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11 INC., an Arizona corporation,  
and eNOM, Incorporated, a  
Nevada corporation

14 UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA

17 DOTSTER, INC., a Washington  
corporation, GO DADDY SOFTWARE,  
18 INC., an Arizona corporation, and  
eNOM, INCORPORATED, a Nevada  
19 corporation,

20 Plaintiffs,

21 v.

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

24 Defendant.

Case No. CV03-5045 JFW (MANx)

DECLARATION OF PAUL  
STAHURA IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION

Date: October 6, 2003  
Time: 1:30 p.m.  
Ctvm: 16  
Judge: John F. Walter

1 I, Paul Stahura, declare and state as follows:

2 I am the President, CEO and part owner of Plaintiff eNom, Inc. ("eNom"). I  
3 make this declaration of my actual knowledge, and after a review of documents  
4 maintained by eNom in the normal course of business and a review of documents on  
5 file in this case or publicly available. If called as a witness I could testify to each of  
6 the following facts:

7 1. eNom is one of approximately 50 Internet Corporation for Assigned  
8 Names and Numbers ("ICANN") accredited domain name registrars ("Registrars")  
9 who compete to re-register domain names that are being deleted (the "Secondary  
10 Domain Market") by the VeriSign Global Registry Services ("VeriSign"), a division  
11 of VeriSign, Inc., which operates the .COM and .NET registry. The Registrars in the  
12 Secondary Domain Market compete to acquire deleting domain names.

13 2. I founded eNom in 1997 in Redmond, Washington, with one small  
14 computer. Today, eNom is one of the largest domain name Registrars in the world  
15 and manages more than 2.3 million domain names and has computers around the  
16 globe. We have grown because we work hard in order to efficiently offer domain  
17 names to resellers at low prices and because ICANN, until recently, has allowed fair  
18 and even competition among Registrars. We have now have 48 employees.

19 **Competition Will be Eliminated if WLS Is Implemented.**

20 3. Currently, a number of motivated Registrars, including eNom, have  
21 invested resources and developed technology to compete against one another in the  
22 Secondary Domain Market. Today there is a re-registration system in place that  
23 fairly, cost effectively, and in a competitive manner distributes deleted names to  
24 people who wish to re-register those names. The proposed Wait List Service ("WLS")  
25 destroys that competition, both in technology and for customers, and replaces it with a  
26 new system that is not better (or necessarily worse), is five times more expensive, and  
27 is offered solely through VeriSign. WLS will create a monopoly, and the adverse  
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1 consequence of that effect is already being visited upon my business.

2 4. eNom embraces and promotes competition, if the competition is on a  
3 level playing field. However, implementation of WLS will devastate competition in  
4 the Secondary Domain Market.

5 5. WLS is offered at the registry level, making WLS a service that we  
6 simply cannot technically compete with. At present, all expiring, unexpired domain  
7 names are deleted and then re-registered. Our technology requires a domain name to  
8 delete before we can assign that name that name to a third party.

9 6. If WLS is approved by ICANN, domain names with a WLS subscription  
10 will not delete. Instead, a domain name with a WLS subscription will simply be  
11 transferred to the WLS subscription holder without deleting. This is a fundamental  
12 shift in the manner in which domain names are allocated. This change is not one  
13 permitted to occur under our Registrar Accreditation Agreement with ICANN without  
14 development of a consensus that supports that change.

15 7. In reading Network Solution's website (Network Solutions is owned by  
16 VeriSign), Network Solutions specifically markets the technological superiority of  
17 VeriSign's WLS. "This new service is superior to traditional back-order services,  
18 which are not administered by the .com/.net registry ... With Next Registration  
19 Rights, there's no competition or auction when the name deletes. If the domain name  
20 becomes available during your subscription term, then it is automatically registered in  
21 your name." A copy of the web site page is attached hereto as Exhibit 1, and is  
22 incorporated herein by reference.

23 8. ICANN further argues that "All ICANN-accredited registrars are given  
24 an equal opportunity, at an equal wholesale price, to participate in WLS." (Turner  
25 Decl. ¶ 32.) Interestingly, Network Solutions has been offering WLS "pre-  
26 subscriptions" since mid-August, 2003. A copy of Network Solution's Next  
27 Registration Rights web site page is attached hereto as Exhibit 2, and is incorporated  
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1 herein by reference.

2 9. The existing competitive systems also allow a re-registered domain name  
3 to be re-registered at a Registrar different than the Registrar who initially registered  
4 the domain name. WLS will create an incentive among WLS subscribers to obtain the  
5 WLS subscription from the then-current Registrar of the domain name in question.  
6 The reason for this is that the then current Registrar has significant information  
7 regarding the then-current registrant and can offer WLS subscriptions with greater  
8 certainty regarding whether the current registrant will renew the name or whether the  
9 WLS subscription will "ripen" into a registration of the domain name. As the WLS  
10 subscription is coupled with at least one year's registration, the WLS subscriptions  
11 will stop a significant number of domain names from transferring from the then-  
12 current Registrar. By itself, this might be a neutral and unintended consequence;  
13 however, the largest Registrar, Network Solutions, currently suffers a significant net  
14 loss of domain names when they are deleted and re-registered. The WLS system will  
15 significantly stem these losses for Network Solutions and will significantly reduce the  
16 number of new customers using eNom's services.

17 **WLS Will Devastate a Major Component of Our Business.**

18 10. No matter how good, reliable or innovative our company's technology,  
19 services, or support is, if a WLS subscription is purchased for the domain name, the  
20 domain name will not delete, and our technology will not have the ability to even  
21 attempt to obtain the domain name.

22 11. The technology and process that we developed to register expiring  
23 domain names that are being deleted is marketed to potential domain registrants under  
24 the name "Club Drop." Club Drop operates as a combination first-come first-served  
25 and auction model. We developed Club Drop by investing a significant amount of  
26 time and financial resources, specifically in the software that competes with other  
27 Registrars on a first-come first-served basis to efficiently re-register deleted names.  
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1 Club Drop is compelling for customers because it gives customers the opportunity to  
2 re-register desirable deleted names, and often times for a low cost. With WLS, no  
3 customer, whether a customer of eNom or an eNom competitor, will have the  
4 opportunity to re-register a name that has a WLS subscription, unless of course that  
5 customer is the WLS subscriber

6 12. Implementation of the proposed WLS will be devastating to our business  
7 on a number of levels, including financially and reputationally. We will be harmed  
8 financially because customers will be more likely to use the WLS product because it is  
9 offered at the registry level and therefore there is no alternative to re-registering a  
10 deleted name.

11 13. We will also suffer serious and substantial harm to our reputation. eNom  
12 is currently regarded as a significant competitor in the expiring domain name market  
13 due to the success of our Club Drop business. As a result of our reputation in the  
14 expiring domain name market, customers of the Club Drop business are likely to also  
15 register their domain names with us. Additionally, customers have brought their  
16 business to eNom as a result of eNom's reputation of success with Club Drop, even if  
17 they do not necessarily use Club Drop. Should WLS be implemented, our business  
18 will lose a very significant source of new customers, and its reputation for being a  
19 leading force in the Internet arena will be harmed. Without our Club Drop business, it  
20 will be increasingly difficult to differentiate us from our competitors. Given the  
21 relentless pace of business on the Internet, and our customers' expectations of reliable,  
22 consistent service, our business reputation would be harmed substantially if our Club  
23 Drop services were unavailable even for a few days upon implementation of WLS in  
24 its current form.

25 14. Implementation of WLS would have an immediately discernible but  
26 unquantifiable adverse impact on our earnings and our ability to maintain our existing  
27 customers given the dramatic changes that would be needed to implement WLS. We  
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1 would be required to redesign our expiring domain name service, reprogram our  
2 systems to conform with WLS, retire our Club Drop business, and abandon our well-  
3 established expiring domain name registration market.

4 15. Our Registrar Accreditation Agreement with ICANN was supposed to  
5 have prevented a fundamental change, such as the way domain names are deleted, or  
6 not deleted, unless such a policy was established by consensus. It was my  
7 understanding that ICANN and Internet stakeholders such as eNom would need to  
8 reach a consensus under the Consensus Policy procedures that are in Section 4 of the  
9 Registrar Accreditation Agreement.

10 16. I feel as though I personally, and the entire Internet community, have  
11 been misled throughout the "WLS approval" process. Specifically, when ICANN's  
12 chief legal counsel discussed the WLS proposal, he stated that "... given the existing  
13 conceptual approach of ICANN to seek consensus where possible, it is my judgment  
14 that the Board should not seek to decide how to deal with this request without  
15 invoking the formal consensus development processes currently established within  
16 ICANN." A copy of ICANN's counsel's analysis is attached hereto as Exhibit 3, and  
17 is incorporated herein by reference.

18 17. When the ICANN Board of Directors first discussed the WLS request by  
19 VeriSign, they made direct reference to their legal counsel's analysis when they  
20 indicated that, "... it is plausible that legitimate interests of others could be harmed by  
21 the proposed amendments, so that more than a 'quick-look' analysis is appropriate  
22 and the formal consensus-development processes currently established within ICANN  
23 should be employed to determine whether the amendment should be approved" The  
24 related resolution was adopted by unanimous voice vote. A copy of ICANN's board  
25 minutes for its April 22, 2002, meeting is attached hereto as Exhibit 4, and is  
26 incorporated herein by reference.

27 18. Based on the Board's decision and the additional work done over more  
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1 than 18 months by the various groups populated by hundreds of people within  
2 ICANN, it was my understanding that the approval of WLS would be through the  
3 Consensus Policy that is set forth in our Registrar Accreditation Agreement, especially  
4 because WLS implementation will directly impact the current principles that govern  
5 the allocation of registered domain names as set forth in Section 4.2.4 of our Registrar  
6 Accreditation Agreement. Section 4.2.4 specifically describes new or revised  
7 specifications and policies that should be established by consensus. I am not aware of  
8 any other formal consensus development processes established within ICANN, other  
9 than the one set forth in Section 4 of our Registrar Accreditation Agreement.

10 19. ICANN took a number of actions that appeared to be part of its  
11 Consensus Process. For example, ICANN established a Task Force to study the WLS  
12 proposal and report its findings to the ICANN Board of Directors, and there were  
13 many conference calls, e-mail lists, and in-person meetings at various locations  
14 worldwide. I provided testimony to the Commerce, Science and Transportation  
15 Committee's Subcommittee on Communications in late July, 2003. A copy of my  
16 written testimony is attached hereto as Exhibit 5, and is incorporated herein by  
17 reference.

18 **The "Trial Period" will be devastating.**

19 20. Daniel E. Halloran of ICANN points out that the WLS will be  
20 implemented for only a "twelve-month trial," and "At the end of the trial, ICANN and  
21 VeriSign would evaluate whether the service should be continued." (Halloran Decl., ¶  
22 4.) Even assuming that there will only be a "twelve-month trial" for the WLS  
23 product, the Internet and businesses on the Internet move very quickly, and for eNom  
24 to be unable to effectively compete against VeriSign's WLS product for a twelve  
25 month period will be devastating.

26 21. In the Internet/domain name registrar business, even temporary  
27 unavailability of a service, or slight reduction in efficiency, will result in customers  
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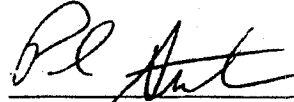
1 complaining to our customer service representatives, negative postings on electronic  
2 bulletin boards, and customers moving their business to other Registrars and service  
3 providers.

4       22. Even if WLS is discontinued after the initial twelve-month trial, the  
5 effects of WLS will be felt for up to an additional year. Halloran states that even in  
6 the event the WLS product is not continued, WLS subscriptions "... extending beyond  
7 the trial would be honored." (Halloran Decl., ¶ 4.) This means that, in effect, the  
8 "twelve-month trial" will have the potential to last at least twenty-four months, should  
9 a consumer purchase a subscription in the last few days of the twelve-month trial  
10 period.

11       23. It appears from other VeriSign documents that approval of the WLS  
12 product after the twelve-month period is a foregone conclusion. I read the Wait  
13 Listing Service Program Product Guidebook (the "Guidebook"), which was drafted by  
14 VeriSign and made publicly available on its website, and found that VeriSign has  
15 programmed functionality into the initial software that allows consumers to  
16 automatically renew their WLS subscriptions. A copy of the Guidebook is attached  
17 hereto as Exhibit 6, and is incorporated herein by reference. Specifically, the  
18 Guidebook states, "If the subscriber wishes to continue holding a subscription for a  
19 name that will not expire during the term of the WLS subscription, they will have the  
20 option to renew their subscription during the term of the WLS subscription, they will  
21 have the option to renew their subscription automatically. The optional renewal can  
22 be chosen at any time during subscription." (Guidebook at 4.) In light of the  
23 foregoing statements by VeriSign, I believe that VeriSign is attempting to mislead us  
24 into believing that the WLS implementation will only be for a one-year "test."



1 I declare under penalty of perjury under the laws of the United States of America  
2 that the foregoing is true and correct, and that this declaration was executed on  
3 September 5 , 2003 at Redmond, Washington.

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6 Paul Stahura  
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## **NEXT REGISTRATION RIGHTS™**

### **LEARN MORE**

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Next Registration Rights is available only on a pre-order basis. When the service becomes available, your order will automatically be submitted. Pre-ordering Next Registration Rights for a domain name does not guarantee that you will receive the service when it becomes available.

This is a subscription-based service that costs just \$39/year, which includes the first year's registration fee if the domain name becomes available during your subscription term. That's just \$4 more than a standard one-year registration! During the pre-order period all pre-order submissions are a commitment to purchase and cannot be cancelled. If the Next Registration Rights subscription you have ordered is available once the service "goes live," a 1-year subscription will be automatically purchased for you, your credit card on file will be charged \$39, and you will receive an e-mail notification.

### **FEATURES & BENEFITS**

- Automatic
- Superior
- Only one order per domain
- Free Alerts for subscription domains
- Unlimited Exchanges During the Pre-Order Period

#### **Automatic**

If you get the Next Registration Rights subscription for a domain name, and the domain name becomes available during your subscription, the registration is yours. It is that simple.

#### **Superior**

This new service is superior to traditional back-order services, which are not administered by the .com/.net registry and frequently accept more than one name per backorder. With Next Registration Rights, there's no competition or auction when the name deletes. If the domain name becomes available during your subscription term, then it is automatically registered in your name.

#### **Only one subscription per domain**

The only backorder service administered by the .com/.net registry, offering only one subscription per domain name. You automatically obtain a specific domain name if it is not renewed and has been deleted by the registry during your subscription term. Subscription availability is scheduled for October 27, 2003.

