

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

IN RE:

**CHARLES F. STEINBERGER
PAMELA J. PERRY**

**Case No. 8:10-bk-19945-KRM
Chapter 7**

Debtors,

Adv. Pro. No. 8:11-ap-00418-KRM

DENISE SUBRAMANIAM,

Plaintiff,

v.

CHARLES STEINBERGER,

**ICANN
INTERNET.BS,
SUSAN K. WOODARD, Chapter 7 Trustee**

Defendants.

**DEFENDANT INTERNET CORPORATION FOR ASSIGNED NAMES AND
NUMBERS, INC.'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR
WITHDRAWAL OF REFERENCE OF THE ADVERSARY PROCEEDING AS TO
CLAIMS AGAINST DEFENDANT ICANN**

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By this motion (the “Motion”), Defendant Internet Corporation for Assigned Names and Numbers, Inc. (“ICANN”) hereby moves this Court (the “Florida District Court”), pursuant to 28 U.S.C. § 157(d), Rule 5011 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 5011-1 of the Local Rules of the United States Bankruptcy Court for the Middle District of Florida (the “Local Rules”), and without any opposition from the other defendants, for two forms of relief.

First, ICANN seeks the entry of an order withdrawing the reference with respect to the claims asserted against ICANN in the adversary proceeding captioned *Subramaniam v. Steinberger*, Adv. Proc. 8:11-AP-00418-KRM (the “Adversary Proceeding”) to the United States Bankruptcy Court for the Middle District of Florida (the “Bankruptcy Court”) on the grounds that the Florida District Court has proper subject matter jurisdiction over these non-bankruptcy related claims, under both 28 U.S.C. § 1331 and 28 U.S.C. § 1332(a).¹

Second, ICANN seeks the entry of an order either dismissing the claims against ICANN or transferring them, pursuant to 28 U.S.C. §§ 1406(a) and 1412, to United States District Court for the District of Oregon, Portland Division (the “Oregon District Court”)² as the only venue to which these claims could properly be removed. Separately, even if the Florida District Court determines that the entire Adversary Proceeding is properly pending before the Bankruptcy Court, ICANN moves this Court, pursuant to 28 U.S.C. § 157(d), Bankruptcy Rule 5011 and Local Rule 5011-1, for the entry of an order withdrawing the reference with respect to the claims asserted against ICANN for cause shown inasmuch the claims asserted against ICANN involve

¹ As set forth in ICANN’s concurrently filed Motion to Dismiss, Florida cannot exercise personal jurisdiction over ICANN in that ICANN has no meaningful contacts with the State that would subject ICANN to suit here. By filing this Motion, ICANN does not submit to the jurisdiction of Florida Courts, but, instead, expressly refers to its Motion to Dismiss challenging jurisdiction in this forum and further reserves all rights and claims to challenge jurisdiction and venue.

² Complaints filed in the County of Washington are properly removed to the District Court for the District of Oregon, Portland Division. See Local Rule 3-2 of the Local Rules Governing Practice and Procedure in the Oregon District Court for civil matters.

exclusively state law and non-bankruptcy federal law claims by a non-debtor against a non-debtor which are neither core nor non-core claims the adversary proceeding.

ICANN certifies that it has conferred with counsel for both the Trustee-Defendant and the Debtor-Defendant to this Adversary Proceeding and has confirmed that neither opposes the relief requested in this Motion.³

PRELIMINARY STATEMENT

During the short life of this case, ICANN has been subjected to a series of procedural missteps resulting in ICANN being dragged into Bankruptcy Court, which lacks subject matter jurisdiction over the non-bankruptcy claims pending against ICANN and lacks personal jurisdiction over ICANN (a California non-profit public benefit corporation).⁴ To begin with, Plaintiff Denise Subramaniam (“Plaintiff”) improperly filed her action against ICANN and others in the Circuit Court of the State of Oregon (the “State Court”) on March 31, 2011 (the “Oregon Action”), claiming that the defendants breached a duty owed to Plaintiff by allowing several of her Internet domain names to expire. With respect to ICANN, however, Plaintiff sued the wrong party, in the wrong jurisdiction, and under the wrong statutes because Oregon lacks personal jurisdiction over ICANN and ICANN has no connection to Plaintiff’s alleged injuries.

Then, to make matters worse, on April 26, 2011, Defendant Susan K. Woodard, Trustee for the bankruptcy estate of Defendant Charles F. Steinberger (the “Trustee”), filed a notice of removal (the “Notice of Removal”) directly in the Bankruptcy Court, removing the entire Oregon Action and commencing this Adversary Proceeding. *See* Exhibit (“Ex.”) A to this Motion.

³ It is ICANN’s understanding that the only remaining non-debtor defendant, Defendant Internet.bs, has not been served with the Complaint by Plaintiff and is therefore not yet implicated in this Adversary Proceeding. Given that there is no opposition from the other defendants, ICANN does not believe a hearing on this Motion is necessary, but will appear for oral argument if the Florida District Court determines otherwise.

⁴ Pursuant to 28 U.S.C. § 157(a) and this Court’s standing order of reference, the Bankruptcy Court may only hear “any and all cases under title 11 and any and all proceedings arising under title 11 or arising in and related to a case under title 11.” 28 U.S.C. § 157(a); Order No. 84-MISC-152 (M.D. Fla. Jul. 11, 1984).

Pursuant to Bankruptcy Rule 9027(c), the Trustee filed a copy of the Notice of Removal in the Oregon Action on April 28, 2011, precluding any further proceedings in the State Court. Fed. R. Bankr. P. 9027(c); *see also* Ex. B to Motion.

As discussed more fully below, it was improper for the Trustee to remove the entire Oregon Action to this Bankruptcy Court. Instead, the Trustee should have removed only the claims and causes of action brought against the Trustee and the Debtors, since removal under 28 U.S.C. § 1452 only permits “[a] party [to] remove *any claim or cause of action* in a civil action ... *if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.*”⁵ 28 U.S.C. § 1452 (emphasis added). The Bankruptcy Court lacks jurisdiction to hear the state law and non-bankruptcy federal law claims asserted against ICANN in the Adversary Proceeding, which have no conceivable effect on the Debtors’ estate and are not claims over which the Bankruptcy Court has jurisdiction under 28 U.S.C. § 1334. But because the District Court has proper subject matter jurisdiction over this action under both 28 U.S.C. § 1331 and 28 U.S.C. § 1332(a), ICANN requests that the Court withdraw the reference with respect to the claims asserted against ICANN in order to cure the Trustee’s defective removal.

In addition, this Court should exercise its discretion to withdraw the reference pursuant to 28 U.S.C. § 157(d), Bankruptcy Rule 5011 and Local Rule 5011-1 for cause shown. All of the traditional factors weighing in favor of withdrawal of the reference with respect to the claims asserted against ICANN are more than satisfied here, since: (i) these claims are neither core nor non-core claims among non-debtor parties that have no conceivable effect on the Debtor’s bankruptcy case; (ii) there is no risk of promoting forum shopping here because these claims were not brought originally in Bankruptcy Court, but removed there from Oregon state court

⁵ The Trustee’s Notice of Removal also improperly removed the Oregon Action to the Bankruptcy Court, rather than to the district court for the district in which the state court action was pending. *See* 28 U.S.C. § 1452(a) and Fed. R. Bankr. P. 9027(a)(1).

where Plaintiff commenced the Oregon Action; (iii) withdrawal of the reference will promote the efficient use of party and judicial resources by removing the cloud of the jurisdictional and procedural defects resulting from the improper removal to the Bankruptcy Court; and (iv) the parties are entitled to a jury trial for determination of the non-bankruptcy claims, which the Bankruptcy Court cannot provide. As such, permissive withdrawal of the reference so that ICANN's defenses to this action can be heard in a U.S. District Court is entirely warranted.

Upon withdrawing the reference, the Florida District Court should either dismiss the claims against ICANN or transfer them to the Oregon District Court pursuant to 28 U.S.C. §§ 1406(a) and 1412, to cure the procedural defects resulting from the Trustee's improper removal of the entire Oregon Action to the Bankruptcy Court. Even though the Trustee's removal was improper, it had the effect of prohibiting ICANN from proceeding any further in the Oregon Action, *see* Fed. R. Bankr. P. 9027(c), and foreclosed ICANN's ability to effect removal to the appropriate district court in order to present its challenges, including jurisdictional challenges, to the action. As discussed below, given that the Florida District Court *does* have subject matter jurisdiction over the claims against ICANN on both federal question and diversity grounds, ICANN submits that the Florida District Court should prevent any further prejudice to ICANN by either dismissing these improperly removed claims or transferring them to the Oregon District Court, as the only venue to which these claims could properly have been removed.

PROCEDURAL AND FACTUAL BACKGROUND

A. Background on ICANN

ICANN is a California non-profit public benefit corporation with its principal place of business in Marina del Rey, California. ICANN does not engage in commercial business, but rather administers the Internet's domain name system, pursuant to a series of agreements over time with the United States Department of Commerce. ICANN's coordination role is fulfilled in

certain ways. For example, and relevant to Plaintiff's allegations, consumers may obtain the right to use Internet domain names (such as google.com or uscourts.gov) through companies known as "Registrars." ICANN operates an accreditation system that has produced a highly competitive Registrar marketplace, with over 900 accredited Registrars, including defendant Internet.bs. These Registrars then allocate the right to use a certain Internet domain name to consumers. ICANN does not directly contract with any consumer, and certainly has not with Plaintiff.

ICANN has no company facilities, assets or real estate in Florida, is not registered to do business in Florida, does not solicit business in Florida, does not have any phone number or mailing address in Florida, does not sell any goods or services in Florida, does not have a bank account in Florida, and does not have any employees in Florida. Ex. C to this Motion (Declaration of Akram Atallah In Support of ICANN's Motion to Dismiss ("Atallah Decl.)) at ¶¶ 3, 8-12, 14-15.

B. The Debtor-Defendant's Bankruptcy

On August 19, 2010, Charles F. Steinberger and Pamela J. Perry filed a voluntary petition for bankruptcy relief pursuant to Chapter 7 of Title 11 of the United States Code. Steinberger and Perry's bankruptcy case (the "Bankruptcy Proceeding") proceeded in the Bankruptcy Court, and the debtors were ultimately issued a discharge injunction on November 23, 2010 (the "Discharge Injunction"). The Bankruptcy Court set April 15, 2011 as the bar-date for creditors to file proofs of claim with the Bankruptcy Court, thereby invoking the specific procedures by which a creditor could recover from the bankruptcy estate. After the Discharge Injunction was issued, but prior to the claims' bar-date established in the Bankruptcy Proceeding, Plaintiff filed the Complaint in the State Court against the Debtor, ICANN, and the Trustee, among others, thereby commencing the underlying Oregon Action. *See* Attachment #1 to Ex. A

to this Motion (Complaint). Plaintiff elected not to file a proof of claim with the Bankruptcy Court.

C. Plaintiff's Complaint

Plaintiff alleges that in 2003, she “contracted as a domain name reseller . . . with 4Domains Inc., owned by defendant Charles Steinberger.” Complaint at ¶ 19. Under this alleged contract, Plaintiff alleges that she was able to purchase Internet domain names wholesale and “resell them to her business clients.” *Id.* She further alleges that 4Domains later became insolvent and the owner, defendant Charles Steinberger, went bankrupt. *Id.* at ¶¶ 31, 35. After determining that 4Domains was in bankruptcy, ICANN allegedly transferred 4Domains’ data and reseller accounts to another Registrar, defendant Internet.bs. *Id.* at ¶¶ 155, 156.

Plaintiff apparently alleges that after her domain name registrations were transferred to defendant Internet.bs, she was unable to communicate with Internet.bs via email because she was bedridden with a disability and Internet.bs did not offer phone support. *Id.* at ¶¶ 68, 159, 160. Plaintiff claims that as a result, several of her domain name registrations expired, *id.* at ¶¶ 67, 69, 70, which allegedly caused her to suffer economic injury and emotional distress. *Id.* at ¶ 140, 143-146.

Plaintiff’s only allegations regarding ICANN relate to the Registrar Accreditation Agreement that ICANN maintains with third party Registrars (not Plaintiff) and its Statement of Registrar Accreditation Policy. *Id.* at ¶ 29. Plaintiff claims that under Oregon’s Uniform Commercial Code (ORS 72.1010 et seq.) these documents create “express and implied warranties” to Plaintiff “regarding performance expectations for ICANN” and that ICANN breached its contractual obligations to Plaintiff and the general “public.” *Id.* at ¶¶ 26, 43, 46. Plaintiff also alleges that ICANN violated the American with Disabilities Act (“ADA”) for failing to give her adequate instructions on how to transfer her domain name registrations and for

failing to require defendant Internet.bs to offer Plaintiff phone support. *Id.* at ¶¶ 155-165.

Finally, Plaintiff alleges that ICANN violated the Freedom of Information Act (“FOIA”) by failing to adequately respond to her request for records and to answer why ICANN transferred her domain name registrations to defendant Internet.bs. *Id.* at ¶¶ 170-174.

D. Proceedings in the Bankruptcy Court

In response to the filing of the Complaint, on April 21, 2011, the Debtor-Defendant filed a motion in the Bankruptcy Court to enforce the Discharge Injunction and to impose sanctions on Plaintiff for willfully violating the Discharge Injunction (the “Discharge Injunction Motion”). On April 26, 2011, the Trustee filed the Notice of Removal directly with the Bankruptcy Court, purporting to remove the entire Oregon Action to the Bankruptcy Court and alleging, among other things, that upon removal the proceeding would be a core proceeding. *See Ex. A* to this Motion. On April 28, 2011, the Trustee filed a copy of the Notice of Removal with the State Court. *See Ex. B* to this Motion. Even though the Trustee’s removal was defective in that it failed to comply with the procedures mandated in 28 U.S.C. § 1452 and Bankruptcy Rule 9027(a)(1), upon the filing of the Notice of Removal with the State Court the Trustee succeeded in commencing this Adversary Proceeding. Pursuant to Bankruptcy Rule 9027(c), all parties were thereby prohibited from proceeding any further in the State Court unless and until the action is remanded. A pretrial conference hearing is scheduled for June 21, 2011.

On May 7, 2011, the Trustee filed a motion to dismiss the Adversary Proceeding on the grounds that the filing of the Oregon Action naming the Trustee as a defendant without first seeking leave from the Bankruptcy Court violated the “Barton Doctrine.” *See, e.g., Lawrence v. Goldberg*, 573 F.3d 1265 (11th Cir. 2009) (“Barton doctrine” bars suit against trustee and counsel, applying doctrine derived from *Barton v. Barbour*, 104 U.S. 126 (1881)).

On May 11, 2011, ICANN filed a protective statement under Bankruptcy Rule 9027(e)(3) (the “ICANN Statement”), denying, *inter alia*, the Trustee’s allegation that the proceeding was core upon removal. The ICANN Statement also denied that the Bankruptcy Court had jurisdiction over the claims against ICANN and noted the defective removal effectuated by the Trustee’s removal directly to the Bankruptcy Court (when the proper venue was the District of Oregon) and, on the basis of such defective removal, submitted that the Bankruptcy Court has no jurisdiction over claims against ICANN and ICANN further does not consent to the exercise of any jurisdiction by the Bankruptcy Court.

ARGUMENT

A. Standards Governing Withdrawal of the Reference

As this Court is well aware, bankruptcy courts are not Article III courts and derive their limited jurisdiction from the district courts’ referral of bankruptcy matters. Specifically, under 28 U.S.C. § 1334(b), the United States district courts have “original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.” Under 28 U.S.C. § 157(a), “[e]ach district court may provide that . . . any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.” In the Middle District of Florida, proceedings within the district courts’ bankruptcy jurisdiction pursuant to 28 U.S.C. § 1334 are automatically referred to the Bankruptcy Court pursuant to the standing order of reference, as contemplated by 28 U.S.C. § 157(a). *See In re Stone*, No. 8:10-cv-2517-JDW, 2010 WL 5069698, at *1 (M.D. Fla. Dec. 7, 2010). Because the Bankruptcy Court acquires jurisdiction only by reference from the district court, a district court may, pursuant to 28 U.S.C. § 157(d), “withdraw, *in whole or in part*, any case or proceeding referred under this section, on its own motion, or on timely motion by any

party, for cause shown.” 28 U.S.C. § 157(d) (emphasis added).⁶ As the statute expressly permits, it is common for courts to withdraw the reference as to those aspects of a case for which withdrawal is appropriate, or in other words, to withdraw the reference “in part.” *See, e.g., BankUnited Fin. Corp. v. F.D.I.C.*, 436 B.R. 216 (S.D. Fla. 2010) (withdrawing the reference only as to the single issue upon which withdrawal was mandatory); *Stein v. Miller*, 158 B.R. 876 (S.D. Fla. 1993) (withdrawing the reference as to the trial of any legal causes of action and affirming the reference in all other respects); *United States v. DeMiro*, No. 11-50131, --B.R.--, 2011 WL 798147 (E.D. Mich. Feb. 23, 2011) (withdrawing the reference as to mandatory withdrawal issues only); *Abondolo v. GGR Holbrook Medford, Inc.*, 285 B.R. 101 (E.D.N.Y. 2002) (withdrawing the reference as to certain motions on efficiency grounds and denying withdrawal as to other motions for which efficiency concerns were not implicated).⁷

While Congress has not statutorily defined the word “cause,” “cause” certainly exists in this case. As an initial matter, there is cause to withdraw the reference to remedy the defective removal of the Oregon Action to the Bankruptcy Court – the claims pending against ICANN are not removable to bankruptcy court; and the Oregon Action was improperly removed directly to the Bankruptcy Court instead of the Oregon District Court. Furthermore, as discussed below, cause exists under the traditional requirements for withdrawal of a reference, which are unquestionably met here. Given this, the reference should be withdrawn, and the claims pending against ICANN should either be dismissed or transferred to Oregon District Court.

⁶ The district court is also required to “withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.” 28 U.S.C. § 157(d). Plaintiff has asserted claims under the ADA and FOIA, which provides a basis for independent federal question jurisdiction over the Oregon Action. As a result, to the extent that Plaintiff advocates that resolution of this case will turn on novel issues of federal law, mandatory withdrawal of the reference would be required.

⁷ A motion for withdrawal of a case or proceeding must be heard by a district judge. Fed. R. Bankr. P. 5011(a). Local Rule 5011-1 provides for how such a motion is to be filed and served in this District.

B. Cause Exists to Withdraw the Reference of the Claims Against ICANN to Remedy the Defective Removal of Those Claims

Withdrawal of the automatic reference of the Adversary Proceeding to the Bankruptcy Court is justified here to remedy the defective removal of the Oregon Action to the Bankruptcy Court. As discussed below, the Bankruptcy Court did not properly acquire subject matter jurisdiction over the claims against ICANN since they were not removable under 28 U.S.C. § 1452, but the Florida District Court does have subject-matter jurisdiction pursuant to 28 U.S.C. § 1331 and § 1332(a), and therefore in the interests of justice, should withdraw the reference as to the claims against ICANN.

1. The Claims Against ICANN Were Not Removable under 28 U.S.C. § 1452(a)

The Trustee based the removal of the State Court Action upon 28 U.S.C. § 1452, which provides as follows:

A party may remove *any claim or cause of action* in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, *if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.*

28 U.S.C. § 1452(a) (emphasis added). As this language makes clear, it is the removal of discrete claims or causes of action *in* a civil action, rather than the removal of a civil action as a whole, that is authorized by this bankruptcy removal statute.⁸ Moreover, by its express terms, section 1452 only allows claims or causes of action to be removed if there is bankruptcy jurisdiction under 28 U.S.C. § 1334. A claim or cause of action is within the bankruptcy jurisdiction as defined by 28 U.S.C. § 1334(b) "if it 'arises under' the Bankruptcy Code or

⁸ This language is in distinct contrast to the general federal removal statute, which governs the removability of "*any civil action brought* in a State Court of which the district courts of the United States have original jurisdiction. 28 U.S.C. § 1441(a) (emphasis added).

‘arises in’ or is ‘related to’ a case under the [Bankruptcy] Code.” *Carter v. Rodgers*, 220 F.3d 1249, 1253 (11th Cir. 2000), (citation omitted). Accordingly, a claim or cause of action is not removable under section 1452 unless it arises under title 11 or arises in, or is related to, a case under title 11. *See Agee v. Assocs. First Capital Corp.*, No. 2:05 CV 305-A, 2005 WL 2387603, at *4 (M.D. Ala. Sept. 28, 2005) (holding that only those claims over which the court had bankruptcy jurisdiction under section 1334 could be removed under section 1452); *Ret. Sys. of Ala. v. Merrill Lynch & Co.*, 209 F. Supp. 2d 1257, 1264 (M.D. Ala. 2002) (“1452 authorizes a party to remove a particular ‘claim or cause of action’ that touches on the administration of a bankruptcy estate, but not an entire ‘action’ involving claims and other parties that may have nothing to do with the bankruptcy”).⁹

A claim “arises under title 11” if it “invokes a cause of action, or substantive right, created by a specific section of the Bankruptcy Code.” *In re Toledo*, 170 F.3d 1340, 1349 (11th Cir. 1999). Plaintiff’s allegations against ICANN include a claim for breach of contract under Oregon state law, a claim for damages under the ADA and a claim for damages under FOIA. Clearly, none of these claims invoke a cause of action or substantive right created by a specific section of the Bankruptcy Code, and as such these claims do not “arise under” the Bankruptcy Code.

A claim “arises in” a case under title 11 if it involves “administrative matters unique to the management of a bankruptcy estate.” *Id.* Again, in contrast to Plaintiff’s claims against the Trustee and Debtor Defendant, which arguably do implicate the Debtor’s bankruptcy case, and the Discharge Injunction, Plaintiff’s claims against ICANN under Oregon state law, the ADA and FOIA clearly do not implicate any matters unique to the management of the Debtor’s, or any

⁹ *See also Anstine & Musgrove, Inc. v. Calcasieu Ref. Co.*, 436 B.R. 136, 142 (D. Kan. 2010) (section 1452 allows “any single party [to] remove any (or all) claims in the case over which the federal court could assert bankruptcy jurisdiction”); 3 Collier on Bankruptcy ¶ 3.07.[1] (2011) (removal under section 1452 requires that “the claim or cause of action be within the jurisdiction of the district court under section 1334”).

other, bankruptcy estate. The claims Plaintiff asserts against ICANN under Oregon law and federal law could be resolved without any involvement of the Bankruptcy Court whatsoever.

