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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

**DENISE SUBRAMANIAM,**

Plaintiff,

v.

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

Defendants.

Civil No. 3:11-CV-00892-MO

**REQUEST FOR RULING ON  
DEFENDANT INTERNET  
CORPORATION FOR ASSIGNED  
NAMES AND NUMBERS' MOTION  
TO DISMISS**

Defendant Internet Corporation for Assigned Names and Numbers ("ICANN") hereby respectfully requests that this Court rule on ICANN's Motion to Dismiss pursuant to Federal

Rules of Civil Procedure 12(b)2, 12(b)3 and 12(b)6, a true and correct copy of which is attached hereto as Exhibit 1.

On March 31, 2011, Plaintiff Denise Subramanian ("Plaintiff") improperly filed an action against ICANN and others in the Circuit Court of the State of Oregon for Washington County, claiming that the defendants breached a duty owed to Plaintiff by allowing several of her Internet domain names to expire. A true and correct copy of Plaintiff's Complaint is attached hereto as Exhibit 2.

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 (a California non-profit benefit corporation). While Oregon courts lack personal jurisdiction over ICANN, this Court has subject matter jurisdiction over the claims against ICANN sufficient for this Court to rule on ICANN's Motion to Dismiss. By virtue of Plaintiff's claims against ICANN under the Americans with Disabilities Act (Complaint at ¶¶ 155-169) and Freedom Of Information Act (Complaint at ¶¶ 170-174), both federal statutes, this Court possesses federal question jurisdiction under 28 U.S.C. § 1331. And diversity jurisdiction also exists under 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. Furthermore, the Complaint seeks millions of dollars in damages, (Complaint at ¶¶ 113, 153, 169, 174), which well-exceeds the minimum amount in controversy required for diversity jurisdiction. 28 U.S.C. § 1332(a).

To further complicate matters, before ICANN could properly remove the action to Oregon District Court to present its challenges, including jurisdictional challenges, to Plaintiff's Complaint, on April 26, 2011, Defendant Susan K. Woodard, Trustee for the bankruptcy estate

of Defendant Debtor Charles F. Steinberger (the “Trustee”), filed a notice of removal directly to the United States Bankruptcy Court for the Middle District of Florida. The Trustee’s notice improperly removed Plaintiff’s entire action – including the claims against ICANN – and commenced an Adversary Proceeding in Florida.

Since ICANN was not properly served with Plaintiff’s Complaint until after the action was removed to Florida Bankruptcy Court, ICANN, without subjecting itself to the jurisdiction of the Court, filed its Motion to Dismiss in Bankruptcy Court in order to comply with the statutory procedures for responding, post removal, to Plaintiff’s Complaint and to preserve all of its defenses and claims. Concurrently with its Motion to Dismiss, ICANN also filed a Motion for Withdrawal of the Reference of the Adversary Proceeding as against ICANN from Bankruptcy Court to the appropriate District Court.<sup>1</sup>

In addition, because the Bankruptcy Court was not the proper forum to decide ICANN’s Motion to Dismiss, ICANN filed a motion to stay all further proceedings as against ICANN in the Bankruptcy Court, including any determination on its Motion to Dismiss, pending the outcome of ICANN’s Motion for Withdrawal of the Reference. On June 24, 2011, the Bankruptcy Court issued an order staying all further proceedings with respect to the claims asserted against ICANN in the Adversary Proceeding pending a ruling on ICANN’s Motion for Withdrawal of the Reference. The Bankruptcy Court ordered that, although briefing on ICANN’s Motion to Dismiss had closed (with no opposition from Plaintiff), the Court would refrain from hearing or determining any of the issues presented in ICANN’s Motion to Dismiss

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<sup>1</sup> Pursuant to Rule 5011(a) of the Federal Rules of Bankruptcy Procedure, although a motion for withdrawal of the reference is filed in Bankruptcy Court, it is properly transferred to District Court for determination.

pending the outcome of the Withdrawal Motion. A true and correct copy of the Bankruptcy Court's Order Staying the Adversary Proceeding as to ICANN is attached hereto as Exhibit 3.<sup>2</sup>

On July 27, 2011, the United States District Court for the Middle District of Florida issued an Order granting ICANN's Motion for Withdrawal of the Reference and directed the Clerk to transfer the Adversary Proceeding to the United States District Court for the District of Oregon. (Docket Entry # 2.) Based on the foregoing, ICANN's Motion to Dismiss is now properly before this Court and ICANN respectfully requests a ruling on the Motion. Given that briefing on ICANN's Motion to Dismiss has closed and there is no opposition from Plaintiff, ICANN does not believe a hearing on this Motion is necessary, but will appear for oral argument if this Court determines otherwise.

