Claim One (Illegal Lottery)*: There is no allegation that Plaintiffs participated  
9 in the alleged lottery (*i.e.*, that VeriSign or NSI sold them a “chance to register  
a currently-registered domain name” (FAC ¶ 5.18)) or were harmed by it.
- 10 • *Claim Two (CLRA Violations)*: There is no allegation that Plaintiffs  
11 purchased a WLS subscription in reliance upon a representation that they  
12 would receive an “economic benefit” that was “contingent” on the occurrence  
of a subsequent event. (*Id.* ¶¶ 6.4, 6.5.)
- 13 • *Claim Four (Deceptive Advertising)*: Plaintiffs do not allege that VeriSign’s  
14 and NSI’s alleged failure to disclose the “likelihood that a WLS subscription  
will succeed” has harmed them in any way. (*Id.* ¶¶ 8.6, 8.8, 8.13, 8.14.)
- 15 • *Claim Five (Deceptive Sales)*: Plaintiffs do not allege that *they* have been  
16 “defraud[ed]” by VeriSign’s and NSI’s alleged practice of “selling WLS  
subscriptions that *cannot* result in a domain name.” (*Id.* ¶ 9.7.)
- 17 • *Claim Six (False Representations)*: Plaintiffs do not allege *they* have been  
18 harmed by VeriSign’s and NSI’s alleged marketing of “WLS subscriptions  
to domain name owners as a form of protection.” (*Id.* ¶¶ 10.8, 10.10.)
- 19 • *Claim Seven (Deceptive and Unfair Practices)*: Plaintiffs do not allege any  
20 harm to *them* from VeriSign’s and NSI’s alleged sale of “contingent future  
interests in property” in which they have “[no] ownership interest.” (*Id.* ¶ 11.8.)
- 21 • *Claim Eight (FTCA Violations)*: There are no allegations that *Plaintiffs*  
22 have been harmed by VeriSign’s and NSI’s alleged “failure to disclose the  
likelihood that a WLS subscription will be successful.” (*Id.* ¶¶ 12.6, 12.8.)

23 Although Plaintiffs purport to sue “on their own behalf and on behalf of the  
24 general public,” they lack Article III standing because they have alleged *no* injury to  
25 themselves and, thus, no *federal* court jurisdiction. *See Lee*, 260 F.3d at 1001-02.

#### 26 **B. The Seven UCL Claims Also Fail To State A Claim**

27 Plaintiffs’ seven purported UCL claims also fail because they are substantively  
28 defective. The UCL proscribes “unlawful, unfair or fraudulent business act[s] or

practice[s]" and "unfair, deceptive, untrue or misleading advertising." Cal. Bus. & Prof. Code § 17200. An "unlawful" business practice is one that is "forbidden by law." *Farmers Ins. Exch. v. Superior Ct.*, 2 Cal. 4th 377, 383, 6 Cal. Rptr. 2d 487 (1992). A business practice is "fraudulent" if its audience is "likely to be deceived" by it. *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1151, 131 Cal. Rptr. 2d 29 (2003). If a communication, read as a whole, together with its qualifying language and stated conditions, is *unlikely* to deceive a reasonable person, then the court may decide *as a matter of law* that it is not fraudulent within the meaning of the UCL. *See Freeman v. Time, Inc.*, 68 F.3d 285, 289-90 (9th Cir. 1995). "[T]he question whether it is misleading to the public will be viewed from the vantage point of members of the targeted group, not others to whom it is not primarily directed." *Lavie v. Procter & Gamble Co.*, 105 Cal. App. 4th 496, 512, 129 Cal. Rptr. 2d 486 (2003).

Finally, an "unfair" business practice is one where "the gravity of the alleged victim's harm" outweighs "the utility of the defendant's conduct." *E.g., Shvarts v. Budget Group, Inc.*, 81 Cal. App. 4th 1153, 1158, 97 Cal. Rptr. 2d 722 (2000); *cf. S. Bay Chevrolet v. Gen. Motors Acceptance Corp.*, 72 Cal. App. 4th 861, 886-87, 85 Cal. Rptr. 2d 301 (1999) (a practice is unfair when it "offends an established public policy or . . . is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers").

At a minimum, a plaintiff must plead "the facts supporting the . . . elements" of a UCL claim "with reasonable particularity." *GlobeSpan, Inc. v. O'Neill*, 151 F. Supp. 2d 1229, 1236 (C.D. Cal. 2001). If the plaintiff avers *fraudulent* conduct to support a UCL claim, he or she must satisfy Federal Rule 9(b)'s heightened particularity requirement. *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1103-05 (9th Cir. 2003).

#### **1. Plaintiffs' UCL Claim Based on an "Illegal Lottery" Fails**

Plaintiffs' First Claim alleges that WLS is an "unlawful" business practice because it constitutes an "illegal lottery." An illegal lottery is "any scheme for the disposal or distribution of property by chance, among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property."

1 Cal. Penal Code § 319. The three defining features of an illegal lottery are (1) a prize,  
2 (2) distributed by chance, (3) among persons who have paid consideration. *See W.*  
3 *Telcon, Inc. v. Cal. State Lottery*, 13 Cal. 4th 475, 484, 53 Cal. Rptr. 2d 812 (1996).

4 First, there can be no lottery unless *two or more* persons have paid for the chance  
5 to win a prize. *See Gayer v. Whelan*, 59 Cal. App. 2d 255, 259, 138 P.2d 763 (1943)  
6 (“[I]n order to constitute a lottery two or more persons must have paid or promised to  
7 pay a consideration for the chance of obtaining the prize. . . .”); Cal. Penal Code § 319  
8 (“persons” who have paid consideration). With WLS, Plaintiffs admit that only *one*  
9 potential registrant may purchase a subscription to register a particular domain name, if  
10 deleted. (FAC ¶ 4.46.) Thus, WLS does not distribute prizes (*i.e.*, domain names)  
11 among *multiple* competing participants, as all lotteries must do. *Gayer*, 59 Cal. App. 2d  
12 at 259.

13 Second, Plaintiffs have failed to allege, and cannot allege, that WLS involves the  
14 necessary element of *chance*. They contend that VeriSign and NSI are operating a  
15 lottery because “WLS distribution of domain names is by chance” (*i.e.*, it is “not within  
16 the control of the WLS subscriber and will not depend on the WLS subscriber’s skill”).  
17 (FAC ¶¶ 5.11, 5.12.) These allegations miss the mark. The “chance” associated with  
18 illegal lotteries refers to the distribution of a prize based solely on random mathematical  
19 probability. *See Bell Gardens Bicycle Club v. Dep’t of Justice*, 36 Cal. App. 4th 717,  
20 747, 42 Cal. Rptr. 2d 730 (1995) (lottery where distribution of poker jackpot depended  
21 on “fortuity or random event”). In contrast, uncertainty over whether a person will allow  
22 his domain name registration to lapse (*see* FAC ¶ 5.18 (“chance to register a currently-  
23 registered domain name . . . depend[s] upon the decision of the current registrant to  
24 renew the domain name”)) does not constitute “chance.” *See Att’y Gen. v. Preferred*  
25 *Mercantile Co.*, 187 Mass. 516, 519, 73 N.E. 669 (1905) (“It has repeatedly been held  
26 that such a chance as the uncertainty in regard to the number of contracts that will be  
27 allowed to lapse . . . is not a chance which makes the scheme a lottery.”).

28



1                   **2. Plaintiffs Fail To State a UCL Claim Based on the CLRA**

2           Plaintiffs' Second Claim alleges that VeriSign and NSI have committed an  
3 "unlawful" business practice by violating the Consumers Legal Remedies Act, Cal. Civ.  
4 Code §§ 1750-1784 (the "CLRA"). Plaintiffs allege that VeriSign's and NSI's WLS  
5 advertisements violate the CLRA's prohibition against "[r]epresenting that the consumer  
6 will receive a[n] . . . economic benefit, if the earning of the benefit is contingent on an  
7 event to occur subsequent to the consummation of the transaction." *Id.* § 1770(a)(17).  
8 (FAC ¶ 6.5.) However, state law precludes Plaintiffs from enforcing the CLRA.

9                   **a. Plaintiffs are not "consumers" under the CLRA**

10           Only a "consumer who suffers . . . damage" from a CLRA violation may sue.  
11 Cal. Civ. Code § 1780(a). The CLRA defines "consumer" as "an individual who seeks  
12 or acquires, by purchase or lease, any goods or services *for personal, family, or*  
13 *household purposes.*" *Id.* § 1761(d) (emphasis added). As the Complaint admits,  
14 Plaintiffs are all business entities that purport to offer services to assist customers who  
15 seek to register recently deleted domain names. (FAC ¶ 1.4.) Plaintiffs also fail to  
16 allege that *they* have sought or acquired any WLS subscriptions – which purportedly  
17 are the "goods or services" that are the subject of the alleged CLRA violation – or that  
18 they did so for "personal, family or household purposes." Plaintiffs clearly are not  
19 "consumers" under the CLRA.

20                   **b. Plaintiffs have not suffered any damage**

21           Plaintiffs have not alleged, as they must, that they have "suffer[ed] any damage."  
22 *See* Cal. Civ. Code § 1780. The Complaint alleges that WLS is only a proposal; it has  
23 not been implemented and is not available for registrars to sell to their customers.  
24 (FAC ¶¶ 4.66-4.67.) Thus, even if VeriSign and NSI were advertising WLS in  
25 violation of the CLRA, no damage could have been caused by the representations  
26 because WLS is not yet available.