Finally, “[s]ection 157(c)(1) sets the minimum requirements for bankruptcy jurisdiction,” otherwise known as “related-to” jurisdiction. *In re Happy Hocker Pawn Shop, Inc.*, 212 Fed. App’x. 811, 817 (11th Cir. 2006). The “usual articulation of the test for determining [‘related-to’ jurisdiction] is whether the outcome of the proceeding could conceivably have an effect on the estate being administered in bankruptcy.” *Carter*, 220 F.3d at 1253. Plaintiff’s claims against ICANN constitute a dispute between two non-debtors implicating non-bankruptcy law, and there are no allegations against ICANN that in any way affect the bankruptcy estate or the amount of estate property available to satisfy creditors’ claims. *See id.* The outcome of a dispute between these two non-debtors could not alter the Debtor’s “rights, liabilities, options, or freedom of action (either positively or negatively) . . . in any way [that] impacts upon the handling and administration of the bankrupt estate.” *In re Lemco Gypsum, Inc.*, 910 F.2d 784, 788 (11th Cir. 1990). Even if ICANN were somehow found liable, ICANN’s liability to Plaintiff could have no conceivable effect on the Debtor’s bankruptcy estate because, if for no other reason, there is no longer an “estate” to affect. *See In re Pickett*, 362 B.R. 794, 798 (Bankr. S.D. Tex. 2007) (“the debtor has already received a discharge in her Chapter 7 case; thus, there is no longer an estate.”).¹⁰ Accordingly, Plaintiff’s claims against ICANN are not “related-to” the Debtor’s bankruptcy estate.

Because Plaintiff’s claims against ICANN do not “arise under title 11,” and neither “arose in” nor are “related to” the Debtor’s bankruptcy proceeding, there is no bankruptcy

¹⁰ *See also In re Dierkes*, No. 05–60983, 2007 WL 5734794, at *7 (Bankr. N.D. Ga. Mar. 22, 2007) (holding that the bankruptcy court had no jurisdiction over state-law claims against debtor once the debtor was discharged; resolution of such claims could no longer affect the debtor’s estate because the estate had been fully administered); *In re Johnson*, No. 03-41916-JJR-13, 2010 Bankr. LEXIS 3559, at *9 (Bankr. N.D. Ala. Sept. 30, 2010) (same); *In re Germaine*, 152 B.R. 619 (B.A.P. 9th Cir. 1993) (concluding that post-discharge efforts to collect debt from debtor, even if successful, would not have reduced the assets of the estate).

jurisdiction over those claims under 28 U.S.C. § 1334. As such, these claims were not removable under 28 U.S.C. § 1452.

2. The Oregon Action was Improperly Removed Directly to the Bankruptcy Court instead of the Oregon District Court

A defendant's right to remove an action from state to federal court "is purely statutory and therefore its scope and the terms of its availability are entirely dependent on the will of Congress." *Global Satellite Commc'n Co. v. Starmill U.K. Ltd.*, 378 F.3d 1269, 1271 (11th Cir. 2004), (citation omitted). The bankruptcy removal statute, 28 U.S.C. § 1452, is like the general removal statute, 28 U.S.C. § 1441, in that both prescribe that a case or proceeding must be removed to the district court for the district in which the action to be removed is pending. 28 U.S.C. §§ 1441, 1452. Courts within the Eleventh Circuit and elsewhere have uniformly held that the district court for the district in which the action to be removed is pending is the only proper forum to which to remove the action under either statute. *See Global Satellite Commc'n Co.*, 378 F.3d at 1271; *Hollis v. Fla. State Univ.*, 259 F.3d 1295, 1299 (11th Cir. 2001) ("[section] 1441(a), by requiring removal to the district court for the district in which the state action is pending, properly fixes the federal venue in that district.").¹¹

¹¹ *See also In re S & K Air Power of Fla., Inc.*, 166 B.R. 193, 194 (Bankr. S.D. Fla. 1994) ("state court actions must be removed to the District Court for the district in which the case is pending [under section 1452]."); *In re Trafficwatch*, 138 B.R. 841, 843 (Bankr. E.D. Tex. 1992) (same); *Cook v. Shell Chem. Co.*, 730 F. Supp. 1381, 1382 (M.D. La. 1990) (section 1441 fixes proper venue for removed state court actions as "the district court of the United States for the district and division embracing the place where such action is pending"); 14C Charles A. Wright, Arthur R. Miller & E. Cooper, *Federal Practice and Procedure* § 3732 (4th ed. 2011) ("[t]he general removal statute, Section 1441 of Title 28, provides that the venue of a removed case is 'the district and division embracing the place where such action is pending.'"). There appears to be some tension within the Eleventh Circuit as to whether removing a proceeding to the wrong district is a jurisdictional, as opposed to merely procedural, defect. The *National Developers* court, which was followed by the court in *S & K Air Power*, held that an improper removal under the precursor statute to section 1452 deprived the destination court of subject matter jurisdiction. *In re Nat'l Developers, Inc.*, 803 F.2d 616, 620 (11th Cir. 1986) (direct removal of New York State action to Middle District of Alabama Bankruptcy Court was improper under section 1452's statutory precursor). At the same time, several subsequent 11th Circuit cases have clearly found that section 1441 is a venue-fixing statute, making defects in removal merely procedural defects. *See, e.g., Global Satellite Commc'n Co. v. Starmill U.K. Ltd.*, 378 F.3d 1269, 1271 (11th Cir. 2004); *Hollis*, 259 F.3d at 1299. In any event, since *National Developers* involved a request to remand based on the lack of bankruptcy court jurisdiction and not a request to retain jurisdiction under independent federal subject matter jurisdiction on diversity and federal question grounds, it is not controlling here.

The removal of the Oregon Action directly to the Bankruptcy Court in Florida was therefore defective and in contravention of the procedures mandated by 28 U.S.C. § 1452(a) and Bankruptcy Rule 9027(a)(1).¹² Pursuant to the plain language of both the statute and the rule, the Oregon District Court is the only court having proper venue for actions removed from an Oregon state court. Proper procedure required the Trustee to remove the Oregon Action to the Oregon District Court and then seek a transfer from the Oregon District Court to the Middle District of Florida, where the proceedings related to the Bankruptcy Proceeding would then have been referred to the Bankruptcy Court. *See National Developers*, 803 F.2d at 620; *S & K Air Power*, 166 B.R. at 194. Because the Trustee elected not to follow this procedure, the removal was defective and the claims against ICANN are improperly venued in the Middle District of Florida.

C. The Traditional Requirements for Withdrawal of the Reference Are Met

As established above, “cause” exists to withdraw the reference as to the claims against ICANN by virtue of the defective removal that has improperly placed ICANN in the Bankruptcy Court. However, even if this Court finds that the Oregon Action was properly removed to the Bankruptcy Court, the factors traditionally relied upon for determining whether to withdraw the reference fully support withdrawal under 28 U.S.C. § 157(d), which include: (i) the advancement of uniformity in bankruptcy administration; (ii) decreasing forum shopping and confusion; (iii) promoting the economical use of the parties’ resources; (iv) facilitating the bankruptcy process; (v) whether the claim is core or non-core; (vi) the efficient use of judicial resources; (vii) whether a jury demand has been made; and (viii) the prevention of delay.

Control Ctr., L.L.C. v. Lauer, 288 B.R. 269, 274 (M.D. Fla. 2002) (citing *Dionne v. Simmons (In*

¹² Bankruptcy Rule 9027(a)(1) provides, in relevant part: “(a) **Notice of Removal.** (1) *Where filed: form and content.* A notice of removal shall be filed with the clerk ***for the district and division within which is located the state or federal court where the civil action is pending . . .***” Fed. R. Bankr.P. 9027(a)(1) (emphasis added).

re Simmons), 200 F.3d 738, 742 (11th Cir. 2000); *In re Hvide Marine Towing, Inc.*, 248 B.R. 841, 844 (M.D. Fla. 2000)). Cause to withdraw the reference may be found “if one or more of these factors is present.” *United States v. Kaplan*, 146 B.R. 500, 504 (D. Mass. 1992); *see also Control Ctr., L.L.C. v. Lauer*, 288 B.R. 269 (withdrawing the reference on the basis that all but one claim in adversary complaint was non-core and the defendant was entitled to a jury trial). When each of these factors is considered, it is clear that the reference should be withdrawn.

1. None of the Claims against ICANN Are Core Or Non-Core Claims

Because a district court is obligated to review the findings of a bankruptcy court on non-core matters *de novo*, “a determination that a proceeding is non-core weighs in favor of transferring the matter to a district court.” *Control Ctr.*, 288 B.R. at 275. Under 28 U.S.C. § 157, core proceedings are the equivalent to those “*arising under title 11 or arising in a case under title 11*,” while ‘non-core’ proceedings are synonymous with those ‘otherwise related’ to the bankruptcy estate.” *Id.* at 276 (quoting *In re Toledo*, 170 F.3d at 1349)(emphasis added); *see also* 28 U.S.C. § 157(b)(1) and (c)(1).

As established above, the claims against ICANN did not “arise under title 11,” did not “arise in” and are not “related to” the Debtor’s bankruptcy proceeding. As such, the claims against ICANN are neither core nor non-core claims. This determination weighs heavily in favor of this Court withdrawing the reference over these non-bankruptcy claims.

2. There is No Risk of Forum-Shopping Here

ICANN’s request to withdraw the reference to the Bankruptcy Court does not represent an effort to “forum shop.” Indeed, as established above, this proceeding did not commence in the Bankruptcy Court and should properly be sent to the Oregon District Court, which is the only forum to which the Oregon Action could have been properly removed in the first instance. The

Bankruptcy Court has no countervailing interest in hearing the claims against ICANN,¹³ and given that the Bankruptcy Court does not have jurisdiction over the non-bankruptcy claims between non-debtor parties, this factor again weighs in favor of withdrawing the reference with respect to the claims against ICANN.

3. Withdrawal of the Reference Would Promote the Economical Use of the Parties' and Judicial Resources

The promotion of the economical use of the parties' and judicial resources are additional factors weighing in favor of withdrawal of the reference. *Control Ctr.*, 288 B.R. at 274. Here, withdrawal of the reference and transfer would promote efficiency by removing the cloud of the jurisdictional and procedural defects resulting from the improper removal to the Bankruptcy Court. A matter must be, at a minimum, related to a bankruptcy proceeding in order for a bankruptcy court to exercise any jurisdiction. *In re Happy Hocker*, 212 Fed. App'x. at 817. As established above, there is no "related-to" bankruptcy jurisdiction over the claims against ICANN. As such, the removal of the claims against ICANN was improper, raising procedural and jurisdictional questions regarding any actions taken with regard to the claims against ICANN by the Bankruptcy Court. Under these circumstances, withdrawal of the reference would promote judicial economy by ensuring that the claims against ICANN are heard by a court that clearly has subject matter jurisdiction.

4. ICANN is Entitled to a Jury Trial

Should the matter against ICANN continue beyond the pleading stage (which it cannot because there is no personal jurisdiction over ICANN), ICANN has a right to a jury trial.

ICANN's right to a jury trial is highly relevant to withdrawal of the reference and, by itself,

¹³ In fact, the issues before the Bankruptcy Court on the claims involving the Debtor Defendant and the Trustee both involve purely procedural issues (whether the claims violate the Discharge Injunction, and whether the Plaintiff failed to obtain leave from the Bankruptcy Court to sue the Trustee under the Barton Doctrine, respectively), and thus the Bankruptcy Court is not even being asked to address the merits of the claims as to these two defendants.

constitutes cause to withdraw the reference. *See In re Orion Pictures Corp.*, 4 F.3d 1095, 1101 (2d Cir. 1993) (“a district court might find that the inability of the bankruptcy court to hold the trial constitutes cause to withdraw the reference”). In the instant case, ICANN is entitled to a jury trial on all of Plaintiff’s claims.¹⁴ The Supreme Court has long recognized that, “as a general rule, monetary relief is legal in nature, and that claims for such relief give rise to a right to trial by jury.” *Control Ctr.*, 288 B.R. at 278 (citing *Feltner v. Columbia Pictures Television, Inc.*, 523 U.S. 340, 352, 1185 S. Ct. 1279, 140 L. Ed. 2d 438 (1998)). The claims against ICANN each pray for monetary relief. Moreover, it is indisputable that ICANN is entitled, at the very least, to a jury trial on Plaintiff’s claims alleging breach of contract. *See Ross v. Bernhard*, 396 U.S. 531, (1970) (finding a right to jury trial in a shareholder’s derivative suit because plaintiffs’ case presented legal issues of breach of contract and negligence); *In re Gunnallen Fin., Inc.*, No. BR. 8:10-AP-949-MGW, 2011 WL 398054, at *2 (M.D. Fla. Feb. 3, 2011) (defendant had a right to a jury trial on breach of contract claim). ICANN’s right to a jury trial, accordingly, provides additional and sufficient cause for withdrawal of the reference.¹⁵

5. None of the Remaining Permissive Withdrawal Factors Counsel Against Withdrawing the Reference

The remaining factors to consider when determining whether to withdraw the reference to the bankruptcy court, including the advancement of uniformity in bankruptcy administration, facilitating the bankruptcy process, and the prevention of delay, are not relevant as to the claims against ICANN. Thus, these remaining factors do not counsel against withdrawing the reference.

¹⁴ Plaintiff has also specifically requested a jury trial in her Complaint. Complaint at ¶ 175.

¹⁵ A bankruptcy court may conduct a jury trial only if it is “specially designated” to do so by the district court and all parties have consented. 28 U.S.C. § 157(e). To eliminate any doubt, ICANN does not consent to a jury trial in the Bankruptcy Court.

D. The Appropriate Remedy Upon Withdrawal of the Reference is Dismissal or Transfer to the Oregon District Court

As established above, withdrawal of the reference is called for in this case. Upon withdrawing the reference, this Court should either dismiss the claims against ICANN or transfer those claims to the Oregon District Court. *See* 28 U.S.C. §§ 1406(a), 1412.

As a threshold matter, while the Bankruptcy Court lacks subject matter jurisdiction over the claims against ICANN, the Florida District Court has independent federal question and diversity of citizenship jurisdiction over these claims. By virtue of Plaintiff's claims against ICANN under the ADA and FOIA, both federal statutes, this Court retains federal question jurisdiction under 28 U.S.C. § 1331. And diversity jurisdiction also exists. *See* 28 U.S.C. § 1332. Plaintiff is a resident of Oregon, Complaint at ¶ 1; and ICANN is a California non-profit public benefit corporation with its principal place of business in California. Atallah Decl. at ¶ 2. Furthermore, the Complaint seeks damages of more than \$5 million, which well-exceeds the minimum amount in controversy required for diversity jurisdiction. 28 U.S.C. § 1332(a).

Under 28 U.S.C. § 1406(a) “[t]he district court in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interests of justice, transfer such case to any district or division in which it could have been brought.” In the context of section 1441, numerous courts have held, based on the procedural nature of the defect resulting from proceedings being removed to the wrong district, that section 1406 contains the proper remedy for such defects. *See, e.g., Keeth v. State Farm Fire & Cas. Co.*, No. 10-13219, 2011 WL 479903, at *2 (E.D. Mich. Feb 7, 2011); *Shamrock Mfg. Co. v. Ammex Corp.*, No. CV-F-10-908, 2010 WL 3153976, at *8 (E.D. Cal. Aug. 9, 2010); *Mortensen v. Wheel Horse Prods., Inc.*, 772 F. Supp. 85, 89 (N.D.N.Y. 1991); *Cook*, 730 F. Supp. at 1382; *see also* 17 J. Moore, *Federal Practice* § 111.37 (4th ed. 2011) (“[w]hen the defendant mistakenly removes an action filed in

state court to the wrong district or division . . . the courts analogize the defect in the district court as ‘akin to an improper venue situation,’ and accordingly will transfer the action under Section 1406(a), the improper venue transfer statute, rather than remand the action for improvident removal.”). Removal to the wrong district under section 1452 has been similarly ruled to be a procedural defect. *See In re Trafficwatch*, 138 B.R. at 843.¹⁶ Accordingly, section 1406(a) should also be held to supplement section 1452, especially because section 1452 does not contain any similar remedy for an improperly venued removal. *See* 28 U.S.C. § 1452; *In re Micci*, 188 B.R. 697 (S.D. Fla. 1995) (assuming the applicability of 28 U.S.C. § 1406(a) to a case filed in bankruptcy court); *Thompson v. Greenwood*, 507 F.3d 416, 420 (6th Cir. 2007) (concluding that when a bankruptcy proceeding is improperly venued, section 1406, rather than section 1412, applies); *In re EDP Med. Computer Sys., Inc.*, 178 B.R. 57 (M.D. Pa. 1995) (same); *In re Sporting Club at Illinois Ctr.*, 132 B.R. 792 (N.D. Ga. 1991) (same).

But even if section 1406(a) did not apply, section 1412, which governs change of venue in bankruptcy cases, justifies a transfer in the interests of justice of the claims against ICANN to the Oregon District Court. 28 U.S.C. § 1412. ICANN has been dragged into an improper court by virtue of the Trustee’s defective removal. Prior to the removal, ICANN fully intended itself to remove the Oregon Action to the Oregon District Court. ICANN was unable to do so, however, because the Trustee filed its improper Notice of Removal first, and thereafter, the parties were prohibited from proceeding any further in the Oregon Action at the state level. *See*

¹⁶ While *National Developers* interpreted the same error under section 1452 to be a jurisdictional defect, potentially calling into question the applicability of the “venue” defect described in section 1406(a) to removals under section 1452, *National Developers* involved the statutory precursor to section 1452 under a previous version of the Bankruptcy Code that conferred jurisdiction over bankruptcy cases and proceedings directly upon the bankruptcy courts and did not involve a situation, as here, where the District Court has independent subject matter jurisdiction without regard to whether there is bankruptcy jurisdiction. 803 F.2d at 620; *see Northern Pipeline Const. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982). Moreover, subsequent to *National Developers*, the Supreme Court has stated that the general removal provisions of sections 1441, 1446–48, supplement the bankruptcy removal provision of section 1452. *Alexander v. Cintas Corp.* (*In re Terry Mfg. Co. Inc.*), 324 B.R. 147, 151–152 (Bankr. M.D. Ala. 2005) (discussing *Things Remembered, Inc. v. Petrarca*, 516 U.S. 124, 129 (1995)).

Fed. R. Bankr. P. 9027(c). Accordingly, the interests of justice demand that the claims against ICANN be transferred to the Oregon District Court, which is the court to which these claims should have been removed. *Terry Mfg. Co. v. Steel Law Firm P.C. (In re Terry Mfg. Co. Inc.)*, 323 B.R. 507, 509 (Bankr. M.D. Ala. 2005); *In re Sporting Club at Illinois Ctr.*, 132 B.R. 792.

CONCLUSION

For the reasons set forth herein, ICANN respectfully requests that the Court enter an order (i) withdrawing the reference of the claims against ICANN from the Bankruptcy Court to the Florida District Court; and (ii) either dismissing the claims against ICANN or transferring them to the Oregon District Court.

DATED: May 20, 2011

Respectfully submitted,

By: /s/ Maria Ruiz

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Attorneys for Defendant
INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing memorandum of law has been provided by regular U.S. Mail or the Court's CM/ECF system on the 20th day of May, 2011, to: Charles F. Steinberger and Pamela J. Perry, 19302 69th Avenue East, Bradenton, FL 34211; Christopher D. Smith, Esq., 5391 Lakewood Ranch Blvd., #203, Sarasota, FL 34240; Denise Subramaniam, 2850 SW Cedar Hills Blvd. #351, Beaverton, OR 97005 and at 13865 SW Walker Road, Beaverton, OR 97005; Susan K. Woodard, Trustee, PO Box 7828, St. Petersburg, FL 33734-7828; Herbert Donica, Counsel for Trustee, 106 S. Tampania Ave., Suite 250 Tampa, FL 33609 and Internet.bs Corp., c/o Ernesto Gongora, CTO, 98 Hampshire Street, N-4892 Nassau, The Bahamas.

/s/ Maria H. Ruiz _____

Maria H. Ruiz
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Exhibit A

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

Charles P. Steinberger and
Pamela J. Perry

Case No. 8:10-bk-19945-KRM
Chapter 7

Debtors.

_____ /

Denise Subramaniam,

State of Oregon
Washington County Circuit Court
Civil Action No. C11-1899-CV

Plaintiff,

vs.

ICANN, Susan K. Woodward,
Charles Steinberger, and Internet.bs,

Adv. No. 8:11-ap-_____-KRM

Defendants.

_____ /

NOTICE OF REMOVAL

SUSAN K. WOODWARD, the Chapter 7 Trustee (the “**Trustee**”) for the bankruptcy estate of Charles P. Steinberger and Pamela J. Perry (the “**Debtors**”), by and through her undersigned counsel, pursuant to Fed. R. Bankr. P. 9027, hereby gives notice of removal of the above-referenced state court action, and respectfully states as follows:

1. The removed action is an action relating to an alleged Breach of Contract by the Debtor and other parties, and the case was originally filed in the Circuit Court of Washington County, State of Oregon, on or about March 31, 2011 (the “**State Court Action**”).

2. The Debtors filed their voluntary petition for relief under Chapter 7 of the Bankruptcy Code on August 19, 2010, Case No. 8:10-bk-19945-KRM, Middle District of Florida, Tampa Division.

3. This Court has jurisdiction over the removed action pursuant to 28 U.S.C. § 1334.
4. The State Court Action may be removed to this Court pursuant to 28 U.S.C. 1452.
5. Allegations in the State Court Action concern an alleged breach of contract.
6. Upon removal of the cause of action, the proceeding is a core proceeding.
7. Trustee hereby consents to entry of final order(s) or judgment by this Court.
8. Copies of all available process and pleadings in the State Court Action, or as may be limited by the Court, will be supplemented soon hereafter.

DONICA LAW FIRM, P.A.
Counsel for Trustee
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E-mail: herb@donicalaw.com

/s/ Herbert R. Donica
Herbert R. Donica, Esq.
Florida Bar No. 841870

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Removal has been provided by regular U.S. Mail or the Court's CM/ECF system on the 26th day of April, 2011, to: **Charles F. Steinberger and Pamela J. Perry**, 19302 – 69th Avenue East, Bradenton, FL 34211; **Christopher D. Smith, Esq.**, 5391 Lakewood Ranch Blvd., #203, Sarasota, FL 34240; **Denise Subramaniam**, 2850 SW Cedar Hills Blvd. #351, Beaverton, OR 97005-1393; **ICANN**, c/o Samantha Eisner, Esq., Senior Counsel, 4676 Admiralty Way #330, Marina del Rey, California 90292 and **Internet.bs Corp.**, c/o Ernesto Gongora, CTO, 98 Hampshire Street, N-4892 Nassau, The Bahamas.

/s/ Herbert R. Donica
Herbert R. Donica, Esq.

Attachment 1 to Ex. A.