#### **Free Alerts for domains with Next Registration Rights**

With each Next Registration Rights subscription, you will receive free e-mail alerts. These alerts will keep you notified about all activities involving the status of your domain name subscription as well as account data.

You will be alerted when:

- The registration for the domain name in your Next Registration Rights subscription is due to expire.
- The registration of the domain name of your Next Registration Rights subscription has expired.
- The registration data for the domain name in your Next Registration Rights subscription has changed.
- The domain name requested in your Next Registration Rights subscription has been renewed.
- The domain name requested in your Next Registration Rights subscription has been transferred to a new registrar.
- The Next Registration Rights subscription has been fulfilled.
- And many more...

#### **Unlimited Exchanges During the Pre-Order Period**

During the pre-order period, you can exchange the domain in your subscription for another domain at any time with n

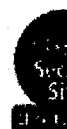
restrictions. There is no limit to the number of times you can exchange your desired domain name registration during the pre-order period.

When the service becomes available, you may change your subscription to another domain name up to 3 times within the one year subscription period. For example, if the the current holder renews the domain name you have targeted, you may choose to maintain your Next Registration Rights subscription for that domain name, or you may choose to give up the Next Registration Rights for that domain name and target a different domain name instead.

#### **FREQUENTLY ASKED QUESTIONS**

- When does the service launch
- How does a pre-order differ than the actual Next Registration Rights service
- How do I know if my pre-order is successful

[Next Registration Rights Home](#), [Manage Your Subscription](#), [Contact Us](#) , [Network Solutions Home](#)  
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**1** Enter your desired domain name:

www.

i.e. my-own-company.com

Search for multiple domain names

**2** Choose an extension:

- .com
- .net
- .org
- .biz
- .info
- .us
- .cc
- .bz
- .tv

See [more extensions](#)

**3**

User ID

Password

Keep me logged in

When you have the right tools, managing domain names is easier than ever.

### WEB SITES

#### GET A WEB SITE THAT WORKS FOR YOU

Have your own professional Web site in no time, and start reaching new customers today.  
Find out more



### E-MAIL

#### GET E-MAIL THAT MEANS BUSINESS

Get an e-mail address that can be yours for life and looks professional.  
Find out more



Is the Domain Name you want already taken?

Introducing Next Registration Rights™

Get the name you want even if it's already taken.

[Find out more](#)

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With 5 year r...

Only \$19 a month  
Includes an a year

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- Web forward
- Digital certifi
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## 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.

**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!


Get your Next Registration Rights today

- Taking pre-orders Now for scheduled October 27, 2003 availability
- Only one subscription per domain name
- Automatically grants you the next registration if the domain name becomes available
- Learn More



**PRE-ORDER NOW**

MANAGE YOUR SUBSCRIPTIONS

**1** Enter your desired domain name:  **2** Choose an extension:  .com  .net **3** Your Code Is:  

www.  Enter code here:

i.e. networksolutions

[Search for multiple domain names](#)

### MORE ABOUT NEXT REGISTRATION RIGHTS

#### How Pre-Order Works

Pre-Orders for Next Registration Rights will be available until the service "goes live" (currently scheduled for October 27, 2003). 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.

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General Counsel's Analysis of VGRS's  
Request for Amendment to Registry  
Agreement  
17 April 2002

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**General Counsel's Analysis of VeriSign Global Registry  
Services' Request for Amendment to Registry  
Agreement**

To the Board:

On 21 March 2002, I received the following request from VeriSign Global Registry Services (VGRS), the division of VeriSign, Inc., that operates the registry for the .com and .net top-level domains:

Subject: Appendix G Amendments  
Date: Thu, 21 Mar 2002 12:10:16 -0500  
From: "Gomes, Chuck" <cgomes@verisign.com>  
To: touton@icann.org  
CC: tjohnson@verisign.com, phils@verisign.com

Louis,

I would like to request amendments to appendix G for the .com and the .net registry agreements to allow for a 12-month trial of the VGRS Wait Listing Service proposal as defined in the attached proposal. A copy of our analysis of comments received regarding the WLS proposal is also attached. Both of these documents will be posted at <http://www.verisign-grs.com/wls.html>.

It is hoped that the amendments can be executed expeditiously so that we can quickly notify registrars of specific milestone dates. We will cooperate however possible to work with you in this regard. In case I am unreachable, please feel free to contact Phil Sbarbaro.

Thanks, Chuck  
[Vice President, Policy & Compliance  
VeriSign Global Registry Services]

This memorandum summarizes my initial analysis of VGRS's request for an amendment to Appendix G to the .com and .net registry agreements and recommends a process for considering the request.

## **Background: The VGRS Wait Listing Service Proposal**

VGRS's request grows out of a proposal for a Wait Listing Service (WLS) that it sent to the DNSO Registrars Constituency on 30 December 2001. After comments from that constituency and others, VGRS revised its proposal on 28 January. After additional discussions with registrars and others, VGRS revised the proposal a second time and submitted it with the 21 March 2002 request for amendment to Appendix G.

The proposed WLS would be offered at the registry level by VeriSign using technology supplied by SnapNames, a company that currently has arrangements with registrars to provide a roughly similar service at the registrar level. In summary, the WLS currently proposed by VGRS would operate as follows:

1. Acting on behalf of customers, accredited registrars could place reservations for currently registered domain names in the .com and .net top-level domains. (In view of its impending reassignment, .org would not be included.) Only one reservation would be accepted for each registered domain name. Each reservation would be for a one-year period. Registrations for names would be accepted on a first-come/first-served basis, with the opportunity for renewal.
2. VGRS would charge the registrar a fee, which would initially be set at \$35.00 for a one-year reservation, but would go down in stages to \$24.00 once specified volume thresholds were reached.
3. The registrar's fee to its customer would be established by the registrar according to market conditions.
4. In the event that a registered domain name is deleted from the registry (after all grace periods expire), VGRS would first check to determine whether a reservation for the name is in effect.
  - a. If there is a reservation, VGRS would assign the name to the registrar, charging the \$6.00 annual registration fee to the registrar. The registrar would register the name to the customer, charging a fee determined by agreement of the registrar and customer.
  - b. If there is no reservation, VGRS would delete the name from the registry, so that the name is returned to the pool of names equally available for re-registration through all registrars on a first-come/first-served basis.
5. There would be no change in the conditions under which names are deleted. In other words, names would only be deleted from the registry when a registrar explicitly deletes them.

VGRS has proposed to implement the WLS for a one-year trial. At the end of the year, ICANN and VGRS would evaluate whether the service should be continued. In the event the WLS is not continued, reservations extending beyond the trial would be honored.



As noted above, several registrars are providing wait-listing services of various kinds at the registrar level. Some of these services are being provided by arrangements between registrars and SnapNames; others are being provided by competitive offerings. In essence, under all of these services the registrars watch for a desired name to be deleted and immediately seek to register it. With respect to registrars currently offering this type of service through SnapNames' "SnapBack" service, VGRS proposes a special transitional arrangement:

"On the WLS launch date, any domain name that has an existing SnapBack subscription would be excluded from the WLS system, meaning that no one, including SnapNames or registrars who license SnapNames' technology, can take out a WLS subscription for that domain names so long as an active SnapBack subscription is in place. SnapNames, the registrars, and any individuals interested in a particular domain name would continue to compete for it as they do today."

VeriSign GRS Responses to Domain Name Wait Listing Service Questions (15 Feb. 2001), response 18.

VGRS has not proposed to exclude names presently involved in non-SnapNames services from the WLS.

### **Background: Discussion of WLS Proposal to Date**

VGRS first made its WLS proposal by sending it to the Registrar Constituency. The reaction from the members of the Registrar Constituency was overwhelmingly negative. Although not initially consulted by VGRS, on 18 January 2002 the Intellectual Property Constituency sent VGRS various questions about the proposal. There also was some discussion on the DNSO general assembly mailing list.

On 28 January 2002, VGRS issued a revised WLS proposal. Significant revised features included:

- VGRS's price for the service was lowered from \$40.00 for a one-year reservation to the presently proposed levels of \$35.00 at the time the service is introduced and then falling to \$24.00 upon meeting volume thresholds.
- Possible terms for registrars' agreements with their customers were included based on feedback from the Intellectual Property Constituency.

The 28 January revised proposal also included procedural guidelines and a schedule for continued discussion of the proposal, including a question-and-answer period. VGRS received many questions from various persons and groups, and on 15 February VGRS posted responses.

Discussion continued, primarily within the Registrars Constituency and on the general assembly mailing list. Various registrars and others posted position papers in connection with the Registrars Constituency's consideration of its position on the proposal. On 10 March 2002, the Registrars Constituency adopted a resolution opposing implementation

of the WLS and urging ICANN to withhold permission for its implementation. A minority of the registrars submitted a statement supporting implementation of WLS (18 registrars were listed as signatories of this statement, but the support of some of these registrars has been disputed).

At the Accra meeting, the DNSO General Assembly and Names Council Transfer Task Force conducted a meeting on a variety of issues concerning deletes, including the WLS. The Names Council Transfer Task Force is scheduled to submit its final report for public comment in May, so that the Names Council can provide a final report to the Board in June.

### **New Registry Services Under uTLD Registry Agreements**

VGRS has requested that Appendix G to the .com and .net Registry Agreements be amended. That appendix specifies the maximum price that VGRS may charge for "Registry Services." Registry Services are defined as those that are "provided as an integral part of the operation of the Registry TLD". In essence, "Registry Services" are those that a registry operator is enabled to provide on a sole-source basis by virtue of its appointment as such by ICANN, rather than services that are provided on a freely competitive basis. The proposed WLS is a registry service because, unlike the wait-listing services provided competitively by registrars, it is implemented by bypassing the normal return of deleted names to the available pool and by instead assigning them to the registrar and customer holding the reservation. In this way, the proposed WLS would become integrated into the operation of the .com and .net registries.

### **Special Role of U.S. Commerce Department in the VeriSign Agreements**

Under Amendment 3 to its Memorandum of Understanding with the U.S. Department of Commerce, ICANN must obtain approval of changes to its registry agreements with VeriSign:

1. The agreements entitled ".com Registry Agreement," ".net Registry Agreement," and ".org Registry Agreement" between ICANN and VeriSign, Inc. and relating to the provision of registry services for the .com, .net, and .org registries are hereby approved by the DOC in substitution for the Registry Agreement between ICANN and Network Solutions, Inc., effective date November 10, 1999. ICANN will not enter into any material amendment of, or substitution for, said agreements, nor will said agreements be assigned by ICANN, without prior approval of the DOC.

(This approval requirement does not apply to ICANN's agreements with the new TLDs.)

### **Considerations in Evaluating Proposed New Registry Services**

ICANN has not yet developed a well-defined procedure for considering requests by registry operators to amend Appendix G to allow charging for an additional registry service. Because action on VGRS's proposal may serve as a model for future actions, it is important to carefully consider the process that should be followed.

On one hand, the registry operator is in a sole-source position in providing registry

services; this position carries with it the potential for various types of harm to the legitimate interests of others.

On the other hand, requiring a consensus-development process for every new registry service could stifle innovation. Registry operators should be encouraged to introduce new services to the marketplace where no legitimate interests of others are being materially harmed.

To accommodate these countervailing considerations, in considering requests to amend a registry agreement to authorize charging for additional registry services, my judgment is that a preliminary "quick-look" evaluation should be made to determine whether it is plausible that the legitimate interests of others could be harmed by the proposed amendment. If no legitimate interest appears in danger of being harmed, then a streamlined procedure for approval should be followed. If, however, there are specific reasons to conclude that the legitimate interests of others are likely to be harmed, then ICANN's existing obligation to seek consensus whenever possible before acting suggests that it should invoke the formal consensus development mechanisms that currently exist prior to any decision by the ICANN Board.

### **Recommended Process for Consideration**

In the case of VGRS's request for an amendment allowing charging for WLS on a one-year trial basis, several concerns have been raised by the Registrar Constituency and others. Some of these concerns are:

1. Displacement of existing registrar-level competition. Currently, different registrars offer a variety of services to customers waiting for domain-name registrations to be deleted. These different services, which are currently offered on a competitive basis, all work on the basis of promptly registering names once they are returned to the available pool after deletion. Because the registry-level WLS would divert deleted names from being returned to the available pool, it would "trump" all of the competitive registrar-level services.

In general, the introduction of registrar-level competition has been extremely successful, and care should be taken before a registry operator is allowed to displace that competition by exercising abilities it has acquired by virtue of being designated the registry operator.

In the specific case of WLS, however, it is quite possible that some of the technically harmful effects of the registrar-level services (such as the high registry loads caused by "add storms") may justify instituting a registry-level WLS. It is also quite possible that the consumer benefits of having a guaranteed effective reservation (which can not be done at the registrar level) make it appropriate to allow registry-level WLS. It does not appear to me that a consensus position on these issues has yet developed in the community.

2. Serious objections have been raised to the preferential transition arrangements proposed for the current SnapBack service, but not for any of the current services with which it competes. Since only some registrars are currently offering the SnapBack service, this proposed preference raises

questions as to whether equivalent access would be accorded to all registrars.

3. Many in the community believe that the price for the proposed WLS service should be limited to a cost-plus-reasonable-profit basis. Registrars, in particular, have indicated that the proposed price is several times likely costs. Maximum-price limits are intended to ensure that a registry operator does not abuse the sole-source position it achieves through its registry agreement with ICANN. Making judgments about appropriate maximum prices requires consideration of many factors, such as whether any effective market-based mechanism will be present for constraining price. On the other hand, the argument that the only true market test of the appropriateness of the product and its costs is its reception by potential purchasers would support VGRS's suggestion for a trial period after which a more informed evaluation could be made.

Under these circumstances, and given the existing conceptual approach of ICANN to seek consensus where possible, it is my judgment that the Board should not seek to decide how to deal with this request without invoking the formal consensus development processes currently established within ICANN.

This judgment is reinforced by the Registrars Constituency vote opposing implementation of WLS and the fact that the Names Council Transfer Task Force is currently considering the WLS issue, with a report to the Board expected in June.

Thus, I recommend that the Board establish the following procedure for obtaining public comment to illuminate its consideration of the VGRS WLS proposal:

1. The proposal and related documents should be posted for public comment for a thirty day period.
2. The DNSO Names Council should be requested to provide any recommendations concerning the WLS proposal at least three weeks before commencement of the Bucharest meeting.
3. Time should be devoted to the WLS issue at the Public Forum in Bucharest.

