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INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS
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9 **UNITED STATES DISTRICT COURT**

10 **CENTRAL DISTRICT OF CALIFORNIA**

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12 **DOTSTER, INC., GO DADDY**
13 **SOFTWARE, INC., and eNOM,**
INC.,

14 **Plaintiffs,**

15 **v.**

16 **INTERNET CORPORATION**
17 **FOR ASSIGNED NAMES AND**
NUMBERS,

18 **Defendant.**

Case No.

DECLARATION OF DANIEL E.
HALLORAN IN SUPPORT OF
DEFENDANT'S PRELIMINARY
OPPOSITION TO PLAINTIFFS'
MOTION FOR A TEMPORARY
RESTRAINING ORDER,
PRELIMINARY INJUNCTION, AND
EXPEDITED DISCOVERY

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1 I, Daniel E. Halloran, declare:

2 1. I am an attorney admitted to the State Bar of California, and I am the
3 Chief Registrar Liaison and Acting Secretary of defendant Internet Corporation for
4 Assigned Names and Numbers ("ICANN"). I have personal knowledge of the
5 matters set forth herein and am competent to testify to those matters. I make this
6 declaration in support of ICANN's Preliminary Opposition to Plaintiffs' Motion for
7 Temporary Restraining Order, Preliminary Injunction, and Expedited Discovery.

8 2. ICANN is a not-for-profit corporation that was organized under
9 California law in 1998. ICANN is responsible for administering certain aspects of
10 the Internet's domain name system. Among its various activities, ICANN accredits
11 companies known as "registrars" that make Internet "domain names" available to
12 consumers. ICANN enters into Registrar Accreditation Agreements with these
13 registrars. Registrars, in turn, contract with individuals and organizations that wish
14 to register domain names.

15 3. VeriSign is a top-level domain registry operator. A registry operates
16 like a phone book, keeping a comprehensive listing of all registered domain names.
17 A registrar, on the other hand, is responsible for selling and trading these domain
18 names and coordinating those operations with registries. Beginning in 2001,
19 VeriSign proposed to offer the Wait List Service ("the Service") at the registry
20 level. The Service would operate by permitting accredited registrars, acting on
21 behalf of customers, to place reservations for currently registered domain names in
22 the .com and .net top-level domains. Only one reservation would be accepted for
23 each registered domain name. Each reservation would be for a one-year period.
24 Registrations for names would be accepted on a first-come/first-served basis, with
25 the opportunity for renewal. VeriSign would charge the registrar a fee, which
26 would be no higher than \$24.00 for a one-year reservation. The registrar's fee to
27 the customer would be established by the registrar, not VeriSign. In the event that a
28 registered domain name is not renewed and is thus deleted from the registry,

1 VeriSign would check to determine whether a reservation for the name is in effect
2 and register the name to the customer or, if there is no reservation, VeriSign would
3 delete the name from the registry, so that the name is returned to the pool of names
4 equally available for re-registration through all registrars on a first-come/first-
5 served basis.

6 4. VeriSign has proposed to implement the Service for a twelve-month
7 trial. At the end of the trial, ICANN and VeriSign would evaluate whether the
8 service should be continued. In the event the Service is not continued, reservations
9 extending beyond the trial would be honored.

10 5. Presently, several registrars are providing their own forms of wait list
11 services at the registrar level. In essence, under all of these services, the registrars
12 watch for a desired name to be deleted and immediately seek to register it. A
13 consumer who wants to register this name may enter what is akin to a lottery by
14 signing up, and in many cases paying in advance, for a registrar to try to win the
15 newly-deleted domain name. Under the current system, a consumer can never be
16 certain that it will be awarded a particular domain name if it is deleted from the
17 registry; a consumer might try to sign up with *each and every* registrar currently
18 offering a "wait list" type of service, but even then might be lose the race for the
19 name to a customer of one of the other registrars that offers only first-come/first-
20 served service with no "wait list" arrangement. Under the Service, the consumer
21 would simply have to sign up with any one registrar to be placed on the waiting list,
22 which would guarantee the consumer the right to be next in line to register the name
23 should it be deleted.

24 6. Plaintiffs request a temporary restraining order and a preliminary
25 injunction based on their claim that ICANN's decision to enter negotiations to allow
26 VeriSign to go forward with offering its proposed Service violates ICANN's
27 contractual obligations under and processes established by the Accreditation
28 Agreement. However, by authorizing VeriSign to offer the Service, ICANN would

1 *remove* impediments to competition, not create them. It is possible that, as
2 Plaintiffs argue, that their services will not be able to compete effectively in the
3 marketplace because consumers will instead purchase the Service, which provides
4 consumers greater security that their subscription for a domain name will be
5 fulfilled. It is also possible that consumers will prefer the Service to Plaintiffs'
6 services because the Service will be offered through as many as 160 competing
7 registrars, while Plaintiffs' services are available only from them directly.

