

1 RONALD L. JOHNSTON (State Bar No. 057418); ronald.johnston@aporter.com  
2 LAURENCE J. HUTT (State Bar No. 066269); laurence.hutt@aporter.com  
3 JAMES S. BLACKBURN (State Bar No. 169134); james.blackburn@aporter.com  
4 ARNOLD & PORTER LLP  
5 777 South Figueroa Street, 44th Floor  
6 Los Angeles, California 90017-5844  
7 Telephone: (213) 243-4000  
8 Facsimile: (213) 243-4199

9 Attorneys for Defendant VeriSign, Inc.

10 JEFFREY A. LEVEE (State Bar No. 125863); jlevee@jonesday.com  
11 JASON C. MURRAY (State Bar No. 169806); jcmurray@jonesday.com  
12 JONES DAY  
13 555 South Flower Street, 50th Floor  
14 Los Angeles, California 90071  
15 Telephone: (213) 489-3939  
16 Facsimile: (213) 243-2539

17 Attorneys for Defendant Internet Corporation for Assigned Names and Numbers

18 PATRICK A. CATHCART (State Bar No. 65413); pcart@ckllp.com  
19 BRET A. FAUSETT (State Bar No. 139420); bfausett@ckllp.com  
20 IMANI GANDY (State Bar No. 223084); igandy@ckllp.com  
21 CATHCART COLLINS & KNEAFSEY LLP  
22 444 South Flower Street  
23 Los Angeles, California 90071  
24 Telephone: (213) 225-6600  
25 Facsimile: (213) 225-6601

26 Attorneys for Plaintiff Coalition for ICANN Transparency Inc.

27 UNITED STATES DISTRICT COURT  
28 NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

29 COALITION FOR ICANN ) Case No. 5:05-CV-04826 (RMW) PVT  
30 TRANSPARENCY INC., a Delaware )  
31 corporation, ) JOINT CASE MANAGEMENT  
32 ) CONFERENCE STATEMENT AND  
33 Plaintiff, ) FED. R. CIV. P. 26(f) REPORT  
34 )  
35 v. ) Honorable Ronald M. Whyte  
36 )  
37 VERISIGN, INC., a Delaware corporation; ) Case Mgmt. Conf. Date: April 28, 2006  
38 INTERNET CORPORATION FOR ) Case Mgmt. Conf. Time: 10:00 a.m.  
39 ASSIGNED NAMES AND NUMBERS, a )  
40 California corporation, )  
41 )  
42 Defendants. )  
43 )

1 Pursuant to Federal Rule of Civil Procedure 26(f) and Local Civil Rules 16-8 and 16-9,  
2 plaintiff Coalition for ICANN Transparency Inc. (“CFIT”) and defendants VeriSign, Inc.  
3 (“VeriSign”) and Internet Corporation for Assigned Names and Numbers (“ICANN”) respectfully  
4 submit their Case Management Conference Statement and Rule 26(f) Report.

5 **I. DESCRIPTION OF THE CASE**

6 **A. Events Underlying the Action**

7 The First Amended Complaint (the “FAC”) filed by CFIT alleges that VeriSign and ICANN  
8 have entered into an agreement with respect to VeriSign’s operation of the registry for the .net top-  
9 level domain (“TLD”) (the “2005 .net Agreement”) and that they propose to enter into an agreement  
10 with respect to VeriSign’s operation of the registry for the .com TLD (the “2006 .com Agreement”).  
11 CFIT contends that entry into these agreements, in particular certain provisions of those agreements  
12 such as the renewal provisions, violates the antitrust laws. CFIT also contends that a “Central  
13 Listing Service” (“CLS”) that VeriSign may propose to introduce under the 2006 .com Agreement  
14 violates the antitrust laws.

15 Defendants contend that the 2005 .net and 2006 .com agreements, which CFIT challenges,  
16 are extensions of the 2001 .net and .com registry agreements, and do not violate any antitrust law.  
17 Regarding CFIT’s challenge to CLS, VeriSign contends that the service has not yet been proposed  
18 to ICANN for consideration, and thus CFIT’s claims with respect to that service are premature. In  
19 addition, VeriSign contends that CLS would provide an additional, beneficial new service to  
20 potential domain name registrants and therefore would promote, rather than chill, competition.