Exhibit A

Copy for Charles Steinberger

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF WASHINGTON

C11-1899CV

Plaintiff:	)	Case No. _____
Denise Subramaniam	)	PLAINTIFF'S COMPLAINT
	)	BREACH OF CONTRACT
v.	)	SPECIFIC PERFORMANCE
Defendants:	)	\$5,887,500
ICANN,)	
Susan K. Woodard,)	
Charles Steinberger,	)	CLAIM NOT SUBJECT TO
Internet.bs	)	MANDATORY ARBITRATION

JURISDICTION AND VENUE

1. The Oregon Circuit Court has jurisdiction over this complaint and Washington County is an appropriate venue. The Plaintiff lives and does business in Washington County, Oregon.
2. Plaintiff is a disabled person. She is currently impoverished. Her poverty is a direct result of her disabilities and due to the defendants' breach of contract with her.
3. Plaintiff is a woman and sole proprietor of a very small technology business; Plaintiff's business qualifies as a federal Women-Owned Small Business (WOSB); an Oregon Women-Owned Enterprise (WOE) and an Oregon DBE (economically disadvantaged business enterprise.)
4. Due to these disadvantages, Plaintiff's business is at a much greater risk of failure when she incurs damage due to a breach of contractual obligations by a powerful monopolistic seller.
5. Plaintiff entered into contracts with the defendants as part of her business activities in Oregon. Plaintiff bought and registered domain names while in Oregon sold by the defendants as part of defendants' business activities in Oregon through the internet or World Wide Web (WWW).
6. Defendant Internet Corporation for Assigned Names and Numbers (ICANN) has a significant presence in and connection with Oregon, every Oregon government office, Oregon business, Oregon non-

- profit or Oregon citizen with a website ultimately bought their domain name (i.e. the address for their website) from ICANN; and is a member of the public ICANN serves. All of these Oregon residents are wholly dependent on ICANN to perform on its contractual obligations and its expressed and implied warranties regarding its accredited registrars and its protection of public interest.
7. An Internet business can be subject to jurisdiction for causing an injury in the state claiming jurisdiction. Courts have upheld that if someone uses the Internet to cause an injury in one state, the person causing the damage may be sued in the state where the injury occurred.
 8. A Pennsylvania court was able to obtain personal jurisdiction over a California Internet service provider that had 3,000 Pennsylvania subscribers. The act of processing the Pennsylvania applications and assigning passwords was sufficient to demonstrate the minimum contacts needed for personal jurisdiction. *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa 1997).
 9. A Texas court gained personal jurisdiction over an out-of-state online gambling enterprise because the gambling operation entered into contracts with Texas residents to play online gambling games, sent emails to the Texas residents, and sent winnings to Texas residents. *Thompson v. Handa-Lopez, Inc.*, 998 F. Supp. 738 (W.D. Tex. 1998).
 10. Committing a tortious act over the Internet should bring about jurisdiction within the state at whose residents the tortious act was directed. The United States Supreme Court held in the 1984 case of *Keeton v. Hustler Magazine, Inc.* that a New Hampshire court properly exercised personal jurisdiction over an Ohio company in a libel suit on the grounds that New Hampshire maintained an interest in discouraging libel against its citizens.
 11. The Supreme Court also held in the companion case *Calder v. Jones* that a California court could exercise personal jurisdiction over an author and an editor, both resident in Florida, for libeling a California resident in an article published in the NATIONAL INQUIRER.

12. Furthermore, defendant ICANN is a multi-million dollar corporation incorporated in California with sole global authority over domain names required for all websites. ICANN has grievously harmed individuals similar to Plaintiff in the past through similar breach of contract and failure to perform on its contractual obligations as well as its stated responsibility to protect the public interest as a powerful monopoly. These similarly harmed individuals brought a class action against ICANN, (Martinez v. RegisterFly et al), but ICANN has never been legally held accountable for its gross misconduct and negligence and the damages it has caused to thousands of plaintiffs in earlier cases because ICANN claims jurisdiction in California Superior Court.
13. In numerous complaints filed against ICANN the California Superior Court has consistently ruled in favor of ICANN. The lone exception was where the plaintiff was another multi-million dollar corporation.
14. The California Superior Court appears to be biased in favor of ICCAN; and ICANN appears to have wielded undue influence over the California courts.
15. Therefore any motion ICANN may make to move jurisdiction and venue to a California court would be highly prejudicial and discriminatory toward the Plaintiff if granted. Such an action would also result in the Plaintiff being denied her right to due process under the U.S. Constitution. (U.S. Const. amend. XIV, sec. 1)
16. Plaintiff is forced to represent herself pro se due to her poverty. This places a considerable disadvantage on her. Jurisdiction or venue in any other court would cause Plaintiff severe hardship and would result in further damages and discrimination against her as a disabled person and as a poor person.
17. Plaintiff has attempted to the best of her abilities to research the appropriate laws and legal procedure, but finds it difficult to understand the material provided by the Washington County Law

Library and is uncertain if she correctly referenced the laws pertaining to her claim in this complaint or followed all the proper procedures. Therefore Plaintiff prays the court will not disqualify or otherwise discriminate against her claims due to her lack of legal expertise and experience.

18. Plaintiff prays that should an attorney come forward at a future date after the filing of this complaint willing to take her case on contingency; that the court shall in no way bar or otherwise prejudice such attorney from modifying or amending or otherwise altering Plaintiff's complaint to correct errors and/or omissions she may have made through ignorance of law, legal procedure, legal process, legal writing or other requirements that would be known and understood by a trained educated legal professional.

CLAIM FOR RELIEF OF DAMAGES DUE TO BREACH UNDER ORS §72.1010 et seq.

19. In 2003 Plaintiff contracted as a domain name reseller or third party domain registrar with a now insolvent incorporation, 4Domains Inc., owned by defendant Charles Steinberger. Plaintiff's reseller contract allowed her to buy domain name registrations wholesale and resell them to her business clients.
20. 4Domains Inc. contracted with ICANN to sell domain names on behalf of ICANN as an ICANN accredited registrar.
21. ICANN is a monopoly. ICANN is the sole authority over domain name registrations worldwide.
22. Internet.bs is an ICANN accredited registrar that was given the Plaintiff's domain registration reseller account and domain registration data by ICANN after ICANN determined 4Domains was insolvent.
23. Plaintiff and her clients are "buyers" and ICANN, 4Domains, and Internet.bs are each a "seller" as defined by ORS §72.8010: Definitions for ORS §72.8010 to §72.8200.
24. The Plaintiff and defendants entered into legally binding contracts with each other regulated by ORS §72.8010 et seq.

25. Because ICANN is a monopoly any business or individual desiring to purchase a domain name for the purpose of establishing and operating a website has no choice but to buy and register domain names from one of ICANN's accredited registrars.
26. ICANN makes specific public claims regarding its accreditation policy and the allowable use of the term "ICANN accredited registrar." These claims constitute express and implied warranties regarding performance expectations for ICANN and its accredited registrars; as per ORS §72.8010 to §72.8200.
27. ICANN started out as a "government sanctioned" monopoly; then became an unregulated monopoly in recent years. Due to ICANN's monopolistic nature, public interest demands a higher than normal standard of performance for ICANN in its:
 - (a.) contractual obligations;
 - (b.) stated duties to the public;
 - (c.) legal obligation to provide transparency to the public regarding its activities; and
 - (d.) its stated role to protect fairness, competition and free enterprise on the internet or WWW.
28. Furthermore, due to ICANN's status as a monopoly with tremendous public responsibility to ensure fairness over the internet, its contractual obligations with its accredited registrars are not contractual obligations purely between ICANN and its individual accredited registrars, but also between ICANN and third party registrars that are fully dependant on the validity of ICANN's accreditation practices, policies and actions; and between ICANN and the general public who are also fully dependent on ICANN to uphold its contractual obligations.
29. ICANN's contract with its accredited registrars, titled Registrar Accreditation Agreement and ICANN's Statement of Registrar Accreditation Policy, both available on ICANN's website, and attached to this complaint as EXHIBIT A and EXHIBIT B respectively, state that minimum requirements for a registrar to obtain ICANN accreditation include:

- (a.) Financial solvency;
 - (b.) The ability to maintain robust software adequate to manage third party domain name registrations;
 - (c.) The ability to provide adequate technical and customer support;
 - (d.) An active commercial insurance policy adequate to provide relief for damages caused when an ICANN accredited registrar fails to perform its expected duties or otherwise causes damages to third parties while accredited by ICANN;
 - (e.) Assurance that that the registrar's obligations to its customers and to the registry administrator will be fulfilled in the event that the ICANN accredited registrar goes out of business.
30. In addition, ICANN's contract with its accredited registrars requires ongoing compliance with ICANN's requirements for accreditation; and requires registrars to inform ICANN of insolvency so that ICANN can transfer its domain registration data to another ICANN accredited registrar to prevent damages to third parties (i.e. resellers or third party registrars and individual domain name owners like the Plaintiff and her clients.)
31. Defendant Charles Steinberger did not inform ICANN of 4Domain's insolvency prior to filing bankruptcy; and thereby breached his contract with ICANN. Charles Steinberger knew or should have known the risk of damage his breach would cause 4Domains' third party registrars, like the Plaintiff.
32. Defendant Charles Steinberger did not keep active a commercial insurance policy adequate to provide relief for such damages; and thereby further breached his contract with ICANN.
33. Plaintiff's damages would have been completely avoided had the defendant Charles Steinberger informed ICANN of 4Domains' insolvency prior to his filing bankruptcy.
34. Furthermore, Plaintiff learned from defendant Charles Steinberger's bankruptcy attorney, Christopher D Smith, Smith & Dine, P.A., 5391 Lakewood Ranch Blvd, Suite 203, Sarasota, FL 34240,

that a tentative buyer for 4Domains existed; the deal fell through and the Bankruptcy Trustee, Susan K. Woodard, PO Box 7828, St. Petersburg, FL 33734-7828 decided to terminate the business operations and liquidate the assets of 4Domains Inc.

35. Defendant Susan K. Woodard liquidated assets that did not belong to 4Domains Inc. or to Charles Steinberger; therefore she had no legal right to do so. According to Charles Steinberger's bankruptcy attorney defendant Susan K. Woodard was warned that her action would harm innocent third parties like the Plaintiff.
36. Therefore Plaintiff has a right to compensation for damages from defendant Charles Steinberger pursuant ORS §72.7140, §72.7150, §72.7160 et al.
37. Defendant Charles Steinberger's bankruptcy does not bar the Plaintiff's claim against his personal property and future earnings to compensate for damages he caused because:
 - (a.) his bankruptcy directly caused the Plaintiff's damages;
 - (b.) he simply had to inform ICANN of his company's insolvency prior to filing bankruptcy to prevent damage to the Plaintiff and her clients;
 - (c.) Charles Steinberger has a long history of irresponsible business practices; he needs to be held accountable for his actions so that in the future he might reconsider making decisions that will place other small businesses at risk for damages.
38. Defendant Susan K. Woodard made a choice to liquidate assets in Charles Steinberger's bankruptcy that belonged to innocent third parties, including the Plaintiff;
39. Therefore Plaintiff has a right to compensation for damages from defendant Susan K. Woodard pursuant ORS §72.7140, §72.7150, §72.7160 et al.

40. Furthermore the circumstances surrounding the insolvency and eventual bankruptcy of 4Domains and ICANN's lax regulation of its accredited registrars pose a serious potential **threat to U.S. HOME LAND SECURITY** because:
- (a.) ICANN's accreditation requirements also state that an ICANN accredited registrar must notify ICANN in the event of a transfer of business ownership.
 - (b.) ICANN was not notified that 4Domains was insolvent, nor that 4Domains was attempting to find a buyer for its insolvent business.
 - (c.) There is no reason to believe that any other ICANN accredited registrar would of its own accord behave differently than 4Domains has.
 - (d.) Any desperate ICANN accredited registrar in a position similar to 4Domains might sell its business to a terrorist group. Considering ICANN's lax validation policies regarding verification of compliance with its accreditation requirements, ICANN would be none the wiser, thus placing U.S. commerce at the mercy of a terrorist take down of websites owned by U.S. based companies.
41. The circumstances stated above and the threats they pose are avoidable if ICANN performed due diligence to assure the ongoing compliance of its accredited registrars.
42. Furthermore, ICANN chooses not to properly regulate compliance of its accredited registrars because this choice unduly enriches ICANN at the expense of Plaintiff and others like her. It costs ICANN less to fight occasional lawsuits brought against it for its failure to perform due diligence than to properly audit its accredited registrars for compliance; especially since ICANN has wielded undue influence on California courts and knows it will never lose a case or be held accountable for damages.
43. ICANN's failure to uphold the obligations of its contract with the public and instead enrich itself results in considerable public harm. Economies are damaged when thousands of websites become

unavailable on the WWW due to ICANN's failure to properly regulate compliance of its accredited registrars; ICANN's choice to *unduly enrich* itself rather than perform its duty to the public creates a domino effect of small business failure and loss of jobs.

44. Plaintiff and the public has the right to adequate assurance of performance based on the contract(s) between the defendants and ICANN under ORS §72.6090.
45. Although Plaintiff's damages were initially caused by defendant Charles Steinberger's negligence and breach of contractual obligations with ICANN; those damages could still have been wholly prevented at least three months prior to Charles Steinberger's bankruptcy, and on multiple occasions thereafter, had ICANN acted reasonably and fulfilled its contractual obligations to Plaintiff and to the public with regard to its duty to verify compliance of its accredited registrars.
46. ICANN failed to perform due diligence and breached its contractual obligations to Plaintiff as a third party domain name registrar, a registered domain name owner, a commercial enterprise doing business over the internet and as a member of the general public.
47. Plaintiff has the right to adequate assurance of contractual performance and to performance based on express and implied warranties by ICANN under ORS §72.6090.
48. Defendant ICANN has a contractual obligation and responsibility to public interest to assure its accredited registrars meet requirements for ICANN accreditation to prevent damages like those suffered by the Plaintiff and her clients.
49. In **March 2010** Plaintiff filed a complaint with ICANN against 4Domains. Plaintiff's complaint stated that:
 - (a.) Reseller or third party registrar software provided by 4Domains for the purpose of renewing registered domain names failed. This failure prevented Plaintiff from renewing the domain

name lacurrencyexchange.com in behalf of her client, World Banknotes, a single proprietor minority owned very small business enterprise.

- (b.) Plaintiff logged numerous support tickets with 4Domains over a six week period. 4Domains support staff failed to respond to these requests in a timely and professional manner;
- (c.) Plaintiff was unable to reach 4Domains by phone as she had been able to do in the past;
- (d.) As a result, Plaintiff was unable to renew her client's registered domain name and it expired;
- (e.) As a result, Plaintiff's client's business website became unavailable on the WWW.

50. A registered domain name is the address for a website. Take away the address for a website and customers and visitors can no longer find the website. Email can no longer be sent or received through the domain/website. The longer a website's address or domain name is unavailable the greater the damage to the website's owner.
51. Plaintiff's primary business functions are website development, website and database hosting, and webmaster and SEO services. She offers domain name registration to as a courtesy service and does not make profit on the registration of domain names.
52. However, registration of domain names is an essential part of Plaintiff's business. A registered domain name is a requirement for all websites, as such; it is a service she must offer to be competitive.
53. Shortly after Plaintiff filed her **March 2010** complaint with ICANN against 4Domains she connected with Charles Steinberger through LinkedIn, an online social media network for professionals. Plaintiff asked this defendant to personally look into the problem and expedite the renewal of her client's expired domain name. This was done.

54. The domain name was expired for three days, so her client's website was unavailable to his customers and potential customers for three days. Plaintiff lost her client's account, and its revenue, as a result. She also must repay revenue received from this client.
55. In **March 2010** Plaintiff did not know or understand the contractual obligations of ICANN accreditation; nor did she understand the expressed and implied warranties inherent in these contracts and the other written documents pertaining to ICANN's responsibilities towards the public interest.
56. However, ICANN definitively knew the risks of noncompliance and the potential damage it could cause to third party domain registrars and domain name owners, like the Plaintiff and her clients, who registered their domains under 4Domains. The very fact that ICANN accreditation requires an active commercial insurance policy to cover such damages proves ICANN's knowledge of such risk.
57. In **March 2010** ICANN took no further action to verify whether 4Domains was still compliant with its accreditation contract; when in fact ICANN knew or should have known there was a high probability that 4Domains was no longer compliant. Therefore; ICANN failed to perform reasonable due diligence to assure 4Domains was compliant.
58. In **July 2010** Plaintiff again filed a complaint with ICAAN against 4Domains for failure to perform. ICANN's handling of this second complaint is the cause for breach of contract and breach of warranties; and these breaches ultimately caused the Plaintiff's damages.
59. Between **April and July 2010** the Plaintiff continued to experience problems with 4Domains and evaluated other ICANN accredited registrars with intent to transfer her reseller account and her registered domains.
60. Plaintiff is disabled, and services like 24 hour phone support and 24 hour live chat support better accommodate her disabilities.

61. Plaintiff's disabilities have worsened over the past few years. Software robust enough to allow her to set up sub-accounts for her clients to take more responsibility for managing their own domain names would also better accommodate her disabilities. These features were important in her selection criteria for a new ICANN accredited registrar.
62. In **July 2010** Plaintiff contracted as a reseller with another ICANN accredited registrar, Spirit Domains (The Registry at Info Avenue, LLC d/b/a Spirit Telecom) that met all the criteria she deemed essential to accommodate her special needs as a disabled person, and as a disabled very small business owner.
63. Plaintiff started transferring her own and her clients' 73 domain names away from 4Domains to Spirit Domains. 4Domains failed to release Plaintiff's domains to the gaining registrar as required by 4Domains accreditation contract with ICANN.
64. In **July and August 2010** Plaintiff filed three complaints with ICANN. However ICANN only has a record of one complaint on or around **Aug 21, 2010**. This is most likely because ICANN staff combined the three complaints into one in its database retaining the latest date.
65. It should be noted that defendant Charles Steinberger bankruptcy case was filed on **August 19, 2010**.
66. ICANN had motive to combine Plaintiff's three separate complaints into the one with the latest date to give the appearance that she filed her complaints after the Steinberger bankruptcy was filed. This was not the case.
67. In the Plaintiff's complaints made to ICANN on or about **July 21 to Aug 21**; and in her numerous phone calls and emails to ICANN between **July 2010 and November 2010** she:
 - (a.) Provided ICANN with enough information to make an immediate determination that 4Domains was no longer compliant with ICANN accreditation requirements. This information included:

- i. Phone logs demonstrating that 4Domains phone numbers listed on ICANN's website and elsewhere on the internet resulted in messages that the number was no longer in service;
 - ii. Logs of Google searches Plaintiff performed on the physical addresses for 4Domains provided to ICANN and located elsewhere on the internet. All these addresses proved to be invalid.
 - iii. Logs of Google searches Plaintiff performed on 4Domains CEO and owner, Charles Steinberger that showed he was involved in several questionable and possibly fraudulent business ventures. Charles Steinberger was recorded as an owner of a securities investment company in Florida that went bankrupt. He also was listed as an owner of several other internet related business that all shared the same phone numbers and physical addresses as the ones listed for 4Domains.
 - iv. Google maps and logs of phone calls Plaintiff made to businesses located next door to the known addresses for 4Domains. Plaintiff phoned a dozen such businesses and asked if 4Domains or any of Charles Steinberger's other businesses were located at the addresses provided; or if they ever had been. In every case the answer was "No."
- (b.) Informed ICANN that many of her registered domains were in danger of expiring;
 - (c.) Informed ICANN that if these domain names expired it would cause her and to her clients, also very small businesses, and/or non-profit organizations and/or individuals, severe financial damage.
 - (d.) Informed ICANN that mass expiration of her registered domain names could result in the failure of her small business and her clients' small businesses.

- (e.) Informed ICANN that stress caused by mass expirations of her and her clients' domain names and fear of serious financial consequences were causing her to experience further health problems.
68. In fact Plaintiff was bedridden from the end of **August**, through all of **September and October** and part of **November 2010** due to this stress and subsequent health failure caused by this stress.
69. Instead of expediting its investigation, ICANN staff told the Plaintiff they had to follow its policies to investigate 4Domain's compliance. ICANN staff assured Plaintiff that if 4Domains was found non-compliant her expired domain names would be reinstated.
70. ICANN took several weeks to investigate whether 4Domains was still compliant. During this time the Plaintiff could neither renew nor transfer her registered domains; they began to expire; and continued to expire until a **total of 21 domain names expired**.
71. To date ICANN as not reinstated a single domain name lost by Plaintiff and her clients.
72. Instead, many of Plaintiff's and her clients' domain names have been acquired by their competitors; or worse.
73. Plaintiff and/or her clients owned their domain names for many years. They invested in the websites these domain names pointed to. These websites enjoyed first page first position in Google, Yahoo and other search engines for many years due to the Plaintiff's website development and ongoing SEO efforts; services for which her client's paid or for which she herself invested.
74. Plaintiff and her clients invested in advertisements that used the domain names (i.e. addresses for their websites);
75. Customers and potential customers used these domains to locate these websites and learn more about Plaintiff's business or activities and that of her clients.

76. These domains (i.e. website addresses) now take these customers and/or supporters to websites belonging to competitors and other entities that are now reaping the rewards of the high SEO achieved through Plaintiff's efforts.
77. Plaintiff and her clients lost years of investment in skilled labor; SEO services, advertisements etc due to ICANN's failure to perform its contractual obligations and its implicit and explicit warranties to the Plaintiff and her clients, as a third party registrar of 4Domains; as domain name registrants and as members of the general public.
78. If ICANN had performed due diligence to assure that 4Domains was compliant with its accreditation contract back in **March 2010** when Plaintiff first brought the problems with 4Domains to ICANN's attention, then Plaintiff and her clients would not have suffered any damages.
79. If in **August 2010** ICANN had made a reasonable evaluation of the evidence provided by Plaintiff regarding 4Domains and reviewed its past history of complaints against 4Domains and expedited its investigation of 4Domains compliance, then the Plaintiff and her clients would not have suffered damages.
80. ICANN had multiple opportunities between **August 2010 and November 2010** to act in a way as to prevent the initial damages and further damages to Plaintiff and her clients, but ICANN consistently failed to do so.
81. ICANN displayed a callous lack of concern for the Plaintiff's dilemma caused through no fault of her own; ICANN failed to respond in an appropriate way that would have prevented damages to the Plaintiff and to her clients; and
82. Furthermore, ICANN has demonstrated through its handling of Plaintiff's complaints against 4Domains that the concerns raised by numerous public interest groups regarding ICANN's lack of accountability are valid; these concerns:

- (a.) Are well documented throughout the internet;
 - (b.) Are voiced by groups affiliated with prestigious Universities and Law Schools including:
Harvard and Cornell;
 - (c.) Are voiced by professional groups with stated missions to protect public interest specific to
very small businesses, non-profit organizations and individuals owning websites and using
their personal names as their domain names;
 - (d.) Specify that ICANN caters to the concerns of big multi-million dollar corporations and
governments (i.e. BIG money) at the expense of small business, non-profit organizations and
individuals;
 - (e.) Specify that ICANN's lack of accountability to the public is a cause for security concerns.
83. ICANN does not permit inclusion of public interest groups and groups that specifically represent the
interests of small business and non-profit organizations on the internet or the interests of individuals
with websites on its Board of Governance Committee.
84. FURTHERMORE it is highly unlikely that Plaintiff was the only third party registrar and/or registered
domain owner who filed complaints against 4Domains for failure to perform prior to its CEO filing
bankruptcy.
85. Plaintiff requested and was denied ICANN's records pertaining to other complaints filed against
4Domains. ICANN's failure to provide the requested information is further addressed in the Plaintiff's
CLAIM FOR DAMAGES UNDER THE FREEDOM OF INFORMATION ACT, 5 USC §552 et al
86. ICANN, as the only authority and monopolized source for domain name registrations, is vested with a
public interest responsibility to perform due diligence to assure ongoing compliance of its accredited
registrars and to protect public interests on the WWW.

