

International Centre for Dispute Resolution

**CASE NO. 01-14-0001-5004**

Between

**DOT REGISTRY, LLC,**  
Claimant

v.

**INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS,**  
Respondent

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**WITNESS STATEMENT OF  
DELAWARE SECRETARY OF STATE  
THE HONORABLE JEFFREY W. BULLOCK**

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I, Jeffrey W. Bullock, of Wilmington, Delaware, hereby make the following statement:

**I. INTRODUCTION**

1. I am currently the Delaware Secretary of State, a position I have held since I was sworn into office on January 21, 2009. As Secretary of State, I oversee Delaware's Division of Corporations and I administer the state's company registry. I am responsible for protecting the integrity of Delaware's legal entity registration system, through which more than 1.1 million legal entities, including corporations, limited liability companies and limited liability partnerships, have organized under the laws of the State of Delaware.

2. I am also an active member of the National Association of Secretaries of State ("NASS"), a not-for-profit, non-partisan organization whose members include the secretaries of state or lieutenant governors of the 50 states, the District of Columbia and United States territories. I

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serve on NASS' Executive Board and co-chair the NASS Business Services Committee, a group which is dedicated to educating and informing NASS members about state practices regarding corporate registrations, electronic business filings, notarizations, Uniform Commercial Code filings and other related services. I have previously served as Co-Chair of the NASS Company Formation Task Force and Chair of the NASS Eastern Region. I have been a member of NASS throughout my six years as Secretary of State of Delaware and have served in leadership positions within NASS for three years. As co-chair of the Business Services Committee and the Company Formation Task Force, I have closely followed the activities of and interfaced with federal agencies and members of Congress regarding these topics as well as with respect to issues that threaten the integrity of state registration systems, such as business identity theft.

3. I submit this witness statement as my true and accurate testimony about certain facts that I understand to be at issue in this Independent Review Process, including how the communities of U.S. registered corporations, limited liability companies and limited liability partnerships are distinct communities, the handling by ICANN and the Economist Intelligence Unit ("EIU") of the correspondence I submitted to ICANN in my capacity as the Delaware Secretary of State regarding ICANN's generic Top-Level Domain ("gTLD") expansion program (the "New gTLD Program"), and Dot Registry's applications to ICANN to operate the registries for the corporate identifier extensions .INC, .LLC and .LLP. I make this statement based on my personal knowledge of the matters discussed below.

**II. PERSONAL AND PROFESSIONAL BACKGROUND**

4. I am a native Delawarean and I have devoted almost 30 years of my career to public service in my home state. After earning a bachelor of arts in Economics and Political Science from the University of Delaware, I moved to Washington, D.C., in 1984, to work for then Congressman Thomas R. Carper where I eventually rose to the position of Chief of Staff with

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direct responsibility for policy development, legislative affairs and oversight of his entire congressional office staff. When Congressman Carper was elected Governor of Delaware in 1992, I was named his Director of Policy in 1993 and then served as his Chief of Staff from 1994 to 2001. Governor Carper was elected to the U.S. Senate in 2000 and I served as Chief of Staff in his Senate office in 2001. I joined the private sector in late 2001. In 2006, I was appointed by New Castle County Executive (now U.S. Senator) Christopher A. Coons as Chief Administrative Officer of New Castle County. In this role, I was responsible for administration of all aspects of operating the state's largest county. In January 2009, I was appointed by newly elected Governor Jack A. Markell and confirmed by the Delaware Senate as Secretary of State of Delaware.

5. The Secretary of State in Delaware is a constitutional office that is second in the line of succession to the Governor after the Lieutenant Governor and responsible for keeping all public records, serving on the Boards of Pardons, and performing all other duties conferred by law. Serving as Secretary of State was of great interest to me. Not only has it provided me the opportunity to share my many years of public service experience with a newly elected Governor and his administration, but it also has offered unique opportunities to have an impact in almost every area of public policy in Delaware. The Delaware Department of State is responsible for administering 18 agencies including, among others, divisions with responsibilities in corporations, banking, international investment and trade, professional regulation, veterans services and health care, arts, history, libraries, archives, civil rights and more. I also have the opportunity to serve on a number of Boards and Commissions responsible for critical economic development and infrastructure matters in our State's largest city and my hometown of

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Wilmington, Delaware, including the boards of the Diamond State Port Corporation, the Delaware Stadium Corporation and the Wilmington Riverfront Development Corporation.