21 According to the FAC, CFIT is an association made up of “Internet domain name registrars,  
22 registrants, and backorder service providers.” (FAC ¶7.) ICANN is a private, not-for-profit  
23 corporation that is responsible for providing technical coordination of the Internet domain name  
24 system pursuant to a Memorandum of Understanding with the Department of Commerce (“DOC”).  
25 VeriSign (or its predecessor) has been the registry operator for the .net and .com TLDs since the  
26 commercialization of the Internet.

27 Based on the foregoing, CFIT has alleged the following claims for relief:

28 (1) Monopolization under Section 2 of the Sherman Act against VeriSign; (2) Attempted

1 Monopolization under Section 2 of the Sherman Act against VeriSign (.com and .net Registration  
2 Markets); (3) Attempted Monopolization under Section 2 of the Sherman Act against VeriSign  
3 (Expiring Names Registration Market); (4) Conspiracy to Monopolize under Section 2 of the  
4 Sherman Act against VeriSign and ICANN; (5) Conspiracy in Restraint of Trade under Section 1 of  
5 the Sherman Act against VeriSign and ICANN; and (6) Conspiracy in Restraint of Trade Under the  
6 Cartwright Act against VeriSign and ICANN.

7 **B. Principal Factual Issues In Dispute**

8 **1. CFIT's Identification of Factual Issues in Dispute**

9 Until Defendants file answers to the FAC, CFIT is not certain which of its factual  
10 contentions are in dispute and which will be admitted. Nevertheless, CFIT expects that the  
11 following factual allegations may be the subject of dispute:

- 12 (1) Whether the .net and proposed .com agreements injure competition in a  
13 relevant market.
- 14 (2) Whether VeriSign and ICANN conspired to provide benefits to each of them  
15 - including monopoly rents on .com pricing to VeriSign and \$12,000,000 of  
16 payments to ICANN - at the expense of domain name registrants.
- 17 (3) Whether the ICANN and VeriSign's negotiations for a new .com agreement  
18 provided VeriSign an unfair, anticompetitive advantage in its .net bid.
- 19 (4) Whether VeriSign has monopolized a relevant market.
- 20 (5) Whether VeriSign's CLS and other services allowed in the .com and .net  
21 agreements will injure competition.
- 22 (6) Whether the provisions of the .com and .net agreement removing VeriSign  
23 from the normal policy process of ICANN's Generic Names Supporting  
24 Organization are anticompetitive.
- 25 (7) Whether ICANN and VeriSign have conspired to monopolize a relevant  
26 market.
- 27 (8) Whether VeriSign threatens to use its market power to introduce products in  
28 other markets in which it does not now compete.
- (9) Whether the pricing provisions of the .net and .com Agreements are  
anticompetitive and allow VeriSign to extract monopoly rents from domain  
name registrants.
- (10) Whether the renewal provisions of the .net and .com Agreements are  
anticompetitive and insulate VeriSign from market forces.

1                   **2. Defendants' Identification of Factual Issues in Dispute**

2 Defendants have identified the following factual issues as in dispute:

- 3                   (1) Whether the .net and proposed .com agreements injure competition in a  
4 relevant market.
- 5                   (2) The DOC's approval of the .net agreement.
- 6                   (3) The requirement that the DOC approve the proposed 2006 .com Agreement.
- 7                   (4) Whether each alleged agreement between VeriSign and ICANN would  
8 require approval by the DOC prior to being of any force or effect.
- 9                   (5) Whether VeriSign has monopolized a relevant market.
- 10                  (6) Whether CFIT can demonstrate that any of its members is likely to suffer an  
11 anticompetitive injury as a result of Defendants' alleged actions.
- 12                  (7) Whether domain names within the .com TLD are substitutable for, or  
13 interchangeable with, domain names from any other TLD.
- 14                  (8) Whether domain names within the .net TLD are substitutable for, or  
15 interchangeable with, domain names from any other TLD.
- 16                  (9) Whether VeriSign has used its position as the registry operator for the .com  
17 and .net domain names to charge, or threaten to charge, supracompetitive  
18 domain name registration fees.
- 19                  (10) Whether the 2005 .net Agreement and the proposed 2006 .com Agreement  
20 "permanently establish" VeriSign as the registry operator for the .net and  
21 .com TLDs.
- 22                  (11) Whether CLS, if proposed and implemented, would injure competition.
- 23                  (12) Whether ICANN or VeriSign has intended to monopolize a relevant market.
- 24                  (13) Whether ICANN and VeriSign have conspired to monopolize a relevant  
25 market.
- 26                  (14) Whether VeriSign threatens to use its market power to introduce products in  
27 other markets in which it does not now compete.