The Board could then act on the merits of the WLS proposal at Bucharest (or after, if additional issues requiring more time arise). If ultimately the Board's decision is that the amendment should be made, then a suitable request can be made to the U.S. Department of Commerce for approval.

Respectfully submitted,

Louis Touton  
General Counsel

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Page Updated 23-Feb-2003

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## Minutes

Special Meeting of the Board  
22 April 2002

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### INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS MINUTES OF SPECIAL MEETING 22 April 2002

A meeting of the Board of Directors of the Internet Corporation for Assigned Names and Numbers ("ICANN") was held by teleconference on 22 April 2002. The following Directors of the Corporation were present by telephone: Vint Cerf (chairman), Rob Blokzijl, Ivan Moura Campos, Lyman Chapin, Frank Fitzsimmons, Masanobu Katoh, Hans Kraaijenbrink, Sang-Hyon Kyong, Stuart Lynn, Andy Mueller-Maguhn, Helmut Schink, and Linda S. Wilson. Directors Amadeu Abril i Abril, Alejandro Pisanty, and Jun Murai joined the call while it was in progress. Also present on the teleconference were Louis Touton, Vice-President, Secretary, and General Counsel of the Corporation, Andrew McLaughlin, Vice-president and Chief Policy Officer of the Corporation, and Joe Sims, outside counsel to the Corporation.

The meeting was called to order by Vint Cerf at 12:12 UTC (5:12 am U.S. Pacific Daylight Time).

#### Approval of Minutes

Mr. Touton proposed that the Board formally approve the minutes of the Board meetings held 13 December 2000 and 22 January 2001. In discussion, the Board decided to vote on these matters separately.

Upon motion made by Dr. Wilson and seconded by Mr. Kraaijenbrink, the Board adopted the following resolution without objection (Mr. Chapin and Dr. Lynn abstaining):

Resolved [02.50] that the minutes of the meeting of the Board for 13 December 2000, are hereby approved and adopted by the Board as presented.

At this point in the proceedings, Mr. Abril i Abril joined the meeting.

Upon motion by Mr. Kraaijenbrink, with a second by Dr. Kyong, the Board adopted the following resolution without objection (Dr. Campos, Mr. Chapin, Dr. Lynn, and Mr. Mueller-Maguhn abstaining):

Resolved [02.51] that the minutes of the meeting of the Board for 22 January 2001, are hereby approved and adopted by the Board as presented.

## Audit Committee

Dr. Cerf noted that Phil Davidson, who resigned from the Board on 2 April 2002, had been a member and chair of the Audit Committee. Frank Fitzsimmons, one of the remaining two members of the committee, is willing to serve as chair. Lyman Chapin is willing to serve as a third member of the committee.

Upon motion by Mr. Kraaijenbrink, with a second by Dr. Schink, the Board adopted the following resolution without objection (Dr. Lynn abstaining):

Whereas, at the annual meeting on 15 November 2001 the Board adopted resolution 01.113 appointing Philip Davidson to serve as chair and Frank Fitzsimmons and Jun Murai to serve as the other members of the Audit Committee of the Board;

Whereas, on 2 April 2002 Philip Davidson resigned as member of the Board;

Resolved [02.52] that the Audit Committee of the Board is continued on the basis of the Charter adopted in resolution 00.23, with Frank Fitzsimmons serving as chair and Jun Murai and Lyman Chapin serving as the other members of the committee.

## VeriSign WLS Proposal

Mr. Touton reported on a request received from VeriSign, Inc., on 21 March 2002 to amend the registry agreements for .com and .net to allow it to charge for a proposed new registry service. The service, known as a "Wait-Listing Service" (WLS), is described in the General Counsel's Analysis of VeriSign Global Registry Services' Request for Amendment to Registry Agreement presented to the Board and posted on the ICANN website before the meeting.

The Board discussed the VeriSign request. Several Directors noted that the proposed service could help improve the current handling of expiring names, which are a source of considerable dissatisfaction within the community. On the other hand, some Directors expressed the view that the introduction of additional fees for services provided exclusively by registries should be avoided, especially where the registry services will displace existing services competitively provided at the registrar level.

Dr. Pisanty and Dr. Murai joined the meeting during the above discussion.

The Board then discussed how the request should be handled. Board members felt the matter should be referred to the DNSO for advice on a quick turnaround, so as to avoid unnecessary burdens on VeriSign's business. Board members expressed the view that the WLS proposal should be evaluated with an appreciation of the broader context of expiring names and deletion issues.

Mr. Chapin moved, with Mr. Fitzsimmons' second, that the Board adopt the following resolutions:

Whereas, on 21 March 2002 VeriSign, Inc., the operator of the .com and Net

registries, requested amendments to the registry agreements for those top-level domains to allow it to charge registrars an annual subscription fee of US\$35.00 (with rebates of US\$7.00 or US\$11.00 depending on volume) for providing a proposed wait-listing service (WLS);

Whereas, this proposal has been discussed in various forms within the ICANN community since 30 December 2001, prompting both opposition and support from various segments of the community;

Whereas, the Transfers Task Force within the DNSO has undertaken a review of issues raised by deletion practices (including the WLS proposal) in the context of its analysis of transfers, and is scheduled to submit its final report for public comment in May, so that the Names Council can provide a final report to the Board in June;

Whereas, the Board believes that the report of the Transfers Task Force will be of assistance in evaluating the VeriSign WLS proposal;

Whereas, on 17 April 2002 the General Counsel presented an analysis to the Board concluding that it is plausible that legitimate interests of others could be harmed by the proposed amendments, so that more than a "quick-look" analysis is appropriate and the formal consensus-development processes currently established within ICANN should be employed to determine whether the amendment should be approved;

Whereas, the Board concludes that, before acting on VeriSign's request for amendment of the .com and Net registry agreements, it would be helpful to receive community comment on the request, and particularly on policy concerns raised by the request that would harm the legitimate interests of others;

Resolved [02.53] that the Board requests the Names Council to coordinate within the DNSO a comprehensive review of issues concerning the deletion of domain names and possible solutions for those issues and to submit to the Board, no later than 10 June 2002, a status report on that review, with the status report to include any recommendations (with supporting materials) concerning VeriSign's request to modify the .com and Net agreements to allow it to provide a wait-listing service, for a fee, as part of its operation of the .com and Net registries;

Resolved [02.54] that the Secretary is directed to advise the Address and Protocol Councils of VeriSign's request and the Board's intent to consider that request at its Bucharest meeting on 28 June 2002, with an invitation to those councils to submit comments (if any) on the request before that time;

Resolved [02.55] that the Board invites public comments on VeriSign's request and directs that a suitable mechanism be established for allowing comments to be submitted over the Internet to ICANN for at least a thirty-day period; and



Resolved [02.56] that the Board invites comments on VeriSign's request at the Public Comment Forum to be held on 27 June 2002 in Bucharest, Romania.

The resolutions were adopted by unanimous voice vote.

### **.org Reassignment**

Mr. Touton reported on the status of the process for finding a successor to VeriSign as the operator of the .org top-level domain. Although significant work has been done since the Accra meeting on preparing request-for-proposals (RFP) materials, progress in completing the RFP has not been as rapid as anticipated. Accordingly, a more detailed, and somewhat adjusted, schedule should be established.

The RFP is planned to include the following elements:

1. A statement of criteria that will be used in evaluating and selecting from among the proposals.
2. Instructions for preparing and submitting proposals.
3. Application forms, including the following four parts:
  - a. A transmittal form.
  - b. Proposal. This form would present the specific questions and issues that applicants must address.
  - c. Fitness disclosure. This document would inquire into possible disqualifying circumstances (prior convictions for financial irregularities, etc.).
  - d. Request for confidentiality. Although ICANN encourages applicants to allow public distribution of as much of the information they submit as possible, it is sometimes necessary to review legitimately confidential information to make an informed evaluation. This form establishes a procedure under which a clear, mutual understanding as to confidentiality is developed.
4. Draft registry agreement. To expedite the process of finalizing an agreement with the selected successor operator, the basic registry agreement that ICANN expects to enter should be published. The agreement would be quite similar to the standard agreement approved and entered for the new unsponsored TLDs (.biz, .info, .name, and .pro), but adjusted to reflect (a) the unrestricted character of .org (like Info) and (b) the fact this is a continuing, rather than a start-up TLD (thus, for example, it will include a transition plan rather than a startup plan). Some details, such as commitments to quality of service levels and pricing, would be left blank in the draft, to be completed based on the proposal that is selected.

Mr. Touton also noted that resolution 02.39 (adopted at the Accra meeting) contemplates that the staff present to the Board a proposal for the amount of a fee for examining applications, based on ICANN's estimated costs. He noted that accurate estimates are difficult because it is currently unknown how many applications will be submitted. Nonetheless, assuming six applications are received the costs are estimated to be roughly US\$ 200,000 or slightly more, leading to a per-application fee of US\$ 35,000. A significantly greater number of applications received would tend to reduce the examination cost per application, while if fewer applications are received, the per-application cost may be somewhat higher.

In view of the above analysis, Mr. Touton recommended that applicants be required to submit a US\$ 35,000 payment with their applications toward the examination fee, with ICANN's commitment that the fee will not exceed that amount. At the Bucharest meeting, the Board should consider whether an immediate rebate should be made to reflect circumstances then known to significantly reduce estimated per-application costs, such as the circumstance that significantly more were received than expected.

The Board discussed whether different examination fees should be established for for-profit and non-profit applicants. After some discussion, the majority sentiment among Board members was that it was not likely to be meaningful to classify particular proposals as submitted by nonprofit or for-profit organizations because most proposals would likely come from teams of both types of organizations. Many Board members also expressed the view that a US\$ 35,000 was likely to be small in relation to the costs of preparing a compelling proposal and preparing to operate a registry the size of .org.

Upon a motion made by Mr. Kraaijenbrink and seconded by Dr. Campos, the Board adopted the following resolutions by voice vote, with no opposition and with Mr. Mueller-Maguhn abstaining:

Whereas, in resolutions 02.36 through 02.39 the Board directed the President to make arrangements for soliciting proposals from organizations seeking to succeed VeriSign, Inc. as the operator of the registry for the .org top-level domain;

Whereas, the the President has recommended a detailed schedule for the submission and consideration of proposals and for the establishment of a fee arrangement;

Resolved [02.57] that the following target schedule is established for requesting, receiving, and evaluating proposals to succeed VeriSign, Inc., as the registry operator for the .org top-level domain:

1 May 2002 - Posting of draft Request for Proposal (RFP) materials for Names Council comment and for applicants to begin working on their proposals

13 May 2002 - DNSO Names Council to provide ICANN Secretary any comment on the posted materials

13 May 2002 - Deadline for prospective applicants to submit

written questions regarding the draft RFP

20 May 2002 - Final RFP materials posted

24 May 2002 - Written questions from prospective applicants posted with responses

18 June 2002 - Deadline for submission of applications, with tentatively established examination fee to be paid

27 June 2002 - Proposals to be discussed Bucharest ICANN Public Forum. Applicants to make presentations.

28 June 2002 - Board to finally establish examination fee

22 July 2002 - Posting of draft staff report; responses invited

1 August 2002 - Deadline for applicant responses to draft staff report

8 August 2002 - Posting of Final Staff Report and Recommendation

Late August 2002 - Board decision on selection

Resolved [02.58] that the above schedule may be adjusted by future Board resolution or by action of the President to the extent circumstances warrant;

Resolved [02.59] that the President shall require that an examination fee, in the tentative amount of US\$35,000, be submitted with each application, with the understanding that at the Bucharest meeting the Board will finally establish the examination fee, not to exceed that amount, with rebates to be made if the final examination fee is less than the tentative examination fee established in this resolution.

### **Interim At-Large Support**

Dr. Lynn reported that Esther Dyson had raised US\$ 22,000 in contributions for the purpose of funding At-Large organizing efforts as encouraged by the Board in resolution 02.17 adopted in Accra. He requested that the Board authorize the acceptance of these restricted contributions, as well as any future contributions of similar character. He also requested authority from the Board to spend funds for the purpose of At Large organizing efforts consistent with resolution 02.17, up to the amount of the contributions received.

In the ensuing discussion, the Board expressed the view that as a matter of sound budgeting practice the authorization to spend money should be limited to the current fiscal year. In connection with its adoption of a budget for the 2002-2003 fiscal year, the Board can consider the continuation of this spending authority.

Dr. Lynn moved, with Dr. Wilson's second, that the Board adopt the following resolutions:

Whereas, in resolutions 02.16 and 02.17, the Board concluded that "ICANN should have a robust At Large mechanism for meaningful, informed participation by Internet users of the kind recommended in the ALSC report" and called "upon the ICANN community to devote sustained energy to the creation of At Large structures built upon bottom-up, self-organized, local Internet community institutions and other organizations that meet the general criteria of openness, participation, and self-sustainability";

Whereas, members of the ICANN community led by Esther Dyson have raised US\$ 22,000 for the purpose of funding staff to support the efforts of interested individuals and organizations to create At Large mechanisms for meaningful, self-organizing informed participation in ICANN by a full range of Internet users of the kind recommended in the ALSC report;

Whereas, the Board welcomes this positive response from the community and believes that ICANN should facilitate these efforts by accepting a contribution of these funds, restricted to the purpose of funding staff support for the organizational efforts;

Resolved [02.60] that the President is authorized to accept restricted contributions for the purpose of funding staff support for the creation and nurturing of At Large mechanisms for meaningful, self-organizing informed participation in ICANN by a full range of Internet users; and

Further resolved [02.61] that the President is hereby authorized, for the balance of the present fiscal year, to expend restricted contributions received for that purpose, including by the engagement of an independent contractor, for so long as unexpended contributed funds remain available.

The resolutions were adopted unanimously.

### **Evolution and Reform Process**

Dr. Pisanty gave a report on the progress of the Committee on ICANN Evolution and Reform and the reform process generally. His remarks summarized a written report to the Board, which the Board decided should be posted on the ICANN website for the community's information.

Upon motion by Dr. Wilson, seconded by Dr. Schink, the meeting was adjourned at 14:04 UTC (7:04 am US Pacific Daylight Time).