DATED: August 4, 2011.

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<sup>2</sup> The Bankruptcy Court also dismissed Plaintiff's Complaint against the Defendant Trustee (based on the "Barton Doctrine," which bars suit against a trustee and counsel) and the Defendant Debtor (based on violation of the discharge injunction in the underlying bankruptcy). Thus, ICANN and Defendant Internet.bs, which ICANN does not believe has been served in the matter, are the only remaining defendants to Plaintiff's Complaint.



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,*

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

DENISE SUBRAMANIAM,

*Plaintiff,*

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

*Defendants.*

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**DEFENDANT INTERNET CORPORATION FOR ASSIGNED NAMES AND  
NUMBERS, INC.'S MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS  
PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 12(b)2, 12(b)3 AND 12(b)6**

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## INTRODUCTION

Plaintiff Denise Subramaniam ("Plaintiff") improperly filed a suit against defendant Internet Corporation for Assigned Names and Numbers ("ICANN"), and others, in the Circuit Court of the State of Oregon alleging that ICANN breached a duty owed to Plaintiff by allowing several of her Internet domain name registrations to expire. With respect to ICANN, however, Plaintiff sued the wrong party, in the wrong jurisdiction, under the wrong statutes because Oregon lacks personal jurisdiction over ICANN and ICANN has no connection to Plaintiff's alleged injuries. To make matters worse, Plaintiff's entire action – including the claims against ICANN – was removed directly to Bankruptcy Court for the Middle District of Florida by defendant Susan K. Woodard, Trustee for the bankruptcy estate of defendant Charles Steinberger.<sup>1</sup> Since ICANN was not properly served with the Complaint until after the action was removed to Bankruptcy Court, ICANN is responding to Plaintiff's Complaint at this time and in this forum to preserve all of its defenses and claims. *See* Fed. R. Civ. P. 81; Fed. R. Bankr. P. 9027(g).<sup>2</sup>

Regardless of where this motion is ultimately heard, Plaintiff's Complaint against ICANN must be dismissed on several independent grounds.

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<sup>1</sup> Concurrently with this Motion, ICANN is filing a Motion for Withdrawal of Reference of the Adversary Proceeding as against ICANN from Bankruptcy Court to Florida District Court. As reflected in that Motion, the Trustees' removal of the entire Oregon State Court action directly to Bankruptcy Court in Florida was defective and in contravention of the procedures mandated by 28 U.S.C. § 1452(a) and Bankruptcy Rule 9027(a)(1), which required the Trustee to file the Notice of Removal with the Oregon District Court as to only the bankruptcy-related claims and then seek a transfer to the Middle District of Florida where the bankruptcy action is proceeding. Because the Trustee improperly removed the entire Oregon State Court action directly to Bankruptcy Court, the claims against ICANN are improperly venued in the Bankruptcy Court and the Bankruptcy Court lacks subject matter jurisdiction over those claims. *See* ICANN's Motion for Withdrawal of Reference and its supporting Memorandum of Law.

<sup>2</sup> By doing so, ICANN is not subjecting itself to the jurisdiction of this Court, Florida District Court or Oregon State Court, but is rather complying with the statutory procedures for responding, post removal, to Plaintiff's Complaint. Because the Bankruptcy Court is not the proper forum to decide ICANN's Motion to Dismiss, ICANN is concurrently filing, pursuant to Rule 5011(c) of the Federal Rules of Bankruptcy Procedure, a motion to stay all further proceedings as against ICANN in the Bankruptcy Court, including any determination on this Motion, pending the outcome of ICANN's Motion for Withdrawal of Reference.