28                   **C. Principal Legal Issues In Dispute**

1                   **1. CFIT's Identification of Legal Issues in Dispute**

2 CFIT has identified the following legal issues as in dispute:

- 3                   (1) Whether VeriSign's conduct in the .com and .net Registration markets should  
4 be enjoined under Section 2 of the Sherman Act.
- 5                   (2) Whether VeriSign's conduct in the Expiring Names Registration markets  
6 should be enjoined under Section 2 of the Sherman Act.

- (3) Whether ICANN and VeriSign have conspired to allow VeriSign to acquire and maintain an indefinite monopoly in the .com and .net Registration markets and the Expiring Names Registration markets.
- (4) Whether ICANN and VeriSign should be enjoined from their allowing VeriSign to acquire and maintain an indefinite monopoly in the .com and .net Registration markets and the Expiring Names Registration markets under Section 1 of the Sherman Act.
- (5) Whether ICANN and VeriSign should be enjoined from their allowing VeriSign to acquire and maintain an indefinite monopoly in the .com and .net Registration markets and the Expiring Names Registration markets under the Cartwright Act.

**2. Defendants' Identification of Legal Issues in Dispute**

Defendants have identified the following legal issues as in dispute:

- (1) Whether CFIT has standing to bring the instant lawsuit, including whether CFIT's membership is barred by principles of *res judicata*.
- (2) Whether there exists a distinct ".com Registration Market" and/or ".net Registration Market" within the General Domain Names Market.
- (3) Whether there exists a distinct "Expiring Names Registration Services Market" within the General Domain Names Market, notwithstanding earlier case law to the contrary.
- (4) Whether the 2005 .net Agreement and/or the proposed 2006 .com Agreement constitute an unlawful restraint of trade.
- (5) Whether CLS, if proposed and implemented, would constitute an unlawful restraint of trade.
- (6) Whether ICANN or VeriSign has monopolized a relevant market.
- (7) Whether ICANN and VeriSign have conspired to monopolize a relevant market.
- (8) Whether ICANN could conspire with VeriSign to monopolize a relevant market even though ICANN is not a VeriSign competitor.
- (9) Whether alleged unilateral price increases by VeriSign, or the relaxation of price caps, could violate the antitrust laws.
- (10) Whether the introduction of beneficial new services not currently offered by VeriSign could violate the antitrust laws.
- (11) Whether alleged "monopoly leveraging" in connection with the introduction of new services could be a violation of the antitrust laws.
- (12) Whether CFIT or its members has suffered antitrust injury.
- (13) Whether ICANN's vertical imposition of a maximum price ceiling violates the antitrust laws.

1 **II. AMENDMENT OF THE PLEADINGS**

2 On March 14, 2006, CFIT filed its FAC following the Court's ruling granting Defendants'  
3 motions for judgment on the pleadings. On April 13, 2006, VeriSign and ICANN each filed a  
4 motion to dismiss the FAC pursuant to Fed. R. Civ. P. 12(b)(6). Those motions currently are  
5 pending before the Court. Accordingly, Defendants have not yet filed answers to the FAC. Should  
6 the Court deny their motions to dismiss, VeriSign and ICANN will file answers to the FAC within  
7 the time provided by the Court.

8 At this time, Plaintiff does not contemplate amending the pleadings to add any additional  
9 claims or additional parties, other than CFIT's potential amendment to the FAC following the  
10 Court's ruling on Defendants' motions to dismiss.

11 **III. DISCOVERY**

12 **A. Rule 26(a)(1) Disclosures**

13 Pursuant to Fed. R. Civ. P. 26(a)(1)(E), the parties have stipulated that they will exchange  
14 initial disclosures on or before April 21, 2006.

15 **B. Expedited Discovery**

16 On December 16, 2005, CFIT moved for limited, expedited discovery in support of its  
17 motion for a preliminary injunction. On January 18, 2006, Judge Trumbull granted deposition and  
18 document discovery limited to the following topics: (1) the interchangeability of other TLDs for  
19 .com, (2) the timing and implementation of the 2006 .com Agreement, and (3) the potential  
20 operation of CLS. Pursuant to Judge Trumbull's order and the further agreement of the parties,  
21 documents were exchanged on or about April 14, 2006. By agreement of the parties, all previously-  
22 noticed depositions have been postponed pending this Court's ruling on the motions to dismiss the  
23 FAC.