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Louis Touton  
Secretary

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Page Updated 02-Jun-2003

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**Internet Operations Oversight:**

**Increasing Fair Competition,  
Improving ICANN Accountability and Trust**

**Testimony of**

**Paul Stahura  
CEO & President**

**ENom, Inc.  
[www.enom.com](http://www.enom.com)**

**Before the**

**Commerce, Science, and Transportation Committee  
Subcommittee on Communications**

**July 31, 2003**

**STAHURA EXHIBIT 5**

Good afternoon. My name is Paul Stahura. I am CEO and President of eNom. eNom is a domain name registrar. I started eNom in 1997 in my garage in Redmond, Washington with one small computer on an ISDN line, and now the company is one of the largest domain name registrars in the world with loads of servers in five locations and millions of domain names.

eNom is part of the Domain Justice Coalition. The Domain Justice Coalition is comprised of domain name registrars and resellers who oppose the proposed Wait List Service (WLS) that has been approved by ICANN. Formed in March 2003, the Coalition shares the belief that the proposed WLS will: harm competition in the secondary market for domain names; increase the cost of acquiring domain names for consumers; and add an unnecessary layer of bureaucracy to the process of acquiring expiring domain names without adding measurable benefits to consumers.

I want to thank the Committee for inviting me to testify today before the Communications Subcommittee and giving me an opportunity to share my views on ICANN.

I want to state at the outset that I am a supporter of ICANN. While I may not agree with all of their decisions, many of which have been adverse to me – I do believe that ICANN is the correct organization to oversee the Domain Name System and that, for the most part, the organization has been doing a good job.

The success of my company, and the hundreds of other competitive domain name registrars in existence today, is the result of ICANN policies that promoted competition in the registration of domain names. There is no question that competition has been tremendously beneficial for consumers and businesses. The cost of registering a domain name has dropped from a high of \$70 for a minimum 2-year registration contract to as little as \$7 per name per year today. Consumers today have choices that were simply not available to them when only one company registered domain names. Competition has brought a variety of business models, and improvements such as better customer service, more distribution channels, and complementary products bundled with the low-cost registration. All of these choices and other advances in the DNS system are the result of competition.

I was involved in the early stages with the formation of ICANN. What I want to communicate to the Committee today is that while ICANN is the correct model, there should be changes to increase ICANN's accountability to, and foster trust from, those they regulate.

- 1) There must be assurances that those affected by ICANN's decisions have some commitment or measure of comfort that they are able to participate in the decision-making process. Moreover, there should be some safeguards in place to ensure that, ICANN's decisions are based on the facts and to remove even the perception that the decisions are not the product of behind the scenes, back room secret negotiations or funny business.
- 2) There must also be a way to challenge ICANN decisions and have those decisions reviewed by an independent or objective decision-making body.



- 3) The way ICANN selects new TLDs and who will offer new services should change from a "beauty contest" which is vulnerable to decision making based on favoritism to an objective standard that would be free of potential bias.
- 4) Finally, ICANN must have a higher degree of accountability. The Department of Commerce must do a better job of overseeing ICANN to ensure that the goals of the MOU, especially the goal of increasing fair competition, are being fulfilled.

There are two issues that illustrate my concerns with ICANN and not coincidentally also affect competition in the domain name space:

- 1) Verisign's proposed wait-list-system (WLS)
- 2) New top-level domains

### WLS

No issue better illustrates the problems with ICANN in my mind than WLS – the proposed Wait List Service. The WLS was proposed by VeriSign as a way to supposedly make the process of registering expiring domain names simpler for the consumer. Unfortunately, VeriSign's attempts at simplification come at the expense of competition and consumer choice. Since WLS is a monopoly service, to be only offered by Verisign, it completely destroys today's competitive marketplace. WLS replaces good old-fashioned free enterprise with a government-sanctioned monopoly.

But, whatever your opinion of WLS, I think virtually everyone can agree that this issue has been badly handled by ICANN.

Initially ICANN declared that WLS was a policy change and therefore a final decision would be handled through ICANN's consensus processes. ICANN established a Task Force to study the WLS proposal and report back to the ICAANN Board. For more than 18 months, many hundreds of people from all types of companies -- domestic and international -- participated in the consensus process debating Verisign's controversial WLS proposal. Meetings were held around the globe... papers submitted, conference calls conducted and task forces organized. This effort took months to build what appeared to be a consensus -- that ICANN should not go forward with WLS -- and was surprisingly rejected by ICANN six months after a decision by the board on the grounds that a consensus was not necessary on this issue. To those opposed to WLS, this reversal appears, at best, extremely suspicious.

When the consensus process resulted in consensus that was adverse to VeriSign, ICANN reversed its position and declared consensus was not necessary with little justification for the complete about face.

This WLS situation highlights one of my principle concerns with ICANN: the lack of transparency in its decision-making processes. ICANN is a black box. You have what goes in, and you have what comes out, with no idea of how or why. Even now, only a very few insiders are privy to what the final WLS will be. This is significant because, in the details, the WLS is a very conceptually complicated proposal. A small change to the proposed WLS can make a big difference. Since I am not one of these insiders, I can only go by what has come out of the black

box, I can only go by what the ICANN board has already approved, and that decision, unfortunately, takes a step backwards, competition-wise.

Besides that fact that WLS would replace today's competitive re-registration system with a monopoly system and higher fees for Verisign, the problem is that WLS, as approved by the ICANN board, would tilt the competitive playing field among registrars, a, so-far, even playing field that has been setup by ICANN and the rest of the Internet community. Coincidentally, the registrar that would gain the largest advantage is Network Solutions, which is owned by Verisign, the company proposing the WLS. The funny thing is that ICANN knew that a certain aspect of Verisign's proposed WLS would have this effect, so ICANN prudently modified Verisign's proposal in an attempt to remove the advantage. ICANN's board subsequently approved the WLS with the modification.

Unfortunately, ICANN's modification does not remove the advantage. Again, as I am not inside the black box, I do not know why the form of WLS approved by ICANN still had the flaw. Thinking the best of ICANN as I usually do, I assume it was an oversight, or possibly ICANN needs more resources to fully understand the repercussions of their decisions, but since as far as outsiders can tell, these problems are not being corrected, I'm reluctantly beginning to think baser thoughts. So we are in a situation where it seems that the form of WLS that will come out of ICANN and will be implemented by Verisign is **anti-competitive**, a flaw that can be removed with only a few words changed in the ICANN board's resolution on WLS.

I have appended my testimony with a letter I sent to the ICANN Board outlining my concerns with WLS "condition (c)" and recommending a small, but important change. (See Tab 1). This change could be made as part of the ongoing, ICANN board authorized, WLS "tailoring" that, as far as outsiders can tell, is happening between ICANN and Verisign.

As WLS is a controversial issue to many people, and there have been few recent decisions that affect competition in the name space, a competitively-neutral WLS output by ICANN is not just my test to determine if the reformed ICANN is advancing competition or taking a step backward, but many other people's as well.

It doesn't matter that the initial WLS as originally proposed by Verisign or the final WLS that emerges out of the ICANN black box is a better product or worse product than the competitive re-registration system that exists today. At the end of the day, it doesn't matter what previous process was used to come to the output, though if a fair process was not followed, then that needs to be corrected. I know, as you Senators do, that as they say, making sausage isn't pretty. But what matters is the output. What matters is that whatever the final WLS, it not tilt the exactly fair, competitive, playing field that ICANN and the Department of Commerce have painstakingly put in place.

Another concern with ICANN that is relevant to the WLS issue is the lack of independent review of ICANN decisions. Under the current process there appears to be no way to appeal ICANN's decision to an independent, objective third party, a process which is outlined and guaranteed in ICANN's own bylaws, but has yet to be enacted even once. In fact, one of the

Domain Justice Coalition members requested such an independent review board but this request, was denied. ICANN's grounds for the denial is that only decisions made through the consensus process are entitled to be reviewed by an independent review board. Regrettably, the Domain Justice Coalition has had to resort to a lawsuit in an effort to resolve this issue. Even if ICANN were to have appointed an independent review panel, the so-called independence of this review panel must be seriously questioned since the ICANN Board determines who serves on the panel. The inability of complainants to get an objective, impartial review of ICANN decisions seriously undermines ICANN's credibility with the companies it regulates.

Time does not permit me to go into greater detail on WLS. I have taken the liberty of including as part of my testimony a letter submitted to the NTIA which outlines my concerns with the proposal in greater detail. I have also included frequently asked questions, or "FAQ" page, on WLS for the Committee's review. (See Tab 2).

#### **New Top-Level Domains (TLDs)**

My company has had some experience with ICANN regarding TLDs. In 2001, eNom participated in the ".one" TLD proposal. ENom did not win that beauty contest. That process resulted in many TLDs, if not all, that have not met their projections. I know its impossible to get every decision right, especially on the first time out, but many of the 7 TLDs selected back then have fewer than 10,000 names, and one is not even live though it has been two years since its selection. The vast majority of internet users have not even heard of some of the TLDs selected, TLDs such as ".areo", ".coop", and ".museum". Have you ever seen a domain with these TLDs in use, let alone the others? The proof of a successful test bed is in usage. The TLD

round in 2000 was not only a test bed for each of the new TLDs but also a test of the selection process itself. Proof of a successful TLD distribution scheme is in whether or not it results in TLDs that are utilized. Why repeat a process that resulted in an allocation and expansion of the name-space resource if the resulting "expansion" is not utilized?

In 2002, eNom participated in another proposal for ".org". Another group, as well, won that contest. Though the winners have successfully transitioned .org, which is good, I know that registrars are paying the exact same price for the same services as before the transition, while there were many others who had proposed the same service for substantially less, and that were equally qualified to perform the transition.

Without clear, quantifiable criteria, it is really difficult for outsiders to tell if ICANN acted arbitrarily or with favoritism in its approval processes, let alone for those who submitted proposals. I do hope that there will be many more opportunities for ICANN to delegate many new TLDs in the near future. And that the knowledge gained in the past will be applied to make the selection incontrovertible.

To that end, I support the following two-step process 1) the ongoing accreditation of registry operators with objective technical criteria, and 2) an auction to determine who is delegated which TLD. Meanwhile; the issue of the remaining applicants from 2000 has to be addressed.

First, accredit registry operators based on specific technical operational criteria. This would focus this part of the debate on what are the "must have" objective technical operational criteria, but at least after the debate had ended; everyone would know what they are. With a registry accreditation step, even if step 2 were a beauty contest, instead of an auction, the prospective registries would know with certainty that their selection of an accredited registry operator will not bias the decision. Without this step, most new TLD proposers will choose an incumbent operator to reduce the risk of ICANN having some issue about an unknown operator and denying their application, even if Step 2 was a more objective and impartial process, such as an auction. Adding a registry operators' accreditation step to the process will create more competition at the registry level and make for a more indisputable outcome

Second, auction them, within limits. A suitable auction could be designed to distribute a small number of TLDs. Safeguards could be built-in to prevent the auction itself from weakening the proposers. The winning bidders would advance to the registry agreement negotiation stage with ICANN, with ICANN publicizing non-technical "must have" terms before the auction (such as adherence to the DRP and data escrow or whatever), Payment to ICANN would occur after actual agreement. Other terms that would be negotiated leave room for the prospective registry to innovate. This will constrain this part of the debate to what the "must have" terms should be. The who-gets-what-TLD machinations would then be removed entirely. The proceeds of the auctions would help fund ICANN. ICANN can use some of the funds to support less objectively chosen TLDs that may be proposed for specific interests, such as for public interest, or for non-profit groups. An auction will help insure that proposers put their

money where their mouth is, and therefore that the TLDs delegated would actually be used. And if it turns out that the TLD is not utilized, at least ICANN has funding to make corrective action.

The incumbent registries would rather not have competitors, so they will fight this 2-step process becoming policy. If I were a for profit registry, I'd advocate more ".museums" or ".nonprofits" to occupy ICANN's time. Its as if, in the early days of Television, CBS, NBC and ABC, seeing an expansion in television channels, advocate for all new channels to be PBS.

With that said, there remains the single issue of the existing applications from the first beauty-contest round in 2000. These remaining applications, each of which paid a \$50,000 application fee to ICANN, were specifically told by ICANN that their applications were not denied, but are, instead, "still pending" the results of the initial test bed. Clearly, these applications need to be addressed before moving forward to Step 2 of the process.

With a beauty contest:

- 1) There is incentive for the proposers to make wild projections to get the TLD, while they are at no risk to losing the TLD if those projections do not turn out. This has already happened.
- 2) Much too much effort is spent in proposers lobbying the ICANN board and other ICANN decision makers
- 3) Insiders have an advantage
- 4) With broad, subjective criteria, the proposers are forced to attempt to read ICANN's mind, which results in "hobbled" TLDs, or TLDs that are constrained by imagined



criteria. As if, in granting spectrum in the early days of radio, the FCC had such subjective criteria that it could be interpreted that you'd have a better chance to be granted spectrum if you wanted to use the space to broadcast music, so the proposers attempt to guess the director's favorite kind.

- 5) Even if all intentions were honorable, due to subjective criteria such as "The prospects for the continued and unimpaired operation of the TLD", it is very difficult to know with certainty that the output of the process was arrived at without shenanigans.

Finally, I urge the Department of Commerce to step up its level of oversight over ICANN. The Memorandum of Understanding (MOU) that ICANN signed with the Department of Commerce clearly envisions some oversight role. Department of Commerce oversight is particularly important in the WLS issue. Paragraph One of Amendment Three to the MOU, which was entered on May 25, 2001 (<http://www.icann.org/general/amend3-spamou-25may01.htm>) requires prior Department of Commerce approval for any material amendments to ICANN's Registry Agreement with VeriSign. The Domain Justice Coalition believes WLS falls under this requirement. Yet, VeriSign began rolling out the WLS service on July 28th by releasing its WLS software development kit despite the fact that the Department of Commerce has yet to review, let alone approve, a single word of the agreement between VeriSign and ICANN making the necessary changes to the Registry Agreement for WLS to go forward.

Moreover, because ICANN's procedures offer no real opportunity for review or reconsideration of ICANN Board decisions, the burden of ensuring that ICANN is adhering to the MOU and of preserving a competitive domain name registration system must fall to the

Department of Commerce. The Department of Commerce should make it clear that WLS cannot go forward without the Department's review and approval.

The extension of ICANN's MOU provides the Department of Commerce with a unique opportunity to make sure that ICANN is functioning as the government and the Internet community intended. It is also a chance for Commerce to review whether the reforms ICANN has recently adopted are having the desired effect.

Congress must also continue to exercise its oversight jurisdiction by holding the Department of Commerce accountable for its activities regarding ICANN. Chairman Burns is to be commended for holding these hearings. There is no dispute of the importance of the Internet to the U.S. and global economy. Proper management of the Domain Name System (DNS) is one of the most important aspects of ensuring the Internet is a stable environment for business to operate.