27                   **c. Plaintiffs have alleged no representation by VeriSign**

28           The CLRA prohibits, in some circumstances, "[r]epresenting that the consumer

1 will receive a[n] . . . economic benefit.” Cal. Civ. Code § 1770(a)(17). Plaintiffs,  
2 however, have pleaded no facts that *VeriSign* made any such “representation”; only NSI  
3 and eNom are alleged to have made “representations.” (FAC ¶¶ 6.6, 6.7.)

4 Moreover, Plaintiffs’ allegation that NSI and eNom are VeriSign’s “agents” does  
5 not save their claim. (*Id.* ¶ 2.14.) The UCL does not permit vicarious liability. *See*  
6 *People v. Toomey*, 157 Cal. App. 3d 1, 14, 203 Cal. Rptr. 642 (1984) (“The concept of  
7 vicarious liability has no application to actions brought under the [UCL].”). Therefore,  
8 “[a] defendant’s liability [under the UCL] must be based on [its] personal ‘*participation*  
9 in the unlawful practices’ and ‘*unbridled control*’ over the practices that are found to  
10 violate [the UCL].” *Emery v. Visa Int’l Serv. Ass’n*, 95 Cal. App. 4th 952, 960, 116  
11 Cal. Rptr. 2d 25 (2002) (emphasis added). Plaintiffs do not allege any facts indicating  
12 that VeriSign exercised “unbridled control” over, or even “participated” in, the alleged  
13 representations of eNom and NSI. *See id.* at 964 (no UCL liability where the defendant  
14 “played no part in preparing or sending any ‘statement’ that might be construed as  
15 untrue or misleading under the unfair business practices statutes”).

16 **d. The lone alleged representation by NSI is not deceptive**

17 Plaintiffs have alleged a single representation by NSI that supposedly violates the  
18 CLRA. However, as Plaintiffs’ allegations reveal, that advertisement explicitly states,  
19 on its face, that a WLS subscription will result in a domain name registration only “[i]f  
20 the domain name becomes available during [the WLS] subscription period.”<sup>6</sup> (*Id.*

21 <sup>6</sup> Plaintiffs did not quote the alleged ad in full or attach it to the Complaint. On a motion  
22 to dismiss, a court may examine the entirety of an allegedly misleading communication  
23 that was only partially quoted in the complaint. *Haskell v. Time, Inc.*, 857 F. Supp.  
24 1392, 1396-98 (E.D. Cal. 1994). A copy of the complete advertisement is attached as  
25 Exhibit 1 hereto and can be found at “www.nextregistrationrights.com/backorder.” The  
26 advertisement contains additional disclosures that negate Plaintiffs’ allegation of  
27 deception. For example, the advertisement states: “*If the domain name is not renewed*  
28 *and completes the registry deletion cycle during your subscription term*, then the domain  
name is yours,” and Next Registration Rights “[a]utomatically grants you the next  
registration *if the domain name becomes available.*” (Ex. 1 at 1 (emphases added).)  
Finally, this advertisement is located at a website that is not operated by NSI since, as  
Plaintiffs admit, VeriSign sold NSI’s domain name registrar business last year. (FAC  
¶ 2.11.) As previously stated, NSI does not currently act as a domain name registrar and  
does not offer, advertise, or promote WLS.

¶ 6.6.) Far from deceiving “consumers” about the contingent nature of the benefit to be received from a WLS subscription, NSI has disclosed up front that a WLS subscription may not result in a domain name registration.

The CLRA was enacted to protect consumers from *deception*. See *Broughton v. CIGNA Healthplans*, 21 Cal. 4th 1066, 1077, 90 Cal. Rptr. 2d 334 (1999) (CLRA designed to “alleviate social and economic problems stemming from deceptive business practices”); Cal. Civ. Code § 1760. In view of this purpose, it is not the law that a representation can violate the CLRA even if it expressly discloses the contingent nature of the benefit to be derived from the good or service. If it were, no seller could advertise a good or service that offered an economic benefit dependent on the occurrence of a future event. For example, sellers of stolen vehicle recovery systems (such as LoJack) could not legally advertise that their goods and services increase the likelihood of recovering a stolen car, because the economic benefit (recovery of the car) is contingent upon an uncertain future event (the car being stolen and recovered). Such an absurd interpretation of the CLRA would ignore its very purpose, which is to protect consumers from *deception*. Here, there is no deception. The Court should dismiss the Second Claim for Relief.

**3. The UCL Does Not Require VeriSign and NSI Individually To Counsel Each WLS Subscriber as to the Likelihood of Success**

In their Fourth Claim for Relief, Plaintiffs allege that VeriSign and NSI have committed a “fraudulent” business practice by publishing promotional materials for WLS that do not disclose “the likelihood that a subscriber will obtain the domain name to which it subscribes.” (FAC ¶ 8.6; *see also id.* ¶ 8.8.) Although Plaintiffs conclusorily assert that this omission is “likely to deceive consumers” (*id.* ¶ 8.12), the facts actually alleged in the Complaint negate the allegation of deception.

Specifically, Plaintiffs admit that domain name registrants already are aware of “the fact that most currently registered domain names will be renewed.” (*Id.* ¶ 4.54.) Indeed, Plaintiffs developed their “pay if successful” business models in response to

1 consumer recognition of this very fact. (*Id.* ¶¶ 1.4, 4.53-4.54.) Therefore, the  
2 Complaint concedes that potential domain name registrants already understand that few  
3 registrants of desirable domain names allow their domain name registrations to be  
4 canceled and their domain names to be deleted. *Nowhere have Plaintiffs alleged that*  
5 *this fact is unknown to the reasonable WLS subscriber.*

6 Only nondisclosures that render a transaction *misleading* run afoul of the UCL.  
7 In *Searle v. Wyndham International, Inc.*, 102 Cal. App. 4th 1327, 126 Cal. Rptr. 2d  
8 231 (2002), for example, a hotel patron alleged that the Wyndham Plaza Hotel  
9 committed a fraudulent business practice by failing to disclose that a seventeen percent  
10 “service charge” added to room service bills included a tip paid to the server. The court  
11 affirmed dismissal of the claim, holding that the hotel had no obligation to disclose this  
12 information because its nondisclosure did not deceive patrons about the cost of their  
13 room service meals. *Id.* at 1330, 1335.

14 Here, the UCL does not require VeriSign or NSI to furnish WLS subscribers with  
15 the statistical probability that a WLS subscription will succeed, because, as in *Searle*,  
16 nondisclosure of that information would not deceive a reasonable subscriber about the  
17 nature of what it is purchasing. Based on the Complaint’s allegations, reasonable  
18 registrants already understand that the success or failure of any WLS subscription, as  
19 well as the resultant value of Plaintiffs’ services, will be inherently uncertain. The UCL  
20 does not require VeriSign and NSI individually to counsel each customer on the  
21 probability that a subscription will succeed. If it did impose such affirmative disclosure  
22 obligations, no insurance company could sell earthquake insurance policies in  
23 California without advising each insured of the (relatively low) statistical probability  
24 that an earthquake will occur – and benefits become payable – during the policy term.  
25 These insureds realize, in a very real – if unquantified – way, that the premiums they  
26 agree to pay are unlikely to return any value other than peace of mind. For the same  
27 reason, WLS subscriptions do not become “fraudulent” simply because VeriSign and  
28 NSI do not quantify and individualize the already *known* and disclosed risk that a

1 domain name will not be deleted.

2 In addition, the Court should dismiss this claim because Plaintiffs have not  
3 alleged with reasonable particularity the *contents* of VeriSign's and NSI's supposedly  
4 deceptive statements. *See Vess*, 317 F.3d at 1103-05 (heightened pleading requirement  
5 of Fed. R. Civ. P. 9(b) applied to allegations of *fraudulent* in support of a UCL claim).  
6 These statements allegedly are posted on VeriSign's and NSI's websites. (FAC ¶¶ 8.8,  
7 8.10.) Yet, as to VeriSign, Plaintiffs merely characterize the promotional materials – in  
8 vague and self-serving ways – without setting forth any of the specific statements  
9 contained therein.<sup>7</sup> (*Id.* ¶ 8.8.) Rule 9(b) requires more.

10 As to NSI, the only statement alleged in support of the claim could not support  
11 liability because it is nonactionable “puffery.”<sup>8</sup> According to Plaintiffs, NSI stated that  
12 WLS is “superior to traditional back-order services, which are not administered by the  
13 .com/.net registry and frequently accept more than one name per backorder.” (*Id.*  
14 ¶¶ 8.10-8.11.) “Puffery” consists of statements not “capable of being proved false,”  
15 *Coastal Abstract Serv., Inc. v. First Am. Title Ins. Co.*, 173 F.3d 725, 731 (9th Cir.  
16 1999), such as “generalized boasting” that a competitor’s products are “inferior” and  
17 “‘lack certain characteristics’ that [our] products provide,” *Pinnacle Sys., Inc. v. XOS*  
18 *Techs., Inc.*, 2003 WL 21397845, at \*5-\*6 (N.D. Cal. June 17, 2003). Courts may  
19 determine as a matter of law that a statement is puffery. *Coastal Abstract*, 173 F.3d at  
20 731. NSI’s statement that WLS is “superior” is “generalized boasting” that Plaintiffs  
21 cannot disprove. Accordingly, the Court should dismiss the Fourth Claim for Relief.