24 **C. Anticipated Discovery**

25 The parties anticipate propounding written discovery, including document requests,  
26 interrogatory requests and requests for admission, as well as deposition discovery. VeriSign and  
27 ICANN also believe that it may be necessary to take significant third party discovery, including  
28 discovery of persons or entities located outside of the United States, in that CFIT's members and

1 other witnesses with information relevant to the claims alleged by CFIT in the FAC are third  
2 parties.

3 **1. CFIT's Statement Regarding Subjects on Which Discovery May Be Needed**

- 4 (1) The discussions that took place between VeriSign and ICANN that resulted  
5 in the .com and .net agreements.
- 6 (2) The discussions that took place internal to VeriSign about pricing for .com  
7 and .net domain name registrations and the introduction of new registry-level  
8 services.
- 9 (3) The discussions that took place internal to ICANN about pricing for .com and  
10 .net domain name registrations and the introduction of new registry-level  
11 services.
- 12 (4) The discussions that took place between ICANN and VeriSign about pricing  
13 for .com and .net domain name registrations and the introduction of new  
14 registry-level services.
- 15 (5) ICANN's decision to lift the historic price caps on .com and .net domain  
16 name registrations.
- 17 (6) Research or analysis that ICANN conducted, if any, about the effect of its  
18 and VeriSign's conduct on the .com and .net Registration markets and the  
19 Expiring Names Registration markets.
- 20 (7) What weight, if any, ICANN gave to the comments submitted to it, both  
publicly and privately, about the anti-competitive aspects of the proposed  
.com Agreement.
- 21 (8) The discussions between ICANN and VeriSign about a new .com Agreement  
preceding VeriSign's submission of its .net bid.
- 22 (9) The effect of the proposed .com Agreement and the .net Agreement on  
ICANN's finances.

23 **2. Defendants' Statement Regarding Subjects on Which Discovery May Be Needed**

24 Defendants state that their written and deposition discovery will address at least the  
25 following issues:

- 26 (1) The standing of CFIT and each of its members to assert the claims alleged in  
27 the FAC.
- 28 (2) The relationship between or among any of CFIT's members and any of the  
plaintiffs in *Dotster, Inc. v. Internet Corp. for Assigned Names and Numbers*,  
296 F. Supp. 2d 1159 (C.D. Cal. 2003) and *Registersite.com v. Internet Corp.  
for Assigned Names and Numbers*, Case Nos. 04-CV-1368 (C.D. Cal. July  
12, 2004) and SC082479 (Cal. Super. Ct.).
- (3) The bases for CFIT's alleged market definitions.

- (4) The potential impact of CLS.
- (5) The potential impact, if any, of changes in domain name registration fees on CFIT's alleged markets.
- (6) The operation of third-party services available to potential registrants to obtain existing domain name registrations.
- (7) The nature and extent of the actual or potential harm, if any, to Pool.com, R. Lee Chambers & Co., Momentous.ca, and any other supporter of CFIT as a result of the circumstances or conduct alleged in the FAC.
- (8) The actual or potential harm to competition, if any, as a result of the circumstances or conduct alleged in the FAC.
- (9) The relief claimed by CFIT.
- (10) Actions by CFIT's members to interfere with the execution of registry agreements by VeriSign or the introduction of new services by VeriSign.

**D. Bifurcation of Discovery**

**1. CFIT's Statement Regarding Bifurcation of Discovery**

Plaintiff does not believe that phasing or bifurcation of discovery is necessary or appropriate, and it contends that any discovery Defendants wish to pursue with regard to standing or *res judicata*, addressed by Defendants below, can be conducted during the natural course of the discovery process.

CFIT also objects to the arguments made by Verisign and ICANN in their individual statements below, on the ground that these statements are inappropriate for a Joint Case Management Statement because (a) they were first shared with CFIT just a few hours before the filing deadline; (b) CFIT has not had a proper opportunity to respond; and (c) the arguments are more properly the subject for a noticed motion. Some background is in order.

The Defendants' original draft statement contained a short, neutrally worded statement about their belief that discovery should be bifurcated. To balance the Defendants' statement, CFIT drafted and circulated only the first paragraph of this section ("Plaintiff does not believe....").