87. In **September and October 2010** Plaintiff asked a selection of ICANN accredited registrars about whether ICANN regularly audited them for compliance. Not one of the registrars she spoke with had ever been audited by ICANN.
88. Plaintiff requested and was denied ICANN's records pertaining to regular compliance audits of ICANN's accredited registrars. ICANN's failure to provide the requested information is further addressed in the Plaintiff's CLAIM FOR DAMAGES UNDER THE FREEDOM OF INFORMATION ACT, 5 USC §552 et al
89. All withstanding, Plaintiff THEREFORE has a right to damages from defendant ICANN pursuant ORS §72.7140, §72.7150, §72.7160 et
90. In the event that damages are unrecoverable from defendants Charles Steinberger and Susan K. Woodard, then defendant ICANN shall be held fully accountable because ICANN had ample opportunity to prevent damages to the Plaintiff and to her clients after defendant Charles Steinberger breached his contractual obligations with ICANN, and after defendant Susan K. Woodard liquidated assets not belonging to defendant Charles Steinberger and BEFORE damages were incurred by Plaintiff and her clients.
91. Furthermore, Plaintiff has a right to include her clients' damages in Plaintiff's claim against ICANN because ICANN's rules have prevented her clients from seeking legal restitution for their own damage from anyone but the Plaintiff.
92. THEREFORE Plaintiff's claim includes damages incurred by her clients as a result of ICANN's breaches.
93. Additionally ICANN's policy regarding domain name disputes is unconstitutional as it has the impact of discriminating against the poor. ICANN's policy requires a \$1,500 minimum fee for reach domain name dispute. Under ICANN's policy Plaintiff would be required to pay \$31,500 to reclaim the domain names she lost, through no fault of her own, but directly caused by ICANN's failure to

perform and its blatant negligence towards its responsibilities to the public; and is the direct result of ICANN's desire to unduly enrich itself in lieu of performing its contractual obligations.

DAMAGES RESULTING FROM FIRST CLAIM

94. The following list includes domain names owned by Plaintiff and her clients that expired due to ICANN's breaches of contract and warranty:

- (a.) antiquebusinesses.com
- (b.) americantaxresearch.org
- (c.) automobilebusinesses.com
- (d.) bengalurubusinesses.com
- (e.) bangaloreresidency.com
- (f.) bestsaasprovider.com
- (g.) billsizemore.com
- (h.) ddln-construction-consulting.com
- (i.) expertdbolutions.com
- (j.) help4chemicalsensitiv.org
- (k.) indiasmallbusinesses.com
- (l.) number1website.com
- (m.) oregonians4honestelections.com
- (n.) oregonians4honestelections.net
- (o.) oregonsmallbusinesses.com
- (p.) ourwebsitedemos.com
- (q.) pms2.com
- (r.) raiseprofits.com
- (s.) unitedstatesbusinesses.com
- (t.) voice4americans.org
- (u.) voice4americans.com

95. Of these original domain names that expired, the Plaintiff was ultimately able to recover americantaxresearch.org; bestsaasprovider.com; ddln-construction-consulting.com; expertdbolutions.com; help4chemicalsensitiv.org; raiseprofits.com; and voice4americans.org.

96. However, recovery of the domains names does not constitute recovery of damages caused due to their expiration and the long-term unavailability of the websites they pointed to on the WWW.

97. The value of a domain name is not the cost of its registration, but the value of the website the domain name points to (i.e. is the address for); the search engine positioning achieved for the domain name through the website's content and through the website developer's SEO activities.
98. The websites for each of the recovered domain names were unavailable to Plaintiff and to her clients' customers, potential customers, supporters, subscribers, and other visitors searching for them online through the WWW for periods of a month or more. This also means no emails could be delivered through these domains. This unavailability caused damages including but not limited to:
- (a.) a decline in the websites' SEO positioning;
 - (b.) lost sales and customer or constituent interaction due to undelivered email;
 - (c.) loss of revenue and growth in customer base;
 - (d.) loss of credibility and visitor trust resulting in lower visitor to customer conversion rates.
99. It will take hours of skilled labor over time to recover these losses. Damages sustained by Plaintiff and her clients have a long-term affect on their business success.
100. THEREFORE Plaintiff requests damages for herself and for her clients, who own the above domain names, in the amount of \$20,000/domain, for a total of \$120,000 for a the expiration of the domains and the temporary unavailability of bestsaasprovider.com; ddln-construction-consulting.com; expertdbsolutions.com; help4chemicalsensitivty.org; raiseprofits.com; and voice4americans.org.
101. Development costs alone for americantaxresearch.org website exceeded \$40,000. This domain name and its website have belonged to a non-profit client of the Plaintiff, American Tax Research Foundation since 2006. The website is dynamic (database driven through visitor interaction) with more than **1000 pages of content**. Prior to the expiration of its domain name, several hundred pages of this website's content enjoyed first page first position in Google and other search engines for

specific keywords and phrases. Extensive SEO services performed by Plaintiff and paid for by the client will need to be redone.

102. Plaintiff has reports and other documentation created since 2006 for Plaintiff's client specific to this website's development and its SEO performance to substantiate the above facts.

103. Damages include but are not limited to:

- (a.) lost credibility;
- (b.) lost visitor activity and reduction of visitor to customer conversions;
- (c.) lost SEO positioning;
- (d.) lost advertisement benefit and advertising expenses;
- (e.) and any other damages due to long-term unavailability of this website.

104. Restitution of \$500,000 is requested for the above mentioned damages.

105. FUTUREMORE from the date this complaint is filed an interest rate of 10% shall accrue monthly on any and all unpaid damages.

106. The Plaintiff has for more than seven years personally owned the domain names antiquebusinesses.com; automobilebusinesses.com; bengalurubusinesses.com; indiasmallbusinesses.com; oregonsmallbusinesses.com; and unitedstatesbusinesses.com.

107. These domain names all pointed to niche web portals developed by the Plaintiff. Considerable development investment and SEO effort went into these web portals and they all enjoyed first page, first position in Google, Yahoo and other search engines.

108. A web portal refers to a website that's purpose is to be a starting point for internet users searching for specific information and/or a broad array of resources and services, such as directories, forums, news, weather, online classifieds, localized information, categorized information, phone and map information, and community forums, online auctions and online shopping malls, etc.

109. Companies with portal sites have attracted stock market investor interest because portals are viewed as able to command large audiences that in turn translate to a large number of advertising viewers.
110. Plaintiff's web portals residing on the above mentioned domains included directory listings, display advertisements and other content that brought advertising revenue to her business. These portals were desirable to potential advertisers and the Plaintiff received advertising revenue these portals and received ongoing requests to place paid advertisements on them.
111. As such, these domain names were highly desirable to competitors and were quickly snatched up by them. These domains now point to competitor websites reaping the benefits of Plaintiff's years of skilled labor.
112. Additionally these web portals were to allow Plaintiff to earn income when she was unable to work due to her disabilities. Work she completed on the portals before she became disabled allowed her to earn some income when she became too disabled to work.
113. Plaintiff requests damages of \$200,000 for the loss of each of these six domain names for a total of \$1,200,000;
114. FURTHERMORE Plaintiff requests that these domain names be reinstated to her. And that from the date this complaint is filed damages in the amount of \$15,000 per month/web portal (for a total of \$90,000/month) shall accrue for each month the domain names are not reinstated. In addition an interest rate of 10% shall accrue monthly on any and all unpaid damages.
115. The domain name billsizemore.com is the personal legal name of one of her clients who is a well known political activist in Oregon.
116. Bill Sizemore has owned his personal name as the domain names: billsizemore.com, billsizemore.net, billsizemore.org, billsizemore.biz since prior to 2005. His political enemies originally registered these domain names and put up websites with derogatory and slanderous content about him. He won

ownership of these domain names through a domain name dispute filed with ICANN when it was still a U.S. government regulated monopoly.

117. Plaintiff transferred these domain names into her reseller account with 4Domains on behalf of this client in 2006. Plaintiff registered additional versions of his personal name as domain names, then developed a dynamic (database driven through visitor interaction) website for him hosted on the domain billsizemore.us domain. She then parked his other domain names on this host account.
118. Therefore the client's website is still available, but it cannot be found on the WWW (i.e. internet) using the domain name "billsizemore.com".
119. Plaintiff's client has incurred substantial damages due to the loss of his billsizemore.com domain name. This was the domain (i.e. website address) used by his supporters; by the press; in advertisements; and by search engines to reference or locate his website.
120. This domain name expired on or around September 1, 2010 after which point his website could no longer be located using the billsizemore.com domain name. This happened in the middle of Oregon's 2010 political season when traffic to his website was at its highest. He received numerous complaints from his supporters that they could not reach his website. Press conferences, news broadcasts etc all referenced his website address as billsizemore.com.
121. To date Bill Sizemore's domain name billsizemore.com has not been restored to him. It was registered in October 2010 by a Japanese merchant through GoDaddy. Currently a website selling Japanese purses is hosted on this domain. As a result Bill Sizemore has suffered humiliation and a terrible loss of credibility. No one's personal name should be abused in this manner.
122. This could have just as easily been Oregon Governor Kitzhaber's domain name johnkitzhaber.com and his website that was affected; or any other Oregon political candidate running for office. ICANN must held accountable for its lax policies regarding compliance of its accredited registers.

123. Apparently ICANN's procedures changed since it became a privatized monopoly without U.S. government regulation because when Bill Sizemore directly requested ICANN to restore his billsizemore.com in September 2010, unlike his experience with ICANN in 2005, ICANN refused.
124. ICANN and GoDaddy informed him he had to go through his own domain registrar; i.e. Plaintiff. ICANN has continually since **August 2010** refused to reinstate any of Plaintiff's domain names, including billsizemore.com.
125. Considerable evidence exists to substantiate Plaintiff's claims.
126. Bill Sizemore has suffered terrible personal and political damage as a result of the loss of his domain name, in addition to the loss of investment in development and SEO effort made to popularize this domain name for the hundreds of pages of content contained in his dynamic website. This domain name has resulted in first page first position in Google, Yahoo and other search engines since 2006.
127. Plaintiff requests damages in the amount of \$500,000 specific to investment in website development and SEO efforts, and including but not limited to advertisement costs, lost visitor traffic, loss of subscriptions and supporter donations; loss of SEO positioning, etc. Additional non-monetary damages are covered in the Plaintiff's second claim.
128. FURTHERMORE Plaintiff requests that the billsizemore.com domain name be reinstated to her in behalf of her client. And that from the date this complaint is filed damages in the amount of \$25,000 per month shall accrue for each month the domain name is not reinstated. In addition an interest rate of 10% shall accrue monthly on any and all unpaid damages.
129. The domain name pms2.com is owned by another of Plaintiff's clients. Platinum Management Services is a very small IT staff augmentation company owned and operated by two business partners. This client's business qualifies as a federally designated MBE (Minority Business Enterprise) and as a Women-Owned Small Business (WOSB).

130. This company's domain name was registered in September 2009. Plaintiff developed their website at the same time.
131. Plaintiff requests damages in the amount of \$12,000 since SEO was not as well established with this domain as with others that had years of history. This amount is required to redo the website's SEO effort and other internet marketing and advertising efforts.
132. FURTHERMORE Plaintiff requests that the pms2.com domain name be reinstated to her on behalf of her client. And that from the date this complaint is filed damages in the amount of \$10,000 per month shall accrue for each month the domain name is not reinstated. In addition an interest rate of 10% shall accrue monthly on any and all unpaid damages.
133. The domain names number1website.com and ourwebsitedemos.com have been registered by Plaintiff since 2006. These domains hosted websites that presented a portfolio of website development projects and provided live demos of Plaintiff's work. The websites located at these two domain names were used to support Plaintiff's marketing efforts. These websites have been unavailable to the Plaintiff's customers and potential customers for more than six months.
134. These two domain names and the websites hosted on them enjoyed first page first position in Google, Yahoo and other search engine results. Due to this they have been snatched by the Plaintiff's competitors who now enjoy the fruit of the Plaintiff's many years of skilled labor.
135. Many hours of skilled labor are required to recover damages caused by the loss of these domain names and the unavailability of the websites they once pointed to.
136. Plaintiff requests damages in the amount of \$200,000 for these two domain names.
137. FURTHERMORE Plaintiff requests that these two domain names be reinstated to her. And that from the date this complaint is filed damages in the amount of \$40,000/month shall accrue for each

month these two domain names are not reinstated. In addition an interest rate of 10% shall accrue monthly on any and all unpaid damages.

138. In addition to the domain names lost to Plaintiff after Plaintiff filed complaints with ICANN about 4 Domains on or about **July 21 to August 21, 2010**; Plaintiff requests damages in the amount of \$5,500 for the loss of her customer account with World Banknotes lost due to the defendants' breaches of their contractual obligations in **March 2010**.
139. Plaintiff additionally requests damages in the amount in \$40,000 for lost income due her inability to work between **August 2010 and November 2010** due to health problems caused by stress due to ICANN's failure to perform.
140. WHEREFORE Plaintiff prays the court award her a total of **\$2,577,500** for damages resulting from Plaintiff's first claim. Plaintiff also prays the court award her **\$165,000/month** from the filing date of this complaint for each month the domain names referenced in this complaint are not restored to her; and 10% interest to be accrued monthly on any and all unpaid damages.

CLAIM FOR INCIDENTAL AND CONSEQUENTIAL DAMAGES UNDER ORS §72.7150 et al.

141. In addition to the above stated monetary damages, Plaintiff and her clients suffered consequential damages that include injury to person and property proximately resulting from defendant ICANN's breach of warranty, as per ORS [1961 c.726 §72.7150].
142. From **August through November 2010** Plaintiff informed ICANN by phone and in writing that she is a disabled person and that the symptoms of her disabilities are severely aggravated by intense and prolonged stress. Plaintiff experienced intense and continued stress caused by ICANN's breach of performance and warranty including but limited to:
- (a.) Loss of 21 domain names through no fault of hers; but through breach of contractual obligations by the defendants.

- (b.) Plaintiff's client's blaming her for their websites becoming unavailable due to their domain names expiring;
 - (c.) ICANN's irresponsible and callous handling of Plaintiff's complaints about 4Domains;
 - (d.) Loss of income to Plaintiff and her clients caused by aforementioned expired domains and resultant unavailability of the websites they pointed to on the WWW;
 - (e.) ICANN's continued and consistent failure to restore Plaintiff's aforementioned lost domains; throughout months of frustrating and unproductive communications with ICANN, including some extremely insulting communications to the Plaintiff from ICANN;
143. As a result of the above mentioned stress Plaintiff suffered intensified physical pain, loss of memory, cognitive dysfunction, chronic fatigue, headaches and migraines and trouble breathing that was severe enough to cause her to become bedridden for more than three months.
144. Plaintiff's doctors will provide evidence and testimony as to the effects of this stress on her specific medical conditions and overall health.
145. Plaintiff incurred medical expenses she does not have the ability to pay during this time; further increasing her stress.
146. THEREFORE Plaintiff requests damages in the amount of \$250,000 for her medical expenses and her pain and suffering.
147. Plaintiff's business suffered damage to its reputation due to the unavailability of so many of its websites and/or the acquisition of her domain names by competitors.
148. Plaintiff lost credibility with customers/clients whose domain names expired due to ICANN's breach of its contractual obligations.

149. Plaintiff's failed health caused by the defendants' breaches prevented her from completing work on non-affected client's websites; causing Plaintiff to lose credibility with those clients; and revenue from them.
150. THEREFORE Plaintiff requests \$500,000 for these damages.
151. Her clients suffered damage to their businesses' and/or their personal reputations due to the unavailability of their websites and/or the acquisition of their domain names by competitors or worse.
152. THEREFORE Plaintiff requests \$2,000,000 in behalf of her clients for these damages.
153. WHEREFORE Plaintiff prays the court award her a total of **\$2,750,000** for damages resulting from her second claim. Plaintiff also prays the court award her 10% interest to be accrued monthly on any and all unpaid damages.
154. FURTHERMORE Plaintiff requests that ICANN be made to change its policies so as to better protect public interest and prevent this type of situation from happening in the future to other individuals, small non-profit organizations, very small businesses and third party registrars. ICANN should include in its policies:
- (a.) *Yearly audits of all its accredited registrars to assure ongoing compliance;*
 - (b.) *Automatic investigations whenever ICANN receives a complaint about one of its accredited registrars indicating the registrar may be insolvent or otherwise non-complaint;*
 - (c.) *Immediate determination to revoke ICANN accreditation whenever ICANN receives a complaint about one of its accredited registrars; and that registrar is not reachable at the address and phone number in ICANN's records. This means that if ICANN attempts to contact the registrar and:*

- i. The phone number provided to ICANN only reaches an automated voice message and no one returns the voice message for a period beyond 48 hours;
 - ii. The phone number provided to ICANN is non-working;
 - iii. The accredited registrar is not physically located at the address provided to ICANN on its contract or in ICANN's other records;
- (d.) Posting of the results of such audits and investigations on ICANN's website for public access;
- (e.) Posting of proof of commercial insurance by its accredited registrars on ICANN's website for public access to provide a sense of confidence in protection against performance failures;
- (f.) Creation of a written policy regarding transfer of domain registration data and third party registrant accounts away from an insolvent ICANN accredited registrar to another solvent ICANN accredited registrar. Such a policy must include:
- i. representation by third party registrars at risk for damages;
 - ii. options for accommodating special needs under the ADA and for personal choice when transferring data for third party registrars at risk for damages;
 - iii. posting of such a policy on ICANN's website for public access;
 - iv. periodic re-evaluation of ICANN's policies as needed to assure they protect the interests of third party registrars and prevent damages;
- (g.) Staff training to assure compliance with the ADA and to educate ICANN's staff in how to interact with the disabled in ways that are courteous and non-condescending.

CLAIM FOR DAMAGES UNDER THE AMERICANS WITH DISABILITIES ACT, 42 U.S.C. §12182 et al.

155. On **September 21, 2010** defendant ICANN sent the Plaintiff an email stating they had determined 4Domains Inc. was in a bankruptcy. There were no instructions for how plaintiff could recover her expired domains or prevent more domains from expiring.

156. ICANN transferred 4Domains data and reseller accounts to defendant Internet.bs, another ICANN accredited registrar and on **October 5, 2010** the Plaintiff received an email from defendant Internet.bs prompting her to login into her account control panel to manage her domains.
157. When Plaintiff logged into her Internet.bs account none of her registered domains showed up. The data transfer had not been done correctly.
158. Eventually ICANN and Internet.bs corrected this problem; however this was not before more of Plaintiff's domains expired.
159. Plaintiff experienced ongoing problems with Internet.bs. In particular with email communications. Because Plaintiff's health prevented her from checking her email often; emails between defendant Internet.bs and Plaintiff kept passing each other. This caused considerable miscommunication.
160. This situation became extremely stressful for Plaintiff, so she requested phone support to resolve these miscommunication problems. Internet.bs staff refused to provide phone support stating it was not Internet.bs' policy.
161. Plaintiff explained to Internet.bs about the nature of her disabilities and that she had become bedridden and had only enough energy to check emails every couple days. Plaintiff again requested phone support in light of this information but Internet.bs continued refusal to provide it.
162. Several email replies from Internet.bs to Plaintiff were rude and condescending towards her.
163. Finally out of total frustration Plaintiff requested in writing that Internet.bs make a change in its policy and provide her with phone support as a reasonable accommodation to her disabilities under 42 U.S.C. §12182. Again Internet.bs refused.
164. Plaintiff had already established a new reseller account with another ICANN accredited registrar that did offer 24/7 phone support. Plaintiff stated in her complaint to ICANN about 4Domains that she

was in the process of transferring her domains away from 4Domains to Spirit Domains; so she then requested ICANN to transfer her domains away from Internet.bs to Spirit Domains. ICANN refused.

165. Plaintiff then made a formal written request to ICANN for reasonable accommodation under 42 U.S.C. §12182 of phone support by Internet.bs; or in the event Internet.bs was unwilling to provide this reasonable accommodation; that ICANN move Plaintiff's domains to her reseller account with Spirit Domains because they did provide the required accommodation for her disabilities.
166. Again ICANN refused to provide this reasonable accommodation as required under 42 U.S.C. §12182.
167. Plaintiff emailed ICANN's ombudsman, and made complaints to various public officials including her Senator and State Attorney, to no avail. This is when Plaintiff discovered no private or government agency has power to regulate ICANN.
168. Plaintiff expressed concern in these communications that the circumstances outlined in her complaint regarding 4Domains; and the way ICANN handled her complaint represented a serious threat to U.S. commerce. The failure of one business, like 4Domains, had the potential to cause the failure of many more small businesses at a time when the U.S. economy could not afford it. Such a domino effect of business failures could easily be prevented by ICANN if it simply performed its contractual obligations and duty to protect public interest.
169. THEREFORE Plaintiff requests damages in the amount of \$500,000 for pain and suffering and for ICANN's failure to comply with 42 U.S.C. §12182.

CLAIM FOR DAMAGES UNDER THE FREEDOM OF INFORMATION ACT, 5 USC §552 et al.

170. Plaintiff received several emails from Internet.bs that were written in poor English. Plaintiff later discovered that Internet.bs is not a U.S. based company.
171. Plaintiff asked ICANN why they chose to transfer 4Domains' reseller accounts to a foreign based company. ICANN failed to provide an answer.
172. Plaintiff made numerous written requests to ICANN for records regarding:
- (a.) other complaints about 4Domains;
 - (b.) audits ICANN performed on 4Domains to determine if it was still in compliance with its accreditation contract;
 - (c.) proof of 4Domains insurance coverage;
 - (d.) criteria used by ICANN's to select Internet.bs to receive 4Domains' reseller accounts;
 - (e.) official policies and procedures ICANN followed in handling her complaint against 4Domains.
173. ICANN failed to provide any of the requested information. As a public entity, ICANN is required to comply with 5 U.S.C. §552, "Freedom of Information Act."
174. THEREFORE Plaintiff requests damages under this claim in the amount of \$100,000 and Plaintiff requests the court to compel ICANN to supply the requested documents.

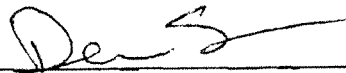
REQUEST FOR TRIAL BY JURY

175. Plaintiff requests a trial by a jury of her peers. (U.S. Const. amend. VII)

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against the defendants for damages in the sum of **\$2,537,500** plus **\$165,000/month** from the filing date of this complaint for each month the domain names referenced in this complaint are not restored to Plaintiff; and 10% interest to be accrued monthly on any and all unpaid damages for Plaintiff's first claim for relief; and damages in the sum of **\$2,750,000** for the Plaintiff's second claim of relief; and damages in the sum of **\$500,000** for the Plaintiff's third claim of relief; and damages in the sum of **\$100,000** for the Plaintiff's fourth claim of relief; and damages for costs and disbursements incurred. And any other damages or rewards the Court deems appropriate.