22 **4. The UCL Does Not Require VeriSign or NSI To Advise WLS**  
23 **Subscribers To Check the Expiration Dates for Domain Names**

24 Plaintiffs allege in their Fifth Claim that VeriSign and NSI “are defrauding

25  
26 <sup>7</sup> Nor, notably, do Plaintiffs allege that registrars provided VeriSign’s “sample” ads to  
27 customers without alteration. (*See* FAC ¶ 8.8.) As the Complaint admits, “consumers”  
28 interact directly with registrars, not VeriSign. (FAC ¶ 4.10.)

<sup>8</sup> As noted above, because NSI no longer operates as a domain name registrar, or offers  
Next Registration Rights, the described advertising is not currently made by NSI.

1 consumers” by their proposal to offer WLS subscriptions for domain names not set to  
2 expire within the subscription period, without advising “consumers” to check the  
3 “expiration dates” for such names. (FAC ¶¶ 9.4-9.7.) However, the supposedly hidden  
4 information – “expiration dates” – is accessible to the entire world, a fact confirmed by  
5 the Complaint’s exhibits. Further, Plaintiffs have not alleged any facts indicating that  
6 reasonable consumers are likely to be deceived by the alleged nondisclosure of this  
7 information.

8 First, interested WLS subscribers have unfettered access to the “expiration dates”  
9 for registered domain names. Upon registering a name, the sponsoring registrar must  
10 submit the “expiration date” as one of the required “data elements” of the registration.  
11 (FAC Ex. A § 2.4.5.) VeriSign maintains this information, for *all* domain names  
12 registered in its TLDs, in a publicly accessible registry “WHOIS” database. VeriSign’s  
13 WHOIS database, at <http://registrar.verisign-grs.com/whois/>, is available for free to the  
14 public.<sup>9</sup> Every ICANN-accredited registrar also must provide a similar publicly  
15 accessible “WHOIS” database that includes up-to-date data, including expiration date,  
16 for currently registered domain names that it sponsors. (*Id.* Ex. B § 3.3.) Using the  
17 database, anyone can input an existing domain name and instantly determine, among  
18 other information, the “expiration date” of the domain name. *See generally Smith*, 135  
19 F. Supp. 2d at 1162-63 (domain name expiration dates are publicly accessible);  
20 *Columbia Ins. Co. v. Seescandy.com*, 185 F.R.D. 573, 575 (N.D. Cal. 1999) (listing  
21 information regarding a domain name registration and stating “[t]he ownership  
22 information for any given domain name can be looked up in a public database using a  
23 ‘WHOIS’ query”).<sup>10</sup> Thus, as the Complaint’s exhibits reveal, VeriSign and NSI are  
24

25 <sup>9</sup> The Court may take judicial notice of the fact that VeriSign’s WHOIS database is  
26 publicly available at VeriSign’s Internet website. *See* Fed. R. Evid. 201; *Hendrickson*  
27 *v. Ebay Inc.*, 165 F. Supp. 2d 1082, 1084 n.2 (C.D. Cal. 2001) (taking judicial notice of  
28 website and the “information contained therein”).

<sup>10</sup> For example, according to the current “WHOIS” database, the RegisterSite.com  
domain name registration will expire on August 10, 2008.

1 not concealing domain name “expiration dates” from consumers. They are, in fact,  
2 actively providing that data.

3 Second, and more fundamentally, Plaintiffs have not alleged that a reasonable  
4 WLS subscriber *could not* or *would not* check this information before it purchased a  
5 WLS subscription. (Of course, common sense says otherwise, especially when told that  
6 a WLS subscription will mature into a registration only if and when a domain name is  
7 deleted.) Absent such an allegation, there can be nothing deceptive about VeriSign’s  
8 and NSI’s selling WLS subscriptions without reminding “consumers” to check public  
9 sources of information.<sup>11</sup>

10 Finally, in addition to alleging that this practice is “fraudulent,” Plaintiffs tersely  
11 add that it is “unfair.” (FAC ¶ 9.9.) They fail to allege, however, what could be unfair  
12 about the practice in the absence of any likelihood of deception. Their allegations of  
13 unfairness, therefore, fail for the same reasons as their deception allegations.

14 **5. Plaintiffs Fail To State a UCL Claim Based on VeriSign’s**  
15 **and NSI’s Alleged Marketing of WLS as “Protection”**

16 In their original complaint, Plaintiffs alleged that VeriSign was committing  
17 “extortion” under the federal Hobbs Act, 18 U.S.C. § 1951(a), by advising registrars to  
18 market WLS subscriptions to domain name registrants as “protection” against the  
19 unintentional expiration of their registrations. (Compl. ¶¶ 9.2-9.12.) They asserted that  
20 VeriSign was “inculcating fear among registrants of a problem that does not exist”  
21 because the chance that a domain name registration would unintentionally expire is very  
22 low. (*Id.* ¶ 9.10.) Plaintiffs amended their complaint after VeriSign pointed out that it is

23  
24 <sup>11</sup> This claim also rests on a false premise, namely, that no rational “consumer” would  
25 buy a WLS subscription for a domain name not set to “expire” within the subscription  
26 period because it “*cannot* result in a domain name.” (FAC ¶ 9.7.) As Plaintiffs admit,  
27 a current registrant may delete its own registration before the expiration date, thereby  
28 making the domain name available for registration during the subscription period. (*Id.*  
¶ 15.6.) In addition, because WLS subscribers will have the option to renew at the end  
of the term (*id.* ¶ 9.6), purchasing a subscription before the domain name is set to expire  
enables the subscriber to reserve its place at the front of the line for future years, when  
the underlying domain name *is* scheduled to expire.

1 legally entitled to delete domain names after all grace periods have expired, and a party  
2 does not commit extortion by warning that it *will* do an act which it is legally entitled to  
3 do. *See, e.g., Rothman v. Vedder Park Mgmt.*, 912 F.2d 315, 318 (9th Cir. 1990).

4 In the FAC, Plaintiffs retain precisely the same factual theory of liability, but  
5 now assert that marketing WLS as “protection” violates the UCL. (FAC ¶¶ 10.2-  
6 10.14.) The legal principle that foreclosed Plaintiffs’ Hobbs Act theory, however,  
7 applies equally to Plaintiffs’ new legal theory. A supposed “threat” is not unlawful  
8 “where that which is threatened is only what the party has a legal right to do.” *McKay*  
9 *v. Retail Auto. Salesmen’s Local Union No. 1067*, 16 Cal. 2d 311, 321, 106 P.2d 373  
10 (1940). Plaintiffs admit that VeriSign is entitled to delete a domain name after all  
11 renewal grace periods have elapsed. (FAC ¶ 10.7.) Any supposed “threat” by VeriSign  
12 that it may act on this legal right cannot be unlawful.

13 In addition, Plaintiffs fail to allege facts indicating that a reasonable domain  
14 name registrant is likely to be deceived by VeriSign’s and NSI’s supposed marketing of  
15 “protection.” As Plaintiffs concede, registrants can register domain names for a term of  
16 many years and, before any domain name is deleted, receive “clear notice that their  
17 domain name requires attention.” (FAC ¶¶ 10.6, 10.11; *see also id.* ¶¶ 4.26-4.32.)  
18 Plaintiffs have failed to allege that a reasonable registrant is unaware of these  
19 circumstances and is likely to be deceived about the “protective” value of a WLS  
20 subscription.

21 Finally, Plaintiffs fail to allege with reasonable particularity the facts showing  
22 that VeriSign and NSI are marketing WLS as “protection.” They do not set forth the  
23 contents of any specific statement, but merely characterize, in the light most favorable  
24 to them, what ostensibly are advertisements available on the Internet. Plaintiffs’ bare  
25 allegations plainly are insufficient. *See Vess*, 317 F.3d at 1103-05. Further, despite  
26 their admission that VeriSign itself is not publishing any such ads (FAC ¶ 10.8),  
27 Plaintiffs do not allege any facts indicating that VeriSign has any control over NSI’s or  
28 eNom’s alleged advertising. *Supra* p. 10. Therefore, Plaintiffs have not alleged a claim



1 against VeriSign or NSI and, at the very least, have not alleged that VeriSign can be  
2 liable, either directly or vicariously, on this claim.

3           **6.     Plaintiffs Fail To State a UCL Claim Based on VeriSign's**  
4           **and NSI's Purported Sales of "Property" They Do Not Own**

5           In their Seventh Claim for Relief, Plaintiffs allege that domain names are  
6 "intangible personal property" and that, by offering WLS subscriptions, VeriSign and  
7 NSI are selling "contingent future interests in property [*i.e.*, domain names] in which  
8 neither . . . has any ownership interest whatsoever." (FAC ¶¶ 11.5, 11.8.) These sales,  
9 according to Plaintiffs, violate the "implied[] representation that [a property seller] has  
10 good and marketable title in the property he sells," and constitute "unfair" and  
11 "fraudulent" business practices under the UCL. (*Id.* ¶¶ 11.4, 11.11.) This claim is  
12 legally-deficient based on Plaintiffs' own allegations.

13           Plaintiffs illustrate their theory by comparing the sale of WLS subscriptions to a  
14 bank's, valet parking attendant's, or coat check's raffling off of deposited funds, parked  
15 cars, or furs entrusted to their care. (*Id.* ¶¶ 1.6, 1.7, 11.9.) However, unlike deposited  
16 funds, parked cars, or checked coats, a deleted domain name – the alleged "property"  
17 that is the subject of a WLS subscription – does not exist and, thus, belongs to *no one*.  
18 (*See id.* ¶ 4.24 n.6.) Once a domain name registration is deleted, neither VeriSign nor  
19 NSI has any legal obligation to maintain that "property" for another.