**III. OVERSEEING BUSINESS REGISTRATIONS**

**A. Forming and Registering as a Legal Entity**

6. The State of Delaware is the leading domicile in the U.S. for domestic and international corporations: 65% of the Fortune 500, 55% of publicly traded companies listed on the two major U.S. stock exchanges (the New York Stock Exchange and the American Stock Exchange) and 80% of new initial public offerings in the United States are domiciled in Delaware. Delaware is also the legal home to many of the largest privately held and not-for-profit companies in the United States as well as to hundreds of thousands of subsidiaries and affiliates of companies around the world. For over a century, Delaware's General Corporation Law has served as a role model for other states and it is generally regarded as the most advanced and flexible business formation statute in the nation.

7. Entities that incorporate, form or organize under Delaware law (as with all of the other states) do so by filing a certificate of incorporation or formation, or a statement of qualification, as appropriate, with the Division of Corporations in the Department of State of Delaware, which I oversee. The decision to register as a corporation, a limited liability company or a limited liability partnership reflects a distinct choice about what the filing party wants to do with the entity, how the ownership and control of the entity will be structured, what protections from personal liability will apply, how it wants to be taxed by both by the state and federal government, and what it wishes to project to the public. For example, a business might choose to organize under Delaware law as a limited liability company because a limited liability company offers it greater flexibility with respect to how its ownership and control is structured as compared to a corporation. Corporations, limited liability companies and limited liability

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partnerships are also subject to distinct filing requirements under the Delaware General Corporation Law, the Delaware Limited Liability Company Act and the Delaware Revised Uniform Partnership Act, respectively.

8. This is not unique to Delaware. Businesses choose the jurisdiction in which they want to incorporate, form or organize and they make a deliberate choice to be a corporation, limited liability company, limited liability partnership or another type of legal entity. Although each state does not manage and regulate entity formation and registration in exactly the same fashion, corporations, limited liability companies and limited liability partnerships share general characteristics across jurisdictions with respect to how they are owned, managed and taxed. This means that when a company holds itself out as a registered limited liability company in the United States, I would know that it is controlled by a manager and/or its members pursuant to an underlying operating agreement that provides for how profits and losses are passed through to its members, the members' liability is limited to the amount of capital contributed, and it is taxed based on "check the box" regulations. From this perspective, the legal form a business chooses does make it part of a community.

**B. Protecting Registered U.S. Businesses and Consumers**

9. As the Secretary of State of Delaware, I am responsible for administering and protecting the integrity of this legal entity registration system. One of the key functions of the Division of Corporations, which I oversee, is supervising and approving the nomenclature used by entities that register in Delaware. We carefully circumscribe and are very protective of the nomenclature entities may use in their entity name in order to maintain the integrity of Delaware's company registry. For example, the Delaware General Corporation Law expressly provides that the name an entity uses on its certificate of incorporation must include one of twelve specific words, such as "company," "corporation" or "incorporated," or abbreviations of such words (*e.g.*, "co." or

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“corp.” or “inc.”), or words or abbreviations of like import of foreign countries or jurisdictions.<sup>1</sup> Likewise, the name of an entity formed under Delaware’s Limited Liability Company Act must contain the words “Limited Liability Company,” the abbreviation “L.L.C.” or the designation “LLC” in its name in its certificate of formation,<sup>2</sup> just as an entity formed and qualified to limit the liability of its partners to the amount of their capital invested under Delaware’s Revised Uniform Partnership Act must contain as the last words or letters of its name “Limited Liability Partnership,” the abbreviation “L.L.P.” or the designation “LLP.”<sup>3</sup> As a matter of law, the name of each Delaware corporation, limited liability company and limited liability partnership must be distinguishable from the name of all other Delaware corporations, partnerships, limited partnerships (including limited liability partnerships and limited liability limited partnerships), statutory trusts and limited liability companies.<sup>4</sup>