To improve both the Department of Commerce and the Congress' understanding of ICANN's operations, the Domain Justice Coalition has endorsed legislation that would place a moratorium on further ICANN activity until the GAO can conduct a review and report back to Congress. H.R. 2521, "The Fair, Transparent, and Competitive Internet Naming Act", introduced by Representatives Baird and Inslee, would provide a much-needed objective and independent evaluation of ICANN. The information contained in a GAO study could prove invaluable to Congress and the Department of Commerce during the MOU extension process and I urge the introduction of similar legislation in the Senate.

ICANN has had many accomplishments in bringing competition to this industry. I hope the reformed ICANN will continue to promote fair and even competition and to bring more of it, not less.

I thank the committee for giving me the opportunity to testify. I am happy to now answer any questions that you may have.

## The Wait Listing Service (WLS) Program

The WLS service complements VeriSign Naming and Directory Services ("VNDS") primary and secondary naming services by allowing customers of Name Store registrars to subscribe to a waitlist for a specific domain name that is currently registered. If and when the domain name becomes available for registration during the WLS subscription term, the WLS service will register that domain name subject to certain terms and conditions.

ICANN accredited registrars will be able to offer WLS for .com and .net domain names through the VNDS NameStore platform.

### Features and Benefits

The following are examples of benefits customers can enjoy through the various WLS features.

- o A single subscription shall be required for each domain name registration. The WLS subscriber will receive that domain name registration should the current registrant decide either not to renew or explicitly delete that domain name registration during the term of the WLS subscription.
- o WLS subscribers may **exchange the domain name covered by their subscription** for another up to three (3) times during a 12-month subscription. This feature is valuable should the incumbent registrant renew the domain name registration or if the domain name registration otherwise is not made available for registration.
- o If the subscriber wishes to continue holding a subscription for a name that will not expire during the term of the WLS subscription, they will have the option to renew their subscription automatically. The optional renewal can be chosen at any time during subscription.

Offered though the NameStore EPP platform, registrars can launch the WLS service with relative ease while enjoying the same benefits provided for all NameStore products including;

- o 24/7 customer and technical support
- o A single credit account.
- o Utilize the existing NameStore EPP connection (WLS SDK)
- o Activity reporting (detailed & summary, daily, weekly & monthly) available via FTP.
- o Wholesale price is US \$24 per 12-month subscription. Price is subject to change.

### Becoming a WLS Provider

Getting started as a WLS Provider is easy but worthy of forward planning. The first step is to sign up for the Name Store service. Secondly, you may not want to wait to start implementing the NameStore WLS SDK that has been made available early to allow for proper preparation prior to OT&E. Please check the WLS Web site for OT&E, launch and other important dates.

Use the following checklist to refer to the order of tasks and to keep track of them.

	Task	Performed By
1. <input type="checkbox"/>	Sign and return VNDS Name Store Merchant Agreement.	Registrar
2. <input type="checkbox"/>	Download SDK with the Programmers Guide and Product Guidebook from Web site to begin preparation for OT&E and agree to SDK Software License Agreement.	Registrar
3. <input type="checkbox"/>	Acquire VeriSign 128 bit Global Certificate *	Registrar

4. <input type="checkbox"/>	Receive user name and password for Operational Test & Evaluation (OT&E).	VNDS Registry Customer Affairs
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	Task	Performed By
<input type="checkbox"/>	Conduct development and testing in OTE environment.	Registrar
<input type="checkbox"/>	Modify limits on Channel Partner deposit account and modify letter of credit, performance bond, or cash deposit for Name Store products.	Registrar
<input type="checkbox"/>	Confirm with VNDS Registry Customer Affairs that contractual and financial obligations are fulfilled.	Registrar
<input type="checkbox"/>	Contact Customer Affairs at <a href="mailto:cao@verisign.com">cao@verisign.com</a> to request user name and password for production environment.	Registrar
<input type="checkbox"/>	Begin providing Wait List Services.	Registrar

\* The VeriSign 128 bit Global Certificate (Secure Site Pro) will be necessary to establish a connection with the VeriSign Name Store:  
 URL: <http://www.verisign.com/products/site/secure/index.html>  
 This is the only certificate that will work with the Name Store Platform. Other 128 bit certificates will not work.

### WLS Data Fields, Business Rules and Use Cases

Below is a description of processes and commands available to WLS providers. Included under each action is a set of business rules for each action, a list of database fields that will be required and returned, EPP use cases and a flow chart that will step through the action. Use case and flow charts are illustrative only and are not intended to be exhaustive.

#### Login

The LOGIN command applies when using EPP or the WLS Administrative Tool (There is additional information about the Administrative Tool later in this document). Logon Name and Password must be provided. WLS Logon Name and Password are provided to the registrar during the final step of becoming a WLS Provider – (Refer to the Agreements and Access table above).

#### Business Rules:

- ◆ Registrar status in Name Store that user is associated to must be ACTIVE.

#### Data Fields:

1. Registrar Logon Name (mandatory)
2. Password (mandatory)

Fields that will be provided via LOGIN command success response:

1. Results code

Fields that will be provided via LOGIN command failed response:

1. Results code

2. Error message

## Logout

The LOGOUT command applies when using EPP or the WLS Administrative Tool.

### **Business Rules:**

- ◆ This command can only be performed if registrar is logged in to WLS system.

### **Data Fields:**

There are no required data fields.

Fields that will be provided via LOGOUT command success response:

1. Results code

Fields that will be provided via LOGOUT command failed response:

1. Results code
2. Error message

## Subscription Process Overview

The following is a step-by step overview of the entire purchase process for WLS subscriptions.

1. Registrar receives request, from a prospective registrant, to register a .com or .net domain name.
2. Registrar sends a RRP CHECK command to SRS.
3. Registrar receives a RRP CHECK response from SRS, that the domain name is not available for registration.
4. Registrar sends a notification to the prospective registrant that the requested domain name is not available in SRS and asks registrant if they would like to check availability with the WLS service for subscription to that domain name.
5. Registrar receives response, from registrant, that they would like to subscribe to the WLS service for that domain name.
6. Registrar sends an EPP CHECK command to the Name Store WLS system.
7. Registrar receives an EPP CHECK response, from the NS WLS system, that no WLS subscription exists for the domain name.
8. Registrar notifies registrant that the WLS subscription is available and confirms they want to place the order.
9. Registrar sends an EPP CREATE command to the Name Store WLS system.
10. WLS system runs data validation, business rule and available credit checks on request and no errors are detected.
11. WLS system sends a successful EPP CREATE response to registrar.

## Checks

The WLS service is first come, first served with a limit of one subscription per registered domain name. The CHECK command will determine whether a subscription is available for a requested registered domain name or already taken.

**Business Rules:**

- ◆ Domain Name is required.
- ◆ Only one Domain Name per check command.

**Data Fields:**

Data that must be provided via CHECK command request:

1. Domain Name (mandatory)

Fields that will be provided CHECK command success response:

1. Results code identifying if subscription is Available or Not Available

Fields that will be provided via CHECK command failed response:

1. Results code
2. Error message

**Use Case:**

Preconditions:

1. Registrar has run a CHECK command in SRS and domain is not available for registration
2. Registrar has asked registrant if they are interested in a WLS subscription.
2. Registrar has logged into WLS system via Name Store gateway.

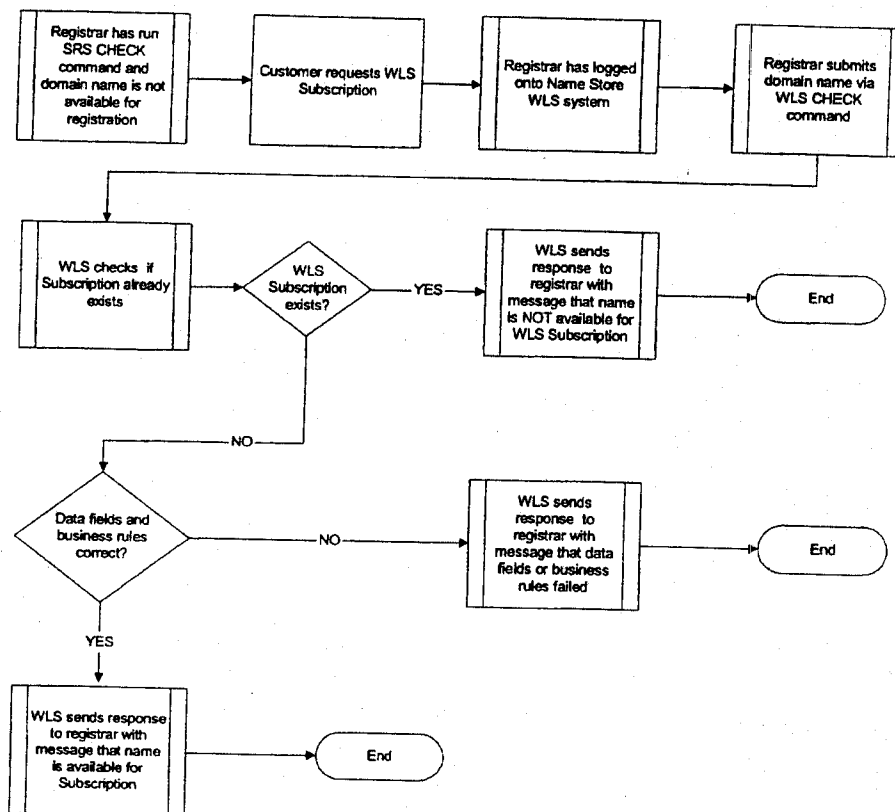
Steps:

1. Registrar submits domain name via EPP CHECK command.
2. WLS system checks WLS database for existing subscription.
3. No WLS subscription exists.
4. WLS system sends successful EPP CHECK response to Registrar with message that name is available for subscription (Note: Available response does not ensure registrar will be able to successfully create the subscription. Business rules may be enforced at creation that do not allow registrar to obtain subscription – refer Service Restrictions below) (End transaction).

Exceptions:

3. WLS subscription exists.
- 3a. WLS system sends EPP CHECK response to Registrar with message that name is not available for subscription (End transaction).
4. Data submitted failed business rule or format requirements or internal system error occurred.
- 4a. WLS system sends failed EPP CHECK response to Registrar with message that data failed format or business rule checks or system error occurred (End transaction).

## WLS Checks



Because this diagram illustrates general process flows, it may not correspond precisely to use case. See Business Rules and Data Fields sections for complete details.



## **Creates**

Once it has been established that the domain registration that a prospective customer is seeking is already registered and a WLS subscription is available, a subscription may be requested by transmitting the CREATE command will generate that subscription.

### ***Business Rules:***

- ◆ Domain name must be provided.
- ◆ Registrar must have enough funds in Name Store Name Store Channel Partner Account to cover subscription fee.
- ◆ A WLS Subscription cannot already exist.
- ◆ A WLS Subscription for a domain name that is on registry and/or registrar Lock or Hold status may be placed.
- ◆ WLS subscription requests submitted by the current registrar of record for the domain name while the domain name is in the Auto-Renew grace period, Redemption grace period, Pending Restore Period or Pending Delete period will be disallowed. (refer Service Restrictions)
- ◆ Subscription cannot be for an International Domain Name (IDN).

### ***Data Fields:***

Data that must be provided via CREATE command request:

1. A Domain Name is required.
2. Reference ID required.
3. AutoRenew Flag (optional flag that defines if the subscription should be automatically renewed at expiration)
3. Subscription period is optional for this initial release.

Fields that will be provided via CREATE command Success response:

1. Results code
2. Domain Name
3. Reference ID
4. Subscription ID (server assigned ID)
5. Created Date (date subscription created)
6. Expiration Date (date subscription will expire, one year from created date)
7. Exchange Count (number of remaining times the domain name may be changed to new domain)
8. AutoRenew Flag (if set to true, will autorenew subscription)
9. Registration Period

**Fields that will be provided via CREATE command Failed response:**

1. Results code
2. Error message

**Data Format Business Rules:**

1. Domain Name required.
2. Domain name must be in valid ASCII domain name format for .com and .net domains.
3. Domain name must be greater than 2 characters (e.g., a.com or fm.com not allowed).
4. Reference ID required.
5. Reference ID may be a duplicate.
6. Reference ID must be in valid format (equal to or less than 100 characters in length and contains no white space).
7. Auto-Renew Flag optional (default to False if not provided).
8. Registration Period is fixed to 1 year for this release.

**Use Case:**

**Preconditions:**

1. Registrar has run a RRP CHECK command in SRS and domain is not available for registration.
2. Registrar has asked registrant is interested in a WLS subscription
3. Registrar has run a EPP CHECK command in the WLS system and WLS subscription is available for that domain name.
4. Registrar has logged into WLS system.

**Steps:**

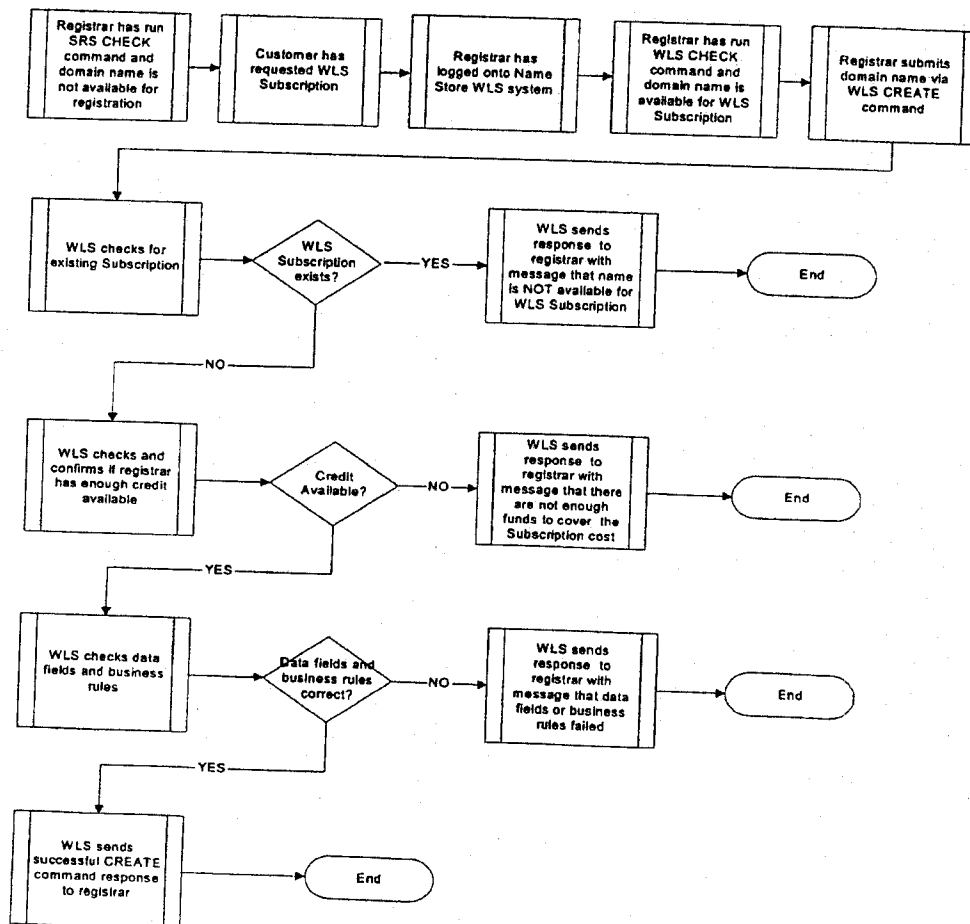
1. Registrar submits domain name via EPP CREATE command.
2. WLS system checks WLS database for existing subscription.
3. No WLS subscription exists.
4. WLS system checks the Channel Partner Account and confirms that enough funds are available.
5. WLS system checks data submitted and confirms that data passed format and business rules check.
6. WLS system:
  1. Debits registrars available credit for amount of WLS subscription.
  2. Saves data and sends successful EPP CREATE command response to registrar (End transaction).