20           Plaintiffs' Complaint concedes these fatal flaws in their theory. They admit that  
21 a WLS subscription will only be activated if and when the current registrant  
22 "abandons" the domain name registration (*i.e.*, fails to renew the registration), in which  
23 event the domain name registration is canceled, and the domain name is deleted.  
24 Accordingly, the former registrant has no "rights" to the deleted domain name. The  
25 domain name is then "registered" to the WLS subscriber. (*Id.* ¶¶ 1.1, 4.48.) Thus,  
26 Plaintiffs have not alleged, and cannot allege, that *anyone* has a valid legal right to a  
27 deleted domain name, or that VeriSign or NSI is under any legal obligation to "hold" a  
28 deleted domain name for the benefit of anyone, least of all Plaintiffs.

1                   **7.     Plaintiffs' UCL Claim Based on Alleged FTCA Violations Fails**

2             In the Eighth Claim, Plaintiffs allege that VeriSign and NSI have committed an  
3     “unlawful” business practice by violating the Federal Trade Commission Act, 15 U.S.C.  
4     §§ 41-58 (the “FTCA”). (FAC ¶¶ 12.1-12.10.) This claim is an improper attempt to  
5     circumvent Congress’ unequivocal decision that no private right of action shall lie under  
6     the FTCA and is, at bottom, a repackaging of their deficient Fourth Claim for Relief.

7                   **a.     Plaintiffs may not indirectly enforce the FTCA**

8             The language and legislative history of the FTCA make clear that Congress  
9     vested *exclusive* enforcement authority for the Act in the FTC. *See Moore v. N.Y.*  
10    *Cotton Exch.*, 270 U.S. 593, 603, 46 S. Ct. 367, 70 L. Ed. 750 (1926); *Holloway v.*  
11    *Bristol-Myers Corp.*, 485 F.2d 986, 1002 (D.C. Cir. 1973); *Carlson v. Coca-Cola Co.*,  
12    483 F.2d 279, 280 (9th Cir. 1973); 15 U.S.C. § 45(a)(2). Consequently, there is no  
13    private right of action to enforce the statute. *See Carlson*, 483 F.2d at 281.

14            Plaintiffs cannot evade this prohibition by disguising in UCL clothing what is in  
15    fact a claim under the FTCA. The UCL may not be used as the vehicle for enforcing  
16    federal statutes, such as the FTCA, as to which Congress has unambiguously rejected  
17    any private right of enforcement. *See Summit Tech., Inc. v. High-Line Med. Instruments,*  
18    *Co.*, 933 F. Supp. 918, 932-33, 943 n.21 (C.D. Cal. 1996) (a plaintiff “may not bring a  
19    [UCL] claim that is, in fact, an attempt to state a claim under the federal FDCA,” where  
20    there is no private right of action to enforce the FDCA).

21                   **b.     Plaintiffs have not alleged an FTCA violation**

22            Plaintiffs have not alleged any “deceptive” acts on the part of VeriSign or NSI.  
23    The FTCA prohibits “[u]nfair methods of competition . . . and unfair or deceptive acts  
24    or practices in or affecting commerce.” 15 U.S.C. § 45(a)(1). An act or practice is  
25    “deceptive” under the FTCA if, among other things, it is likely to mislead consumers  
26    acting reasonably under the circumstances. *See FTC v. Gill*, 265 F.3d 944, 950 (9th  
27    Cir. 2001). The UCL’s judicially crafted definition of “fraudulent” mimics the FTCA  
28    standard. *See Haskell*, 857 F. Supp. at 1399 (applying FTC’s interpretation of

1 “deceptive” in the UCL context).

2 Plaintiffs’ Eighth Claim for Relief, like their Fourth, is based on VeriSign’s and  
3 NSI’s allegedly deceptive “failure to disclose the likelihood that a WLS subscription  
4 will be successful.” (FAC ¶¶ 8.6, 8.8, 8.13, 12.6, 12.8.) For the reasons set forth above  
5 with respect to Plaintiffs’ Fourth Claim under the UCL, *supra* pp. 12-13, Plaintiffs have  
6 not alleged a claim for deception under the FTCA.

7 **C. Plaintiffs Fail To Plead The Essential Elements Of A Tying Claim**

8 Plaintiffs’ Ninth Claim alleges that VeriSign and NSI have established an  
9 unlawful *per se* tying arrangement in violation of § 1 of the Sherman Act because “each  
10 consumer who purchases a WLS subscription will be required to agree to purchase any  
11 resulting domain name registration from the same registrar.” (FAC ¶¶ 13.2, 13.6.)  
12 Plaintiffs have not, and cannot, allege an antitrust claim against either VeriSign or NSI.

13 **1. Plaintiffs Do Not Have Standing To Allege Their Tying Claim**

14 As an initial matter, Plaintiffs lack standing to bring their antitrust claim because  
15 there have not been *any* sales of WLS. Indeed, Plaintiffs readily admit that VeriSign  
16 has not yet launched WLS. (FAC ¶¶ 4.66-4.67.) Even though “threatened” injury is  
17 sometimes enough to confer standing under section 16 of the Clayton Act, 15 U.S.C.  
18 § 26, *see Los Angeles Mem’l Coliseum Comm’n v. Nat’l Football League*, 468 F. Supp.  
19 154, 158-59 (C.D. Cal. 1979), it is insufficient where, as here, the “threatened” injury is  
20 merely speculative and does not constitute a *significant* threat. *Id.*; *see also In re*  
21 *Multidist. Vehicle Air Pollution M.D.L. No. 31*, 481 F.2d 122, 125-30 (9th Cir. 1973)  
22 (courts have exercised “pronounced restraint in granting standing” where, as here, a  
23 party seeks treble damages). Among other things, as set forth in more detail below,  
24 Plaintiffs have failed to articulate or to quantify the purported impact on commerce  
25 from VeriSign’s proposed launch of WLS (and cannot do so at this premature stage).  
26 Plaintiffs do not and cannot satisfy these standing requirements.

27 **2. Plaintiffs’ Tying Claim Fails on the Merits**

28 Under the Sherman Act, a seller creates an unlawful tie by requiring that a

1 consumer who purchases the tying product or service also purchase the tied product or  
2 service. *Paladin Assocs., Inc. v. Mont. Power Co.*, 328 F.3d 1145, 1159 (9th Cir. 2003)  
3 (“A tying arrangement is a device used by a competitor with market power in one  
4 market [the tying product market] to extend its market power to an entirely distinct  
5 market [the tied product market].”). A plaintiff must allege three elements to assert a  
6 *per se* illegal tying arrangement:

7 (1) [T]hat there exist two distinct products or services in different markets  
8 whose sales are tied together; (2) that the seller possesses appreciable  
9 economic power in the tying product market sufficient to coerce  
acceptance of the tied product; and (3) that the tying arrangement affects a  
‘not insubstantial volume of commerce’ in the tied product market.

10 *Id.* at 1159. Moreover, the Ninth Circuit requires that the defendant receive some type  
11 of economic benefit from sales of the tied product or service. *County of Tuolumne v.*  
12 *Sonora Cmty. Hosp.*, 236 F.3d 1148, 1158 (9th Cir. 2001) (because plaintiffs’ claimed  
13 benefit was “so attenuated” their *per se* tying claim failed). An indirect benefit from  
14 the tied product, even if substantial, will not be enough. *See id.*; *Robert’s Waikiki U-*  
15 *Drive, Inc. v. Budget Rent-A-Car Sys., Inc.*, 732 F.2d 1403, 1407-08 (9th Cir. 1984) (\$1  
16 cost savings per package sold is inadequate). Plaintiffs’ Complaint fails to allege any  
17 conduct by VeriSign or NSI that satisfies these elements.<sup>12</sup>

18 **a. No claim has been alleged against VeriSign**

19 First, a plaintiff must allege sufficiently that two separate and distinct products or  
20 services in separate relevant markets are being tied together. *See County of Tuolumne*,  
21 236 F.3d at 1157. “Separateness is determined in part by whether the products are  
22 normally sold or used as a unit and whether their joint sale effects savings beyond those

23 <sup>12</sup> Any tying claim based on the “rule of reason” is also deficient. Plaintiffs claim that  
24 WLS “will unreasonably restrain commerce” because it will limit consumers’ choices  
25 of domain name registrars and compel consumers to purchase domain name  
26 registrations from a registrar who may “not necessarily” offer the lowest price. (FAC  
27 ¶¶ 13.11-13.12.) Yet Plaintiffs offer no supporting factual details of how or why  
28 anticompetitive harm will result, particularly in light of their allegations that WLS  
would be available to, and may be offered by, all domain name registrars. (*See id.*  
¶ 13.13 (alleging that registrars “choose” to sell WLS).) Such “conclusory, self-serving  
allegations” fail to state a rule of reason claim. *Falstaff Brewing Co. v. Stroh Brewery*  
*Co.*, 628 F. Supp. 822, 828 (N.D. Cal. 1986).