10. The Delaware Secretary of State is also responsible for monitoring and policing the company formation and registration process in Delaware in a variety of other ways. For example, the Secretary of State administers laws governing the roles and responsibilities of registered agents that forward state correspondence to Delaware legal entities and are responsible for accepting service of process on behalf of Delaware legal entities. Typically, registered agents also provide a variety of related corporate services such as assisting companies in reserving a corporate name, filing formation and other legal documents, and helping companies to comply with the registration and licensing laws of the states within which a particular company operates. At the time of formation, many registered agents assist companies with the process of reserving a

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<sup>1</sup> Del. Code Ann. tit. 8, § 102(a)(1).

<sup>2</sup> Del. Code Ann. tit. 6, § 18-102(1).

<sup>3</sup> Del. Code Ann. tit. 6, § 15-108(b).

<sup>4</sup> Del. Code Ann. tit. 6, § 18-102(3), tit. 15, § 15-108(c).

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website name. The Secretary of State has broad authority to develop rules, regulations and guidelines to both enforce the statutory requirements for registered agents and to govern the activities of registered agents that request to be listed on the State's website.<sup>5</sup>

11. I also share responsibility with the other secretaries of state and persons responsible for state registration systems to ensure that our collective system functions well for legally registered U.S. businesses and consumers. As the leading domicile in the U.S. for the nation's largest corporations, Delaware seeks to set high standards for administering and monitoring state registration systems. This is a responsibility we take very seriously. The entire system is only as strong as its weakest link (as criminals naturally exploit the weakest systems), so we continually work to raise our standards and thereby encourage other states to do likewise.

12. One of the ways that I contribute to these efforts is through my involvement in NASS and its Business Services Committee. As a member of NASS and co-chair of the Business Services Committee, I represent not only the general public and businesses, non-profits and investment vehicles registered under Delaware law, but advocate for standards that protect the communities of registered U.S. entities, including corporations, limited liability companies and limited liability partnerships. Raising the standards of all states helps protect these communities and consumers from other businesses unlawfully trading on their name and reputation.

**IV. MY INVOLVEMENT IN ICANN'S NEW gTLD PROGRAM**

13. It was during a NASS winter meeting in early 2012 in Washington, D.C., that I learned that ICANN planned to begin accepting applications for new gTLDs. This was the first time I heard that anyone was contemplating using company ending identifiers as TLDs. The concept came up during a discussion we were having about the debates going on at the time in the U.S.

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<sup>5</sup> See Del. Code Ann. tit. 8, § 132.

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Congress regarding transparency with respect to the beneficial ownership of registered entities. In this context, it was very alarming to me that company ending extensions would be available on an unrestricted commercial basis. Without an effective way of monitoring the registrants for company ending strings, I feared that widespread confusion and abuse was likely. I also recognized that it would place a greater burden on the agencies of each state responsible for entity formation and registration, as legitimate businesses and upset consumers likely would bring their grievances to us regarding any misuse of these TLDs. It was (and remains) altogether unclear who would have the jurisdiction to address these grievances. I am not aware of any clear legal or tax consequence associated with the use of company ending TLDs on the Internet by unregistered users, other than, for example, if a registered trademark is being used unlawfully.

14. From this point onward, I followed the progress of the New gTLD Program, particularly with respect to applications for company ending strings. I also raised my concerns about the use and monitoring of these strings to the leadership of ICANN and to U.S. government officials.