DATED: March 31, 2011, 2011

15/ 

Plaintiff's Name

2850 SW Cedar Hills Blvd #35

Address

Beaverton OR 97005-1393

Phone

503-764-5300

EXHIBIT A

Registrar Accreditation Agreement

(<http://www.icann.org/en/registrars/ra-agreement-21may09-en.htm>)

13 pages minus cover sheet

Registrar Accreditation Agreement (<http://www.icann.org/en/registrars/ra-agreement-21may09-en.htm>)

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Registrar Accreditation Agreement

This REGISTRAR ACCREDITATION AGREEMENT ("Agreement") is by and between the Internet Corporation for Assigned Names and Numbers, a California non-profit, public benefit corporation, and [Registrar Name], a [Organization type and Jurisdiction] ("Registrar"), and shall be deemed made on _____ at Los Angeles, California, USA.

1. DEFINITIONS. For purposes of this Agreement the following definitions shall apply:

1.1 *Accredit* means to identify and set minimum standards for the performance of registration functions, to recognize persons or entities meeting those standards, and to enter into an accreditation agreement that sets forth the rules and procedures applicable to the provision of Registrar Services.

1.2 *DNS* refers to the Internet domain-name system.

1.3 The "Effective Date" is _____.

1.4 The "Expiration Date" is _____.

1.5 *ICANN* refers to the Internet Corporation for Assigned Names and Numbers, a party to this Agreement.

1.6 *Personal Data* refers to data about any identified or identifiable natural person.

1.7 *Registered Name* refers to a domain name within the domain of a TLD that is the subject of an appendix to this Agreement, whether consisting of two or more (e.g., john.smith.name) levels, about which a TLD Registry Operator (or an affiliate engaged in providing Registry Services) maintains data in a Registry Database, arranges for such maintenance, or derives revenue from such maintenance. A name in a Registry Database may be a Registered Name even though it does not appear in a zone file (e.g., a registered but inactive name).

1.8 *Registered Name Holder* means the holder of a Registered Name.

1.9 The word *Registrar*, when appearing with an initial capital letter, refers to [Registrar Name], a party to this Agreement.

1.10 The word *registrar*, when appearing without an initial capital letter, refers to a person or entity that contracts with Registered Name Holders and with a Registry Operator and collects registration data about the Registered Name Holders and submits registration information for entry in the Registry Database.

1.11 *Registrar Services* means services provided by a registrar in connection with a TLD as to which it has an agreement with the TLD's Registry Operator, and includes contracting with Registered Name Holders, collecting registration data about the Registered Name Holders, and submitting registration information for entry in the Registry Database.

1.12 *Registry Data* means all Registry Database data maintained in electronic form, and shall include TLD Zone-File Data, all data used to provide Registry Services and submitted by registrars in electronic form, and all other data used to provide Registry Services concerning particular domain name registrations or nameservers maintained in electronic form in a Registry Database.

1.13 *Registry Database* means a database comprised of data about one or more DNS domain names within the domain of a registrar, that is used to generate either DNS resource records that are published authoritatively or responses to domain-name availability lookup requests or Whois queries, for some or all of those names.

1.14 A *Registry Operator* is the person or entity then responsible, in accordance with an agreement between ICANN (or its assignee) and that person or entity (those persons or entities) or, if that agreement is terminated or expires, in accordance with an agreement between the US Government and that person or entity, (those persons or entities), for providing Registry Services for a specific TLD.

1.15 *Registry Services*, with respect to a particular TLD, shall have the meaning defined in the agreement between ICANN and the Registrar Operator for that TLD.

1.16 A *Registered Name Is sponsored* by the registrar that placed the record associated with that registration into the registry. Sponsorship of a registration may be changed at the express direction of the Registered Name Holder or, in the event a registrar loses accreditation, in accordance with then-current ICANN specifications and policies.

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1.13 'Registry Database' means a database comprised of data about one or more DNS domain names within the domain of a registry that is used to generate either DNS resource records that are published authoritatively, or responses to domain-name availability lookup requests or Whois queries, for some or all of those names.

1.14 A 'Registry Operator' is the person or entity then responsible, in accordance with an agreement between ICANN (or its assignee) and that person or entity (those persons or entities) or, if that agreement is terminated or expires, in accordance with an agreement between the US Government and that person or entity (those persons or entities), for providing Registry Services for a specific TLD.

1.15 'Registry Services' with respect to a particular TLD, shall have the meaning defined in the agreement between ICANN and the Registry Operator for that TLD.

1.16 A Registered Name is 'sponsored' by the registrar that placed the record associated with that registration into the registry. Sponsorship of a registration may be changed at the express direction of the Registered Name Holder or, in the event a registrar loses accreditation, in accordance with then-current ICANN specifications and policies.

1.17 'Term of this Agreement' begins on the Effective Date and continues to the earlier of (a) the Expiration Date, or (b) termination of this Agreement.

1.18 A 'TLD' is a top-level domain of the DNS.

1.19 'TLD Zone-File Data' means all data contained in a DNS zone file for the registry, or for any subdomain for which Registry Services are provided and that contains Registered Names, as provided to nameservers on the Internet.

2. ICANN OBLIGATIONS.

2.1 Accreditation. During the Term of this Agreement, Registrar is hereby accredited by ICANN to act as a registrar (including to insert and renew registration of Registered Names in the Registry Database) for the TLD(s) that are the subject of appendices to this Agreement according to Subsection 5.5.

2.2 Registrar Use of ICANN Name and Website. ICANN hereby grants to Registrar a non-exclusive, worldwide, royalty-free license during the Term of this Agreement (a) to state that it is accredited by ICANN as a registrar for each TLD that is the subject of an appendix to this Agreement and (b) to link to pages and documents within the ICANN web site. No other use of ICANN's name or website is licensed hereby. This license may not be assigned or sublicensed by Registrar.

2.3 General Obligations of ICANN. With respect to all matters that impact the rights, obligations, or role of Registrar, ICANN shall during the Term of this Agreement:

2.3.1 exercise its responsibilities in an open and transparent manner;

2.3.2 not unreasonably restrain competition and, to the extent feasible, promote and encourage robust competition;

2.3.3 not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and not single out Registrar for disparate treatment unless justified by substantial and reasonable cause; and

2.3.4 ensure, through its reconsideration and independent review policies, adequate appeal procedures for Registrar to the extent it is adversely affected by ICANN standards, policies, procedures or practices.

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2.3.4 ensure, through its reconsideration and independent review policies, adequate appeal procedures for Registrar, to the extent it is adversely affected by ICANN standards, policies, procedures or practices.

3. REGISTRAR OBLIGATIONS.

3.1 Obligations to Provide Registrar Services. During the Term of this Agreement, Registrar agrees that it will operate as a registrar for each TLD for which it is accredited by ICANN in accordance with this Agreement.

3.2 Submission of Registered Name Holder Data to Registry. During the Term of this Agreement:

3.2.1 As part of its registration of Registered Names in a TLD as to which it is accredited, Registrar shall submit to, or shall place in the Registry Database operated by the Registry Operator for the TLD the following data elements:

3.2.1.1 The name of the Registered Name being registered

3.2.1.2 The IP addresses of the primary nameserver and secondary nameserver(s) for the Registered Name

3.2.1.3 The corresponding names of those nameservers;

3.2.1.4 Unless automatically generated by the registry system, the identity of the Registrar;

3.2.1.5 Unless automatically generated by the registry system, the expiration date of the registration; and

3.2.1.6 Any other data the Registry Operator requires be submitted to it.

The appendix to this Agreement for a particular TLD may state substitute language for Subsections 3.2.1.1 through 3.2.1.6 as applicable to that TLD; in that event the substitute language shall replace and supersede Subsections 3.2.1.1 through 3.2.1.6 stated above for all purposes under this Agreement but only with respect to that particular TLD.

3.2.2 Within five (5) business days after receiving any updates from the Registered Name Holder to the data elements listed in Subsections 3.2.1.2, 3.2.1.3, and 3.2.1.6 for any Registered Name Registrar sponsors, Registrar shall submit the updated data elements to, or shall place those elements in the Registry Database operated by the Registry Operator.

3.2.3 In order to allow reconstitution of the Registry Database in the event of an otherwise unrecoverable technical failure or a change in the designated Registry Operator, within ten days of any such request by ICANN, Registrar shall submit an electronic database containing the data elements listed in Subsections 3.2.1.1 through 3.2.1.6 for all active records in the registry sponsored by Registrar in a format specified by ICANN, to the Registry Operator for the appropriate TLD.

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3.3 Public Access to Data on Registered Names During the Term of this Agreement

3.3.1 At its expense, Registrar shall provide an interactive web page and a port 43 Whois service providing free public query-based access to up-to-date (i.e., updated at least daily) data concerning all active Registered Names sponsored by Registrar for each TLD in which it is accredited. The data accessible shall consist of elements that are designated from time to time according to an ICANN adopted specification or policy. Until ICANN otherwise specifies by means of an ICANN adopted specification or policy, this data shall consist of the following elements as contained in Registrar's database:

- 3.3.1.1 The name of the Registered Name;
- 3.3.1.2 The names of the primary, nameserver and secondary nameserver(s) for the Registered Name;
- 3.3.1.3 The Identif. of Registrar (which may be provided through Registrar's website);
- 3.3.1.4 The original creation date of the registration;
- 3.3.1.5 The expiration date of the registration;
- 3.3.1.6 The name and postal address of the Registered Name Holder;
- 3.3.1.7 The name, postal address, e-mail address, voice telephone number, and (where available) fax number of the technical contact for the Registered Name; and
- 3.3.1.8 The name, postal address, e-mail address, voice telephone number, and (where available) fax number of the administrative contact for the Registered Name.

The appendix to this Agreement for a particular TLD may state substitute language for Subsections 3.3.1.1 through 3.3.1.8 as applicable to that TLD. In that event the substitute language shall replace and supersede Subsections 3.3.1.1 through 3.3.1.8 stated above for all purposes under this Agreement but only with respect to that particular TLD.

3.3.2 Upon receiving any updates to the data elements listed in Subsections 3.3.1.2, 3.3.1.3, and 3.3.1.5 through 3.3.1.8 from the Registered Name Holder, Registrar shall promptly update its database used to provide the public access described in Subsection 3.3.1.

3.3.3 Registrar may subcontract its obligation to provide the public access described in Subsection 3.3.1 and the updating described in Subsection 3.3.2, provided that Registrar shall remain fully responsible for the proper provision of the access and updating.

3.3.4 Registrar shall abide by any ICANN specification or policy, established as a Consensus Policy according to Section 4 that requires registrars to cooperatively implement a distributed capability that provides query-based Whois search functionality, across all registrars. If the Whois service implemented by registrars does not in a reasonable time provide reasonable, robust, reliable, and convenient access to accurate and up-to-date data, the Registrar shall abide by any ICANN specification or policy established as a Consensus Policy, according to Section 4 requiring Registrar, if reasonably determined by ICANN to be necessary (considering such possibilities as remedial action by specific registrars), to supply data from Registrar's database to facilitate the development of a centralized Whois database for the purpose of providing comprehensive Registrar Whois search capability.

3.3.5 In providing query-based public access to registration data as required by Subsections 3.3.1 and 3.3.4, Registrar shall not impose terms and conditions on use of the data provided, except as permitted by policy established by ICANN. Unless and until ICANN establishes a different policy, according to Section 4, Registrar shall permit use of data it provides in response to queries for any lawful purposes except to: (a) allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass, unsolicited, commercial advertising or solicitations to entities other than the data recipient's own existing customers; or (b) enable high volume, automated electronic processes that send queries or data to the systems of any Registrar, Operator or ICANN-accredited registrar, except as reasonably necessary to register domain names or modify existing registrations.

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3.3.6 In addition, Registrar shall provide third-party bulk access to the data subject to public access under Subsection 3.3.1 under the following terms and conditions.

3.3.6.1 Registrar shall make a complete electronic copy of the data available at least one time per week for download by third parties who have entered into a bulk access agreement with Registrar.

3.3.6.2 Registrar may charge an annual fee, not to exceed US\$10,000, for such bulk access to the data.

3.3.6.3 Registrar's access agreement shall require the third party to agree not to use the data to allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass, unsolicited, commercial advertising or solicitations to entities other than such third party's own existing customers.

3.3.6.4 Registrar's access agreement shall require the third party to agree not to use the data to enable high-volume, automated, electronic processes that send queries or data to the systems of any Registrar, Operator or ICANN-Accredited registrar, except as reasonably necessary to register domain names or modify existing registrations.

3.3.6.5 Registrar's access agreement may require the third party to agree not to sell or redistribute the data except insofar as it has been incorporated by the third party into a value-added product or service that does not permit the extraction of a substantial portion of the bulk data from the value-added product or service for use by other parties.

3.3.6.6 Registrar may enable Registered Name Holders who are individuals to elect not to have Personal Data concerning their registrations available for bulk access for marketing purposes based on Registrar's "Opt-Out" policy, and if Registrar has such a policy, Registrar shall require the third party to abide by the terms of that Opt-Out policy, provided, however, that Registrar may not use such data subject to opt-out for marketing purposes in its own value-added product or service.

3.3.7 Registrar's obligations under Subsection 3.3.6 shall remain in effect until the earlier of (a) replacement of this policy with a different ICANN policy, established according to Section 4, governing bulk access to the data subject to public access under Subsection 3.3.1; or (b) demonstration, to the satisfaction of the United States Department of Commerce, that no individual or entity is able to exercise market power with respect to registrations or with respect to registration data used for development of value-added products and services by third parties.

3.3.8 To comply with applicable statutes and regulations and for other reasons, ICANN may from time to time adopt policies and specifications establishing limits (a) on the Personal Data concerning Registered Names that Registrar may make available to the public through a public-access service described in this Subsection 3.3 and (b) on the manner in which Registrar may make such data available. In the event ICANN adopts any such policy, Registrar shall abide by it.

3.4 Retention of Registered Name Holder and Registration Data

3.4.1 During the Term of this Agreement, Registrar shall maintain its own electronic database, as updated from time to time, containing data for each active Registered Name sponsored by it within each TLD for which it is accredited. The data for each such registration shall include the elements listed in Subsections 3.3.1.1 through 3.3.1.8: the name and, where available, postal address, e-mail address, voice telephone number, and fax number of the billing contact; and any other Registry Data that Registrar has submitted to the Registry Operator or placed in the Registry Database under Subsection 3.2.

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3.4.2 During the Term of this Agreement and for three years thereafter, Registrar (Itself or by its agent(s)) shall maintain the following records relating to its dealings with the Registry Operator(s) and Registered Name Holders:

3.4.2.1 In electronic form, the submission date and time, and the content, of all registration data (including updates) submitted in electronic form to the Registry Operator(s).

3.4.2.2 In electronic, paper, or microfilm form, all written communications constituting registration applications, confirmations, modifications, or terminations and related correspondence with Registered Name Holders, including registration contracts, and

3.4.2.3 In electronic form, records of the accounts of all Registered Name Holders with Registrar, including dates and amounts of all payments and refunds.

3.4.3 During the Term of this Agreement and for three years thereafter, Registrar shall make these records available for inspection and copying by ICANN upon reasonable notice. ICANN shall not disclose the content of such records except as expressly permitted by an ICANN specification or policy.

3.5 Rights in Data. Registrar disclaims all rights to exclusive ownership or use of the data elements listed in Subsections 3.2.1.1 through 3.2.1.3 for all Registered Names submitted by Registrar to the Registry Database for, or sponsored by Registrar in, each TLD for which it is accredited. Registrar does not disclaim rights in the data elements listed in Subsections 3.2.1.4 through 3.2.1.6 and Subsections 3.3.1.3 through 3.3.1.8 concerning active Registered Names sponsored by it in each TLD for which it is accredited, and agrees to grant non-exclusive, irrevocable, royalty-free licenses to make use of and disclose the data elements listed in Subsections 3.2.1.4 through 3.2.1.6 and 3.3.1.3 through 3.3.1.8 for the purpose of providing a service or services (such as a Whois service under Subsection 3.3.4) providing interactive, query-based public access. Upon a change in sponsorship from Registrar of any Registered Name in a TLD for which it is accredited, Registrar acknowledges that the registrar gaining sponsorship shall have the rights of an owner to the data elements listed in Subsections 3.2.1.4 through 3.2.1.6 and 3.3.1.3 through 3.3.1.8 concerning that Registered Name, with Registrar also retaining the rights of an owner in that data. Nothing in this Subsection prohibits Registrar from (1) restricting bulk public access to data elements in a manner consistent with this Agreement and any ICANN specifications or policies or (2) transferring rights it claims in data elements subject to the provisions of this Subsection.

3.6 Data Escrow. During the Term of this Agreement, on a schedule under the terms, and in the format specified by ICANN, Registrar shall submit an electronic copy of the database described in Subsection 3.4.1 to ICANN or, at Registrar's election and at its expense, to a reputable escrow agent mutually approved by Registrar and ICANN, such approval also not to be unreasonably withheld by either party. The data shall be held under an agreement among Registrar, ICANN, and the escrow agent (if any) providing that (1) the data shall be received and held in escrow, with no use other than verification that the deposited data is complete, consistent, and in proper format, until released to ICANN; (2) the data shall be released from escrow upon expiration without renewal or termination of this Agreement; and (3) ICANN's rights under the escrow agreement shall be assigned with any assignment of this Agreement. The escrow shall provide that in the event the escrow is released under this Subsection, ICANN (or its assignee) shall have a non-exclusive, irrevocable, royalty-free license to exercise (only for transitional purposes) or have exercised all rights necessary to provide Registrar Services.

3.7 Business Dealings, Including with Registered Name Holders.

3.7.1 In the event ICANN adopts a specification or policy supported by a consensus of ICANN-Accredited registrars, establishing or approving a Code of Conduct for ICANN-Accredited registrars, Registrar shall abide by that Code.

3.7.2 Registrar shall abide by applicable laws and governmental regulations.

3.7.3 Registrar shall not represent to any actual or potential Registered Name Holder that Registrar enjoys access to a registry for which Registrar is Accredited that is superior to that of any other registrar Accredited for that registry.

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3.7.4 Registrar shall not activate any Registered Name unless and until it is satisfied that it has received a reasonable assurance of payment of its registration fee. For this purpose, a charge to a credit card, general commercial terms extended to creditworthy customers, or other mechanism providing a similar level of assurance of payment shall be sufficient, provided that the obligation to pay becomes final and non-revocable by the Registered Name Holder upon activation of the registration.

3.7.5 Registrar shall register Registered Names to Registered Name Holders only for fixed periods. At the conclusion of the registration period, failure by or on behalf of the Registered Name Holder to pay a renewal fee within the time specified in a second notice or reminder shall, in the absence of extenuating circumstances, result in cancellation of the registration. In the event that ICANN adopts a specification or policy concerning procedures for handling expiration of registrations, Registrar shall abide by that specification or policy.

3.7.6 Registrar shall not insert or renew any Registered Name in any registry for which Registrar is accredited by ICANN in a manner contrary to an ICANN policy stating a list or specification of excluded Registered Names that is in effect at the time of insertion or renewal.

3.7.7 Registrar shall require all Registered Name Holders to enter into an electronic or paper registration agreement with Registrar including at least the following provisions:

3.7.7.1 The Registered Name Holder shall provide to Registrar accurate and reliable contact details and promptly correct and update them during the term of the Registered Name registration, including: the full name, postal address, e-mail address, voice telephone number, and fax number if available of the Registered Name Holder, name of authorized person for contact purposes in the case of an Registered Name Holder that is an organization, association, or corporation; and the data elements listed in Subsections 3.3.1.2, 3.3.1.7 and 3.3.1.8.

3.7.7.2 A Registered Name Holder's willful provision of inaccurate or unreliable information, its willful failure promptly to update information provided to Registrar, or its failure to respond for over fifteen calendar days to inquiries by Registrar concerning the accuracy of contact details associated with the Registered Name Holder's registration shall constitute a material breach of the Registered Name Holder-registrar contract and be a basis for cancellation of the Registered Name registration.

3.7.7.3 Any Registered Name Holder that intends to license use of a domain name to a third party is nonetheless the Registered Name Holder of record and is responsible for providing its own full contact information and for providing and updating accurate technical and administrative contact information adequate to facilitate timely resolution of any problems that arise in connection with the Registered Name. A Registered Name Holder licensing use of a Registered Name according to this provision shall accept liability for harm caused by wrongful use of the Registered Name, unless it promptly discloses the identity of the licensee to a party providing the Registered Name Holder reasonable evidence of actionable harm.

3.7.7.4 Registrar shall provide notice to each new or renewed Registered Name Holder stating:

3.7.7.4.1 The purposes for which any Personal Data collected from the applicant are intended;

3.7.7.4.2 The intended recipients or categories of recipients of the data (including the Registry Operator and others who will receive the data from Registry Operator);

3.7.7.4.3 which data are obligatory and which data, if any, are voluntary; and

3.7.7.4.4 How the Registered Name Holder or data subject can access and, if necessary, rectify the data held about them.

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3.7.7.5 The Registered Name Holder shall consent to the data processing referred to in Subsection 3.7.7.4

3.7.7.6 The Registered Name Holder shall represent that notice has been provided equivalent to that described in Subsection 3.7.7.4 to any third-party individuals whose Personal Data are supplied to Registrar by the Registered Name Holder, and that the Registered Name Holder has obtained consent equivalent to that referred to in Subsection 3.7.7.5 of any such third-party individuals.

3.7.7.7 Registrar shall agree that it will not process the Personal Data collected from the Registered Name Holder in a way incompatible with the purposes and other limitations about which it has provided notice to the Registered Name Holder in accordance with Subsection 3.7.7.4 above.

3.7.7.8 Registrar shall agree that it will take reasonable precautions to protect Personal Data from loss, misuse, unauthorized access or disclosure, alteration, or destruction

3.7.7.9 The Registered Name Holder shall represent that to the best of the Registered Name Holder's knowledge and belief, neither the registration of the Registered Name nor the manner in which it is directly or indirectly used infringes the legal rights of any third party.

3.7.7.10 For the adjudication of disputes concerning or arising from use of the Registered Name, the Registered Name Holder shall submit, without prejudice to other potentially applicable jurisdictions, to the jurisdiction of the courts (1) of the Registered Name Holder's domicile and (2) where Registrar is located

3.7.7.11 The Registered Name Holder shall agree that its registration of the Registered Name shall be subject to suspension, cancellation, or transfer pursuant to any ICANN adopted specification or policy, or pursuant to any registrar or registry procedure not inconsistent with an ICANN adopted specification or policy, (1) to correct mistakes by Registrar or the Registry Operator in registering the name or (2) for the resolution of disputes concerning the Registered Name.

3.7.7.12 The Registered Name Holder shall indemnify and hold harmless the Registry Operator and its directors, officers, employees and agents from and against any and all claims, damages, liabilities, costs, and expenses (including reasonable legal fees and expenses) arising out of or related to the Registered Name Holder's domain name registration.