On Friday, April 21, 2006 at 10:30 a.m., just a few hours before the present Joint Statement was to be filed, ICANN forwarded a new section for inclusion in the Joint Case Management Statement titled "ICANN's Statement Regarding Bifurcation of Discovery" (infra, at Section III.D.3). ICANN's last minute submission is effectively a motion for protective order.

1 On Friday, April 21, 2006 at 2:45 p.m., less than two hours before the present Joint Case  
2 Management Conference Statement was to be filed, Verisign forwarded a new section titled  
3 “Verisign’s Statement Regarding Bifurcation of Discovery” (infra, at Section III.D.2) that was  
4 substantially revised from its earlier submission. As with ICANN’s last minute addition, this section  
5 too became a substantial discovery motion clothed as a case management statement.

6 The only apparent basis for the change is that CFIT wishes to move ahead with discovery.  
7 On Wednesday, April 19, 2006, CFIT served it Rule 26(a) disclosure on the defendants. On this  
8 same day, CFIT sent ICANN a letter pursuant to Local Rule 30-1 seeking to confer about witness  
9 availability for four depositions. ICANN has not responded to this letter. By its separate “Statement  
10 Regarding Bifurcation of Discovery,” however, ICANN seeks to address not only the *timing* of  
11 these deposition but the *appropriateness* of discovery from the designated deponents. ICANN even  
12 questions the motives of CFIT’s undersigned counsel in seeking these depositions. After receiving  
13 ICANN’s last minute submission, CFIT informed ICANN’s counsel that the new section of  
14 argument was inappropriate for inclusion in the Joint Statement but that it would entertain a  
15 proposal for an expedited briefing schedule for a motion for protective order. ICANN insisted that  
16 its argument be included in this Joint Statement.

17 As a matter of procedure, the Defendants, either individually or together, should bring a  
18 motion to bifurcate the case or a motion for protective order, as appropriate, if they wish to deny  
19 Plaintiff its rights to discovery under the Federal Rules of Civil Procedure.

20 As a matter of substance, every defendant that enters this Court would like the opportunity  
21 to conduct discovery only on its affirmative defenses, keeping the plaintiff at bay for as long as  
22 possible. Even assuming that the Federal Rules of Civil Procedure could be tilted to provide only  
23 one party the right to move forward, such a rule would be particularly inappropriate in a case like  
24 this in which the Plaintiff alleges irreparable harm and seeks only injunctive and declaratory relief.  
25 Time is the friend only of the Defendants. Contrary to the statement made by Verisign below that  
26 “CFIT apparently has no present intention of moving for a preliminary injunction,” CFIT *does*  
27 intend to refile its motion for preliminary injunction if and when it becomes apparent that the .COM  
28

1 Agreement will be approved, executed and implemented. Verisign was told this fact during the  
2 parties' Rule 26(f) conference.

3 No harm will result to the Defendants from having to take their planned discovery on  
4 standing and/or *res judicata* during the normal course of discovery. CFIT, however, will be harmed  
5 if it has to delay discovery on substantive issues on which it may suffer irreparable harm.

6 **2. VeriSign's Statement Regarding Bifurcation of Discovery**

7 VeriSign believes that all discovery, including depositions, should be stayed pending  
8 determination of the potentially dispositive motions to dismiss. Discovery in a complex antitrust  
9 action, such as the instant case, is costly and time-consuming and likely will involve disclosure of  
10 confidential and proprietary information of Defendants. Accordingly, VeriSign believes that it is an  
11 inefficient use of the parties' time and resources to pursue discovery that may be obviated by the  
12 Court's ruling on the motions to dismiss. An example of the need for such a stay is CFIT's recent  
13 deposition notices of ICANN board members, who have marginal, if any, relevant knowledge (as is  
14 more fully explained in ICANN's separate statement regarding bifurcation below). At the same  
15 time, any delay in discovery due to the pendency of the motions to dismiss would be very limited  
16 and could not prejudice any party to this action. Despite its prior claims, CFIT apparently has no  
17 present intention of moving for a preliminary injunction. Moreover, CFIT's counsel has already  
18 agreed to place on hold the depositions that were earlier noticed following Judge Trumbull's grant  
19 of limited, expedited discovery.