8 7. Arguments that a proposed new service such as the Service will
9 displace existing services because it is more attractive to consumers, however, do
10 not demonstrate a threat to competition. Instead, they reflect the operation of
11 competition. ICANN's core values support the introduction and promotion of
12 competition, not the protection of competitors. This core value is in alignment with
13 subsection 2.3.2 of the registrar accreditation agreement; it states that ICANN
14 should promote "competition," not "competitors."

15 8. The ICANN Board considered this issue over a long period of time
16 and analyzed the effect on competition of authorizing VeriSign to offer the new
17 service. In adopting its resolution authorizing staff to negotiate with VeriSign for
18 the terms of offering the Service, the Board, stated the Service should be offered
19 with a number of conditions to be negotiated and recited that it was "mindful that
20 ICANN should act in a way that promotes consumer choice and innovative services
21 while ensuring that registry operations are conducted in a manner that does not
22 harm the legitimate interests of consumers or others." In short, the substance of
23 Plaintiffs' competition arguments *was* thoroughly considered by the Board.

24 9. Plaintiffs mis-characterize VeriSign's proposed new Service as a
25 "policy" of ICANN, and assert that ICANN's authorization of the offering of the
26 Service "contravenes the procedural requirements for adopting a Consensus Policy,
27 as required in the Accreditation Agreement."
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1 10. The contractual role of the "consensus policies" under the registrar
2 accreditation agreement is to provide a means to require registrars to comply with
3 additional obligations or requirements developed through ICANN's bottom-up,
4 consensus-based policy development process. Under subsection 4.1 of the registrar
5 accreditation agreement, registrars agree to comply with new or revised policies
6 developed during the term of the agreement, provided they are established
7 according to a consensus process described in subsection 4.3 and on topics
8 prescribed in subsection 4.1.2.

9 11. The proposed new Wait Listing Service is not an ICANN policy. It is
10 a service to be offered under an agreement VeriSign has entered into with ICANN.
11 ICANN is not requiring registrars to abide by, adopt, offer, or implement this
12 proposed new service.

13 12. ICANN is only able to impose new obligations on all registrars by
14 following the process set forth in section 4.3.1 of the Accreditation Agreement.
15 Section 4.3.1 of the Accreditation Agreement requires "policies" to be implemented
16 only by following specific procedures set forth in that section. Although not
17 defined in section 4.3.1, section 4.3.5 of the accreditation agreement makes clear
18 what qualifies as a policy, which are those policies with far-reaching effect and
19 binding on all accredited registrars. By contrast, other actions that do not affect all
20 registrars are not "policies" under Section 4.3.1, therefore, they are treated in
21 different ways. The Service is an example of one such action. The Service was
22 effected by an amendment to the VeriSign registry agreement. Registrars can
23 choose to be involved in the Service but do not have to be, so treating the Service
24 decision as an amendment to VeriSign's agreement was entirely appropriate as it
25 did not qualify as a "policy" under the Accreditation Agreement.

26 13. To be clear, the Service does not involve changes to Plaintiffs'
27 obligations nor does it impose *any* obligations on any registrars. A registrar is free
28 to participate in the Service or not—just as a registrar is free to participate in a

1 current form of wait listing service or not. Indeed, while some registrars do offer a
2 current form of wait listing service, most do not. This is yet another reason why the
3 changes proposed to be made to the Registry Agreement between ICANN and
4 VeriSign do not qualify as a "policy" change under the registrar agreements.

5 14. Plaintiffs fail to explain to the Court all of the steps that would have to
6 occur before the Service could be implemented. First, VeriSign would have to
7 reach an agreement with ICANN to modify the .com and .net registry agreements
8 between VeriSign and ICANN. Second, pursuant to the Memorandum of
9 Understanding Between the U.S. Department of Commerce and ICANN (as
10 amended), any modification to either of the agreements governing VeriSign's
11 registry services with respect to .com and .net would have to be approved by the
12 United States Department of Commerce. Third, if and when the modifications to
13 the .com and .net registry agreements were to be approved by the Department of
14 Commerce, VeriSign would still then have to undertake the significant technical
15 and operational tasks of implementing the Service. Plaintiffs have alleged, and
16 VeriSign has also stated that the earliest that VeriSign will offer the Service would
17 be 11 October 2003.

18 I declare under penalty of perjury that the foregoing is true and correct. This
19 declaration was signed on 17 July 2003 at Marina del Rey, California.

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22 Daniel E. Halloran
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