3.7.8 Registrar shall abide by any specifications or policies established according to Section 4 requiring reasonable and commercially practicable (a) verification, at the time of registration, of contact information associated with a Registered Name sponsored by Registrar or (b) periodic re-verification of such information Registrar shall, upon notification by any person of an inaccuracy in the contact information associated with a Registered Name sponsored by Registrar, take reasonable steps to investigate that claimed inaccuracy. In the event Registrar learns of inaccurate contact information associated with a Registered Name it sponsors, it shall take reasonable steps to correct that inaccuracy.

3.7.9 Registrar shall abide by any ICANN adopted specifications or policies prohibiting or restricting warehousing of or speculation in domain names by registrars

3.7.10 Nothing in this Agreement prescribes or limits the amount Registrar may charge Registered Name Holders for registration of Registered Names

3.8 Domain Name Dispute Resolution. During the Term of this Agreement, Registrar shall have in place a policy and procedures for resolution of disputes concerning Registered Names. Until different policies and procedures are established by ICANN under Section 4, Registrar shall comply with the Uniform Domain Name Dispute Resolution Policy identified on ICANN's website (www.icann.org/general/consensus-policies.htm).

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3.9 Accreditation Fees. As a condition of accreditation, Registrar shall pay accreditation fees to ICANN. These fees consist of yearly and variable fees.

3.9.1 Yearly Accreditation Fee. Registrar shall pay ICANN a yearly accreditation fee in an amount established by the ICANN Board of Directors, in conformity with ICANN's bylaws and articles of incorporation. This yearly accreditation fee shall not exceed US\$4,000 for the first TLD for which Registrar is Accredited plus US\$500 for each additional TLD for which Registrar is Accredited at any time during the year. Payment of the yearly fee shall be due within thirty days after invoice from ICANN.

3.9.2 Variable Accreditation Fee. Registrar shall pay the variable accreditation fees established by the ICANN Board of Directors, in conformity with ICANN's bylaws and articles of incorporation, provided that in each case such fees are reasonably allocated among all registrars that contract with ICANN and that any such fees must be expressly approved by registrars accounting, in the aggregate, for payment of two-thirds of all registrar-level fees. Registrar shall pay such fees in a timely manner for so long as all material terms of this Agreement remain in full force and effect, and notwithstanding the pendency of any dispute between Registrar and ICANN.

3.9.3 On reasonable notice given by ICANN to Registrar, accountings submitted by Registrar shall be subject to verification by an audit of Registrar's books and records by an independent third-party that shall preserve the confidentiality of such books and records (other than its findings as to the accuracy of, and any necessary corrections to, the accountings).

3.10 Insurance. Registrar shall maintain in force commercial general liability insurance with policy limits of at least US\$500,000 covering liabilities arising from Registrar's registrar business during the term of this Agreement.

4. PROCEDURES FOR ESTABLISHMENT OR REVISION OF SPECIFICATIONS AND POLICIES.

4.1 Registrar's Ongoing Obligation to Comply With New or Revised Specifications and Policies. During the Term of this Agreement, Registrar shall comply with the terms of this Agreement on the schedule set forth in Subsection 4.4, with

4.1.1 new or revised specifications (including forms of agreement to which Registrar is a party) and policies established by ICANN as Consensus Policies in the manner described in Subsection 4.3.

4.1.2 this Agreement expressly provides for compliance with revised specifications or policies established in the manner set forth in one or more subsections of this Section 4; or

4.1.2.2 the specification or policy, concerns one or more topics described in Subsection 4.2.

4.2 Topics for New and Revised Specifications and Policies. New and revised specifications and policies may be established on the following topics:

4.2.1 issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, technical reliability, and/or operational stability of Registrar Services, Registry Services, the DNS, or the Internet;

4.2.2 registrar policies reasonably necessary to implement ICANN policies or specifications relating to a DNS registry or to Registry Services;

4.2.3 resolution of disputes concerning the registration of Registered Names (as opposed to the use of such domain names), including where the policies take into account use of the domain names;

4.2.4 principles for allocation of Registered Names (e.g., first-come-first-served, timely renewal, holding period after expiration);

4.2.5 prohibitions on warehousing of or speculation in domain names by registries or registrars;

4.2.6 maintenance of and access to accurate and up-to-date contact information regarding Registered Names and nameservers.

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4.2.6 maintenance of and access to accurate and up-to-date contact information regarding Registered Names and nameservers;

4.2.7 reservation of Registered Names that may not be registered initially or that may not be renewed due to reasons reasonably related to (a) avoidance of confusion among or misleading of users, (b) intellectual property, or (c) the technical management of the DNS or the Internet (e.g., 'example.com' and names with single-letter/digit labels);

4.2.8 procedures to avoid disruptions of registration due to suspension or termination of operations by a registry, operator or a registrar, including allocation of responsibility among continuing registrars of the Registered Names sponsored in a TLD by a registrar losing accreditation; and

4.2.9 the transfer of registration data upon a change in registrar sponsoring one or more Registered Names

Nothing in this Subsection 4.2 shall limit Registrars' obligations as set forth elsewhere in this Agreement

4.3 Manner of Establishment of New and Revised Specifications and Policies

4.3.1 'Consensus Policies' are those specifications or policies established based on a consensus among Internet stakeholders represented in the ICANN process, as demonstrated by (a) action of the ICANN Board of Directors establishing the specification or policy, (b) a recommendation, adopted by at least a two-thirds vote of the council of the ICANN Supporting Organization to which the matter is delegated, that the specification or policy should be established, and (c) a written report and supporting materials (which must include all substantive submissions to the Supporting Organization relating to the proposal) that (i) documents the extent of agreement and disagreement among impacted groups, (ii) documents the outreach process used to seek to achieve adequate representation of the views of groups that are likely to be impacted, and (iii) documents the nature and intensity of reasoned support and opposition to the proposed policy.

4.3.2 In the event that Registrar disputes the presence of such a consensus, it shall seek review of that issue from an Independent Review Panel established under ICANN's bylaws. Such review must be sought within fifteen working days of the publication of the Board's action establishing the policy. The decision of the panel shall be based on the report and supporting materials required by Subsection 4.3.1. In the event that Registrar seeks review and the Independent Review Panel sustains the Board's determination that the policy is based on consensus, however, the Registrar must continue to implement the policy unless it has obtained a stay or injunctive relief under Subsection 5.6 or a final decision is rendered in accordance with the provisions of Subsection 5.5 that relieves Registrar of such obligation. The decision in any such further review shall be based on the report and supporting materials required by Subsection 4.3.1.

4.3.3 A specification or policy established by the ICANN Board of Directors on a temporary basis, without a prior recommendation by the council of an ICANN Supporting Organization, shall also be considered to be a Consensus Policy if adopted by the ICANN Board of Directors by a vote of at least two-thirds of its members, so long as the Board reasonably determines that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the operational stability of Registrar Services, Registry Services, the DNS, or the Internet, and that the proposed specification or policy is as narrowly tailored as feasible to achieve those objectives. In establishing any specification or policy under this provision, the ICANN Board of Directors shall state the period of time for which the specification or policy is temporarily adopted and shall immediately refer the matter to the appropriate Supporting Organization for its evaluation and review with a detailed explanation of its reasons for establishing the temporary specification or policy and why the Board believes the policy should receive the consensus support of Internet stakeholders. If the period of time for which the specification or policy is adopted exceeds ninety days, the Board shall reaffirm its temporary establishment every ninety days for a total period not to exceed one year, in order to maintain such specification or policy in effect until such time as it meets the standard set forth in Subsection 4.3.1. If the standard set forth in Subsection 4.3.1 is not met within the temporary period set by the Board, or the council of the Supporting Organization to which it has been referred votes to reject the temporary specification or policy, it will no longer be a Consensus Policy.

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Immediately refer the matter to the appropriate Supporting Organization for its evaluation and review with a detailed explanation of its reasons for establishing the temporary specification or policy and why the Board believes the policy should receive the consensus support of Internet stakeholders. If the period of time for which the specification or policy is adopted exceeds ninety days, the Board shall reaffirm its temporary establishment every ninety days for a total period not to exceed one year, in order to maintain such specification or policy in effect until such time as it meets the standard set forth in Subsection 4.3.1. If the standard set forth in Subsection 4.3.1 is not met within the temporary period set by the Board, or the council of the Supporting Organization to which it has been referred votes to reject the temporary specification or policy, it will no longer be a Consensus Policy.

4.3.5 For all purposes under this Agreement, the policies specifically identified by ICANN on its website (www.icann.org/general/consensus-policies.htm) at the date of this Agreement as having been adopted by the ICANN Board of Directors before the date of this Agreement shall be treated in the same manner and have the same effect as 'Consensus Policies' and accordingly shall not be subject to review under Subsection 4.3.2.

4.3.6 In the event that, at the time the ICANN Board of Directors establishes a specification or policy under Subsection 4.3.1 during the Term of this Agreement, ICANN does not have in place an Independent Review Panel established under ICANN's bylaws, the fifteen-working-day period allowed under Subsection 4.3.2 to seek review shall be extended until fifteen working days after ICANN does have such an Independent Review Panel in place and Registrar shall not be obligated to comply with the specification or policy in the interim.

4.4 Time Allowed for Compliance. Registrar shall be afforded a reasonable period of time after receiving notice of the establishment of a specification or policy under Subsection 4.3 in which to comply with that specification or policy, taking into account any urgency involved.

5. MISCELLANEOUS PROVISIONS.

5.1 Specific Performance. While this Agreement is in effect, either party may seek specific performance of any provision of this Agreement in the manner provided in Section 5.6 below, provided the party seeking such performance is not in material breach of its obligations.

5.2 Termination of Agreement by Registrar. This Agreement may be terminated before its expiration by Registrar by giving ICANN thirty days written notice. Upon such termination by Registrar, Registrar shall not be entitled to any refund of fees paid to ICANN pursuant to this Agreement.

5.3 Termination of Agreement by ICANN. This Agreement may be terminated before its expiration by ICANN in any of the following circumstances:

5.3.1 There was a material misrepresentation, material inaccuracy, or materially misleading statement in Registrar's application for accreditation or any material accompanying the application.

5.3.2 Registrar:

5.3.2.1 Is convicted by a court of competent jurisdiction of a felony or other serious offense related to financial activities, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of those offenses; or

5.3.2.2 Is disciplined by the government of its domicile for conduct involving dishonesty or misuse of funds of others.

5.3.3 Any officer or director of Registrar is convicted of a felony or of a misdemeanor related to financial activities, or is judged by a court to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN deems as the substantive equivalent of any of these, provided, such officer or director is not removed in such circumstances.

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5.3.4 Registrar fails to cure any breach of this Agreement (other than a failure to comply with a policy adopted by ICANN during the term of this Agreement as to which Registrar is seeking, or still has time to seek, review under Subsection 4.3.2 of whether a consensus is present) within fifteen working days after ICANN gives Registrar notice of the breach.

5.3.5 Registrar fails to comply with a ruling granting specific performance under Subsections 5.1 and 5.6.

5.3.6 Registrar continues acting in a manner that ICANN has reasonably determined endangers the stability or operational integrity of the Internet after receiving three days notice of that determination.

5.3.7 Registrar becomes bankrupt or insolvent.

This Agreement may be terminated in circumstances described in Subsections 5.3.1 - 5.3.6 above only upon fifteen days written notice to Registrar (in the case of Subsection 5.3.4 occurring after Registrar's failure to cure), with Registrar being given an opportunity during that time to initiate arbitration under Subsection 5.6 to determine the appropriateness of termination under this Agreement. In the event Registrar initiates litigation or arbitration concerning the appropriateness of termination by ICANN, the termination shall be stayed an additional thirty days to allow Registrar to obtain a stay of termination under Subsection 5.6 below. If Registrar acts in a manner that ICANN reasonably determines endangers the stability or operational integrity of the Internet and upon notice does not immediately cure, ICANN may suspend this Agreement for five working days pending ICANN's application for more extended specific performance or injunctive relief under Subsection 5.6. This Agreement may be terminated immediately upon notice to Registrar in circumstance described in Subsection 5.3.7 above.

5.4 Term of Agreement; Renewal; Right to Substitute Updated Agreement. This Agreement shall be effective on the Effective Date and shall have an initial term running until the Expiration Date, unless sooner terminated. Thereafter, if Registrar seeks to continue its accreditation, it may apply for renewed accreditation, and shall be entitled to renewal provided it meets the ICANN-adopted specification or policy on accreditation criteria then in effect, is in compliance with its obligations under this Agreement, as it may be amended, and agrees to be bound by terms and conditions of the then-current Registrar accreditation agreement (which may differ from those of this Agreement) that ICANN adopts in accordance with Subsection 2.3 and Subsection 4.2. In connection with renewed accreditation, Registrar shall confirm its assent to the terms and conditions of the then-current Registrar accreditation agreement by signing that accreditation agreement. In the event that, during the Term of this Agreement, ICANN posts on its web site an updated form of registrar accreditation agreement applicable to accredited registrars, Registrar (provided it has not received (1) a notice of breach that it has not cured or (2) a notice of termination of this Agreement under Subsection 5.3 above) may elect by giving ICANN written notice, to enter an agreement in the updated form in place of this Agreement. In the event of such election, Registrar and ICANN shall promptly sign a new accreditation agreement that contains the provisions of the updated form posted on the web site, with the length of the term of the substituted agreement as stated in the updated form posted on the web site, calculated as if it commenced on the date this Agreement was made, and this Agreement will be deemed terminated.

5.5 Addition or Deletion of TLDs for Which Registrar Accredited. On the Effective Date, Registrar shall be accredited according to Subsection 2.1 for each TLD as to which an appendix executed by both parties is attached to this Agreement. During the Term of this Agreement, Registrar may request accreditation for any additional TLD(s) by signing an additional appendix for each additional TLD in the form prescribed by ICANN and submitting the appendix to ICANN. In the event ICANN agrees to the request, ICANN will sign the additional appendix and return a copy of it to Registrar. The mutually signed appendix shall thereafter be an appendix to this Agreement. During the Term of this Agreement, Registrar may abandon its accreditation for any TLD under this Agreement (provided that Registrar will thereafter remain accredited for at least one TLD under this Agreement) by giving ICANN written notice specifying the TLD as to which accreditation is being abandoned. The abandonment shall be effective thirty days after the notice is given.

5.6 Resolution of Disputes Under this Agreement. Disputes arising under or in connection with this Agreement, including (1) disputes arising from ICANN's failure to renew Registrar's accreditation and (2) requests for specific performance, shall be resolved in a court of competent jurisdiction or, at the election of either party, by an arbitration conducted as provided in this Subsection 5.6 pursuant to the International Arbitration Rules of the American Arbitration Association (AAA). The arbitration shall be conducted in English and shall occur in Los Angeles County, California, USA. There shall be three arbitrators; each party shall choose one arbitrator and, if those two arbitrators do not agree on a third arbitrator, the third shall be chosen by the AAA. The parties shall bear the costs of the arbitration in equal shares, subject to the right of the arbitrators to reallocate the costs in their award as provided in the AAA rules. The parties shall bear their respective attorney's fees in connection with the

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shall be conducted in English and shall occur in Los Angeles County, California, USA. There shall be three arbitrators: each party shall choose one arbitrator and, if those two arbitrators do not agree on a third arbitrator, the third shall be chosen by the AAA. The parties shall bear the costs of the arbitration in equal shares, subject to the right of the arbitrators to reallocate the costs in their award as provided in the AAA rules. The parties shall bear their own attorneys' fees in connection with the arbitration, and the arbitrators may not reallocate the attorneys' fees in conjunction with their award. The arbitrators shall render their decision within ninety days of the conclusion of the arbitration hearing. In the event Registrar initiates arbitration to contest the appropriateness of termination of this Agreement by ICANN, Registrar may at the same time request that the arbitration panel stay the termination until the arbitration decision is rendered, and that request shall have the effect of staying the termination until the arbitration panel has granted an ICANN request for specific performance and Registrar has failed to comply with such ruling. In the event Registrar initiates arbitration to contest an Independent Review Panel's decision under Subsection 4.3.3 sustaining the Board's determination that a specification or policy is supported by consensus, Registrar may at the same time request that the arbitration panel stay the requirement that it comply with the policy until the arbitration decision is rendered, and that request shall have the effect of staying the requirement until the decision or until the arbitration panel has granted an ICANN request for lifting of the stay. In all litigation involving ICANN concerning this Agreement (whether in a case where arbitration has not been elected or to enforce an arbitration award), jurisdiction and exclusive venue for such litigation shall be in a court located in Los Angeles, California, USA; however, the parties shall also have the right to enforce a judgment of such a court in any court of competent jurisdiction. For the purpose of aiding the arbitration and/or preserving the rights of the parties during the pendency of an arbitration, the parties shall have the right to seek temporary or preliminary injunctive relief from the arbitration panel or in a court located in Los Angeles, California, USA, which shall not be a waiver of this arbitration agreement.

5.7 Limitations on Monetary Remedies for Violations of this Agreement. ICANN's aggregate monetary liability for violations of this Agreement shall not exceed the amount of accreditation fees paid by Registrar to ICANN under Subsection 3.9 of this Agreement. Registrar's monetary liability to ICANN for violations of this Agreement shall be limited to accreditation fees owing to ICANN under this Agreement. In no event shall either party be liable for special, indirect, incidental, punitive, exemplary, or consequential damages for any violation of this Agreement.

5.8 Handling by ICANN of Registrar-Supplied Data. Before receiving any Personal Data from Registrar, ICANN shall specify to Registrar in writing the purposes for and conditions under which ICANN intends to use the Personal Data. ICANN may from time to time provide Registrar with a revised specification of such purposes and conditions, which specification shall become effective no fewer than thirty days after it is provided to Registrar. ICANN shall not use Personal Data provided by Registrar for a purpose or under conditions inconsistent with the specification in effect when the Personal Data was provided. ICANN shall take reasonable steps to avoid uses of the Personal Data by third parties inconsistent with the specification.

5.9 Assignment. Either party may assign or transfer this Agreement only with the prior written consent of the other party, which shall not be unreasonably withheld, except that ICANN may, with the written approval of the United States Department of Commerce, assign this agreement by giving Registrar written notice of the assignment. In the event of assignment by ICANN, the assignee may, with the approval of the United States Department of Commerce, revise the definition of "Consensus Policy" to the extent necessary to meet the organizational circumstances of the assignee, provided the revised definition requires that Consensus Policies be based on a demonstrated consensus of internet stakeholders.

5.10 No Third-Party Beneficiaries. This Agreement shall not be construed to create any obligation by either ICANN or Registrar to any non-party to this Agreement, including any Registered Name Holder.

5.11 Notices, Designations, and Specifications. All notices to be given under this Agreement shall be given in writing at the address of the appropriate party as set forth below, unless that party has given a notice of change of address in writing. Any notice required by this Agreement shall be deemed to have been properly given when delivered in person, when sent by electronic facsimile with receipt of confirmation of delivery, or when scheduled for delivery by internationally recognized courier service. Designations and specifications by ICANN under this Agreement shall be effective when written notice of them is deemed given to Registrar.

If to ICANN addressed to:

ICANN | Registrar Accreditation Agreement | 17 May 2001 - Windows Internet Explorer

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If to ICANN, addressed to:

Internet Corporation for Assigned Names and Numbers
 Registrar Accreditation
 4675 Admiralty Way, Suite 330
 Marina del Rey, California 90292 USA
 Attention: General Counsel
 Telephone: 1/310/823-9358
 Facsimile: 1/310/823-9549

If to Registrar, addressed to

[Registrar Name]
 a [organization type and jurisdiction]
 [Courier Address]
 [Mailing Address]
 Attention: [contact person]
 Registrar Website URL: [URL]
 Telephone: [telephone number]
 Facsimile [fax number]
 e-mail: [e-mail address]

5.12 Dates and Times. All dates and times relevant to this Agreement or its performance shall be computed based on the date and time observed in Los Angeles, California, USA.

5.13 Language. All notices, designations, and specifications made under this Agreement shall be in the English language.

5.14 Amendments and Waivers. No amendment, supplement, or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both parties. No waiver of any provision of this Agreement shall be binding unless evidenced by a writing signed by the party waiving compliance with such provision. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided.

5.15 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

5.16 Entire Agreement. Except to the extent (a) expressly provided in a written agreement executed by both parties concurrently herewith or (b) of written assurances provided by Registrar to ICANN in connection with its Accreditation, this Agreement (including the appendices which form part of it) constitutes the entire agreement of the parties pertaining to the accreditation of Registrar and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed in duplicate by their duly authorized representatives.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

By: _____

[Registrar Name]

By: _____
 Name: _____
 Title: _____

EXHIBIT B

Statement of Registrar Accreditation Policy

Statement of Minimum Qualifications for Accreditation

(http://www.icann.org/en/registrars/policy_statement.html#IIA)

14 pages minus cover sheet

Statement of Minimum Qualifications for Accreditation (http://www.icann.org/en/registrars/policy_statement.html#IIA)

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STATEMENT OF REGISTRAR ACCREDITATION POLICY
(.com, .net, and .org top-level domains)
(Adopted March 4, 1999)

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Done Internet 100%

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http://www.icann.org/initiatives/policies/statement.html#11a

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IV. Program for Accreditation of Registrars for Phase 1 (Testbed Phase) of Shared Registration System

ICANN adopts the following policies concerning accreditation of registrars for the .com, .net, and .org top-level domains (TLDs). The ICANN Board of Directors intends to review the appropriateness of these policies in Spring 2000, to permit them to be improved based on experience ICANN then has with the policies.

The World Intellectual Property Organization is expected to submit to ICANN final recommendations concerning intellectual property issues in mid-1999. ICANN's consideration of those recommendations may result in some modifications to these policies.

In adopting these policies for accreditation of registrars for the .com, .net, and .org TLDs, ICANN notes that some of the terms and conditions of registrar accreditation agreements, as set forth in Section III below, are made appropriate by the circumstances concerning those TLDs and the administration of their registry. ICANN recognizes that different circumstances that may presently apply to other TLDs, or different circumstances that may in the future apply to these TLDs, may make it appropriate for these types of terms and conditions to be included in agreements between the registry administrator and registrars, rather than agreements between ICANN and registrars.

I. Policies Concerning Application Fees and Procedures

For initial applications, the application fee is US\$2500 for applicants seeking to be selected as testbed participants and US\$1000 for all other applicants. If an applicant applies unsuccessfully to participate in the testbed, the applicant will be considered for regular accreditation without the payment of a further application fee. Renewal application fees will be established later, after experience is gained regarding the time and effort required to process applications.

In processing applications for registrar accreditation, ICANN's goal is that action be taken within thirty days of an application being submitted in complete form, excluding time consumed in obtaining additional information from the applicant. ICANN's President and CEO shall report monthly to the Board on any instances where that goal has been missed.