**Exceptions:**

- 3 WLS subscription already exists.
- 3a. WLS system sends failed EPP CREATE response to Registrar with message that name is not available for subscription (End transaction).

4. Registrar's Name Store available credit is not enough to cover subscription fee.
- 4a. WLS system sends failed EPP CREATE response to Registrar with message that registrar does not have sufficient funds to cover cost of subscription (End transaction).
5. Data submitted failed business rule or format requirements or internal system error occurred.
- 5a. WLS system sends failed EPP CREATE response to Registrar with message that data failed format or business rule checks or system error occurred (End transaction).

### WLS Creates



Because this diagram illustrates general process flows, it may not correspond precisely to use case. See Business Rules and Data Fields sections for complete details.

## **Deletes**

Should an existing WLS subscription require deleting this command can be performed as follows.

### **Business Rules:**

- ◆ Domain name or Subscription ID must be provided and must match a domain name or subscription ID in the database for the registrar provided.
- ◆ Only the registrar that created subscription can delete a WLS Subscription.
- ◆ No refunds or substitute services will be provided for subscriptions that are terminated through the delete command.
- ◆ No other transaction can be in progress (e.g. subscription being fulfilled).

### **Data Fields:**

Data that must be provided via DELETE command request:

1. Domain Name (required if subscription ID is not provided)  
OR
2. Subscription ID (required if domain name is not provided)

Fields that will be provided via DELETE command success response:

1. Results code

Fields that will be provided via DELETE command failed response:

1. Results code
2. Error message

### **Use Case:**

Preconditions:

1. Registrar has created a WLS subscription for the domain.
2. Registrar has logged into WLS system.

Steps:

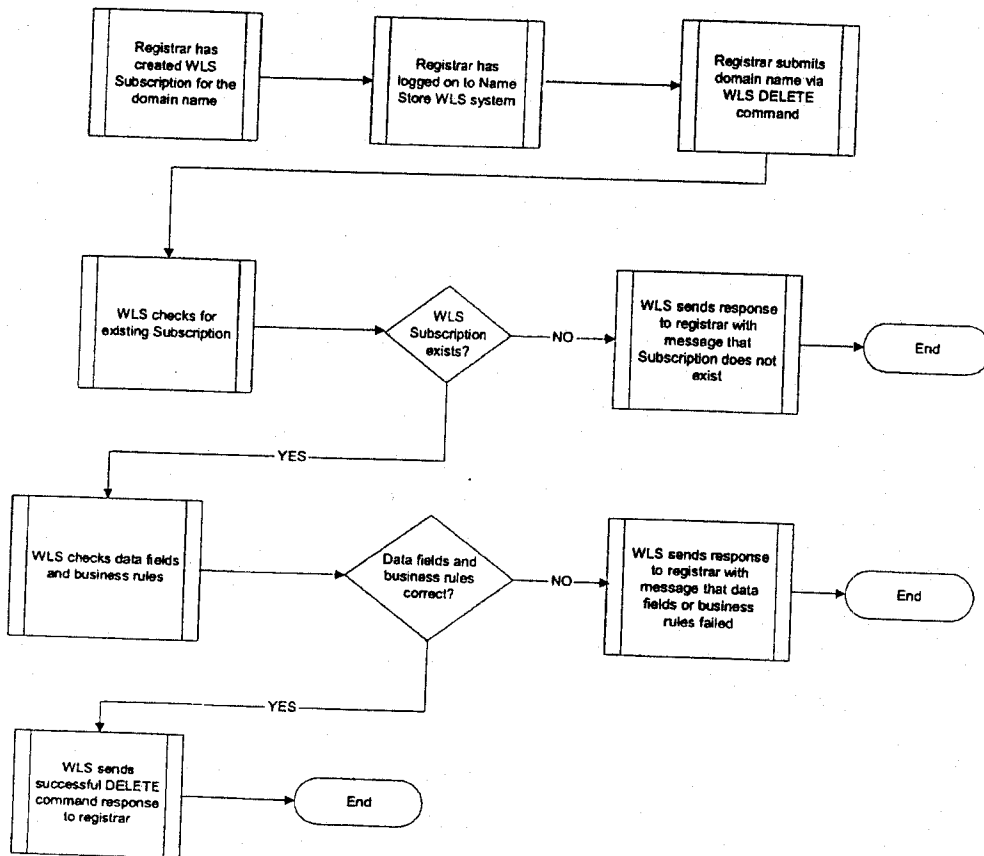
1. Registrar submits domain name via EPP DELETE command.
2. WLS system checks WLS database and finds existing subscription.
3. WLS system checks data submitted and confirms that data complies with accepted format and business rules check.
4. WLS system sends successful EPP DELETE command response to registrar (End transaction).

Exceptions:

2. WLS subscription does not exist.
- 2a. WLS system sends failed EPP DELETE response to Registrar with message that no subscription exists for this domain (End transaction).

3. Data submitted failed business rule or format requirements or internal system error occurred.
- 3a. WLS system sends failed EPP DELETE response to Registrar with message that data failed format or business rule checks or system error occurred (End transaction).

### WLS Deletes



Because this diagram illustrates general process flows, it may not correspond precisely to use case. See Business Rules and Data Fields sections for complete details.

## **INFO (STATUS & PORTFOLIO)**

The INFO command is used to retrieve information regarding existing subscriptions. There are two methods of retrieval:

1. STATUS sub-command will return information on one WLS subscription
2. PORTFOLIO sub-command will return for all WLS subscriptions with a specified Reference ID.

### **Business Rules:**

- ◆ One of the two sub-commands must be provided, either STATUS or PORTFOLIO.
- ◆ If STATUS sub-command selected, Domain name or Subscription ID must be provided.
- ◆ Subscription must exist for domain name or for subscription ID.
- ◆ Only the registrar that created the WLS Subscription can retrieve the INFO on a subscription.
- ◆ If PORTFOLIO sub-command selected, maximum number of WLS subscriptions that will be returned is 1000.
- ◆ Although information provided in response to status and portfolio commands are believed to be correct, it is not guaranteed.

### **Data Fields:**

Data that must be provided via INFO command request:

1. Status sub-command
  - a) Domain Name (mandatory if subscription ID is not provided)  
OR
  - b) Subscription ID (mandatory if domain name is not provided)
2. Portfolio sub-command
  - a) Reference ID (mandatory)

Fields that will be provided via INFO command success response

1. Results Code
2. Domain Name
3. Reference ID
4. Subscription ID (server assigned ID)
5. Created Date (date subscription created)
6. Expiration Date (date subscription will expire, one year from created date)
7. Exchange Count (number of remaining times the domain name may be changed to new domain)
8. AutoRenew Flag (if set to true, will autorenew subscription)
9. Updated Date (date subscription was last updated)
10. Registration Period (optional field in EPP schema. In this release this field will not be returned)

Fields that will be provided via INFO command failed response:

1. Results code
2. Error Message

**Use Case:**

Preconditions:

1. Registrar has created a WLS subscription for the domain(s).
2. Registrar has logged into WLS system.

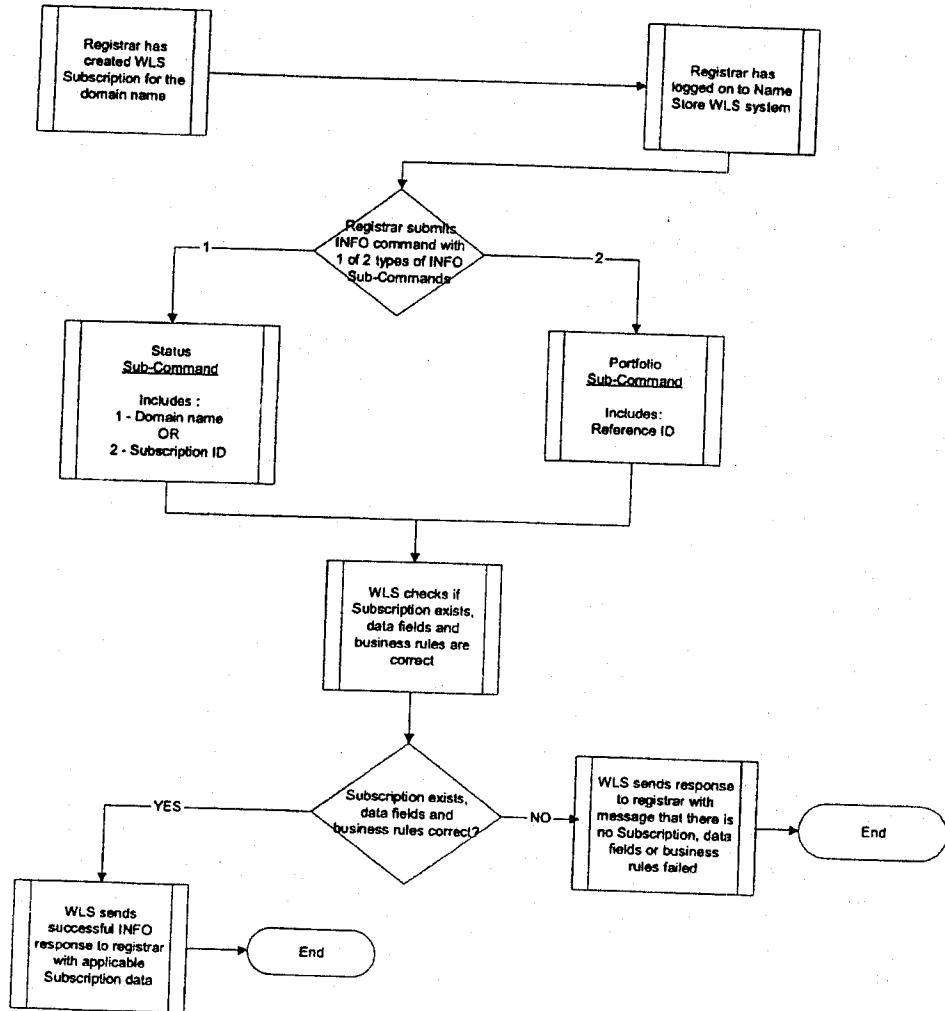
Steps:

1. Registrar submits one of two types of INFO sub-commands via EPP INFO command:
  - 1-1. Status sub-command (includes domain name or subscription ID)
  - 1-2. Portfolio sub-command (includes just reference ID)
2. WLS system checks WLS database and finds existing subscription(s) (Note: multiple subscriptions may be returned if registrar selects Portfolio sub-command. Maximum returned will be 1000).
3. WLS system checks data submitted and confirms that data passed format and business rules check.
4. WLS system sends successful EPP INFO command response to registrar with applicable subscription data (End transaction).

Exceptions:

2. WLS subscription does not exist.
- 2a. WLS system sends failed EPP INFO response to Registrar with message that no subscription exists for this domain (End transaction).
3. Data submitted failed business rule or format requirements or internal system error occurred.
- 3a. WLS system sends failed EPP INFO response to Registrar with message that data failed format or business rule checks or system error occurred (End transaction).

## WLS Infos (Status & Portfolio)



Because this diagram illustrates general process flows, it may not correspond precisely to use case. See Business Rules and Data Fields sections for complete details.



## **UPDATE (MODIFY)**

Auto-renewal is an optional feature that can be turned on or off at any time during the subscription period. If turned on, the WLS subscription will be renewed at the end of the subscription period. The following outlines how to make this change using the UPDATE command and MODIFY sub-command

### **Business Rules:**

- ◆ Domain name or Subscription ID must be provided and must match a domain name or subscription ID in database for the registrar provided.
- ◆ Reference ID may be provided with Subscription ID, and if provided must match a reference ID/subscription ID pair in the database for the registrar provided.
- ◆ Auto-renew flag must be valid (true or false).
- ◆ Registrar status must be set to ACTIVE.
- ◆ Only the registrar that created subscription can change renew flag on that subscription.
- ◆ Auto-renewal subscriptions shall be for a period matching the current subscription.
- ◆ Registrar must have enough funds in Name Store Channel Partner Account to cover subscription fee time of auto-renewal.

NOTE: If the Auto-Renew flag is set to True it must be changed via the MODIFY sub-command in order to deactivate the auto-renew functionality. If the flag remains True the subscription will continue to auto-renew each year.

