

December 12, 2003

VIA E-MAIL AND FACSIMILE

Mr. Paul Twomey
President
Internet Corporation for Assigned Names and Numbers (ICANN)
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292-6601

Re: Proposed Wait List Service

Dear Mr. Twomey:

We write in response to the November 7, 2003 letter signed by three registrars, which was recently posted on ICANN's website. The undersigned herein include 25 ICANN accredited registrars.

On behalf of the vast majority of registrars, we must once again voice our strong opposition to WLS.

A recently released study on public participation in ICANN completed by the highly respected Berkman Center for Internet and Society at Harvard University cites ICANN's adoption of WLS despite the fact that it was opposed by the public, the Names Council and the DNSO Transfers Task Force as an unsupported action that ignored the wishes of the Internet community:

"The public commentary was overwhelmingly opposed to the introduction of the wait-listing service. The Names Council, adopting a report developed by the DNSO Transfers Task Force, also recommended against this proposal. ICANN's general counsel mentioned the possibility of endangerment of legitimate business interests in the event of adoption of the wait-listing service proposal, but did not directly oppose the proposal. Despite the strong objections expressed by those who submitted public commentary and the opposition of the Names Council and the DNSO Transfers Task Force, the ICANN Board decided to support the VGRS waiting-list service proposal.

"Many of those who posted public comments on this topic argued that implementing the WLS would have one of the following problems: it would negatively affect competition in the secondary Domain Name market; encourage monopolistic business practices; and/or eliminate those businesses already offering wait-listing services to interested customers.

"Unlike the case of certain TLD applications, this proposal by VGRS for a waiting list service had extensive, and often quite carefully reasoned, public commentary in opposition to its passage. In addition to the public commentary, the Names Council recommended to the Board that they reject the proposal; likewise, a staff member urged caution."

The study can be viewed at <http://cyber.law.harvard.edu/icann/publicparticipation/>.

In light of the Harvard study, and for many additional reasons set forth herein, we urge ICANN consider the public good and to suspend any further consideration or initiation of WLS. Please consider the following:

WLS will prevent competition in the domain name backorder marketplace.

Should WLS be enacted and the one-year trial period begin, WLS will allow Verisign to eliminate the numerous competitive models that have emerged in the burgeoning domain name backorder market. Because the one-year trial will, in principle, actually extend beyond 365 days (since registrations of domain names are for a minimum of one year), many of the competing registrars and business models will almost certainly be forced out of business. When the "trial" is over, what once was a competitive and healthy market will have been, for all intents and purposes, destroyed.

WLS will prevent consumer choice.

To date, several established business models have emerged in the backorder market, allowing consumers various options for acquiring expired or deleted domain names. Most of these models operate on a contingency based performance fee, where the consumer is charged nothing if the desired domain name is not acquired. In contrast, the WLS model would require consumers to pay a minimum fee of \$24 per annum just to be first in line for the domain, should it delete. There is no guarantee of success and no refund, should the domain not become available.

Some argue that WLS will make "choice" easier for the consumer. This is nonsense. Such an argument is tantamount to claiming that free market competition is too confusing for the consumer. Instead of offering a competitive environment where prices are dictated based upon supply and demand, WLS will ensure just "one game in town." In fact, under WLS, once someone places a backorder on a name, the "one stop shop" is immediately closed to all others.

WLS will establish a monopoly with exorbitant fees going to one company.

The WLS proposal ensures that Verisign (the original domain name monopoly) receives a \$24 fee from the backorder process (in addition to the \$6 it earns as the registry).

WLS is patently anti-consumer and a monopoly; Anti-consumer in that it marks up the cost for capturing an expired or deleted domain name by 500 percent, and a monopoly in that it operates with the function of rewarding Verisign with that 500 percent profit, with no other company having a chance to offer better services at a lower price.

Verisign has shown a consistent level of arrogance toward the Department of Commerce, ICANN, the Internet community and its own customers with regard to this and other issues. Examples include the recent wildcard issue as well as its solicitation of WLS orders. We believe that such activities, in advance of any formal approval of WLS by either ICANN or the Commerce Department, are arrogant, unlawful and contrary to the public interest.

The fact is, the current competitive system is delivering real results to consumers. Indeed, when Verisign was forced to end its monopolistic practices and face competition in the domain name registration market in 1999, the average cost to the consumer of Internet domain name registrations dropped from \$50 to under \$9, and many innovative pro-consumer business models emerged, such as the bundling of domains for free with hosting. Consumers also received better customer service as the number of competitors expanded to fill demand. Today we are seeing similar levels of innovation (and corresponding high levels of customer service) in the backorder market. Yet, all of these benefits and innovations will end if WLS is implemented and the registrars and other companies who currently offer competitive backorder services are forced out of this business.

These are just some of the reasons why we believe ICANN should reject WLS.

Several members of Congress have taken an interest in this issue. Recently, Tennessee Representative Zach Wamp, a member of the House Appropriations Committee, sent a letter co-signed by nine other concerned Members of the House of Representatives to the Department of Commerce, asking that specific questions about the nature and potential consequences of WLS be answered before the Department of Commerce approves a submitted WLS proposal.

We also note with interest the statement made in the November 7, 2003 letter: *"ICANN should not engage in an exercise of "picking and choosing" winners and losers in the WLS context. Rather it is appropriate for ICANN to maintain a studied competitively neutral approach."* Sadly, picking and choosing the winners and losers in the WLS context is exactly the course of action that ICANN seems determined to take. These actions are being taken regardless of the strong and vocal wishes to the contrary of the **Internet community**, the vast majority of your own **ICANN Registrars**, and most importantly the **public**. The public, as consumers of WLS, will be forced to pay monopolistic prices for a flawed and inferior product, effectively requiring them to purchase a pre-paid lottery ticket on the chance that a particular domain will delete.

We respectfully request that instead of adopting WLS and thereby destroying a vibrant, healthy and competitive market to appease a single entity, ICANN immediately suspend any further consideration of WLS and take steps to insure that it is not implemented by Verisign.

Sincerely,

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Barry Fellman
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A Technology, DBA Namesystem

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Vijay Shekhar Sharma
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cc: ICANN Board of Directors