**A. Communications with ICANN**

15. At the outset, my concern about the prospect of company endings being delegated as unrestricted TLDs compelled me to write to ICANN directly in my official capacity as the Delaware Secretary of State. On March 20, 2012, I sent a letter to the attention of the New gTLD Program, expressing Delaware's view that ICANN's plan to delegate company ending extensions raised public policy issues and concerns. In particular, I stressed that issuing such extensions would increase the potential for fraud and abuse, an already serious issue for the community of registered businesses. I urged ICANN that if it intended to proceed with its plan to delegate corporate identifier extensions, then it should do so in a manner with safeguards in place to protect consumers and the community interest of validly registered U.S. businesses.

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16. Additionally, I requested that ICANN reject any and all requests for the unrestricted use of .INC, .LLC., .LLP, .CORP, .BANK, .TRUST or similar commonly used company endings in the United States. I also requested that ICANN, at a minimum, restrict the issuance of these company ending strings to only validly registered U.S. legal entities, such as Dot Registry proposed to do in its application. Specifically, I recommended that ICANN require the following:

- that the registry operator confirm that each registrant seeking to use a company ending TLD is validly formed according to the criteria and documentation established by the relevant state;
- that the registry operator check on an annual basis that each registrant remains validly registered and in good standing; and
- that registrants be required to (i) provide a mechanism on their homepage that provides for the disclosure of the jurisdiction in which the entity is legally domiciled or (ii) include a geographic tag within the domain name.

Similar concerns were raised in letters to ICANN written by many of my peers in NASS, including a letter written by the then President of NASS and Secretary of State of Alabama, Beth Chapman, to Mr. Rod Beckstrom, the president and chief executive officer of ICANN. ICANN responded in writing to my letter and that of Secretary Chapman in separate letters in April 2012 from a group called the “New gTLD Customer Service” team. The letters we received described the deadline for filing an application for a gTLD, encouraged us to “actively participate in the process and monitor the ICANN website for further developments,” and described in general terms the role of ICANN’s Governmental Advisory Committee (“GAC”), but did not respond in any substantive way whatsoever to what were very substantive concerns raised by government officials early in the process to the highest levels of ICANN.

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**B. Communications with the U.S. Department of Commerce and My Submission of Public Comments on Applications for Company Ending TLDs**

17. After receiving an unsatisfactory response from ICANN and observing ICANN move forward with accepting applications for unrestricted company ending TLDs, I wrote to Assistant Secretary of Communications and Information of the U.S. Department of Commerce Lawrence Strickling in my official capacity as the Delaware Secretary of State. In my letter to Assistant Secretary Strickling, dated August 15, 2012, I explained that ICANN's singular focus on its evaluation process and its apparent unwillingness or inability to recognize the serious policy implications associated with delegating company ending TLDs seriously called into question whether ICANN is capable of evaluating, instituting and enforcing measures to ensure that consumers and legitimate business are protected from fraud and abuse. I urged Assistant Secretary Strickling that the public would be best served by not allowing company ending strings to be delegated. Assistant Secretary Strickling's office suggested to me that I follow up with Suzanne Radell, the senior policy advisor of the National Telecommunications and Information Administration ("NTIA") of the Department of Commerce, who represents the U.S. government in the GAC.

18. In the meantime, I continued to follow the applications for company ending TLDs. On September 21, 2012, in my official capacity as Delaware Secretary of State, I submitted a public comment through ICANN's public comments portal on every application that was submitted to ICANN to operate a registry for a U.S. company ending TLD as well as for the German corporate identifier "GmbH" (since Delaware's General Corporation Law permits a corporation to use in its name a foreign word of like import or an abbreviation of such word). The substance of each comment was the same—that if ICANN proceeds with delegating these types of TLDs, then it must require such strings to be issued only to businesses properly registered with a state

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company registry. I did this because of my strong belief that the public is best protected if these corporate identifier extensions are not made available for use. Although I later clarified in a letter to ICANN that these comments were not specific to Dot Registry's applications, at the time, I was concerned that none of the applications submitted by applicants for company ending TLDs contained registration policies and procedures that would adequately safeguard consumers, legitimate legally registered businesses, the public at large, state regulators and the Internet itself from being used for fraudulent or misleading purposes.