*First*, neither this Court, nor any other court in Florida or in Oregon, can properly exercise personal jurisdiction over ICANN (a California non-profit public benefit corporation). ICANN maintains no offices, facilities or other presence in Florida or Oregon; ICANN has no assets or employees in Florida or Oregon; ICANN does not conduct business in Florida or Oregon; and ICANN does not have any sufficient contacts with Florida or Oregon that would render it subject to suit in either jurisdiction. Plaintiff, who bears the burden of alleging jurisdictional facts, cannot allege the “minimum contacts” necessary for a Florida or Oregon court to assert personal jurisdiction over ICANN. As such, this action should be dismissed, under Federal Rule of Civil Procedure 12(b)(2), for a lack of personal jurisdiction.

*Second*, this action should be dismissed, under Federal Rule of Civil Procedure 12(b)(3), for a lack of venue in Florida and Oregon. Other than defendant Steinberger’s bankruptcy proceeding in Florida, this case has nothing to do with the State of Florida. Likewise, other than Plaintiff’s residence in Oregon, this case has nothing to do with the State of Oregon.

*Finally*, Plaintiff asserts claims under statutes that do not apply to ICANN – such as the Americans with Disabilities Act, the Freedom of Information Act and Oregon’s Commercial Code – and under a contract she is not a party or beneficiary to. Accordingly, Plaintiff’s entire Complaint against ICANN should be dismissed, under Federal Rule of Civil Procedure 12(b)(6), for a complete failure to state a claim.

#### FACTUAL BACKGROUND

##### 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 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 or Oregon, is not registered to do business in Florida or Oregon, does not solicit business in Florida or Oregon, does not have any phone number or mailing address in Florida or Oregon, does not sell any goods or services in Florida or Oregon, does not have a bank account in Florida or Oregon, and does not have any employees in Florida or Oregon. Declaration of Akram Atallah In Support of ICANN's Motion to Dismiss ("Atallah Decl.") at ¶¶ 3, 8-12, 14-15, 16-20, 22-23.

The only plausible contact ICANN has with Florida or Oregon, Florida and Oregon share with the rest of the world. ICANN operates a few passive websites on the Internet that provide information regarding its activities, as well as publicly available information about domain name registrations, including the websites at <http://www.icann.org>, <http://www.iana.org>, and <http://www.internic.net>. None of these websites are operated from web servers physically located in Oregon or Florida. *Id.* at ¶ 4. The websites contain information about ICANN, about the people who work for ICANN, and about the projects that ICANN has undertaken in connection with the Internet, but ICANN does not offer anything for sale on its websites. *Id.* In fact, ICANN does not sell anything anywhere. *Id.* at ¶ 3.

Plaintiff's Complaint

Plaintiff alleges that in 2003, she “contracted as a domain name reseller . . . with . . . 4Domains Inc., owned by defendant Charles Steinberger.” Complaint (“Compl.”) 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. *See 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 Americans with Disabilities Act 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 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.

**I. FLORIDA LACKS PERSONAL JURISDICTION OVER ICANN.**

ICANN does not have the necessary “minimum contacts” with Florida for this Court – or any court in Florida – to assert personal jurisdiction over ICANN. Determining whether personal jurisdiction can be exercised over a non-resident defendant like ICANN involves a two-part inquiry: (1) whether the exercise of jurisdiction is appropriate pursuant to Florida’s long-arm statute; and (2) whether exercising jurisdiction would violate the Due Process Clause of the Fourteenth Amendment. *Sloss Indus. Corp. v. Eurisol*, 488 F.3d 922, 925 (11th Cir. 2007). The second part of the inquiry asks whether there are sufficient “minimum contacts . . . such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414, 104 S. Ct. 1868, 1872, 80 L. Ed. 2d 404 (1984); *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 158, 90 L.Ed. 95 (1945). In other words, to satisfy constitutional concerns, ICANN must have reasonably expected to be haled into court in Florida. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472, 105 S. Ct. 2174, 2181-82, 85 L. Ed. 2d 528 (1985).

