

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

POOL.com INC.

Plaintiff

- and -

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

Defendant

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

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Internet Corporation for Assigned Names and
Numbers

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

POOL.com INC.

Plaintiff

- and -

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

Defendant

NOTICE OF MOTION
(Returnable March 16, 2004)

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

PROPOSED METHOD OF HEARING:

The motion is to be heard orally.

THE MOTION IS FOR:

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

THE GROUNDS FOR THE MOTION ARE:

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

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

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

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

Date: January 23, 2004

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Solicitors for the Plaintiff

POOL.com INC.

and

Plaintiff

INTERNET CORPORATION FOR ASSIGNED
NAMES AND NUMBERS
Defendant

Court File No: 03-CV-24621

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Ottawa

NOTICE OF MOTION

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

POOL.com INC.

Plaintiff

- and -

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

Defendant

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

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

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

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

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

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

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

ICANN Does Not Reside or Carry On Business in Ontario

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

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

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

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

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

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

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

(a) The Internet and DNS

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

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

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

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

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

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

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

(b) ICANN's Role in the DNS

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

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

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

18. Thus, ICANN has been recognized by the U.S. and other governments, as well as by technical standards development bodies and other private sector entities involved in the Internet's operation, as the global consensus development entity to coordinate technical management of the DNS.

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

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

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

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

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

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

"In all litigation involving ICANN concerning this Agreement (whether in a case where arbitration has not been elected or to enforce an arbitration award), jurisdiction and exclusive venue for such litigation shall be in a court located in Los Angeles, California, USA; however the parties shall also have the right to enforce a judgment of such a court in any court of competent jurisdiction."

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

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

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

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

(c) Pool.com

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) The California Action

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

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

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

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

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

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

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

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

(f) The Present Action

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

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

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

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

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

Ontario is not the Convenient Forum

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

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

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

Summary

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

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

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

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

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



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

Daniel E. Halloran
 DANIEL E. HALLORAN

POOL.com INC.
Plaintiff

and

INTERNET CORPORATION FOR ASSIGNED
NAMES AND NUMBERS
Defendant

Court File No: 03-CV-24621

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Proceeding commenced at Ottawa

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

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Solicitors for the Defendant

24

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

I. PARTIES

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

II. PURPOSE

A. Background

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

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

B. Purpose

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

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

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

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

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

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

C. The Principles

The Parties will abide by the following principles:

1. Stability

This Agreement promotes the stability of the Internet and allows the Parties to plan for a deliberate move from the existing structure to a private-sector structure without disruption to the functioning of the DNS. The Agreement calls for the design, development, and testing of a new management system that will not harm current functional operations.

2. Competition

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

3. Private, Bottom-Up Coordination

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

4. Representation.

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

III. AUTHORITIES

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

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

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

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

IV. MUTUAL INTEREST OF THE PARTIES

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

V. RESPONSIBILITIES OF THE PARTIES

A. General.

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

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

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

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

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

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

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

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

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

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

D. Prohibitions.

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

emergency.

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

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

VI. EQUITABLE APPORTIONMENT OF COSTS

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

VII. PERIOD OF AGREEMENT AND MODIFICATION/TERMINATION

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

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U.S. Department of Commerce
Washington, D.C. 20230

PARTIES ESTIMATED SIX MONTH COSTS

A. ICANN

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

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

B. DOC

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

Comments concerning the layout, construction and functionality of this site should be sent to webmaster@icann.org.

Page Updated 31-December-99.

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Registrar Accreditation Agreement

(17 May 2001)

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

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Registrar Accreditation Agreement

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

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

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

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

1.3 The "Effective Date" is _____.

1.4 The "Expiration Date" is _____.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. ICANN OBLIGATIONS.

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

2.2 Registrar Use of ICANN Name and Website. ICANN hereby grants to Registrar a non-exclusive, worldwide, royalty-free license during the Term of this Agreement (a) to state that it is accredited by ICANN as a registrar for each TLD that is the subject of an appendix to this Agreement and (b) to link to pages and documents within the ICANN web site. No other use of ICANN's name or website is licensed hereby. This license may not be assigned or sublicensed by Registrar.

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

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- 2.3.1 exercise its responsibilities in an open and transparent manner;
- 2.3.2 not unreasonably restrain competition and, to the extent feasible, promote and encourage robust competition;
- 2.3.3 not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and not single out Registrar for disparate treatment unless justified by substantial and reasonable cause; and
- 2.3.4 ensure, through its reconsideration and independent review policies, adequate appeal procedures for Registrar, to the extent it is adversely affected by ICANN standards, policies, procedures or practices.