19. On March 5, 2013, upon the advice of Assistant Secretary Strickling's office, I also wrote to Heather Dryden, the chair of the GAC at the time, and Ms. Radell, to reiterate the concerns I had previously raised with ICANN, in ICANN's public comments forum for gTLD applications and to Assistant Secretary Strickling, as well as with numerous state and federal governmental officials. I do not recall ever receiving a response from Ms. Dryden or Ms. Radell, which was surprising to me. At the very least, I expected a response acknowledging Delaware's concerns given the serious issues I raised.

20. Unfortunately, no one appeared to be able, or believed that they were able, to stop ICANN from delegating these strings. This was concerning to me, as I had lost all confidence in ICANN's capability to evaluate, institute and enforce meaningful measures to protect consumers and legitimate legal entities from fraud and abuse. At this point, I knew ICANN would proceed with delegating the gTLDs and that the best I could hope for was that the applicants who would be awarded these strings would work with us and other states to protect the safety and soundness of the collective company registry system.

**C. Correcting Donuts' Misstatement**

21. Subsequently, I learned that one of Dot Registry's competitors, Donuts, Inc. ("Donuts"), had submitted correspondence to Christine Willet, the vice president of the ICANN New gTLD

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Program, and to ICANN staff, that suggested that the State of Delaware is specifically opposed to the community applications submitted by Dot Registry. It appears that counsel for Donuts intended to use the generic public comments I submitted in September 2012 on all company ending TLDs as evidence of this. To correct this misstatement, I promptly wrote to the Chairman of ICANN's Board of Directors in my official capacity as the Delaware Secretary of State. In a letter dated March 20, 2014, I explained that the correspondence Donuts submitted on March 3, 2014, took my comments out of context and erroneously implied that the State of Delaware is opposed to Dot Registry's applications. I also clarified that while I have considerable concerns about the wisdom of ICANN delegating these strings at all, if ICANN is going to do so, then these strings should be awarded to an applicant—like Dot Registry—that will maintain and enforce a system with real-time and continuous verification of each entity's legal status in accordance with the laws of the jurisdiction of formation and registration. I understand that Dot Registry is the only applicant for .INC, .LLC and .LLP who has made a specific commitment and undertaken the preparations and initiated the dialogue necessary to ensure this happens.

**D. Communications with the EIU Evaluators**

22. As part of the ICANN Community Priority Evaluation process that Dot Registry's applications underwent, I was contacted on numerous occasions by different persons who identified themselves as employees or contractors for the EIU. This process was particularly challenging for my office to be responsive to, as contact was made by no fewer than three different persons asking my office to confirm the authenticity of comment letters that I view as a single commentary on the entire proposed award of "company identifiers" rather than the individual award of particular identifiers.

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23. In April 2014, I was contacted via email by a <sup>EIU Contact Information Redacted</sup>, a person who identified himself as an employee of The Economist Group writing on behalf of ICANN stating that the Economist Intelligence Unit (EIU) had been selected as the Community Priority Evaluation Panelist to authenticate letters from entities providing letters of support or objection to community-based applications. He stated that “DotRegistry LLC has applied for the gTLD LLC, for which we received documentation from your organization.” Specifically, he asked us to verify the authenticity of the letter written by me to ICANN’s gTLD Program dated March 20, 2012, the letter to Heather Dryden and Suzanne Radell dated March 5, 2013, and the letter dated March 20, 2014, to Dr. Stephen Crocker. On May 7, 2014, I sent an email to <sup>EIU Contact Information Redacted</sup> verifying that I had issued such letters and stating that (i) the correspondence I sent did not express clear support for any applicant, (ii) the correspondence clearly outlined Delaware’s overall objections to the idea of awarding these gTLD’s to any party, (iii) the correspondence to Dr. Crocker clearly outlined Delaware’s conditional support of the community application process if ICANN was determined to move forward with awarding these gTLD’s despite such objections, and (iv) the fact that DotRegistry LLC was the sole community applicant for these gTLD’s meant that Delaware would support its application over any non-community applicant.