### **Data Fields:**

Data that must be provided via EPP UPDATE command (MODIFY sub-command) request:

1. Domain Name (mandatory if subscription ID is not provided)

OR

2. Subscription ID (mandatory if domain name is not provided)

AND

1. Reference ID (optional)
2. Auto-Renew Flag

Fields that will be provided via UPDATE command success response:

1. Results code

Fields that will be provided via UPDATE command failed response:

1. Results code
2. Error message

**Use Case:**

**Preconditions:**

1. Registrar has created a WLS subscription for the domain.
2. Registrar has logged into the WLS system.

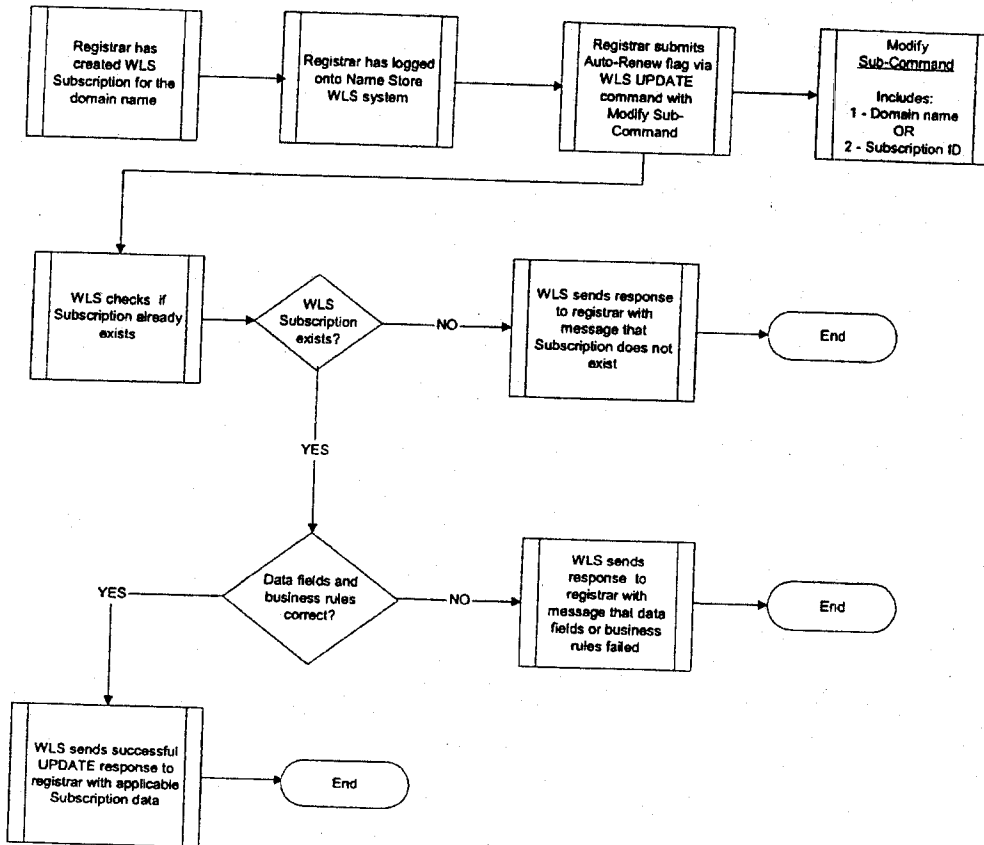
**Steps:**

1. Registrar submits domain name (or subscription ID and reference ID) and auto-renew flag via EPP UPDATE command (MODIFY sub-command).
2. WLS system checks the WLS database and finds existing subscription.
3. WLS system checks data submitted and confirms that data passed format and business rules check.
4. WLS system saves data and sends successful EPP RENEW command response to registrar with applicable subscription data (End transaction).

**Exceptions:**

2. WLS subscription does not exist.
- 2a. WLS system sends failed EPP RENEW response to Registrar with message that no subscription exists for this domain (End transaction).
3. Data submitted failed business rule or format requirements or internal system error occurred.
- 3a. WLS system sends failed EPP RENEW response to Registrar with message that data failed format or business rule checks or system error occurred (End transaction).

## WLS Updates (Modify)



Because this diagram illustrates general process flows, it may not correspond precisely to use case. See Business Rules and Data Fields sections for complete details.

## **UPDATE (CLEAR & POPULATE) for Exchanges**

Used to exchange the domain name registration to which the WLS subscription applies. The Update command clears the existing domain name then populates the subscription with the desired domain name. At the same time the subscription's number of exchanges, starting with three (3) is decremented by a single unit. The registrar must check availability of the newly desired domain name for a WLS subscription prior to initiating the UPDATE command (CLEAR & POPULATE sub-commands).

### **Business Rules:**

- ◆ Must provide two (2) sub-commands CLEAR & POPULATE.
- ◆ CLEAR sub-command, domain name or subscription ID must be provided and must match domain name or subscription ID in database for registrar provided.
- ◆ CLEAR sub-command, and domain name field may not be blank in database.
- ◆ POPULATE sub-command, new domain name and Subscription ID must be provided and subscription ID must match subscription ID in database for registrar provided.
- ◆ CLEAR sub-command, subscription must have at least one exchange credit.
- ◆ Only the registrar that created subscription can update subscription.
- ◆ WLS subscription requests submitted by the current registrar of record for the domain name while the domain name is in the Auto-Renew grace period, Redemption grace period, Pending Restore Period or Pending Delete period will be disallowed.
- ◆ There are no grace periods for exchanges.
- ◆ Note: Exchange count does not apply if registrar is requesting a Modify sub-command.

### **Data Fields:**

Data that must be provided via INFO command request:

1. CLEAR sub-command
  - a) Domain Name (mandatory if subscription ID not provided)
- OR
- b) Subscription ID (mandatory if Domain Name not provided)
2. POPULATE sub-command
  - a) New Domain Name (mandatory)
  - b) Subscription ID (mandatory)

Fields that will be provided via UPDATE command success response:

1. Results code

Fields that will be provided via UPDATE command failed response:

1. Results code
2. Error message

### Use Case:

#### Preconditions:

1. Registrar has created a WLS subscription for the domain.
2. Registrar has logged into WLS system.
3. Registrar has used the CHECK command to confirm availability of the new domain name within the WLS system

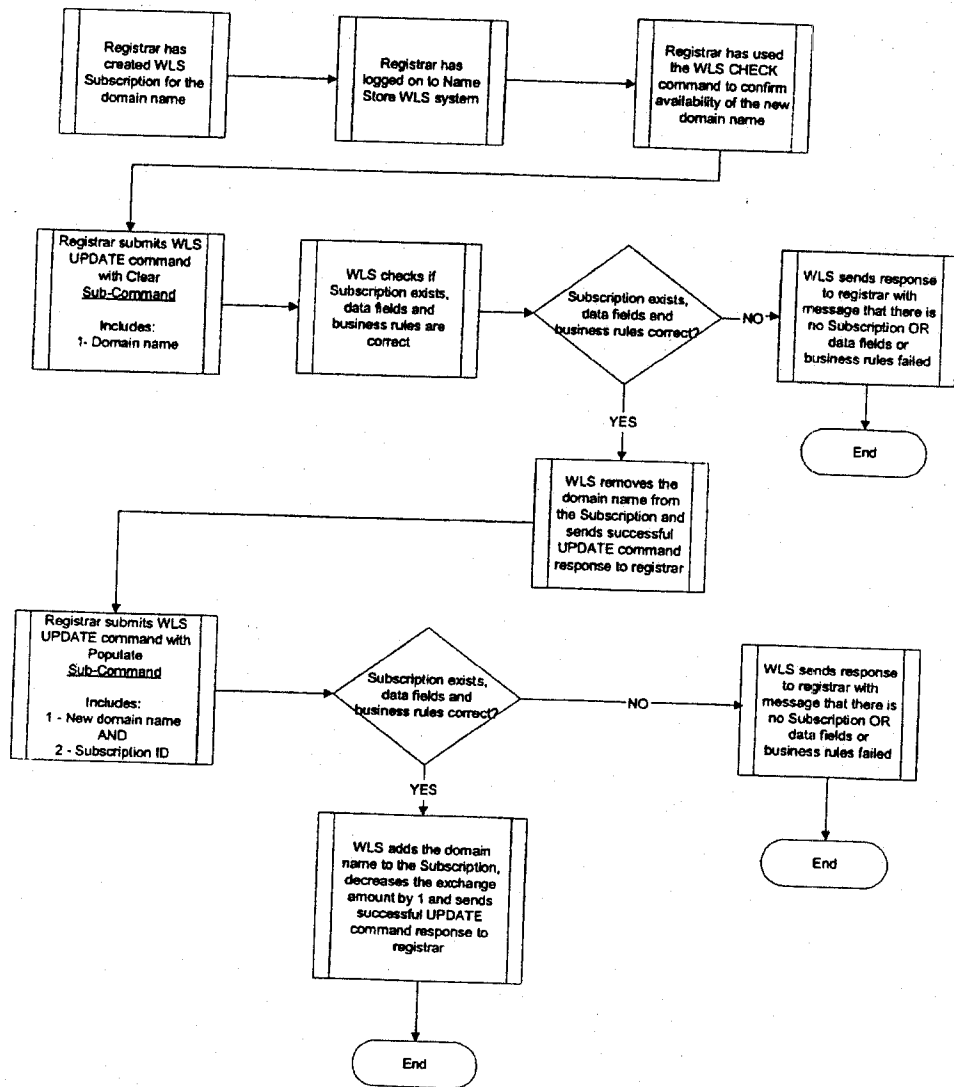
#### Steps:

1. Registrar submits one of three types of UPDATE sub-commands via EPP UPDATE command:
  - 1-1 Clear sub-command (includes domain name)
  - 1-2 Populate sub-command (includes new domain name, subscription ID and optional reference ID)
  - 1-3 Modify sub-command (includes domain name (or subscription ID and optional reference ID) and new reference ID)
2. WLS system checks waitlist database and finds existing subscription.
3. WLS system checks data submitted and confirms that data passed format and business rules check.
4. If registrar submits Clear sub-command:
  - 4-1 WLS system removes the domain name from the subscription and sends successful EPP UPDATE command response to registrar (End transaction).
5. If registrar submits Populate sub-command:
  - 5-1 WLS system adds the domain name to the subscription, decrements the exchange count by 1, and sends successful EPP UPDATE command response to registrar (End transaction).
6. If registrar submits Modify sub-command:
  - 6-1 WLS system changes the reference ID on the subscription and sends successful EPP UPDATE command response to registrar (End transaction).

#### Exceptions:

2. WLS subscription does not exist.
- 2a. WLS system sends failed EPP UPDATE response to Registrar with message that no subscription exists for this domain (End transaction).
3. Data submitted failed business rule or format requirements or internal system error occurred.
- 3a. WLS system sends failed EPP UPDATE response to Registrar with message that data failed format or business rule checks or system error occurred (End transaction).
- 4-1 Registrar submits Clear sub-command.
  - 4-1a WLS system sends failed EPP UPDATE (CLEAR) response to Registrar with message explaining why command failed (End transaction).
- 5-1 Registrar submits Populate sub-command.
  - 5-1a WLS system sends failed EPP UPDATE (POPLULATE) response to Registrar with message explaining why command failed (End transaction).

## WLS Updates for Exchange (Clear & Populate)



Because this diagram illustrates general process flows, it may not correspond precisely to use case. See Business Rules and Data Fields sections for complete details.

## **Polling (REQ & ACK)**

Name Store messages for other products and WLS fulfillment messages are placed in the Poll queue via the Poll Message Queue batch process. These messages are retrieved using a two-step process:

1. REQ (Request) receipt of the next message in the poll queue
2. ACK (Acknowledge) receipt of the message and makes next message available for request

### **Business Rules:**

- ◆ Must select one of two sub-commands, REQ or ACK
- ◆ If ACK (Acknowledge) sub-command, message ID must be provided

### **Data Fields:**

Data that must be provided via POLL command request:

1. REQ (request) sub-command
2. ACK (acknowledge) sub-command
  - a) Message ID (mandatory)

List of the data that will be provided via a successful EPP POLL Req. command response:

1. Results code (EPP code)
2. Message Count (number of messages in queue)
3. Message ID and Message Description (unique ID for each message, description is optional)
4. Message Details
  - a) Response Code
  - b) Response Description
  - c) Domain Name
  - d) Transaction Date (if fulfillment was successful, date will be domain registration creation date. Otherwise, it will be the date the fulfillment transaction failed).
  - e) Reference ID
  - f) Subscription ID

Data that will be provided via a failed EPP POLL REQ command response:

1. Results code
2. Error message

Data that will be provided via a successful EPP POLL ACK command response:

1. Results code
2. Message Count
3. Message ID and Message Description

Data that will be provided via a failed EPP POLL ACK command response:

1. Results code
2. Error message

**Use Case:**

**Preconditions:**

1. Poll queue has been created for the registrar in Name Store system (this is part of the initial set up of the registrar in Name Store).
2. Registrar has created a WLS subscription for the domain.
3. Registrar has logged into the WLS system.

**Steps:**

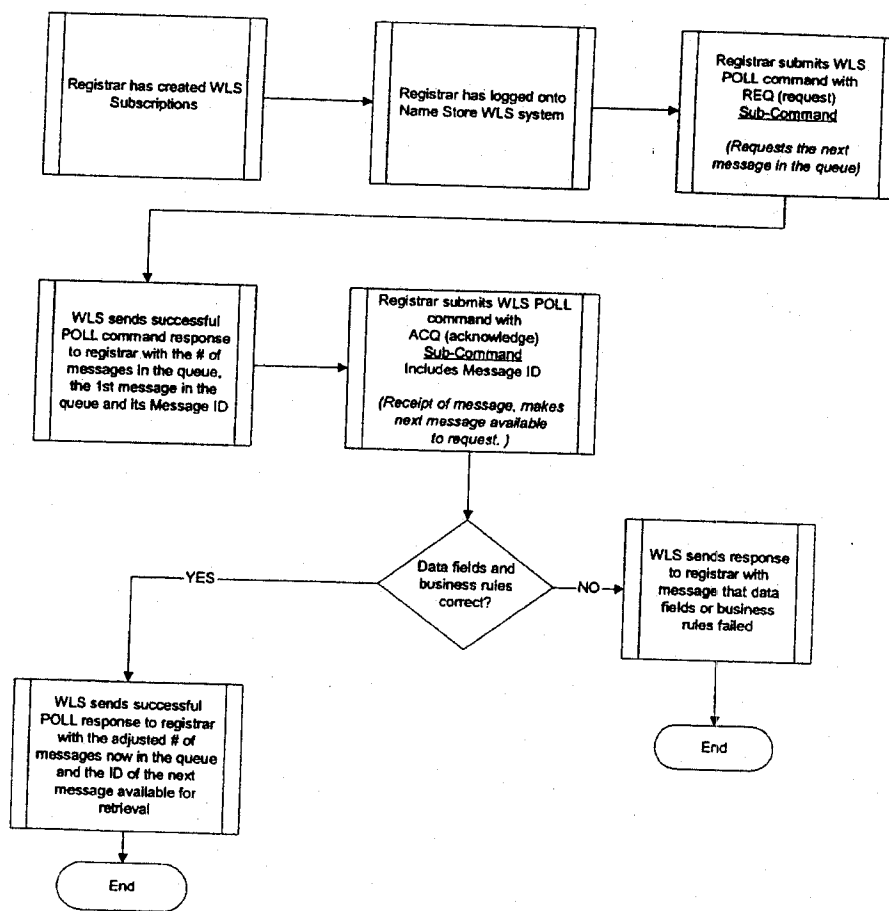
1. Registrar submits a POLL command with one of the following two POLL sub-commands via EPP POLL command:
  - 1-1 REQ. (request the next message in the queue) sub-command
  - 1-2 Ack. (acknowledge receipt of message, makes next message available to request) sub-command (includes message ID)
2. WLS system checks data submitted and confirms that data passed format and business rules check.
3. If registrar submits REQ. sub-command to WLS system:
  - 3-1 WLS system sends successful EPP POLL command response to registrar with the number of messages in the queue, the first message in the message queue and its message ID.
  - 3-2 Registrar receives the POLL response (End transaction).
4. If registrar sends a POLL ACK sub-command to WLS system with the message ID of a message that has been previously received.
  - 4-1 WLS system deletes acknowledged message.
  - 4-2 WLS system sends successful POLL response with the adjusted number of messages now in the queue. (End transaction)

**Exceptions:**

2. Data submitted failed business rule or format requirements or system error occurred.
- 2a. WLS system sends failed EPP POLL response to registrar with message that data failed format or business rule checks or system error occurred (End transaction).
- 3-1 POLL request failed
- 3-1a WLS system sends failed EPP POLL response to registrar with message explaining why command failed (End transaction).
- 4-2 POLL acknowledgement failed
- 4-2a WLS system sends failed EPP POLL response to registrar with message explaining why command failed (End transaction).