It is Plaintiff’s burden to “[establish] a prima facie case of personal jurisdiction.” *Stubbs v. Wyndham Nassau Resort & Crystal Palace Casino*, 447 F.3d 1357, 1360 (11th Cir. 2006). And even if such a prima facie case is made, “[w]here, as here, [D]efendant submits affidavits to the contrary, the burden traditionally shifts back to the plaintiff to produce evidence supporting jurisdiction.” *Meier v. Sun Int’l Hotels, Ltd.*, 288 F.3d 1264, 1269 (11th Cir. 2002). Even if she eventually tries, Plaintiff will not be able to carry this burden.

**A. Florida's Long-Arm Statute Does Not Confer Jurisdiction Over ICANN.**

"Since the extent of the long-arm statute is governed by [state law], federal courts are required to construe it as would the Florida Supreme Court." *Cable/Home Comm'n v. Network Prods.*, 902 F.2d 829, 856 (11th Cir. 1990) (citation omitted). Florida courts have held that "Florida's long-arm statute is to be strictly construed." *Sculptchair Inc. v. Century Arts, Ltd.*, 94 F.3d 623, 627 (11th Cir. 1996); *see also Thomas Jefferson Univ. v. Romer*, 710 So. 2d 67, 71 (Fla. Ct. App. 1998).

ICANN has not undertaken any of the activities enumerated in Florida's long-arm statute that would subject it to jurisdiction in the State. The only arguably applicable provision in Florida's long-arm statute is Section 1(a), which may subject a defendant to jurisdiction if it carries on business in Florida. Fla. Stat. § 48.193(1)(a). "In order to establish that a defendant is 'carrying on business' for the purposes of the long-arm statute, the activities of the defendant must be considered collectively and show a general course of business activity in the [S]tate for pecuniary benefit." *Future Tech. Today, Inc. v. OSF Healthcare Sys.*, 218 F.3d 1247, 1249 (11th Cir. 2000).

But ICANN has not conducted any such business activity in Florida. ICANN is a not-for-profit California corporation with its principal place of business in California. Atallah Decl. at ¶ 2. ICANN has no employees, offices or agents in Florida. *Id.* at ¶¶ 8, 10 & 13. ICANN holds no business licenses in Florida. *Id.* at ¶ 14. ICANN does not offer anything for sale to Florida residents; in fact, ICANN does not sell anything. *Id.* at ¶¶ 3 & 15. On similar facts, the Eleventh Circuit recently found that Florida courts lacked personal jurisdiction over a group of defendants because they did not manufacture, sell or solicit orders for products in Florida and they did not maintain offices or agents in the State. *See Sculptchair Inc.*, 94 F.3d at 627-28; *see also Response Reward Sys., L.C. v. Meijer Inc.*, 189 F. Supp. 2d 1332, 1336-37 (M.D. Fla. 2002)

(ruling that the defendant did not operate a business in Florida because it “has no employees, officers, property, telephone number or mailing address in Florida”). The conclusion, here, should be no different.

Finally, any argument that ICANN conducts business in Florida because it maintains a passive Internet website that can be viewed by Florida residents if they so chose must be rejected. Indeed, the Middle District of Florida has already held that the maintenance of a passive website, such as ICANN’s, does not constitute operating a business for the purposes of the long-arm statute. *Miller v. Berman*, 289 F. Supp. 2d 1327, 1332-33 (M.D. Fla. 2003) (defendants’ Internet website did not constitute “conducting or carrying on business in the state of Florida” because defendants did not solicit business or contract with Florida residents over the Internet).

In sum, Plaintiff cannot allege facts sufficient to satisfy Florida’s long-arm statute. Without going any further, this Court has sufficient justification to dismiss Plaintiff’s entire Complaint against ICANN for want of personal jurisdiction under Florida’s long-arm statute.

**B. The Due Process Clause Does Not Confer Jurisdiction Over ICANN.**

The Due Process Clause of the Fourteenth Amendment provides further justification for dismissal of Plaintiff’s claims. To be clear, the exercise of jurisdiction over ICANN in Florida does not comport with due process.

“The Due Process Clause protects an individual’s liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful ‘contacts, ties, or relations.’” *Burger King Corp.*, 471 U.S. at 471-72, 105 S. Ct. at 2181. Due process requires two elements be established: (1) the defendant must have certain “minimum contacts” with the forum state; and (2) the maintenance of the suit must not offend “traditional notions of fair play and substantial justice.” *Int’l Shoe Co.*, 326 U.S. at 316, 66 S. Ct. at 158.

