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15 Attorneys for Plaintiffs  
16 DOTSTER, INC., a Washington  
17 corporation, GO DADDY SOFTWARE,  
18 INC., an Arizona corporation,  
19 and eNOM, Incorporated, a  
20 Nevada corporation

21 UNITED STATES DISTRICT COURT  
22 CENTRAL DISTRICT OF CALIFORNIA

23 DOTSTER, INC., a Washington  
24 corporation, GO DADDY SOFTWARE,  
25 INC., an Arizona corporation, and  
26 eNOM, INCORPORATED, a Nevada  
27 corporation,

28 Plaintiffs,

v.

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

Defendant.

Case No. CV03-5045 JFW (MANx)

DECLARATION OF HARVARD P.  
SPIGAL IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION

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

1 I, Harvard P. Spigal, declare and state as follows:

2 1. I am an attorney for Preston Gates & Ellis LLP. I make this declaration  
3 of my own knowledge, and based on direct knowledge and personal experience. If  
4 called as a witness I could and would testify to each of the following facts:

5 2. On August 29, 2003, I had a telephone discussion with Mr. Stacy  
6 Cheney, an attorney for the National Telecommunications and Information  
7 Administration ("NTIA"). NTIA is the agency of the Department of Commerce  
8 ("Commerce") that executed the Memorandum of Understanding with ICANN (the  
9 "MOU"). Mr. Cheney was knowledgeable about the MOU, and about this litigation.  
10 He said, in response to questions, that ICANN would require Commerce approval of  
11 the Wait List Service ("WLS"). Approval is required pursuant to Amendment 3 of the  
12 MOU. A true and correct copy of Amendment 3 to the MOU is attached hereto as  
13 Exhibit 1. Amendment 3 of the MOU obligates ICANN to obtain approval of  
14 Commerce for any material amendments to the .com Registry Agreement and the .net  
15 Registry Agreement (collectively the "Registry Agreement") between ICANN and  
16 VeriSign, Inc.

17 3. He said that Commerce had not received an amendment to the Registry  
18 Agreement to approve the WLS policy. Mr. Cheney said that he did not foresee a  
19 public process before Commerce approved an amendment to the Registry Agreement.  
20 Mr. Cheney said he could not speculate as to the time it would take Commerce to  
21 approve the WLS policy, but that it was possible for Commerce to approve an  
22 amendment within three days of receiving a request from ICANN. Mr. Cheney said  
23 that he would not speculate as to whether any public notice would be given that  
24 Commerce was considering an amendment to the Registry Agreement.

25 4. On September 5, 2003, I had a telephone conversation with Mr. Cheney.  
26 Mr. Cheney reported he "can't say" whether Commerce has approved an amendment  
27 to the Registry Agreement relating to the WLS policy, or whether Commerce has  
28

1 received a proposed amendment. He then said that he "didn't know" whether  
2 Commerce had approved or received such an amendment. Mr. Cheney then put me on  
3 "hold" to talk to someone else. When he returned, he said that he was afraid that I  
4 would have to submit my questions "in letter form." Mr. Cheney said that it will take  
5 "a week or more" for Commerce to respond, and that the response would take into  
6 account political considerations. He said that the letter should be directed to Mike  
7 Gallagher, Acting Assistant Secretary for Communication Information, Department of  
8 Commerce.

9         5. The Board of Directors for ICANN held a teleconference meeting on  
10 April 22, 2002. At the Meeting, the Board of Directors considered VeriSign's new,  
11 WLS registry service. The Board of Directors adopted a resolution directing the  
12 Names Council of the Domain Names Supporting Organization (the "DNSO") to  
13 coordinate a comprehensive review within the DNSO of the VeriSign WLS proposal.  
14 A true and correct copy of the April 22, 2002, minutes of the Special Meeting of the  
15 ICANN Board of Directors at which the resolution was adopted is attached hereto as  
16 Exhibit 2.

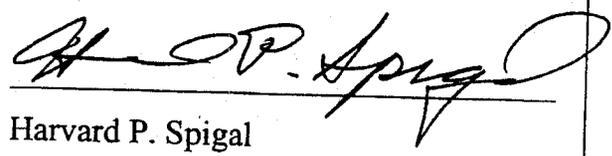
17         6. ICANN responded to Dotster's request for an Independent Review Panel  
18 to review ICANN's decision to establish the WLS policy by sending a letter dated  
19 June 23, 2003, from Louis Touton, ICANN's General Counsel, to Kevin Brannon, an  
20 attorney for Dotster ("the Letter"). A true and correct copy of the Letter is attached  
21 hereto as Exhibit 3.

22         7. ICANN and Commerce have executed five amendments to the MOU.  
23 The five amendments were executed by Commerce on or about November 10, 1999;  
24 September 7, 2000; May 25, 2001; September 24, 2001; and, September 19, 2002. On  
25 September 7, 2003 I conducted an electronic search of the Federal Register, and I did  
26 not find a notice for comment regarding the subject amendments.

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I declare under penalty of perjury under the laws of the Unites States of America that the foregoing is true and correct, and that this declaration was executed on September 7, 2003 at Portland, Oregon.

  
Harvard P. Spigal