20 VeriSign also believes that discovery regarding CFIT's standing and Defendants' *res*  
21 *judicata* defense should take place before the parties commence discovery on other issues, in  
22 accordance with the schedule set forth below. As set forth in VeriSign's motions to dismiss,  
23 VeriSign believes that CFIT lacks standing to assert the claims alleged in the FAC against VeriSign  
24 and ICANN. As a result, VeriSign contends that discovery regarding this important, threshold issue  
25 should take place before discovery concerning the substance of CFIT's alleged claims. Similarly,  
26 VeriSign contends that discovery regarding whether *res judicata* bars CFIT's claims should occur  
27 before the parties commence complex discovery regarding the substance of CFIT's antitrust  
28

1 allegations. VeriSign may move the Court to bifurcate for early determination by motion or trial the  
2 standing of CFIT to bring this action.

3 VeriSign further believes that fact discovery should occur before the commencement of  
4 expert discovery in order to allow the parties' experts to have the benefit of a complete and  
5 developed factual record.

6 ICANN joins in VeriSign's positions on discovery and further states its position on  
7 bifurcation, in specific, below.

8 **3. ICANN's Statement Regarding Bifurcation of Discovery**

9 The necessity and efficiency of bifurcating discovery on the threshold issues of standing/res  
10 judicata from general merits discovery, or at least postponing discovery until after the motions to  
11 dismiss are decided, is made evident by recent events. On April 19, 2006, CFIT informed ICANN  
12 that it intends to notice the depositions of four of the volunteer foreign members of ICANN's Board  
13 of Directors in mid-May while they are in Los Angeles for an ICANN meeting.

14 It is doubtful that any merits-based discovery will be necessary in this litigation because  
15 CFIT will be unable to demonstrate that it meets the threshold requirement of standing. As set forth  
16 in ICANN's motion to dismiss, CFIT has failed to meet associational standing requirements to  
17 maintain this suit. This position is borne out by CFIT's recent production of documents pursuant to  
18 the Court's order granting limited expedited discovery. CFIT failed to produce any evidence  
19 demonstrating injury to any of its members as required to grant standing to an association. Given  
20 this infirmity, broad discovery would be an inefficient use of the parties' time and resources.

21 Moreover, the depositions sought by CFIT are unnecessary even if discovery on standing/res  
22 judicata is is not bifurcated. The requested depositions simply are not relevant to this suit. By these  
23 depositions, CFIT apparently hopes to learn about the individual motivations of the selected board  
24 members in voting on the 2006 .com Agreement between VeriSign and ICANN. The personal  
25 motivations of four of ICANN's third-party directors -- each of whom can only speak to Board  
26 Action -- is not a proper topic for deposition,<sup>1</sup> and CFIT's request for their depositions is clearly

27 \_\_\_\_\_  
28 <sup>1</sup> Counsel for CFIT, Bret Fausett, stated on his March 7, 2006 podcast discussing the ICANN Board approval of the 2006 .com Agreement that "I would loved to have heard from the board what they

(Footnote Cont'd on Following Page)

1 excessive, unnecessary and brought for the purposes of harassment. ICANN's Board is comprised  
2 of volunteer members from around the world, each of whom donate their time to this unique  
3 organization. A deposition during a short visit already set for business purposes would be an  
4 unwarranted intrusion on their time. These directors already devote over 2 months of time per year  
5 to ICANN, and to further encumber them with preparing for deposition – for plaintiff's convenience  
6 in not having to travel to their home countries – would discourage any further participation in Board  
7 activities. In addition, ICANN's ability to solicit future Board members may be hindered if this  
8 case were to set the precedent that ICANN Board members are subject to deposition on a wholesale  
9 basis.<sup>2</sup>

10 Accordingly, ICANN urges this Court to limit the current discovery to the threshold issues  
11 of standing and *res judicata*. Only after CFIT's very ability to maintain this suit is determined  
12 should the parties be burdened with the battles over the appropriate scope of merits-based  
13 discovery. A bifurcation of discovery would be efficient for the litigants, and greatly reduces the  
14 chance that this Court would be burdened with discovery disputes over unnecessary and irrelevant  
15 requests for information.

16 **E. Changes to Discovery Limitations**

17 At this time, the parties do not propose any changes to the limitations on discovery provided  
18 by the Federal Rules of Civil Procedure or the local rules of this district. Given the number of  
19 potential third-party witnesses, including CFIT's members, however, Defendants believe that it may  
20 eventually be necessary to expand the limitation on the total number of depositions set forth in Fed.  
21 R. Civ. P. 30(a)(2)(A). CFIT concurs in this assessment, based on the number of party  
22 representatives with relevant knowledge, including ICANN staff and Board members, and VeriSign  
23

24 (Footnote Cont'd From Previous Page)

25 were thinking before they voted.” Bret Fausett, IPR74: Reading and Ranting and Arithmetic,  
*available at* [http://blog.lextext.com/blog/audio/\\_archives/2006/3/7](http://blog.lextext.com/blog/audio/_archives/2006/3/7).