## WLS Polling



Because this diagram illustrates general process flows, it may not correspond precisely to use case. See Business Rules and Data Fields sections for complete details.

## **WhoIS**

### ***Business Rules:***

- ◆ Registrars are required to update their Whois service with appropriate registration data when a registration is created through the WLS Service.
- ◆ The update of registry Whois will occur as it normally does when a domain is registered.
- ◆ WLS Subscription data should not be included in either Whois.

## **Payments**

### ***Business Rules:***

- ◆ Registrar must have an Active Name Store Channel Partner Account with VeriSign
- ◆ Each WLS transaction will be debited from the Name Store Channel Partner Account.
- ◆ Domain Registration fees will be debited from the .com/.net Account.
- ◆ Registrars shall receive a monthly invoice listing the total quantity of WLS billable transactions and will use the information provided in the invoice to reconcile against their system.
- ◆ Registrar must replenish their Name Store Channel Partner Account based on the information provided in the monthly invoice.

## **WLS Registrar Administrative Tool**

This Web-based tool provides views into the data stored in the WLS subscription database and allows users, with the appropriate privilege level, to manage subscriptions. The WLS Admin tool is available by logging onto the WLS web tool URL.

Registrars may perform the following functions:

1. Login
2. Logout
3. Check
4. Create
5. Delete
6. Info
7. Update (Modify)
8. Update (Clear & Populate)

## **VNDS CSR Administrative Tool**

The web-based tool is available to VNDS customer service representatives with the appropriate privilege levels to perform administrative functionality on behalf of the registrars. This tool is used

by the VNDS Customer Service Representative should the registrar have trouble performing any of the activities described in the proceeding section.

### **Registration Fulfillment**

Upon deletion of the domain name registration covered by a WLS subscription, the WLS system will automatically register that domain name to the WLS subscriber per the normal SRS domain name registration process. The WLS registrar will become the domain name registrar of record and their .com/.net account will be debited \$6USD.

### **Service Restrictions**

The Registrars are prohibited from placing a WLS subscription on a domain name for which they are the Registrar of record if the registration is also in either Auto Renewal Grace Period, Redemption Grace Period ("RGP") or Pending Delete Status.

From the date of deletion request prior to expiration this "blackout period" covers a period of 35 days from deletion (30 days RGP & 5 days pending delete). For deletion requests that occur after expiration this covers a period of up to 80 days from expiration (45 days AR Grace Period plus 30 days Redemption Grace Period plus 5 days pending delete).

### **Registrant Notification**

The Registrar of Record will be requested to notify the current registrant promptly after a WLS subscription covering the registrant's domain name has been placed.

To assist registrars VNDS will provide a daily list of WLS subscriptions sent via FTP report to the registrar of record for notification to be forwarded to the registrant.

If the registrar of record elects not to notify their registrant, the WLS registrar will be required to do so. To assist registrars with identifying those registrants they need to notify VNDS will post to the WLS Registrar's FTP server a list of non-participating registrars. The WLS registrar is required to identify on that list the Registrar of record of the domain name to which they have placed a WLS subscription and send notification to the registrant.

The WLS registrar is required to identify WLS subscriptions placed on domain names where the registrar of record is listed as non-participating (has chosen not to notify their registrants of WLS subscriptions). For those names the WLS registrar must identify the registrant contact details and forward notification. Notification can be written or via email.

### **Active Status**

The Registrar must have an active status with both the Name Store and WLS services to perform these activities.

### **Reports**

All reports are available via FTP server. Reports are formatted as a colon delimited text file and sorted on Transdate in ascending order. Reports capture and report subscription activity as backorders.

#### **Daily Transaction Detail Report**

FREQUENCY: Report runs daily.

RETENTION: Daily reports stored on FTP for one week.

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INPUTS: All transactions that occurred on the previous day.

OUTPUTS:

HEADER: Start date 10.10.2001.00.00.00 End date 10.10.2001.23.59.59:Registrarname

FIELD

DESCRIPTIONS:

Field Name	Description
Transactionid	This number uniquely identifies a transaction
Referenceid	The Referenceid is a value set by a Registrar (alpha numeric)
Subid	Unique ID for each subscription
Transdate	Date/time the transaction took place: MM.DD.YYYY.HH.MN.SS
Action	Transaction description
Response	The response code give for the transaction, this maps to the EPP return codes
Domainname	The domain name
RegistrarTextName	The full name of the registrar
Price	The wholesale subscription price charged to the registrar (if applicable, some transactions are not billable and value may be 0. Also, does not reflect subscription fulfillment/domain registration fee

EXAMPLE OUTPUT:

*Adding a waitlist subscription:*

1:02312:10:10.02.2001 17.23.30:ADD-BACKORDER:SUCCESS:test.com:ACMEREGRISTRAR:24.00

*Setting the auto renewal flag to yes:*

1:02313:10:10.02.2001 17.23.30:ADD-AUTORENEWAL:SUCCESS:test.com:ACMEREGRISTRAR:0

*Subscription fulfilling:*

1:02314:10:11.02.2002 17.23.30:DOMAIN Aquired:SUCCESS:test.com:ACMEREGRISTRAR:0

*Exchanged domain name (note nothing distinguishes using an exchange credit):*

1:02315:1:10.02.2001 17.23.30:CLEAR-BACKORDER:SUCCESS:test.com:ACMEREGRISTRAR:0

1:02316:1:10.02.2001 17.23.51:REPOPULATE-BACKORDER:Success:match.com:ACMEREGRISTRAR:0

*Unsuccessful add of a waitlist subscription:*

1:02317:10:10.02.2001 17.23.50:ADD-BACKORDER:FAIL domain name exists:match.com:ACMEREGRISTRAR:0

**Daily/Weekly/Monthly Summary Report**

**PURPOSE:** This report is designed to roll up the daily, weekly, monthly transaction data, giving you an overview of the number of each type of transaction and the total cost associated to each transaction type.

**FREQUENCY:** Daily - for previous day  
Weekly - on Monday for previous Monday through Sunday  
Monthly - on 1st of month for previous month

**RETENTION:** Daily reports stored on FTP for one week.  
Weekly reports stored on FTP for one month.  
Monthly reports stored on FTP for 90 days.

**INPUTS:** The report runs for all transactions that occurred during the previous day, week and month.

**OUTPUTS:**

**HEADER:** Start date 10.10.2001.00.00.00 End date 10.10.2001.23.59.59:Registrarname

**FIELD**

**DESCRIPTIONS:**

Field Name	Description
Begin Date	The begin date of the report MM.DD.YYYY.HH.MN.SS
End Date	The ending date of the report MM.DD.YYYY.HH.MN.SS
Action	Describes what transaction took place
Count	Total number of the specific type of transaction
Dollar Amount	Total dollar amount for each billable transaction in US dollars

**EXAMPLE OUTPUT:**

*New*

10.10.2001.00.00.00:10.10.2001.23.59.59:NEW-BACKORDER:200:10000.00

*Delete*

10.10.2001.00.00.00:10.10.2001.23.59.59:DEL-BACKORDER:2:0

*Backorders Fulfilled (Domain Registrations)*

10.10.2001.00.00.00:10.10.2001.23.59.59:RIPEND-BACKORDER:10:0

*Currently Open*

00.00.0000.00.00.00:10.10.2001.23.59.59:CURRENTLY OPEN BACKORDER:4000:105100

*Del- AutoRenewal (subscriptions that have been changed to NO auto renew)*

10.10.2001.00.00.00:10.10.2001.23.59.59:DEL-AUTORENEWALS:10:0

*New-AutoRenewal (subscriptions that have been changed to auto renew)*  
10.10.2001.00.00.00:10.10.2001.23.59.59:NEW-AUTORENEWAL:100:0

### **Monthly Subscription Snapshot Report**

**PURPOSE:** This report is to accommodate registrars that only want to get a list of domain name subscriptions that are currently in the WLS system. This report will allow registrars to verify that the domain name subscriptions requested have been created in the WLS system without having to parse through the Daily registrar detail report.

**FREQUENCY:** Report runs monthly (1st of month) and current through the report run time.

**RETENTION:** Monthly reports stored on FTP for 90 days.

**INPUTS:** All current subscriptions as of the running of the report.

**OUTPUTS:**

**HEADER:** Start date 10.01.2001.00.00.00 End date 10.31.2001.23.59.59

**FIELD**

**DESCRIPTIONS:**

Field Name	Description
Transdate	The date the subscription was created: MM.DD.YYYY.HH.MN.SS
Domainname	The domain name. If null then this is a subscription in process of being exchanged
Expirationdate	The date the back order will expire if not auto-renewed or fulfilled (i.e., registered)
Autorenewal	Shows if the auto renewal flag is set 0-no 1-yes
Exchangecredits	The number of exchange credits still available
Referenceid	The Reference id the registrar assigns to their customer
Subid	The unique id created by waitlist system for each subscription
Lastupdated	The most recent date a change occurred on the subscription

**EXAMPLE OUTPUT:**

05.10.2001.22.00.02:mydomainname.com:05.10.2002:1:0:cust\_id:1:06.11.2001  
05.10.2001.22.01.03:yourdomainname.com:05.10.2002:1:1:cust\_id2:1:05.10.2001

## Frequently Asked Questions

- a. I'm an ICANN accredited registrar and interested in WLS, but I have not interfaced with the NameStore in the past – will I need to do so in order to offer WLS?
- A Yes. Name Store is the VNDS platform for all new services simplifying the connection for registrars into a single EPP interface. WLS will be available only through the Name Store platform. Once you have signed up for Name Store, launch of WLS and other products offered through Name Store is streamlined. Contact your sale representative for further details.
- b. If I decline to sign-up to offer WLS subscriptions, will I receive updates or reports on WLS subscriptions and how will I receive them?
- A A feature of WLS is to notify existing registrants when a WLS subscription has been placed on their existing domain name registration. All ICANN accredited registrars will receive a daily report posted to their FTP server listing domain names for which they are the registrar of record and against which a WLS subscription has been placed.
- Prior to launch of the WLS service all ICANN accredited registrars will be given the choice whether they wish to participate by notifying their registrants. If you choose not to participate the WLS registrar placing the subscription will be required to notify your registrants.
- c. Is there a cost associated with my receiving data on WLS Subscriptions?
- A No. The daily report will be posted to your FTP server at no cost.
- d. Is it guaranteed that a customer will receive a registration if the current registration expiration date is within the period of the WLS subscription?
- A No. Expiration of a registration does not guarantee the domain name will be registered to the WLS subscriber. It is the choice of the current registrant to delete the domain name registration making it available for the WLS subscriber. If the current registrant elects to continue their domain name registration the WLS subscriber can either change the subscription and try for another domain name (up to 3 times during a single subscription at no additional cost) or elect for the optional auto-renewal to continue their subscription with the same domain name for another 12 months.
- If the current registrant elects to delete their registration the WLS service will automatically register the domain for the WLS registrar to their subscriber.
- e. Is there a grace period on WLS subscriptions in the event that must customer changes their mind?
- A The choice for auto-renewal is the subscribers and can be changed at any time during the subscription, but once the subscription auto-renews at the end of the subscription period there is no grace period. WLS has no create (add) grace period.
- f. Will the registrar price for WLS subscriptions drop over time as did RGP renewals? Why not?
- A The circumstances under which the price of RGP renewals was reduced were unique to RGP. There are no plans to change the price of WLS subscriptions.

- g. Will all registrars have visibility to which names have a WLS subscription on them (sort of like a WHOIS)? Question relates to WLS type services offered by other registrars -- this way they would know which their customers will NOT be able to get.
- A The best chance a customer has to secure a currently registered domain name is to subscribe to WLS. There is no WHOIS service for WLS subscriptions.
- h. Will registrants that have an existing registration be notified when they have a WLS subscription on their name? SMP related question -- maybe they will then try to sell their name on their own if they know others want it.
- A The existing registrant will be notified of a WLS subscription being placed on their domain name registration by either their registrar or the WLS registrar (see b. above). Either way this is notification that there is another customer who is interested in their particular domain name registration.

Please refer to the WLS web page for more frequently asked questions or contact your customer representative to answer your specific questions.



1  
2 **PROOF OF SERVICE BY PERSONAL DELIVERY**

3 I, \_\_\_\_\_, declare as follows:

4 I am a citizen of the United States and a resident of the County of Orange; I am  
5 over the age of 18 years and am not a party to the within action or proceedings. My  
6 business address is Worldwide Attorney Services, Inc., 850 North Parton Street, Santa  
7 Ana, California 92701.

8 On September 8, 2003, I served a true copy of the following document(s)  
9 described as: **DECLARATION OF PAUL STAHURA IN SUPPORT OF**  
10 **PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION** on the interested  
11 parties in this action by personally delivering a copy to:

12 Jeffrey A. LeVee  
13 Emma Killick  
14 Eric P. Enson  
15 JONES DAY  
16 555 West Fifth Street, Suite 4600  
17 Los Angeles, CA 90013

18 I hereby declare under penalty of perjury that the foregoing is true and correct.  
19 Executed on September 8, 2003 at Irvine, California.

20  
21  
22 \_\_\_\_\_  
23 (Print Name)

24  
25 **WORLDWIDE ATTORNEY SERVICES, INC.**  
26  
27  
28

# Wait Listing Service Program (WLS) Product Guidebook

July 28, 2003 Version 1.0



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