1 of combined marketing.” *Klamath-Lake Pharm. Ass’n v. Klamath Med. Serv. Bureau*,  
2 701 F.2d 1276, 1289 (9th Cir. 1983); *see also Hirsh v. Martindale-Hubbell, Inc.*, 674  
3 F.2d 1343, 1350 (9th Cir. 1982) (“Absent the existence of separate markets, the alleged  
4 tying and tied products are, in reality, but a single product.”). Further, separateness  
5 depends on whether the products are “distinguishable in the eyes of buyers” depending  
6 on the character of demand. *Jefferson Parish Hosp. Dist. No. 2 v. Hyde*, 466 U.S. 2,  
7 19-20, 104 S. Ct. 1551, 80 L. Ed. 2d 2 (1984).

8 Plaintiffs cannot allege separate products here. Although they allege that a WLS  
9 subscription will be nothing more than the purchase of a subscription to register a  
10 domain name in the future if that domain name becomes available, Plaintiffs assert that  
11 “WLS subscriptions and domain name registrations are separate, distinct services.”  
12 (FAC ¶ 13.8.) However, they do not plead any facts to show whether *consumers* of  
13 “back order” services for currently-registered domain names, such as those Plaintiffs  
14 offer, consider the “back order” request to be a different service from the resulting  
15 domain name registration. On the contrary, Plaintiffs allege that these two events are  
16 intertwined. They allege that they join their own “back order” service with registration  
17 of the subject domain name. (FAC ¶ 4.40.)

18 Furthermore, the very nature of the services at issue suggests that they are not  
19 susceptible to a tying claim. The Ninth Circuit has noted that it makes no sense to  
20 “treat[] a contract granting an option with respect to an item as a product distinct from  
21 that consisting of the terms on which the option is to be exercised.” *Klamath-Lake*, 701  
22 F.2d at 1290. Based on Plaintiffs’ allegation in their Complaint, WLS can be  
23 considered the equivalent of an option to register a domain name once it becomes  
24 available. (*See, e.g.*, FAC ¶ 1.5 (“WLS is a contingent future interest in a domain name  
25 . . .”).) Under *Klamath-Lake*, therefore, WLS, as pleaded by Plaintiffs, cannot be  
26 treated as a service distinct from domain name registration services.

27 Second, a plaintiff must allege that the seller’s tying activity will result in a not  
28 insubstantial effect on commerce in the market for the *tied* product or service. *Paladin*

1 *Assocs.*, 328 F.3d at 1159. Here, Plaintiffs allege that domain name registration  
2 services are the “tied” service. Not surprisingly, since WLS has not been launched,  
3 Plaintiffs cannot allege any facts to support the conclusion that there will be a “not  
4 insubstantial effect” on the market for domain name registration services. In fact, based  
5 on Plaintiffs’ allegations, a *de minimis* effect would be expected, if any effect at all.  
6 They allege that a very small percentage (“less than 5%”) of the currently-registered  
7 domain names that would be desirable to WLS customers will ever be available for  
8 registration. (FAC ¶¶ 4.55-4.58.) Admittedly, this small percentage is an even smaller  
9 percentage of the overall number of domain name registrations. Moreover, as Plaintiffs  
10 allege, all domain name registrants are free to transfer a domain name registration from  
11 one registrar to another. (*Id.* ¶ 13.3.) Thus, any domain names registered as a result of  
12 WLS can be transferred by the registrant to another registrar. Based on these  
13 allegations, Plaintiffs cannot contend that the domain name registration “market” will  
14 suffer any substantial impact as a result of WLS.

15 Finally, Plaintiffs cannot satisfy the Ninth Circuit’s requirement that the  
16 defendant must receive an economic benefit from the tied product or service. Because  
17 Plaintiffs fail to allege that VeriSign has a sufficient economic interest in the tied  
18 product, domain name registrations, they have failed to allege this element of a tying  
19 claim. (*See id.* ¶ 13.2.) Plaintiffs’ FAC makes clear that WLS subscriptions will be  
20 sold by registrars, not VeriSign, and, likewise, the domain name registration that may  
21 be effectuated when a domain name subject to a WLS subscription expires is also  
22 “sold” by a registrar, not by VeriSign. (*Id.* ¶¶ 4.10-4.11, 4.48.) Irrespective of which  
23 registrar may sell a WLS subscription and then register the domain name for its  
24 customer, VeriSign will receive the same registry fee. (*Id.* ¶¶ 4.11, 4.48.) In other  
25 words, VeriSign will receive no higher registration fees in the future if a registrar uses  
26 WLS or a competitive service, such as those offered by Plaintiffs.<sup>13</sup> (*See id.* ¶¶ 4.39-

27 <sup>13</sup> Moreover, Plaintiffs’ cursory allegation that “VeriSign owns 15% of NSI and has an  
28 economic interest in restricting registrars’ ability to compete with NSI for domain name  
registrations” does not salvage their tying claim. (FAC ¶ 13.17.) Notably, Plaintiffs do

(Footnote Cont’d on Following Page)

1 4.43.) Absent any allegation of direct economic benefit to VeriSign, Plaintiffs' tying  
2 claim is legally insufficient.

3 **b. No claim has been alleged against NSI**

4 Plaintiffs' tying claim against NSI must fail because Plaintiffs do not – and cannot  
5 – allege that NSI's conduct satisfies the elements necessary for a tying claim.  
6 Significantly, Plaintiffs do not allege that NSI has or will have *any* economic power in  
7 the alleged “tying” service market to affect the alleged “tied” service or that NSI has  
8 taken any steps to “tie” the two services. While Plaintiffs allege that “NSI is the largest  
9 registrar” and “NSI sponsors nearly one-fourth of all registered domain names in  
10 <.com> and <.net>” (FAC ¶ 13.14), these allegations only address NSI's former market  
11 share in the *tied* market and ignore the relevant inquiry of NSI's purported share in the  
12 *tying* market in which WLS may compete in the future.<sup>14</sup> Moreover, Plaintiffs admit that  
13 WLS would not be limited to NSI. (*Id.* ¶ 13.13.) Thus, as pleaded, NSI has or had no  
14 unique position in connection with WLS.

15 **D. Plaintiffs Fail To State A Tortious Interference Claim**

16 Plaintiffs' Tenth Claim must fail because, as they concede, WLS has not been  
17 launched. Even if WLS had been launched, Plaintiffs' claim is legally deficient.  
18 California law is clear that the claim of tortious interference with prospective economic  
19

20 (Footnote Cont'd From Previous Page)

21 not contend that VeriSign has or will limit WLS to a small number of registrars;  
22 instead, Plaintiffs allege that registrars “choose” whether to sell WLS. (FAC ¶ 13.13.)  
23 Because end users will be able to purchase WLS and domain name registrations from  
24 registrars other than NSI, VeriSign does not have a sufficient economic interest in the  
25 tied product market to support a *per se* tying claim. *See Comm-Tract Corp. v. N.*  
*Telecom, Inc.*, 1996 WL 11953, at \*8 (D. Mass. Jan. 5, 1996) (holding that defendant  
26 who was majority owner of three distributors did not have sufficient economic interest  
27 in tied service that was also sold by numerous distributors with no relation to  
28 defendant).

<sup>14</sup> Plaintiffs cannot resuscitate their claim by contending that NSI's market share in the  
tied market can be extrapolated to the tying market because a court will not infer market  
power from a market share of less than 25%. *See Jefferson Parish*, 466 U.S. at 26-27  
(30% share insufficient); *Brokerage Concepts, Inc. v. U.S. Healthcare, Inc.*, 140 F.3d  
494, 516-17 (3d Cir. 1998) (25% share insufficient). Moreover, as noted above, NSI no  
longer operates as a domain name registrar. *See supra* at 2 n.3.

1 advantage does not protect the “speculative expectation that a potentially beneficial  
2 relationship will eventually arise.” *Westside Ctr. Assocs. v. Safeway Stores 23, Inc.*, 42  
3 Cal. App. 4th 507, 524, 49 Cal. Rptr. 2d 793 (1996). Plaintiffs’ original complaint  
4 alleged that, when VeriSign allegedly made “false and defamatory” statements about  
5 Plaintiffs’ services, Plaintiffs “were seeking business from *prospective customers*.”  
6 (Compl. ¶ 10.9 (emphasis added); *see also id.* ¶ 10.11.) In the FAC, however, these  
7 “prospective customers” have been transformed into “beneficial economic relationships  
8 with [Plaintiffs’] *respective customers*” (FAC ¶ 14.4 (emphasis added)), even though  
9 VeriSign’s allegedly tortious conduct has remained unchanged. Plaintiffs admitted in  
10 their original complaint that these customer relationships had not yet developed at the  
11 time of VeriSign’s allegedly tortious conduct, and no facts alleged in the amended  
12 complaint call this admission into doubt. Plaintiffs’ disingenuous attempt, with the  
13 stroke of a pen, to breathe life into their legally deficient claim should fail. *See Reddy*  
14 *v. Litton Indus., Inc.*, 912 F.2d 291, 296-97 (9th Cir. 1990).

15 To allege a claim for tortious interference, Plaintiffs must allege the identity of  
16 the relationships with which Defendants purportedly interfered. *See Brown v. Allstate*  
17 *Ins. Co.*, 17 F. Supp. 2d 1134, 1140 (S.D. Cal. 1998) (dismissing the plaintiff’s tortious  
18 interference claim where the plaintiff “fail[ed] to identify any *specific* existing  
19 relationships with which [the defendant] tortiously interfered”) (emphasis added). They  
20 must also allege facts that demonstrate “*existing* noncontractual relations which hold  
21 the promise of future economic advantage.” *Westside Ctr.*, 42 Cal. App. 4th at 524.