“Minimum Contacts within the forum may give rise to two types of personal jurisdiction: specific or general jurisdiction.” *Response Reward Sys.*, 189 F. Supp. at 1338; *see Helicopteros Nacionales de Colombia, S.A.*, 466 U.S. at 414-15, 104 S. Ct. at 1872. Here, ICANN is subject to neither.

**1. ICANN Is Not Subject To General Jurisdiction In Florida.**

To assert general jurisdiction, ICANN must have “continuous and systematic” contacts with Florida. *Fraser v. Smith*, 594 F.3d 842, 846 (11th Cir. 2010). Factors that weigh against general jurisdiction include a lack of business or a business license in the forum, *Helicopteros Nacionales de Colombia, S.A.*, 466 U.S. at 416, 104 S. Ct. at 1873, a lack of property ownership in the forum, *Nat’l Enquirer, Inc. v. News Group News, Ltd.*, 670 F. Supp. 962, 966-67 (S.D. Fla. 1987), or a lack of any bank accounts, telephone listings, or mailing addresses in the forum. *Id.* at 966. All of these factors weigh against exercising general jurisdiction over ICANN in Florida.

As established above, ICANN does not have continuous and systematic contacts with Florida. ICANN has no employees, assets, bank accounts, real property, personal property, offices, or other facilities in Florida. Atallah Decl. at ¶¶ 8 & 10-12. ICANN is not licensed to do business in Florida, does not have a registered agent for service of process in Florida, and has no phone numbers or mailing addresses in Florida. *Id.* at ¶¶ 9 & 13-14. Finally, ICANN’s websites, which are operated from web servers physically located in Southern California and Virginia, do not offer anything for sale. *Id.* at ¶ 4. And the operation of these websites outside of Florida does not subject ICANN to jurisdiction within Florida. *See Miller*, 289 F. Supp. 2d at 1336 (“[T]he exercise of [general] jurisdiction over Defendants in the State of Florida is not proper because placing an informational website on the Internet does not amount to sufficient contacts with the forum.”); *Bird v. Parsons*, 289 F.3d 865, 874 (6th Cir. 2002) (ruling that the fact that the defendant “maintains a website that is accessible to anyone over the Internet is insufficient to

justify general jurisdiction”); *Mink v. AAAA Dev. LLC*, 190 F.3d 333, 336-37 (5th Cir. 1999) (nationwide toll-free telephone number and website insufficient). ICANN therefore has none of the contacts with Florida that would subject it to general jurisdiction here. *Helicopteros Nacionales de Colombia, S.A.*, 466 U.S. at 416, 104 S. Ct. at 1873; *Nat’l Enquirer, Inc.*, 670 F. Supp. at 967.

## 2. ICANN Is Not Subject To Specific Jurisdiction In Florida.

“Specific” jurisdiction arises “out of a party’s activities in the forum state that are related to the cause of action alleged in the complaint.” *Sloss Indus. Corp.*, 488 F.3d at 925 (quotation marks and citation omitted). The Eleventh Circuit employs a three-part test for determining whether minimum contacts sufficient to support specific personal jurisdiction exist: (1) the defendant’s contacts with Florida must involve some act by which the defendant purposefully avails itself of the privilege of conducting activities within the State; (2) the defendant’s contacts with the State must give rise to the plaintiff’s cause of action; and (3) the defendant’s contacts with the State must be such that the defendant should reasonably anticipate being haled into court there. *See Future Tech. Today, Inc.*, 218 F.3d at 1250-51; *Miami Breakers Soccer Club v. Women’s United Soccer Assoc.*, 140 F. Supp. 2d 1325, 1330 (S.D. Fla. 2001). “The touchstone of sufficient contacts is that the defendant ‘purposefully directed’ its activities at residents of the forum-state.” *JB Oxford Holdings, Inc. v. Net Trade, Inc.*, 76 F. Supp. 2d 1363, 1366 (M.D. Fla. 1999); *see Burger King*, 471 U.S. at 472-73, 105 S. Ct. at 2181-82, *Response Reward Sys.*, 189 F. Supp. 2d at 1338 (finding no specific personal jurisdiction because the defendant’s activities could not be considered to be “purposefully directed to the State of Florida”). All of these factors weigh against exercising specific jurisdiction over ICANN in Florida.