II. Statement of Minimum Qualifications for Accreditation

An applicant for accreditation must demonstrate that it likely can perform its obligations as registrar by showing in its application for accreditation that it possesses the qualifications set forth in [Section II.A](#) below. Even where such a showing is made, ICANN may refuse to accredit a registrar if any of various conditions that reflected negatively on the application arise, as set forth in [Section II.B](#) below. In connection with termination of accreditation, ICANN may disqualify a registrar or related persons, either permanently or for a stated period of time, from involvement with accredited registrars, as set forth in [Section II.C](#) below.

A. Qualifications

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http://www.icann.org/registrars/registry_statement_of_policy_0114

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A. Qualifications

To qualify for accreditation as a registrar, the applicant will be required to

1. In the case of applicants for initial accreditation, demonstrate to the satisfaction of ICANN current business capabilities (including management, communication, and information systems), or submit information (such as a reasonably detailed business plan) sufficient to show the ability to develop capabilities by the commencement of operation under accreditation that, in ICANN's judgment, are reasonably suited to

- a. Provide the applicant secure, authenticated access to the registry.
- b. Provide robust and scalable operations capable of handling the registration volume reasonably projected by applicant.
- c. Allow for prompt handling of second-level domain ("SLD") holders' requests for changes in registration data.
- d. Achieve a reliable and readily usable daily data backup and archival of all SLD holder and registration data.
- e. Maintain electronic copies of all transactions, correspondence, and communications with the SRS for at least the length of a registration contract.
- f. Provide procedures for information systems security to prevent malicious or accidental disruption of the applicant's operations.
- g. Meet the applicant's obligations under its accreditation agreement.
- h. Provide procedures that permit applicant's customers to change registrars without interruption in use of the assigned domain name.
- i. Have the capacity to engage a sufficient number of qualified employees to handle the registration, update, and customer inquiry volume reasonably projected by applicant. The equivalent of five full-time employees or more will be deemed sufficient, although a lesser number of employees will be accepted upon a showing that it will be sufficient in the circumstances.
- j. Ensure that the registrar's obligations to its customers and to the registry administrator will be fulfilled in the event that the registrar goes out of business, including ensuring that SLD holders will continue to have use of their domain names and that operation of the Internet will not be adversely affected.

Applicants for initial accreditation seeking to demonstrate current business capabilities meeting the above criteria may do so by submitting an independently verified or verifiable description of the applicant's business, such as audited financial statements or annual reports of companies with publicly-traded securities. Applicants for initial accreditation submitting comprehensive business plans to develop capabilities by the commencement of operation under accreditation may do so under appropriate assurances by ICANN of confidentiality of the plans.

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2. In the case of applicants already operating as registrars accredited by ICANN, it demonstrate that they are meeting the requirements of 1(a)(i) in their existing registrar businesses.

3. Offer to agree to have, and demonstrate an ability to obtain, commercial general liability insurance in effect during the accreditation period in an amount sufficient, given the registration volume reasonably projected by applicant, to provide domain-name holders reasonable compensation for losses caused by the applicant's wrongful covered acts. A policy limit in the amount of US\$500,000 or more will be deemed sufficient, although a lesser limit will be accepted upon a showing that it provides for reasonable compensation in the circumstances. A certificate of insurance need not accompany the application, but must be presented as a condition of accreditation becoming effective.

4. Demonstrate that it has adequate working capital available for the operation of the registrar business, given the registration volume reasonably projected by applicant. For applicants seeking initial accreditation, demonstration of the ability to procure liquid capital immediately available in the applicant's name at the commencement of the accreditation period in an amount of US\$70,000 or more will be deemed adequate, although a lesser amount will be accepted upon a showing that in the circumstances it will provide adequate working capital. Evidence of independent verification of the capital (such as by guaranteed bank loan or by a guaranteed credit line or letter of credit from a recognized financial institution) need not accompany the application, but must be presented as a condition of accreditation becoming effective. For applicants with existing registrar businesses, or proposing to convert their existing domain-name reseller businesses to registrar businesses, an independently verified financial statement (such as by an accountant's audit) showing the working capital devoted to the business should be presented with the application.

5. At the time of the application, hold an existing and operational SLD (or third level domain if operating under an ISO-3166 country level domain).

B. Matters Potentially Leading to Ineligibility

ICANN may refuse to accredit an otherwise qualified applicant for any of the following reasons:

1. There is a material misrepresentation, material inaccuracy, or materially misleading statement in the application or any material accompanying the application;
2. Applicant has submitted to ICANN within the past year an accreditation application or material accompanying an accreditation application that ICANN has found to contain a material misrepresentation, material inaccuracy, or materially misleading statement;
3. Applicant or any officer, director, or manager, or any person or entity owning (or beneficially owning) five percent or more of applicant:
 - a. within the past ten years, has been convicted of a felony or of a misdemeanor related to financial activities, or has been judged by a court to have committed fraud or breach of fiduciary duty, or has been the subject of a judicial determination that ICANN deemed as the substantive equivalent of any of these;
 - b. within the past ten years, has been disciplined by any government or industry regulator, body for conduct involving dishonesty or misuse of the funds of others;
 - c. is currently involved in any judicial or regulatory proceeding that could result in a conviction, judgment, determination, or discipline of the type specified in (a) or (b); or
 - d. is the subject of a disqualification imposed by ICANN and in effect at the time the application is considered, as specified immediately below.

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http://www.icann.org/whois/registrars/policy_statement/01161610 mary jane butters

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C. Disqualification

To address violations by an accredited registrar or registry administrator of its obligations stated in the accreditation agreement, ICANN may, in accordance with ICANN's procedures, disqualify a registrar or registry administrator, or any officer, director, manager, employee, or owner (including beneficial owners) from being an ICANN-accredited registrar or registry administrator, either permanently or for a stated period of time. As noted in Section II.B.3.d immediately above, disqualification also precludes the subject from certain types of involvement with any ICANN-accredited registrar.

III. Terms and Conditions of Accreditation Agreements

As a condition of obtaining and maintaining ICANN accreditation, registrars must enter and maintain in effect accreditation agreements with ICANN. The terms and conditions of which will be specified in written agreements executed by ICANN and each registrar. In conformity with the following general terms:

The following outline gives the terms of the standard accreditation agreement that is being considered for adoption. This is an outline only, and will be implemented in more detailed contractual language.

The principal provisions of these agreements will include:

A. Accreditation. During the term of the agreement, the registrar will be accredited by ICANN to act as a registrar (including to insert and renew registration of SLDs in the registry) for the .com, .net, and .org TLDs.

B. Registrar Use of ICANN Name. The registrar will be granted a non-exclusive worldwide license to state during the term of the agreement that it is accredited by ICANN as a registrar in the .com, .net, and .org TLDs. No other use of ICANN's name will be covered by the license. This license may not be assigned or sublicensed by the registrar.

C. Submission of SLD Holder Data to Registry. During the term of the agreement

1. As part of its registration of all SLD registrations in the .com, .net, and .org TLDs, the registrar will submit the following data elements concerning SLD registrations it processes to Network Solutions, Inc. ("NSI") or such other the entity as ICANN may designate as registry administrator for the appropriate TLD:
 - a. The name of the SLD being registered.
 - b. The Internet Protocol ("IP") addresses of the primary nameserver and any secondary nameservers for the SLD.
 - c. The corresponding names of those nameservers.
 - d. The identity of the registrar, and
 - e. Unless waived by ICANN, the expiration date of the registration.
2. Within two business days after receiving any updates to data elements C.1.b and c from the SLD holder, the registrar will submit the updated data elements to NSI or such other the entity as ICANN may designate as registry administrator for the appropriate TLD
3. Within ten days of any request by ICANN, the registrar will submit an electronic database containing data elements C.1.a through d for all active records placed by the registrar into the registry, in a format specified by ICANN, to an existing or a substitute registry administrator designated by ICANN for the appropriate TLD. This submission is to allow reconstitution of the registry, in the event of a technical failure of the registry or change in accredited registrar, administrator.

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http://www.icann.org/registrars/policy-statement.html#D.1A

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D. Public Access to Data on SLD Registrations. During the term of the agreement

1. At its expense, the registrar will provide public access on a real-time basis (such as through a Whois service) to such data elements as ICANN designates from time to time concerning all active SLD registrations sponsored by the Registrar in the registry for the .com, .net, and .org TLDs. Until ICANN otherwise designates, this data shall consist of
 - a. The name of the SLD being registered;
 - b. The Internet Protocol ("IP") addresses of the primary nameserver and any secondary nameservers for the SLD;
 - c. The corresponding names of those nameservers;
 - d. The identity of the registrar;
 - e. The expiration date of the registration;
 - f. The name and postal address of the SLD holder;
 - g. The name, postal address, e-mail address, voice telephone number, and where available fax number of the technical contact for the SLD;
 - h. The name, postal address, e-mail address, voice telephone number, and where available fax number of the administrative contact for the SLD;
 - i. The name, postal address, e-mail address, voice telephone number, and where available fax number of the zone contact for the SLD; and
 - j. Any remark concerning the registered SLD name that should appear in the Whois data.
2. Upon receiving any updates to data elements D.1.b through j from the SLD holder, the registrar will promptly update its database used to provide the public access described in Section D.1.
3. The registrar may subcontract its obligation to provide the public access described in Section D.1 to another entity with ICANN's prior written approval of the subcontractor and the terms and conditions of the subcontract. In the event of subcontracting, Registrar shall remain fully responsible for the proper provision of the access.
4. In the event that ICANN determines that the real-time public access described in Section D.1 should be provided by an entity other than the registrar, the registrar will provide up-to-date data elements D.1.b through j, in an electronic format specified by ICANN, for all active SLD registrations sponsored by the registrar to the entity designated by ICANN to provide the access. The data will be provided within ten days of ICANN's designation of any such provider. Thereafter, for so long as ICANN's designation of the provider remains in effect, the registrar promptly will provide data elements D.1.a through j for new SLD registrations and updates to registration data to the designated provider, all in an electronic format specified by ICANN. The registrar will bear the cost of providing the data to the designated provider.
5. To comply with applicable statutes and regulations or for other reasons, ICANN may from time to time establish limits on the data concerning SLD registrations that the registrar may make available to the public. In the event ICANN establishes such limits, the registrar shall abide by them.

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E. Retention of SLD Holder and Registration Data.

1. During the term of the accreditation agreement, the registrar will maintain its own electronic database containing updated data elements D.1 a through j for each active SLD registration sponsored by it in the registry for the .com, .net, and .org TLDs.
2. During the term of the agreement and for three years thereafter, the registrar will maintain the following records relating to its dealings with registry administrators and SLD holders:
 - a. In electronic form, the submission date and time, and the content, of all registration data (including updates) submitted to the registry;
 - b. In electronic, paper, or microfilm form, all written communications with actual or potential SLD holder-customers, including order templates; and
 - c. In electronic form, records of the accounts of all SLD holder-customers with the registrar, including dates and amounts of all payments and refunds.

The registrar will make these records available for inspection by ICANN upon reasonable notice.

F. Rights in Data. The registrar will disclaim all rights to ownership or exclusive use of data elements C.1 a through c and D.1 a through c for all SLD registrations submitted by the registrar to any registry. The registrar will be permitted to claim rights in the data elements C.1 d and e and D.1 d through j concerning active SLD registrations sponsored by it in the registry for the .com, .net, and .org TLDs, subject to (1) a non-exclusive, irrevocable, royalty-free license to exercise or have exercised all such rights for or on behalf of ICANN throughout the world, which ICANN may sublicense to any other registrar it accredits in the event this Agreement is terminated or expires without renewal; and (2) a non-exclusive, irrevocable, royalty-free license to make use of and disclose the data elements D.1 a through j in a Whois or similar service. ICANN will have the ability to waive in writing the requirement for the license stated in (2).

G. Data Escrow. During the term of the agreement, on a daily basis or on such other a schedule as ICANN may from time to time specify, the registrar will submit to ICANN or to an independent escrow agent ICANN designates, an electronic copy, in a format specified by ICANN, of the database described in Section E.1 above. The escrowed data will be held by ICANN or the escrow agent under an escrow agreement that specifies that the data may be used only in the event that this Agreement is terminated or expires without renewal.

H. Fair Competition with Other Registrars. The registrar, if it is also a registry administrator for the .com, .net, or .org TLD(s), will abide by the following procedures to ensure that all accredited registrars have equal access to the registry for that TLD:

1. The registrar operations of the registry administrator shall not have access to, and will not make any use of, data concerning the expiration date of registrations inserted or last renewed in the registry by other registrars.
2. The registrar operations of the registry administrator shall not have earlier or more extensive access than any other registrar to data concerning the level of registry activity (e.g., number of initial registrations inserted, number of renewals, and number of updates) of any other registrar.
3. The registry shall be administered so that initial SLD registrations received from accredited registrars are assigned on a first-come, first-served basis and so that existing SLD holders may renew their registrations through the accredited registrar of their choice.
4. The registry shall be administered to permit any accredited registrar, with SLD-holder authorization, to assume sponsorship of an SLD registration placed or renewed in the registry by another registrar.

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I. Accommodation by Registry Administrator of Privacy Requirements Applicable to Registrars The registrar, if it is also a registry administrator for the .com, .net, or .org TLD(s), will abide by the following requirements to promote uniform application of fair information practices and to facilitate the submission of SLD registration data to the registry by registrars in a manner that complies with those registrars' privacy obligations to their SLD holders

1. The registry administrator shall provide each registrar with notice as to:
 - a. The purposes for which data about any identified or identifiable natural person ("Personal Data") to be provided by the registrar are intended;
 - b. The recipients or categories of recipients of any Personal Data provided by the registrar; and
 - c. How any Personal Data provided by the registrar and maintained in the registry can be accessed and, if necessary, rectified.
2. The registry administrator shall, in the registrar/registry administrator contract, agree that the registry will not process any Personal Data provided by the registrar in a way incompatible with the purposes and other limitations about which it has provided notice to the registrar.
3. The registry administrator shall, in the registrar/registry administrator contract, agree that the registry will take reasonable precautions to protect any Personal Data provided by the registrar from loss, misuse, unauthorized access or disclosure, alteration, or destruction.

J. Business Dealings Including with SLD Holders

1. In the event ICANN either adopts or approves any Code of Conduct for DNS Registrars, the registrar will abide by that Code.
2. The registrar will abide by all applicable laws and governmental regulations.
3. The registrar will not represent to any actual or potential SLD holder that the registrar enjoys access to a registry for which the registrar is accredited that is superior to that of any other registrar accredited for that registry.
4. The registrar will not activate any SLD registration unless and until it is satisfied that it has received payment of its registration fee. For this purpose, a charge to a credit card or other mechanism providing a reasonable assurance of payment will be sufficient.
5. The registrar will register SLDs to SLD holders only for fixed periods. At the conclusion of the registration period, failure to pay a renewal fee within the time specified in a second notice or reminder will result in cancellation of the registration.
6. The registrar will not insert or renew any SLD name in any registry for which the registrar is accredited in a manner contrary to an ICANN I-approved list or specification of excluded SLD names that is in effect at the time of insertion or renewal.
7. The registrar will require all SLD holders to enter an electronic or paper registration agreement with the registrar including at least the following provisions.

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7 The registrar will require all SLD holders to enter an electronic or paper registration agreement with the registrar including at least the following provisions:

a. The SLD holder shall provide to the registrar accurate and reliable contact details and promptly update them during the term of the SLD registration, including: the full name, postal address, e-mail address, voice telephone number, and fax number if available of the SLD holder, name of authorized person for contact purposes in the case of an SLD holder that is an organization, association, or corporation; and the data elements listed in Section D.1.b, c, and f through f above.

A SLD holder's willful provision of inaccurate or unreliable information or the willful failure promptly to update information provided to the registrar shall constitute a material breach of the SLD holder-registrar contract and be a basis for cancellation of the SLD registration.

An SLD holder (such as an ISP) may provide its own contact information in connection with an SLD the use of which it intends to license to a third party who wishes to remain anonymous, provided that the technical, administrative, and zone contact information provided is adequate to facilitate timely resolution of any problems that arise in connection with the SLD. An SLD holder licensing use of an SLD according to this provision shall accept liability for harm caused by wrongful use of the SLD, unless it promptly discloses the identity of the licensee to a party providing it reasonable evidence of such harm. (N.B. This provision has been clarified in the posted Registrar Accreditation Agreement.)

b. The registrar shall provide notice to each SLD holder-customer stating:

- i. The purposes for which any data collected from the applicant about any identified or identifiable natural person (Personal Data) are intended;
- ii. The intended recipients or categories of recipients of the data (including the registry administrator and others who will receive the data from the registry);
- iii. Which data are obligatory; and which data, if any, are voluntary; and
- iv. How the data subject can access and, if necessary, rectify the data held about them.

c. The SLD holder shall consent to the data processing referred to in Section J.7.b

d. The SLD holder shall represent that it has provided notice equivalent to that described in Section J.7.b above to any third-party individuals whose Personal Data are supplied to the registrar by the SLD holder, and that the SLD holder has obtained consent equivalent to that referred to in Section J.7.c above of any such third-party individuals.

e. The registrar shall agree that it will not process the Personal Data collected from the SLD holder in a way incompatible with the purposes and other limitations about which it has provided notice to the SLD holder in accordance with Section J.7.b above.

f. The registrar shall agree that it will take reasonable precautions to protect Personal Data from loss, misuse, unauthorized access or disclosure, alteration, or destruction.

g. The SLD holder shall represent that, to the best of the SLD holder's knowledge and belief, neither the registration of the SLD name nor the manner in which it is directly or indirectly used infringes the legal rights of a third party.

h. For the adjudication of disputes concerning or arising from use of the SLD name, the SLD holder shall submit, without prejudice to other potentially applicable jurisdictions, to the jurisdiction of the courts (1) of the SLD holder's domicile and (2) where the registrar is located.

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7. The registrar will require all SLD holders to enter an electronic or paper registration agreement with the registrar including at least the following provisions:

a. The SLD holder shall provide to the registrar accurate and reliable contact details and promptly update them during the term of the SLD registration, including: the full name, postal address, e-mail address, voice telephone number, and fax number if available of the SLD holder; name of authorized person for contact purposes in the case of an SLD holder that is an organization, association, or corporation; and the data elements listed in Section D.1.b.c. and f through l above.

A SLD holder's willful provision of inaccurate or unreliable information or the willful failure promptly to update information provided to the registrar shall constitute a material breach of the SLD holder-registrar contract and be a basis for cancellation of the SLD registration.

An SLD holder (such as an ISP) may provide its own contact information in connection with an SLD the use of which it intends to license to a third party who wishes to remain anonymous, provided that the technical, administrative, and zone contact information provided is adequate to facilitate timely resolution of any problems that arise in connection with the SLD. An SLD holder licensing use of an SLD according to this provision shall accept liability for harm caused by wrongful use of the SLD, unless it promptly discloses the identity of the licensee to a party providing it reasonable evidence of such harm. *(i.e. This provision has been clarified in the posted Registrar Accreditation Agreement!)*

b. The registrar shall provide notice to each SLD holder-customer stating:

i. The purposes for which any data collected from the applicant about any identified or identifiable natural person ("Personal Data") are intended;

ii. The intended recipients or categories of recipients of the data (including the registry administrator and others who will receive the data from the registry);

iii. Which data are obligatory and which data, if any, are voluntary; and

iv. How the data subject can access and, if necessary, rectify the data held about them.

c. The SLD holder shall consent to the data processing referred to in Section J.7.b.

d. The SLD holder shall represent that it has provided notice equivalent to that described in Section J.7.b above to any third-party individuals whose Personal Data are supplied to the registrar by the SLD holder, and that the SLD holder has obtained consent equivalent to that referred to in Section J.7.c above of any such third-party individuals.

e. The registrar shall agree that it will not process the Personal Data collected from the SLD holder in a way incompatible with the purposes and other limitations about which it has provided notice to the SLD holder in accordance with Section J.7.b. above.

f. The registrar shall agree that it will take reasonable precautions to protect Personal Data from loss, misuse, unauthorized access or disclosure, alteration, or destruction.

g. The SLD holder shall represent that, to the best of the SLD holder's knowledge and belief, neither the registration of the SLD name nor the manner in which it is directly or indirectly used infringes the legal rights of a third party.

h. For the adjudication of disputes concerning or arising from use of the SLD name, the SLD holder shall submit, without prejudice to other potentially applicable jurisdictions, to the jurisdiction of the courts (1) of the SLD holder's domicile and (2) where the registrar is located.

STATEMENT OF REGISTRAR ACCREDITATION POLICY - Windows Internet Explorer

http://www.icann.org/en/registrars/registry/stateofaccreditation.htm

mary jane butters

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i. The SLD holder shall agree that its registration of the SLD name shall be subject to suspension, cancellation, or transfer by any ICANN procedure, or by any registrar or registry administrator procedure approved by ICANN, (1) to correct mistakes by the registrar or the registry administrator in registering the name or (2) for the resolution of disputes concerning the SLD name.

8. The registrar will, upon notification by any person of an inaccuracy in the contact details associated with a SLD registration sponsored by the registrar, take reasonable steps to verify and correct that inaccuracy.

9. The registrar will maintain in force commercial general liability insurance with policy limits of at least the amount stated in Section II.4.3 above covering liabilities arising from Registrar's registrar business during the term of the agreement.

K. Domain Name Dispute Resolution. During the term of the accreditation agreement, the registrar will have in place a policy and procedure for resolution of disputes concerning SLD names. In the event that ICANN establishes a policy or procedure for resolution of disputes concerning SLD names that by its terms applies to the registrar, the registrar will adhere to the policy or procedure.

L. Accreditation Fees. As a condition of accreditation, the registrar will pay accreditation fees to ICANN. These fees consist of fixed and variable components. Initially, the fixed component for a one-year term will be US\$5,000.00. Payment of the fixed component will be due upon execution by the registrar of the initial accreditation agreement and each renewal. The variable component will be based on the number of SLD registrations inserted or renewed in the .com, .net, and .org registries by the registrar on or after July 1, 1999, and will be payable monthly in arrears. Within five days following the end of each month during the term of the agreement beginning July 1999, the registrar will submit an accounting to ICANN stating the sum of the durations (in years) of all of the registrations inserted or renewed in said registries by the registrar during the month. At the time the accounting is submitted to ICANN, the registrar will pay ICANN an amount computed by multiplying that sum by a charge specified from time to time by ICANN, which will not exceed US\$1.00 per registration-year through December 31, 2000. On reasonable notice given by ICANN to the registrar, accountings submitted by the registrar will be subject to verification by an independent audit of the registrar's books and records.

M. Termination of Agreement. The accreditation agreement may be terminated by ICANN before its expiration in any of the following circumstances:

1. The registrar requests termination in writing.
2. There was a material misrepresentation, material inaccuracy, or materially misleading statement in the registrar's application for accreditation or any material accompanying the application.
3. Any of the circumstances of ineligibility for accreditation stated above in Section II.B.3 apply with respect to the registrar or related persons.
4. The registrar fails to cure any breach of the agreement within thirty days after ICANN gives the registrar notice of the breach.
5. The registrar acts in a manner that ICANN reasonably determines endangers the stability and operational integrity of the Internet.
6. The registrar ceases doing business as a registrar.
7. The registrar becomes bankrupt or insolvent.