22 Here, Plaintiffs have failed to identify these necessary facts. They have not  
23 identified any of the purported customers or the nature of their business relationships  
24 with Plaintiffs. Nor have they alleged that these supposed customers had clearly agreed  
25 to continue using Plaintiffs’ services, such that they were existing, rather than potential,  
26 customers. Finally, since WLS has not launched, they cannot allege any interference.  
27 Plaintiffs’ allegations amount to “at most a hope for an economic relationship and a  
28 desire for future benefit,” *Blank v. Kirwan*, 39 Cal. 3d 311, 330-31, 216 Cal. Rptr. 718



1 (1985), which is legally insufficient.<sup>15</sup>

2 **E. The Eleventh Claim Does Not Entitle Plaintiffs To Declaratory Relief**

3 Plaintiffs seek a declaration that implementation of WLS would breach the  
4 Registry-Registrar Agreement (the "RRA") that VeriSign has entered into with each  
5 ICANN-accredited registrar that uses VeriSign's domain name registration systems.  
6 (FAC ¶¶ 15.1-15.16; Prayer ¶ 9; Ex. A.) Specifically, Plaintiffs assert that WLS would  
7 stop VeriSign from fulfilling its supposed contractual obligation to "delete domain  
8 names from the registry at the direction of the sponsoring registrar." (FAC Prayer ¶ 9;  
9 *id.* ¶ 15.2.) However, the Complaint itself unequivocally demonstrates that WLS would  
10 have no effect on a sponsoring registrar's ability to delete domain names they have  
11 registered. Indeed, as Plaintiffs acknowledge, WLS would merely determine who  
12 would be the next in line to register a domain name *after* the deletion (*id.* ¶¶ 1.1, 4.30-  
13 4.32, 4.48); it would *not* affect a registrar's ability to delete registrations of domain  
14 names they have registered. Consequently, Plaintiffs have failed to allege a threatened  
15 breach that could support a declaratory relief claim.


16 **IV. CONCLUSION**

17 For all of the foregoing reasons, the Court should grant this motion and dismiss  
18 each and every claim asserted against VeriSign and NSI without leave to amend.

19 Dated: May 28, 2004

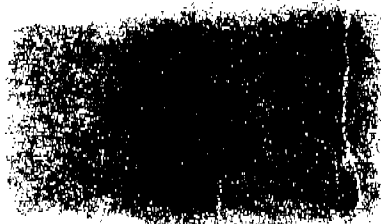
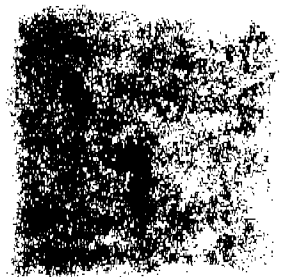
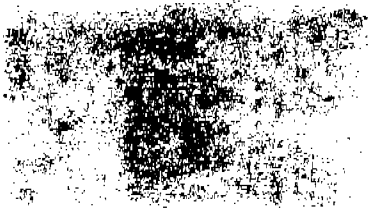
ARNOLD & PORTER LLP

20  
21 By:

  
22 LAURENCE J. HUTT  
23 Attorneys for Defendants VeriSign,  
Inc. and Network Solutions, Inc.

24 321800\_4.DOC

25 <sup>15</sup> Plaintiffs also must allege that VeriSign engaged in an independently *unlawful* act that  
26 interfered with their prospective economic advantage. *See Korea Supply*, 29 Cal. 4th at  
27 1158-59. Here, Plaintiffs summarily assert that VeriSign's conduct "was independently  
28 wrongful as described hereinabove." (FAC ¶ 14.7.) Assuming Plaintiffs are referring to  
their UCL and Sherman Act claims, their tortious interference claim must fail because  
Plaintiffs have failed to state a claim under either of these statutes. *Supra* pp. 5-23.



**EXHIBIT 1**

## Network Solutions

### NEXT REGISTRATION RIGHTS™

Now you can get the domain name you want when it becomes available. Next Registration Rights is a new service from Network Solutions that lets you order a .com or .net domain name that is already registered. If the domain name becomes available during your subscription period, the registration is yours.

**\$39 A YEAR**

INCLUDES REGISTRATION\*

**PRE-ORDER NOW**

**Act now. Only one pre-order will be accepted for each domain name.**

Next Registration Rights helps you:

- Protect the domain names you have
- Get a domain name you always wanted... but somebody else already has!

**MANAGE YOUR SUBSCRIPTIONS**

Get your Next Registration Rights today

- Coming soon! Pre-order today and you will be notified as soon as the service is released.
- Only one order per domain name will be accepted so place your order today before it's too late.
- Automatically grants you the next registration if the domain name becomes available
- [Learn More](#)

#### SELECT A DOMAIN NAME

**1** Enter your desired domain name: **2** Choose an extension: **3** Your code is: **3 f h 4 v**

www.  ☒ .com ☒ .net

i.e. my-own-company

Enter code here:

[Search for multiple domain names](#) **SEARCH**

#### MORE ABOUT NEXT REGISTRATION RIGHTS

##### How Pre-Order Works

Pre-Orders for Next Registration Rights will be available until the service "goes live". Customers who placed pre-orders will be notified at that time. When you place your pre-order you commit to purchasing the service should you receive the subscription. There is no guarantee that pre-orders will result in obtaining a Next Registration Rights subscription. When the service "goes live", if your credit card is valid at that time, your order will be submitted to the VeriSign registry on a first come first served basis. If the Next Registration Rights subscription you ordered is available, it will be automatically purchased for you. Your credit card on file will be charged \$39 for each successful subscription. You will be notified via e-mail whether or not your order was successful.

##### A superior new way to backorder

The only backorder service administered by the .com/.net registry, offering only one subscription per domain name. If the domain name is not renewed and completes the registry deletion cycle during your subscription term, then the domain name is yours. The domain name will be automatically placed into your account with a 1-year registration.

##### How will orders work after the Pre-Order Period?

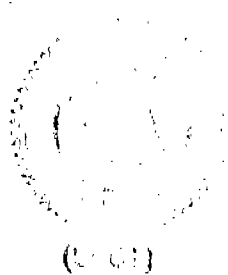
After the service "goes live," each time you search for Next Registration Rights availability for a particular domain name, you will be able to view whether or not the subscription is currently available. If it is available for purchase you will have the opportunity to immediately secure the subscription. At that time your credit card will be charged \$39 for a 1-year subscription. Your order will be confirmed via e-mail.

\*One year domain name registration included with the purchase of Next Registration Rights if the domain name becomes available and is registered to you during the subscription term.

[Next Registration Rights Home](#), [Manage Your Subscription](#), [Contact Us](#), [Network Solutions Home](#)

[Review our Privacy Policy](#), [Service Agreement](#), [Legal Notice](#)

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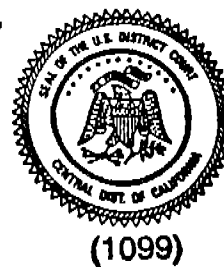


000027

I hereby attest and certify on 9/7/04  
that the foregoing document is a full, true  
and correct copy of the original on file in  
my office, and in my legal custody.

CLERK U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

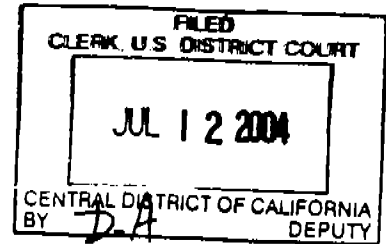
*Debra M. ...*  
DEPUTY CLERK



(1099)

# **Exhibit C**

Priority  
Send  
Cisd  
Enter  
NO JS-5/JS-6  
JS-2/JS-3



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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

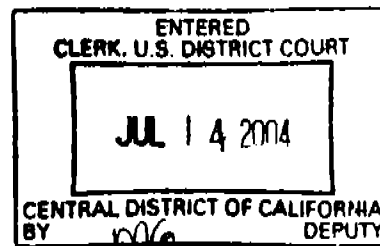
REGISTERSITE.COM, an Assumed )  
Name of ABR PRODUCTS INC., a )  
New York corporation, et al., )  
Plaintiff, )  
v. )  
INTERNET CORPORATION FOR )  
ASSIGNED NAMES AND NUMBERS, a )  
California corporation, et al. )  
' )  
Defendants. )

CASE NO.: CV 04-1368 ABC (CWx)  
ORDER RE: DEFENDANTS' MOTIONS TO  
DISMISS

Pending before the Court are Defendants' motions to dismiss. The motions came on regularly for hearing on July 12, 2004. Upon consideration of the submissions of the parties, the case file, and oral argument of counsel, the motion to dismiss filed by Defendants Verisign, Inc. and Network Solutions, Inc. is hereby GRANTED IN PART and DENIED IN PART. The remaining motions are MOOT for reasons discussed below.

//

THIS CONSTITUTES NOTICE OF ENTRY  
AS REQUIRED BY FRCP, RULE 77(d).



54

1 I. FACTUAL AND PROCEDURAL HISTORY

2 On April 8, 2004, Plaintiffs filed a First Amended Complaint  
3 ("FAC") asserting a federal antitrust claim under the Sherman Act, 15  
4 U.S.C. § 1, and eleven various state law claims. The Plaintiffs<sup>1</sup>  
5 consist of eight businesses that assist consumers in registering  
6 expired Internet domain names. (FAC ¶ 1.4.) Plaintiffs assert claims  
7 against four defendants: Verisign, Inc. ("Verisign"), Network  
8 Solutions, Inc. ("NSI"), Internet Corporation for Assigned Names and  
9 Numbers ("ICANN"), and eNom, Inc. ("eNom").