3. REGISTRAR OBLIGATIONS.

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

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

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

3.2.1.1 The name of the Registered Name being registered;

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

3.2.1.3 The corresponding names of those nameservers;

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

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

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

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

3.2.2 Within five (5) business days after receiving any updates from the

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Registered Name Holder to the data elements listed in Subsections 3.2.1.2, 3.1.2.3, and 3.2.1.6 for any Registered Name Registrar sponsors, Registrar shall submit the updated data elements to, or shall place those elements in the Registry Database operated by the Registry Operator.

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

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

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

3.3.1.1 The name of the Registered Name;

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

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

3.3.1.4 The original creation date of the registration;

3.3.1.5 The expiration date of the registration;

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

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

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

The appendix to this Agreement for a particular TLD may state substitute language for Subsections 3.3.1.1 through 3.3.1.8 as applicable to that TLD; in that event the substitute language shall replace and supersede Subsections

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3.3.1.1 through 3.3.1.8 stated above for all purposes under this Agreement but only with respect to that particular TLD.

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

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

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

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

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

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

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

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

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

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

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

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

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

3.4 Retention of Registered Name Holder and Registration Data.

3.4.1 During the Term of this Agreement, Registrar shall maintain its own electronic database, as updated from time to time, containing data for each

active Registered Name sponsored by it within each TLD for which it is accredited. The data for each such registration shall include the elements listed in Subsections 3.3.1.1 through 3.3.1.8; the name and (where available) postal address, e-mail address, voice telephone number, and fax number of the billing contact; and any other Registry Data that Registrar has submitted to the Registry Operator or placed in the Registry Database under Subsection 3.2.

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

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

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

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

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

3.5 Rights in Data. Registrar disclaims all rights to exclusive ownership or use of the data elements listed in Subsections 3.2.1.1 through 3.2.1.3 for all Registered Names submitted by Registrar to the Registry Database for, or sponsored by Registrar in, each TLD for which it is accredited. Registrar does not disclaim rights in the data elements listed in Subsections 3.2.1.4 through 3.2.1.6 and Subsections 3.3.1.3 through 3.3.1.8 concerning active Registered Names sponsored by it in each TLD for which it is accredited, and agrees to grant non-exclusive, irrevocable, royalty-free licenses to make use of and disclose the data elements listed in Subsections 3.2.1.4 through 3.2.1.6 and 3.3.1.3 through 3.3.1.8 for the purpose of providing a service or services (such as a Whois service under Subsection 3.3.4) providing interactive, query-based public access. Upon a change in sponsorship from Registrar of any Registered Name in a TLD for which it is accredited, Registrar acknowledges that the registrar gaining sponsorship shall have the rights of an owner to the data elements listed in Subsections 3.2.1.4 through 3.2.1.6 and 3.3.1.3 through 3.3.1.8 concerning that Registered Name, with Registrar also retaining the rights of an owner in that data. Nothing in this Subsection prohibits Registrar from (1) restricting bulk public access to data elements in a manner consistent with this Agreement and any ICANN specifications or policies or (2) transferring rights it claims in data elements subject to the provisions of this Subsection.

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

3.7 Business Dealings, Including with Registered Name Holders.

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

3.7.2 Registrar shall abide by applicable laws and governmental regulations.

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

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

3.7.5 Registrar shall register Registered Names to Registered Name Holders only for fixed periods. At the conclusion of the registration period, failure by or on behalf of the Registered Name Holder to pay a renewal fee within the time specified in a second notice or reminder shall, in the absence of extenuating circumstances, result in cancellation of the registration. In the event that ICANN adopts a specification or policy concerning procedures for handling expiration of registrations, Registrar shall abide by that specification or policy.

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

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

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

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

3.7.7.3 Any Registered Name Holder that intends to license use of a domain name to a third party is nonetheless the Registered Name Holder of record and is responsible for providing its own full contact information and for providing and updating accurate technical and administrative contact information adequate to facilitate timely resolution of any problems that arise in connection with the Registered Name. A Registered Name Holder licensing use of a Registered Name according to this provision shall accept liability for harm caused by wrongful use of the Registered Name, unless it promptly discloses the identity of the licensee to a party providing the Registered Name Holder reasonable evidence of actionable harm.

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

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

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

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

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

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

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

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

3.7.7.8 Registrar shall agree that it will take reasonable precautions to protect Personal Data from loss, misuse, unauthorized access or disclosure, alteration, or destruction.

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

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

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

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

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Name Holder's domain name registration.

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

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

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

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

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

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

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

3.9.3 On reasonable notice given by ICANN to Registrar, accountings submitted by Registrar shall be subject to verification by an audit of Registrar's books and records by an independent third-party that shall preserve the