The accreditation agreement may be terminated in circumstances 1 through 6 above only upon fifteen days notice to the registrar, with the registrar being given an opportunity during that time to initiate arbitration under Section O below to determine the appropriateness of termination. In cases where ICANN reasonably determines that immediate action is urgently required to preserve the stability of the Internet or protect third parties, it may suspend the registrar's accreditation immediately, on notice to the registrar for the fifteen-day period or until any requested arbitration is concluded. This Agreement may be terminated immediately upon notice to the registrar in circumstance 7 above.

STATEMENT OF REGISTRAR ACCREDITATION POLICY - Windows Internet Explorer

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N. Term of Agreement Renewal. The accreditation agreement will have an initial term of one year, unless sooner terminated. If the registrar seeks to continue its accreditation, it may apply for renewed accreditation, and will be entitled to renewal provided it meets the accreditation requirements then in effect. In connection with renewed accreditation, the registrar will confirm its assent to the terms and conditions of the applicable ICANN accreditation agreement prevailing at the time of renewal (which may differ from those of the expiring accreditation agreement) by signing a new accreditation agreement.

O. Resolution of Disputes Under the Accreditation Agreement. Disputes arising under the accreditation agreement, including disputes arising from ICANN's failure to renew a registrar's accreditation, will be resolved by arbitration conducted under the rules of an arbitral body intended for resolution of international disputes. In the event litigation arises involving ICANN concerning the accreditation agreement (such as to enforce an arbitration award), jurisdiction and exclusive venue for such litigation will be in a court located in Los Angeles, California, USA, with the parties also having the right to enforce a judgment of such a court located in Los Angeles in any court of competent jurisdiction.

P. Limitations on Monetary Remedies for Violations of the Agreement. ICANN's aggregate monetary liability for violations of the agreement will not exceed the amount of accreditation fees paid by the registrar to ICANN under the agreement. The registrar's monetary liability to ICANN for violations of the agreement will be limited to accreditation fees owing to ICANN under the agreement. (This limitation will not apply to liabilities arising from any false representations by the registrar as to its accreditation.) In no event will either party be liable for punitive or exemplary damages for any violation of the agreement.

IV. Program for Accreditation of Registrars for Phase 1 (Testbed Phase) of Shared Registration System

All applicants seeking to participate in the phase 1 testbed must meet the accreditation requirements generally applicable to registrars operating in later phases, as described in the Section II above, and enter an accreditation agreement containing the provisions summarized in Section III above. To be considered for participation in the phase 1 testbed, an applicant must specifically note in its application for accreditation its desire to participate in phase 1 and pay the US\$2500 application fee described in Section I above to cover the increased cost of handling the application.

In addition, to ensure the success of the phase 1 testbed, registrars participating in phase 1 will be required to enter a supplemental agreement with ICANN by which they commit:

1. to provide the enhanced technical and engineering support to necessary to interface with NSI and to collaborate closely with NSI's registry administration operation and other phase 1 registrars;
2. to provide ICANN and the U.S. Government operational information in writing concerning the test within thirty days after completion of the test; and
3. to give non-participating accredited registrars reasonable access to test results and other relevant technical data through an ICANN organized meeting to be held no later than thirty days after completion of the test.

In the event that more than five qualified applicants seek to participate in phase 1, the participating applicants will be selected by ICANN based on four criteria. The primary criterion for selection will be:

1. The applicant's demonstrated technical and business capabilities to support the phase 1 test and its willingness to commit the resources and to collaborate closely, as appropriate, to ensure a successful testing of the SRS.

Additional criteria that ICANN is considering using in selecting the phase 1 participants are:

2. The contribution that the applicant's participation would make to introduction of early, robust competition in registrar services.
3. The extent to which the applicant's participation would enhance the availability of registration services in geographical regions or to categories of prospective domain name registrants that would be less adequately served without applicant's participation.
4. The extent to which the applicant's participation would promote a diversity of business models (including non-profit models) and types for provision of registrar services.

The screenshot shows a web browser window displaying the ICANN website. The page title is "Affirmation of Responsibilities for ICANN's Private Sector Management". The document is dated 25 September 2006 and was approved by the ICANN Board of Directors. It outlines ICANN's commitment to the private sector management of the Internet DNS and lists ten key responsibilities:

- Security and Stability:** ICANN shall continue, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems.
- Transparency:** ICANN shall continue to develop, test and improve processes and procedures to encourage improved transparency, accessibility, efficiency and timeliness in the consideration and adoption of policies related to technical coordination of the Internet DNS and funding for ICANN operations. ICANN will continue and aspire to be a leader in the area of transparency for organizations involved in private sector management.
- Accountability:** ICANN shall continue to develop, test, maintain, and improve on accountability mechanisms to be responsive to global Internet stakeholders in the consideration and adoption of policies related to the technical coordination of the Internet DNS, including continuing to improve openness and accessibility for enhanced participation in ICANN's bottom-up participatory policy development processes.
- Root Server Security and Relationships:** ICANN shall continue to coordinate with the operators of root name servers and other appropriate experts with respect to the operational and security matters, both physical and network, relating to the secure and stable coordination of the root zone, ensure appropriate contingency planning, maintain clear processes in root zone changes. ICANN will work to formalize relationships with root name server operators.
- TLD Management:** ICANN shall maintain and build on processes to ensure that competition, consumer interests, and Internet DNS stability and security issues are identified and considered in TLD management decisions, including the consideration and implementation of new TLDs and the introduction of gTLDs. ICANN will continue to develop its policy development processes, and will further develop processes for taking into account recommendations from ICANN's advisory committees and supporting organizations, and other relevant expert advisory panels and organizations. ICANN shall continue to enforce existing policy relating to WHOIS, such existing policy requires that ICANN implement measures to maintain timely, unrestricted and public access to accurate and complete WHOIS information, including registrant, technical, billing and administrative contact information. ICANN shall continue its efforts to achieve stable agreements with country-code top-level domain (ccTLD) operators.
- Multi-stakeholder Model:** ICANN shall maintain and improve multi-stakeholder model and the global participation of all stakeholders, including conducting reviews of its existing advisory committees and supporting organizations, and will continue to further the effectiveness of the bottom-up policy development processes. ICANN will strive to increase engagement with the Private Sector by developing additional mechanisms for involvement of those affected by the ICANN policies.
- Role of Governments:** ICANN shall work with the Government Advisory Committee Members to sustain the GAC's role within ICANN so as to facilitate effective consideration of GAC advice on the public policy aspects of the technical coordination of the Internet.
- IR Addressing:** ICANN shall continue to work collaboratively on a global and regional level so as to incorporate Regional Internet Registries policy-making activities into the ICANN processes, while allowing them to continue their technical work. ICANN shall continue to maintain legal agreements with the RIRs (and such other appropriate organizations) reflecting this work.
- Corporate Responsibility:** ICANN shall maintain excellence and efficiency in operations, including good governance, organizational measures to maintain stable, international private sector organization, and shall maintain relevant technical and business experience for members of the Board of Directors, executive management, and staff. ICANN will implement appropriate mechanisms that foster participation in ICANN by global Internet stakeholders, such as providing educational services and fostering information sharing for constituents and promoting best practices among industry segments.
- Corporate Administrative Structure:** ICANN shall conduct a review of, and shall make necessary changes in, corporate administrative structure to ensure stability, including securing adequate resources in contract enforcement, taking into account organizational and corporate governance best practices.

Registrar Accreditation Agreement (<http://www.icann.org/en/registrars/ra-agreement-21may09-en.htm>)

The screenshot shows a web browser window displaying the ICANN website. The page title is "Affirmation of Responsibilities for ICANN's Private Sector Management". The document is dated 25 September 2006 and was approved by the ICANN Board of Directors. The main content is a list of 10 responsibilities that ICANN has affirmed and agreed to be guided by. A left-hand navigation menu includes links for Home, News, Announcements, Blog, Contractual Compliance Newsletter Archive, Learning, Monthly Magazine, Newsletters and News Alerts Sign-Up Page, Newsletter Archive, Photos, Policy Update, Press Resources, RSS Feeds, Speeches and Presentations, and Video.

Affirmation of Responsibilities for ICANN's Private Sector Management

Approved by the ICANN Board of Directors
25 September 2006

ICANN shall continue in its commitment to the private sector management of the Internet DNS by promoting the security and stability of the global Internet while maintaining and promoting competition through its multi-stakeholder model.

ICANN hereby affirms and agrees to be guided by the following responsibilities:

1. **Security and Stability** ICANN shall coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems.
2. **Transparency** ICANN shall continue to develop, test and improve processes and procedures to encourage improved transparency, accessibility, efficiency and timeliness in the consideration and adoption of policies related to technical coordination of the Internet DNS, and funding for ICANN operations. ICANN will innovate and aspire to be a leader in the area of transparency for organizations involved in private sector management.
3. **Accountability** ICANN shall continue to develop, test, maintain, and improve on accountability mechanisms to be responsive to global Internet stakeholders in the consideration and adoption of policies related to the technical coordination of the Internet DNS, including continuing to improve openness and accessibility for enhanced participation in ICANN's bottom-up participatory policy development processes.
4. **Root Server Security and Relationships** ICANN shall continue to coordinate with the operators of root name servers and other appropriate experts with respect to the operational and security matters, both physical and network, relating to the secure and stable coordination of the root zone, ensure appropriate contingency planning, maintain clear processes in root zone changes. ICANN will work to formalize relationships with root name server operators.
5. **TLD Management** ICANN shall maintain and build on processes to ensure that competition, consumer interests and Internet DNS stability and security issues are identified and considered in TLD management decisions, including the consideration and implementation of new TLDs and the introduction of IDNs. ICANN will continue to develop its policy development processes, and will further develop processes for taking into account recommendations from ICANN's advisory committees and supporting organizations and other relevant expert advisory panels and organizations. ICANN shall continue to enforce existing policy relating to WHOIS, such existing policy requires that ICANN implement measures to maintain timely, unrestricted and public access to accurate and complete WHOIS information, including registrant, technical, billing and administrative contact information. ICANN shall continue its efforts to achieve stable agreements with country-code top-level domain (ccTLD) operators.
6. **Multi-stakeholder Model** ICANN shall maintain and improve multi-stakeholder model and the global participation of all stakeholders, including conducting reviews of its existing advisory committees and supporting organizations, and will continue to further the effectiveness of the bottom-up policy development processes. ICANN will strive to increase engagement with the Private Sector by developing additional mechanisms for involvement of those affected by the ICANN policies.
7. **Role of Governments** ICANN shall work with the Government Advisory Committee Members to review the GAC's role within ICANN so as to facilitate effective consideration of GAC advice on the public policy aspects of the technical coordination of the Internet.
8. **IP Addressing** ICANN shall continue to work collaboratively on a global and regional level so as to incorporate Regional Internet Registries policy-making activities into the ICANN processes while allowing them to continue their technical work. ICANN shall continue to maintain legal agreements with the RIRs (and such other appropriate organizations) reflecting this work.
9. **Corporate Responsibility** ICANN shall maintain excellence and efficiency in operations, including good governance, organizational measures to maintain stable international private sector organization, and shall maintain relevant technical and business experience for members of the Board of Directors, executive management, and staff. ICANN will implement appropriate mechanisms that foster participation in ICANN by global Internet stakeholders, such as providing educational services and fostering information sharing for constituents and promoting best practices among industry segments.
10. **Corporate Administrative Structure** ICANN shall conduct a review of, and shall make necessary changes in, corporate administrative structure to ensure stability including devoting adequate resources to contract enforcement, taking into account organizational and corporate governance best practices.

Exhibit B

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF WASHINGTON

Plaintiff:	)	Case No. C11-1899-CV
Debra Subramanian)	
	)	PLAINTIFF'S COMPLAINT
v.	)	BREACH OF CONTRACT
Defendants:	)	SPECIFIC PERFORMANCE
ICANN,	)	\$5,887,500
Susan K. Woodward,)	
Charles Steinberger,	)	CLAIM NOT SUBJECT TO
Internet.bs	)	MANDATORY ARBITRATION

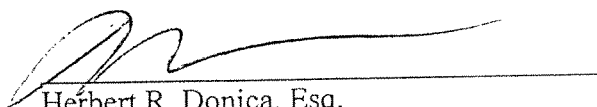
NOTICE OF FILING NOTICE OF REMOVAL

Defendant, SUSAN K. WOODWARD, by and through her undersigned counsel, hereby files the attached copy of the Notice of Removal, the original of which was filed with the United States Bankruptcy Court for the Middle District of Florida, Tampa Division, on April 26, 2011.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Filing Notice of Removal has been furnished by regular U.S. Mail and facsimile on the 26th day of April, 2011, to: **Denise Subramaniam**, 2850 SW Cedar Hills Blvd. #351, Beaverton, OR 97005-1393; **ICANN**, c/o Samantha Eisner, Esq., Senior Counsel, 4676 Admiralty Way #330, Marina del Rey, California 90292; **Charles F. Steinberger**, 19302 – 69th Avenue East, Bradenton, FL 34211 and **Internet.bs Corp.**, c/o Ernesto Gongora, CTO, 98 Hampshire Street, N-4892 Nassau, The Bahamas.

DONICA LAW FIRM, P.A.
Counsel for Defendant Susan K. Woodard
106 S. Tampania Ave., Suite 250
Tampa, FL 33609
Telephone: (813) 878-9790
Facsimile: (813) 878-9746



Herbert R. Donica, Esq.
Florida Bar No. 841870

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

Charles P. Steinberger and
Pamela J. Perry

Case No. 8:10-bk-19945-KRM
Chapter 7

Debtors.

Denise Subramaniam,

Plaintiff,

State of Oregon
Washington County Circuit Court
Civil Action No. C11-1899-CV

vs.

ICANN, Susan K. Woodward,
Charles Steinberger, and Internet.bs,

Adv. No. 8:11-ap-_____-KRM

Defendants.

NOTICE OF REMOVAL

SUSAN K. WOODWARD, the Chapter 7 Trustee (the “Trustee”) for the bankruptcy estate of Charles P. Steinberger and Pamela J. Perry (the “Debtors”), by and through her undersigned counsel, pursuant to Fed. R. Bankr. P. 9027, hereby gives notice of removal of the above-referenced state court action, and respectfully states as follows:

1. The removed action is an action relating to an alleged Breach of Contract by the Debtor and other parties, and the case was originally filed in the Circuit Court of Washington County, State of Oregon, on or about March 31, 2011 (the “State Court Action”).

2. The Debtors filed their voluntary petition for relief under Chapter 7 of the Bankruptcy Code on August 19, 2010, Case No. 8:10-bk-19945-KRM, Middle District of Florida, Tampa Division.

3. This Court has jurisdiction over the removed action pursuant to 28 U.S.C. § 1334.
4. The State Court Action may be removed to this Court pursuant to 28 U.S.C. 1452.
5. Allegations in the State Court Action concern an alleged breach of contract.
6. Upon removal of the cause of action, the proceeding is a core proceeding.
7. Trustee hereby consents to entry of final order(s) or judgment by this Court.
8. Copies of all available process and pleadings in the State Court Action, or as may be limited by the Court, will be supplemented soon hereafter.

DONICA LAW FIRM, P.A.
Counsel for Trustee
106 S. Tampania Ave., Suite 250
Tampa, FL 33609
Telephone: (813) 878-9790
Facsimile: (813) 878-9746
E-mail: herb@donicalaw.com

/s/ Herbert R. Donica
Herbert R. Donica, Esq.
Florida Bar No. 841870

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Removal has been provided by regular U.S. Mail or the Court's CM/ECF system on the 26th day of April, 2011, to: **Charles F. Steinberger and Pamela J. Perry**, 19302 – 69th Avenue East, Bradenton, FL 34211; **Christopher D. Smith, Esq.**, 5391 Lakewood Ranch Blvd., #203, Sarasota, FL 34240; **Denise Subramaniam**, 2850 SW Cedar Hills Blvd. #351, Beaverton, OR 97005-1393; **ICANN**, c/o Samantha Eisner, Esq., Senior Counsel, 4676 Admiralty Way #330, Marina del Rey, California 90292 and **Internet.bs Corp.**, c/o Ernesto Gongora, CTO, 98 Hampshire Street, N-4892 Nassau, The Bahamas.

/s/ Herbert R. Donica
Herbert R. Donica, Esq.

[8NPTFML] [NOTICE OF PRETRIAL CONFERENCE]

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re: Case No. 8:10-bk-19945
Chapter 7

Charles F. Steinberger
Pamela J. Perry

Debtor(s) /

Denise Subramaniam

Plaintiff(s)

Adv. Pro. No. 8:11-ap-00418-KRM

vs.

Charles F. Steinberger

ICANN
Internet.bs Corp.
Susan K. Woodard, Chapter 7 Trustee

Defendant(s) /

NOTICE OF PRETRIAL CONFERENCE

Notice is hereby given that a Notice of Removal of a civil action has been filed by Attorney for Trustee, Herbert Donica , removing a case pending in the Circuit Court of Washington County, State of Oregon styled Denise Subramaniam , Plaintiff(s) vs. ICANN, Susan K Woodard, Charles Steinberger and Internet.bs , Defendant(s), Case No C11-1899CV .

Notice is further given that the moving party, if it has not done so, shall file copies of the entire record of the removed case and if required, remit the \$250.00 filing fee within fourteen (14) days from the entry of this notice.

Notice is further given that a pre-trial conference shall be held in Tampa, FL – Courtroom 9B, Sam M. Gibbons United States Courthouse, 801 N. Florida Avenue , on June 21, 2011 at 10:30am .

At the pretrial conference, the Court will schedule for hearing any pending motions, establish pretrial procedures pursuant to Fed. R. Bankr. P. 7016, and schedule this proceeding for trial, if appropriate.

Appropriate Attire. You are reminded that Local Rule 5072-1(b)(16) requires that all persons appearing in Court should dress in business attire consistent with their financial abilities. Shorts, sandals, shirts without collars, including tee shirts and tank tops, are not acceptable.

Avoid delays at Courthouse security checkpoints. You are reminded that Local Rule 5073-1 restricts the entry of cellular telephones and, except in Orlando, computers into the Courthouse absent a specific order of authorization issued beforehand by the presiding judge. Please take notice that as an additional security measure a photo ID is required for entry into the Courthouse.

DATED on April 28, 2011 .

FOR THE COURT

Lee Ann Bennett , Clerk of Court

Sam M. Gibbons United States Courthouse

801 North Florida Avenue, Suite 555

Tampa, FL 33602

*All references to "Debtor" shall include and refer to both debtors in a case filed jointly by two individuals.

Exhibit C

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

IN RE:

CHARLES F. STEINBERGER
PAMELA J. PERRY

Case No. 8:10-bk-19945-KRM
Chapter 7

Debtors,

Adv. Pro. No. 8:11-ap-00418-KRM

DENISE SUBRAMANIAM,

Plaintiff,

v.

CHARLES STEINBERGER,
ICANN
INTERNET.BS,
SUSAN K. WOODARD, Chapter 7 Trustee

Defendants.

**DECLARATION OF AKRAM ATALLAH IN SUPPORT OF DEFENDANT ICANN'S
MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

I, Akram Atallah, declare and affirm as follows:

1. I am the Chief Operating Officer of the Internet Corporation for Assigned Names and Numbers ("ICANN"), a defendant in this action. I have personal knowledge of the matters set forth herein and am competent to testify to those matters. I make this declaration in support of ICANN's Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)2, 12(b)3 and 12(b)6.

Background and Function of ICANN

2. ICANN is a not-for-profit public benefit corporation organized under the laws of the State of California. Its principal place of business is in Marina del Rey, which is in Los Angeles County, California. ICANN is responsible for the global coordination of the Internet's domain name system unique identifiers. Background on the privatization of the Internet is

available in a publication published by the Department of Commerce on June 5, 1998 entitled *Management of Internet Names and Addresses* and is available at 63 Fed. Reg. 31741 (1998).

3. ICANN does not produce, manufacture or distribute any goods or services anywhere in the world. In fact, ICANN does not sell anything and is not engaged in commercial business, nor does ICANN contract directly with any consumer.

4. ICANN maintains the websites that are located at <http://www.icann.org>, <http://www.iana.org>, and <http://www.internic.net>. These websites are operated from web servers physically located in Southern California and Virginia. These websites contain a wealth of information about ICANN, about the people who work for ICANN, and about the projects that ICANN has undertaken in connection with the Internet. The websites also contain “links” to other information that is related to ICANN’s activities. ICANN does not offer anything for sale on its website.

5. ICANN maintains a series of agreements with generic TLD Internet registries (such as .com and .net) and registrars, and these agreements provide that the registries and registrars pay ICANN fees, some of which are based on a per-registration basis. ICANN collects these fees only directly from the registries or registrars, and not directly from the registrants.

6. A company can become accredited as a Registrar with ICANN by coming to California to do business with ICANN there. Specifically, the company must: (a) go to the passive informational website that ICANN operates in California; (b) mail a hard-copy application to ICANN in California; (c) sign an accreditation agreement and forward it to ICANN in California; and (d) enter an accreditation agreement that explicitly states that it is deemed made at Los Angeles, California, that disputes (between ICANN and the registrar) will be resolved in Los Angeles, and that “all litigation involving ICANN concerning this Agreement (whether in a case where arbitration has not been elected or to enforce an arbitration award), jurisdiction and exclusive venue for such litigation shall be in a court located in Los Angeles, California, USA.” The Agreement is available publicly on the Internet at <http://www.icann.org/registrars/ra-agreement-17may01.htm>.

7. No contract exists between ICANN and Plaintiff Denise Subramaniam.

ICANN's Lack of Connection to Florida

8. ICANN does not have any office or other company facilities in Florida.

9. ICANN does not have any phone number or mailing address in Florida.

10. ICANN does not have any employee or staff member in Florida.

11. ICANN has not applied for any loan or opened any bank account in Florida.

12. ICANN has not owned any tangible personal property or real estate property or assets in Florida.

13. ICANN has not appointed any agent in Florida for service of process.

14. ICANN is not registered or licensed to do business in Florida and does not conduct any business in Florida.

15. ICANN does not solicit business in Florida and has never released any advertisement to the residents of Florida, nor has it released any advertisement in any magazine targeted at residents of Florida.

ICANN's Lack of Connection to Oregon

16. ICANN does not have any office or other company facilities in Oregon.

17. ICANN does not have any phone number or mailing address in Oregon.

18. ICANN does not have any employee or staff member in Oregon.

19. ICANN has not applied for any loan or opened any bank account in Oregon.

20. ICANN has not owned any tangible personal property or real estate property or assets in Oregon.

21. ICANN has not appointed any agent in Oregon for service of process.

22. ICANN is not registered or licensed to do business in Oregon and does not conduct any business in Oregon.

23. ICANN does not solicit business in Oregon and has never released any advertisement to the residents of Oregon, nor has it released any advertisement in any magazine targeted at residents of Oregon.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

This declaration was signed on May 16, 2011 at Marina del Rey, California.


Akram Atallah