10 Verisign is a registry operator responsible for maintaining the  
11 database of domain registrations for the <.com> and <.net> domain  
12 names. (FAC ¶ 4.9.) Verisign plans to launch a new service, the Wait  
13 Listing Service ("WLS"). (FAC ¶ 1.1.) The WLS purports to give  
14 consumers, for an annual fee, the right to be "first in line" on the  
15 "waiting list" for currently-registered <.com> and <.net> domain  
16 names. (FAC ¶ 1.1.) According to Plaintiffs, Verisign requires that  
17 each consumer who purchases a WLS subscription also purchase any  
18 resulting domain name registration from the same registrar from whom  
19 he purchased the WLS subscription. (FAC ¶¶ 13.6, 13.7.) NSI and eNom  
20 are registrars who are currently advertising and taking "pre-orders"  
21 for the Verisign WLS service. (FAC ¶¶ 2.11-2.14, 7.6, 8.6.)  
22 Plaintiffs allege that a consumer will receive no benefit from  
23 purchasing a WLS subscription unless and until the current registrant  
24 decides to abandon its domain name, which is unlikely. (FAC ¶ 1.1.)  
25 As such, the WLS service will fail to provide any value to consumers.

26  
27 <sup>1</sup> Plaintiffs include: (1) Registersite.com, (2) Name.com, (3) R.  
28 Lee Chambers Company LLC, (4) Fiducia LLC, (5) Spot Domain, LLC, (6)  
!\$6.25 Domains! Network, Inc., (7) Ausregistry Group PTY LTD., and (8)  
!\$! Bid It Win It, Inc.



1 (FAC ¶ 4.55-4.58.).

2 In their ninth cause of action, Plaintiffs allege that the WLS  
3 service is an illegal tying arrangement in violation of the Sherman  
4 Act. Verisign allegedly exercises market power with respect to  
5 registry services, including WLS subscriptions. (FAC ¶ 13.9.) WLS  
6 subscriptions and domain name registrations are separate, distinct  
7 services. (FAC ¶ 13.8.) Consumers are free to transfer their  
8 registered domain names between registrars. (FAC ¶ 13.3.) However,  
9 consumers will be unable to purchase a WLS subscription without  
10 agreeing to purchase a domain name registration if the subscription is  
11 successful. (FAC ¶ 13.9.) Plaintiffs claim that "a not insubstantial  
12 volume of commerce in [domain name registrations] will be affected by  
13 Verisign's tying agreement." (FAC ¶ 13.16.)

14 On May 28, 2004, the Court received Defendant eNom's motion to  
15 dismiss the FAC, Defendant ICANN's motion to dismiss certain causes of  
16 action, Defendant Verisign's motion to dismiss the eleventh cause of  
17 action, and Defendants Verisign's and NSI's motion to dismiss the FAC.  
18 On June 17, 2004, Plaintiffs filed oppositions to each of the motions  
19 and a motion to strike certain portions of ICANN's motion. The  
20 Defendants filed replies on June 30, 2004.

## 21 II. LEGAL STANDARD

22 A Rule 12(b)(6) motion tests the legal sufficiency of the claims  
23 asserted in the complaint. See Fed. R. Civ. P. 12(b)(6). Rule  
24 12(b)(6) must be read in conjunction with Rule 8(a) which requires a  
25 "short and plain statement of the claim showing that the pleader is  
26 entitled to relief." 5A Charles A. Wright & Arthur R. Miller, Federal  
27 Practice and Procedure § 1356 (1990). "The Rule 8 standard contains  
28 'a powerful presumption against rejecting pleadings for failure to

1 state a claim.'" Gilligan v. Jamco Dev. Corp., 108 F.3d 246, 249 (9th  
2 Cir. 1997). A Rule 12(b)(6) dismissal is proper only where there  
3 either a "lack of a cognizable legal theory" or "the absence of  
4 sufficient facts alleged under a cognizable legal theory." Balistreri  
5 v. Pacifica Police Dept., 901 F.2d 969, 699 (9th Cir. 1988); accord  
6 Gilligan, 108 F.3d at 249 ("A complaint should not be dismissed  
7 'unless it appears beyond doubt that the plaintiff can prove no set of  
8 facts in support of his claim which would entitle him to relief").

9 The Court must accept as true all material allegations in the  
10 complaint, as well as reasonable inferences to be drawn from them.  
11 See Pareto v. F.D.I.C., 139 F.3d 696, 699 (9th Cir. 1998). Moreover,  
12 the complaint must be read in the light most favorable to plaintiff.  
13 See id. However, the Court need not accept as true any unreasonable  
14 inferences, unwarranted deductions of fact, and/or conclusory legal  
15 allegations cast in the form of factual allegations. See, e.g.,  
16 Western Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

17 Moreover, in ruling on a 12(b)(6) motion, a court generally  
18 cannot consider material outside of the complaint (e.g., those facts  
19 presented in briefs, affidavits, or discovery materials). See Branch  
20 v. Tunnell, 14 F.3d 449, 453 (9th Cir. 1994). A court may, however,  
21 consider exhibits submitted with the complaint. See id. at 453-54.  
22 Also, a court may consider documents which are not physically attached  
23 to the complaint but "whose contents are alleged in [the] complaint  
24 and whose authenticity no party questions." Id. at 454. Further, it  
25 is proper for the court to consider matters subject to judicial notice  
26 pursuant to Federal Rule of Evidence 201. Mir, M.D. v. Little Co. of  
27 Mary Hospital, 844 F.2d 646, 649 (9th Cir. 1988).

### III. DISCUSSION

#### A. Plaintiffs' Federal Antitrust Claim

Plaintiffs' ninth claim alleges that Verisign, eNom, and NSI have established an illegal *per se* tying arrangement in violation of the Sherman Act, 15 U.S.C. § 1. A tying arrangement involves a seller's refusal to sell one product (the tying product) unless the buyer also purchases a second product (the tied product) from the seller. Hamro v. Shell Oil Co., 674 F.2d 784, 786 (9th Cir. 1982). In this case, Plaintiffs allege that Verisign has established a tying arrangement because "[e]ach consumer who purchases a WLS subscription [the tying product] will be required to agree to purchase any resulting domain name registration [the tied product] from the same registrar from whom he purchased the WLS subscription." (FAC ¶ 13.6.)

In response to these allegations, Defendants argue that Plaintiffs lack standing because Defendants have yet to sell any WLS subscriptions. Plaintiffs counter that threatened injury confers standing. The Court agrees with Plaintiffs. "In order to establish standing, a plaintiff must first show that she has suffered an 'injury in fact - an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical.'" Scott v. Pasadena Unified Sch. Dist., 306 F.3d 646, 654 (9th Cir. 2002) (citation omitted). Here, Plaintiffs allege that Verisign plans to launch the WLS no more than thirty days after it is approved, that approval is likely, and that eNom and NSI are currently advertising the WLS and are accepting pre-orders for WLS subscriptions on their Web sites. (FAC ¶¶ 4.66-4.68.) The Court finds that these allegations sufficiently state an imminent injury. Furthermore, Defendants' contention that the threatened

1 injury is not substantial enough is not relevant to a standing  
2 inquiry. Instead, the magnitude of the threatened injury is relevant  
3 to whether Plaintiffs have sufficiently pled each of the elements of a  
4 tying claim.

5 To establish that a tying arrangement is illegal *per se*,  
6 plaintiffs must prove: (1) a tie between two separate products or  
7 services sold in relevant markets, (2) sufficient economic power in  
8 the tying product market to affect the tied market, (3) an effect on a  
9 not-insubstantial volume of commerce in the tied product market, and  
10 (4) the defendant's economic interest in the tied product. County of  
11 Tuolumne v. Sonora Cmty. Hosp., 236 F.3d 1148, 1157-58 (9th Cir. 2001)  
12 (citation omitted).

13 Plaintiffs' allegations fail to satisfy the third and fourth  
14 requirements.<sup>2</sup> As Defendants point out, Plaintiffs must do more than  
15 state mere legal conclusions. While Plaintiffs do state that a "not  
16 insubstantial volume of commerce in the tied product will be affected  
17 by Verisign's tying agreement," Plaintiffs' FAC fails to include facts  
18 to support this legal conclusion. In fact, the FAC includes facts  
19 which suggest that WLS subscriptions will not have an effect on domain  
20 name registrations because "of WLS subscriptions on the most desirable  
21 domain names, ninety five percent (95%) of consumers will never  
22 obtain the domain names to which they subscribe." (FAC ¶ 4.58)

23  
24  
25 <sup>2</sup> Plaintiffs' allegations also fail to satisfy the second  
26 requirement with respect to Defendants eNom and NSI. Plaintiffs have  
not alleged that eNom and NSI have market power in WLS subscriptions,  
the tying product.

27 <sup>3</sup> According to Plaintiffs, "WLS subscriptions are likely to be  
28 purchased on the most desirable domain names, and are unlikely to be  
purchased on the least desirable domain names." (FAC ¶ 4.56.)