26 <sup>2</sup> The need for protection of Board members is evident here, as CFIT's counsel recently published  
27 personal aspersions against one of the requested deponents. See .Bret Fausett, IPR74: Reading and  
28 Ranting and Arithmetic, *available at* [http://blog.lextext.com/blog/audio/\\_archives/2006/3/7](http://blog.lextext.com/blog/audio/_archives/2006/3/7) (calling  
Hagen Hultzsch a “nitwit” and expressing Mr. Fausett's desire to see Mr. Hultzsch not re-elected to  
the Board).

1 employees. The parties propose to take initial discovery, to explore the scope of the necessary  
 2 expansion, before making a specific proposal regarding expansion of the limitation on the number  
 3 of depositions.

4 **F. Protective Order**

5 On March 21, 2006, Magistrate Patricia V. Trumbull signed a protective order governing the  
 6 exchange of confidential information in this action.

7 **IV. ALTERNATIVE DISPUTE RESOLUTION**

8 On March 31, 2005, pursuant to the Court’s November 28, 2005 Order Setting Initial Case  
 9 Management Conference, the parties filed a Notice of Need for ADR Conference based on their  
 10 inability to agree on an alternate dispute resolution procedure for this action. CFIT prefers  
 11 mediation before a mediator appointed from the Court’s panel of mediators. *See* Local ADR  
 12 Rule 3-4(a)(3). Defendants prefer mediation before a private mediator selected by the parties. *See*  
 13 ADR Local Rule 3-4(b). A teleconference with the Northern District’s ADR legal staff to discuss  
 14 the available ADR options is scheduled for April 24, 2006.

15 **V. PRETRIAL CONFERENCE AND TRIAL SETTING**

16 **A. Length of Trial**

17 The parties estimate that a trial of this action will take approximately 3-4 weeks.

18 **B. Proposed Pretrial Schedule**

19 **1. CFIT’s Proposed Schedule**

20 CFIT proposes the pretrial and trial dates set forth below. CFIT’s proposal is based on its  
 21 claims that its members will be irreparably harmed by the actions described in its FAC, and its  
 22 claim that it needs to have these issues addressed as soon as possible, either by trial or by  
 23 preliminary injunction:  
 24

25 Deadline to file motion to add parties or amend pleadings	June 30, 2006
26 Exchange expert disclosures/reports	August 7, 2006
27 Completion of all fact discovery and last day to file any fact discovery motions	September 1, 2006

1	Exchange rebuttal expert disclosures/reports	September 8, 2006
2	Completion of all expert discovery and last day to file any expert discovery motions	September 29, 2006
3	Deadline for filing summary judgment motions	October 6, 2006 (Friday at 9:00 a.m.)
4	Final Pretrial Conference	November 16, 2006 (Thursday at 2:00 p.m.).
5	Trial	December 4, 2006 (Monday at 1:30 p.m.)

## 2. Defendants' Proposed Schedule

Defendants propose the pretrial and trial dates set forth below. Defendants' proposal is based on the median time to trial in the Northern District (28 months)<sup>3</sup> and the complexities inherent in an antitrust case based on claims, among others, of monopolization and attempted monopolization of several different alleged markets.

13	Deadline to file motion to add parties or amend pleadings	October 13, 2006
14	Completion of fact discovery regarding CFIT's standing and Defendants' <i>res judicata</i> defense	July 31, 2006
15	Commence general fact discovery	August 1, 2006
16	Completion of all fact discovery	April 13, 2007
17	Deadline to file any fact discovery motions	May 1, 2007
18	Exchange expert disclosures/reports	May 18, 2007
19	Exchange rebuttal expert disclosures/reports	June 29, 2007
20	Completion of all expert discovery	August 3, 2007
21	Deadline to file any expert discovery motions	August 21, 2007
22	Deadline for completion of ADR process	September 7, 2007
23	Deadline for filing summary judgment motions	October 12, 2007 (Friday at 9:00 a.m.)

<sup>3</sup> See Administrative Office of the U.S. Courts, *Federal Court Management Statistics*, <http://www.uscourts.gov/cgi-bin/cmsd2005.pl>. (last visited April 19, 2006).