24. A flood of additional authentication correspondence from the EIU was subsequently received by other persons in my office, including my Executive Assistant Ms. Kathy Bradford and my Community Relations Director Ms. Tammy Stock. The correspondence came from <sup>EIU Contact Information Redacted</sup> related to various other company endings including .INC. and .LLP, for which Dot Registry had applied, as well as .GMBH for which DotRegistry had not applied. While the entire authentication process seemed overly complex, repetitive and perhaps unintentionally designed to lead to inadvertent omissions and errors, in each case, my staff

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responded by forwarding a copy of the generic response that I had originally sent to

EIU Contact Information  
Redacted

on May 7, 2014, as described above.

**V. CONDITIONAL SUPPORT FOR APPLICATIONS THAT SAFEGUARD  
COMPANY ENDING STRINGS FROM FRAUD AND ABUSE**

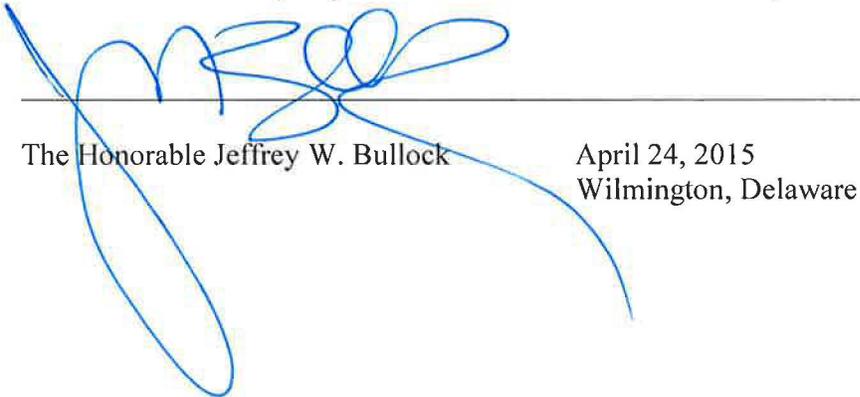
25. I believed in 2012—and I believe today—that if ICANN is going to delegate these extensions despite the overall objections to the idea of awarding these gTLD's to any party, then it is absolutely critical that it do so in a way that is designed to safeguard them from business and consumer fraud and abuse. Out of more than 30 applicants for company ending TLDs, Dot Registry is the only applicant that sought any input from my office, as the representative of the affected community in my state, and, to my knowledge, other representatives of these communities nationally. If the company ending TLDs are to be awarded and there is going to be an effective and real-time enforcement mechanism, I believe it must originate from the representatives of these communities—namely the individual secretaries of state (or other equivalent state administrators) and NASS representing collectively more than 20 million corporations, limited liability companies and partnerships. We represent the communities of registered businesses and are best positioned to speak on behalf of these communities about the protections necessary to protect them. Unrestricted use will ill serve these communities and the public interest.

To my knowledge, only one applicant—Dot Registry—has made any meaningful commitment to implement the safeguards I recommended that ICANN require registry operators for these strings to adopt. I understand that because Dot Registry is the only community-based applicant for .INC, .LLC and .LLP, Dot Registry is the only applicant for these strings that would be bound by its Registry Agreement with ICANN to operate the registries for these strings according to the registration policies described in its applications and to seek input from the members and

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representatives of the communities of registered U.S. corporations, limited liability companies and limited liability partnerships, including my office, before modifying such policies. If these company ending TLD's are to awarded despite my overall objections and concerns, such a community-based process offers an ongoing opportunity for ongoing community input to provide the appropriate policing of the use of such TLD's to protect the interests of the community and the public. Such a process is no doubt preferential to the alternative of awarding such gTLD's without restriction or any process for seeking input from those parties most likely to be affected by such registration policies.

I affirm that the foregoing is true and correct to the best of my knowledge.



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The Honorable Jeffrey W. Bullock

April 24, 2015  
Wilmington, Delaware