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(emphasis in original). As a result, Plaintiffs claim "VERISIGN WILL PROVIDE NO VALUE TO CONSUMERS PURCHASING WLS." (FAC at 20:4.) If Plaintiffs are correct, and the Court must assume they are, that consumers' WLS subscriptions will be overwhelmingly unsuccessful, and that only successful WLS subscriptions will result in domain name registrations, then the facts in Plaintiffs' FAC do not support the legal conclusion that the WLS will affect a not-insubstantial volume of commerce in domain name registrations. Instead, Plaintiffs' FAC suggests that the majority of WLS consumers will be free to register their domain names with either their current registrar or other registrars. In fact, Plaintiffs allege that "[c]onsumers are free to transfer their registered domain names between registrars." (FAC ¶ 13.3).

Plaintiffs have also failed to allege that Verisign has a sufficient economic interest in domain name registration. "In the typical tying scheme, the seller of the tying product also sells the tied product. The tying product seller's interest need not be so direct, however, as long as the seller has an economic interest in the sale of the tied product." Robert's Waikiki U-Drive, Inc., v. Budget Rent-A-Car Sys., Inc., 732 F.2d 1403, 1407-08 (9th Cir. 1984) (citation omitted). In this case, Plaintiffs' FAC makes clear that in the unlikely event that a WLS subscription is successful, domain name registrations will be sold by registrars, not Verisign. (FAC ¶ 13.6.) Plaintiffs further allege that "[d]omain registration fees are not included in the \$24 fee Verisign will charge registrars for each WLS subscription sold." (FAC ¶ 13.5.) Thus, according to Plaintiffs' allegations, Verisign's economic interest is in the sale of WLS

1 subscriptions, not domain name registrations.<sup>4</sup>

2 For the reasons articulated, Plaintiffs have failed to  
3 sufficiently allege an illegal tying arrangement. Therefore, the  
4 Court dismisses this claim without prejudice.<sup>5</sup>

5 **B. Plaintiffs' State Law Claims**

6 Plaintiffs' remaining eleven claims arise out of state law.  
7 Defendants argue for dismissal of these claims on the merits for  
8 various reasons. However, the Court declines to exercise supplemental  
9 jurisdiction over the state law claims for two reasons. First, where  
10 federal claims are disposed of well before trial, it is appropriate  
11 for pendent state claims to be dismissed as well. 28 U.S.C. §  
12 1367(c)(3). Because the Court has dismissed the sole federal claim,  
13 judicial economy and comity weigh in favor of dismissing the state  
14 claims.

15 Second, a district court may decline to exercise supplemental  
16 jurisdiction if the state law claims substantially predominate over  
17 the federal law claim. 28 U.S.C. § 1367(c)(2). Here, Plaintiffs  
18 allege several claims arising under California's Unfair Competition  
19 Act, intentional interference with prospective economic advantage, and  
20 breach of contract. These claims would substantially expand the scope

21  
22 <sup>4</sup> Plaintiffs do contend that "Verisign owns 15% of NSI and has an  
23 economic interest in restricting registrars' ability to compete with  
24 NSI for domain name registrations." (FAC ¶ 13.17.) However,  
25 Plaintiffs have not contended that Verisign will limit WLS  
26 subscriptions to NSI. Instead, Plaintiffs' allegations indicate that  
Verisign intends to force other registrars to agree to offer WLS  
subscriptions. (FAC ¶¶ 13.21, 13.22.)

27 <sup>5</sup> Although the Court grants Plaintiffs leave to amend, the  
28 amended complaint may only allege other facts consistent with the  
original complaint. See Reddy v. Litton Indus., Inc., 912 F.2d 291,  
297 (9th Cir. 1990).

of this case. To support these claims, Plaintiffs allege, inter alia, that Defendants are engaging in an illegal lottery, making false, misleading, and defamatory statements, and selling contingent future interests in property they do not own. Plaintiffs' submissions demonstrate that the state law claims predominate this action and the dispute between the parties. While the allegations necessary for the federal antitrust claim are contained on three brief pages, the allegations for the state law claims span the remaining 47 pages of Plaintiffs' 51-page FAC. In responding to Defendants' motion to dismiss, Plaintiffs dedicated only one page of their 25-page opposition to the federal antitrust claim. Not only are the various state law claims numerous, but, as discussed above, the facts alleged to support these state law claims are in some ways inconsistent with Plaintiffs' deficient antitrust claim, which is the sole basis for original jurisdiction.<sup>6</sup> For these reasons, the Court exercises its discretion to dismiss Plaintiffs' state law claims without prejudice.

#### IV. CONCLUSION

For the foregoing reasons, Defendants Verisign, Inc.'s and Network Solutions, Inc.'s motion to dismiss the First Amended Complaint is hereby GRANTED IN PART and DENIED IN PART. Accordingly, Plaintiffs' First Amended Complaint is DISMISSED WITHOUT PREJUDICE as to the federal and state law claims. Plaintiffs may amend their

---

<sup>6</sup> In their FAC, Plaintiffs assert § 57b of the Federal Trade Commission Act ("FTCA") as an additional basis for jurisdiction. (FAC ¶ 3.1). However, § 57b of the FTCA authorizes suits by the Federal Trade Commission, not private individuals. See 15 U.S.C. § 57b. As such, Plaintiffs may not rely on § 57b as a basis for federal jurisdiction.

1 federal antitrust claim by filing a second amended complaint within 14  
2 days of entry of this Order. Failure to refile within 14 days will  
3 result in a dismissal of the antitrust claim with prejudice.<sup>7</sup>

4 The Court declines to exercise supplemental jurisdiction over  
5 Plaintiffs' state law claims. Accordingly, the Court finds that:

6 Defendant Verisign Inc.'s motion to dismiss the eleventh claim  
7 for relief for improper venue is MOOT;

8 Defendant Internet Corporation for Assigned Names and Numbers'  
9 motion to dismiss certain causes of action is MOOT;

10 Defendant eNom, Inc's motion to dismiss the First Amended  
11 Complaint is MOOT; and

12 Plaintiffs' motion to strike certain portions of Defendant  
13 ICANN's motion is MOOT.

14  
15 SO ORDERED.

16 DATED: July 12, 2004

17  
18 Audrey B. Collins  
19 AUDREY B. COLLINS  
20 UNITED STATES DISTRICT JUDGE

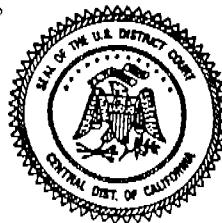
21  
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25  
26 <sup>7</sup> The Court waives the requirement that the parties comply with  
27 the requirements of Local Rule 7-3, as the parties have already  
28 complied with its meet and confer requirements. However, Plaintiffs  
should be cognizant of their obligations under Federal Rule of Civil  
Procedure 11 in deciding whether to refile this claim.



I hereby attest and certify on 9/7/04  
that the foregoing document is a full, true  
and correct copy of the original on file in  
my office, and in my legal custody.

CLERK U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

*Nancy Mena*  
DEPUTY CLERK



(1099)

# **Exhibit D**

## Network Solutions

### NEXT REGISTRATION RIGHTS™

Now you can get the domain name you want when it becomes available. Next Registration Rights is a new service from Network Solutions that lets you order a .com or .net domain name that is already registered. If the domain name becomes available during your subscription period, the registration is yours.

**\$39 A YEAR**

INCLUDES REGISTRATION\*

**PRE-ORDER NOW**

**Act now. Only one pre-order will be accepted for each domain name.**

Next Registration Rights helps you:

- Protect the domain names you have
- Get a domain name you always wanted... but somebody else already has!

**MANAGE YOUR SUBSCRIPTIONS**

Get your Next Registration Rights today

- Coming soon! Pre-order today and you will be notified as soon as the service is released.
- Only one order per domain name will be accepted so place your order today before it's too late.
- Automatically grants you the next registration if the domain name becomes available
- [Learn More](#)

#### SELECT A DOMAIN NAME

**1** Enter your desired domain name:

www.

i.e. my-own-company

[Search for multiple domain names](#)

**2** Choose an extension:

☒ .com

☒ .net

**3** Your code is:

k5wdw

Enter code here:

**SEARCH**

#### MORE ABOUT NEXT REGISTRATION RIGHTS

##### How Pre-Order Works

Pre-Orders for Next Registration Rights will be available until the service "goes live". Customers who placed pre-orders will be notified at that time. When you place your pre-order you commit to purchasing the service should you receive the subscription. There is no guarantee that pre-orders will result in obtaining a Next Registration Rights subscription. When the service "goes live", if your credit card is valid at that time, your order will be submitted to the VeriSign registry on a first come first served basis. If the Next Registration Rights subscription you ordered is available, it will be automatically purchased for you. Your credit card on file will be charged \$39 for each successful subscription. You will be notified via e-mail whether or not your order was successful.

##### A superior new way to backorder

The only backorder service administered by the .com/.net registry, offering only one subscription per domain name. If the domain name is not renewed and completes the registry deletion cycle during your subscription term, then the domain name is yours. The domain name will be automatically placed into your account with a 1-year registration.

##### How will orders work after the Pre-Order Period?

After the service "goes live," each time you search for Next Registration Rights availability for a particular domain name, you will be able to view whether or not the subscription is currently available. If it is available for purchase you will have the opportunity to immediately secure the subscription. At that time your credit card will be charged \$39 for a 1-year subscription. Your order will be confirmed via e-mail.

\*One year domain name registration included with the purchase of Next Registration Rights If the domain name becomes available and is registered to you during the subscription term.

[Next Registration Rights Home](#), [Manage Your Subscription](#), [Contact Us](#), [Network Solutions Home](#)

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