As established above, ICANN does no business in Florida and is not party to any contracts with Plaintiff involving Florida in any way. Atallah Decl. at ¶¶ 7 & 14. Indeed,

ICANN has no contacts with the state of Florida, much less contacts that gave rise to Plaintiff's claims against ICANN. *Fraser*, 594 F.3d at 850 (“[A] fundamental element of the specific jurisdiction calculus is that plaintiff’s claim must ‘arise out of or relate to’ at least one of defendant’s contacts with the forum.”) (citation omitted). Specific personal jurisdiction is further lacking because ICANN did nothing to “purposefully avail[] itself of the privilege of conducting activities” in Florida, and could not “reasonably anticipate being haled into [this] court.” *Sloss Indus. Corp.*, 488 F.3d at 925 (quotation marks and citation omitted).

In short, ICANN has no meaningful contacts with Florida and the exercise of Florida jurisdiction over ICANN is therefore unreasonable. Plaintiff’s Complaint against ICANN must therefore be dismissed for want of personal jurisdiction.

## II. OREGON LACKS PERSONAL JURISDICTION OVER ICANN.

Similar to the types of contacts lacking with the State of Florida, Plaintiff cannot establish that ICANN has contacts with Oregon sufficient to subject it to jurisdiction in that State either. As such, this Court should dismiss Plaintiff’s Complaint with prejudice, rather than transferring her claims back to Oregon District Court.

Oregon’s Rules of Civil Procedure (“ORCP”) set forth the circumstances under which an Oregon court has personal jurisdiction over a non-resident defendant, like ICANN. Under ORCP 4, Oregon’s exercise of jurisdiction over an out-of-state defendant is either general, specific, or conferred under Oregon’s “catch-all” due process provision. *North Pac. Ins. Co. v. Switzler*, 143 Or. App. 223, 235-36 (1996). To satisfy due process, a plaintiff must satisfy a two-part inquiry. First, the plaintiff must allege material facts demonstrating that a defendant has “minimum contacts” with Oregon. *State ex rel. Circus Circus Reno, Inc. v. Pope*, 317 Or. 151, 159 (1993). Second, even if minimum contacts exist, exercising jurisdiction over the defendant must be reasonable in light of traditional notions of “fair play and substantial justice.” *Id.* (citing

*Burger King Corp.*, 471 U.S. 462 (1985)). Here, Plaintiff has not alleged sufficient material facts to support personal jurisdiction over ICANN in Oregon under either the long-arm statute or the Due Process Clause. *Sinatra v. Nat'l Enquirer, Inc.*, 854 F.2d 1191, 1194 (9th Cir. 1988) (“When a defendant challenges the sufficiency of personal jurisdiction, the plaintiff bears the burden of establishing personal jurisdiction over the defendant.”); *State ex rel. La Manufacture Francaise Des Pneumatiques Michelin v. Wells*, 294 Or. 296, 299 (1982) (restating the well-established rule that it is a plaintiff’s burden to “allege and prove facts sufficient to establish jurisdiction”). As such, Plaintiff’s Complaint should be dismissed with prejudice.

**A. ICANN Is Not Subject To General Jurisdiction In Oregon.**

ORCP 4 A provides for general jurisdiction over a defendant in any action against a defendant who, at the time the action is commenced, “is engaged in substantial and not isolated activities within this state, whether such activities are wholly interstate, intrastate, or otherwise.”<sup>3</sup> The standard for establishing general jurisdiction is “fairly high,” and requires that the defendant’s contacts be of the sort that “approximate physical presence” in Oregon. *Wilson v. Paladin*, 186 F. Supp. 2d 1140, 1143 (D. Or. 2001).

Like Florida, ICANN is not subject to general jurisdiction in Oregon. ICANN has no employees, assets, bank accounts, real property, personal property, offices, or other facilities in Oregon. Atallah Decl. at ¶¶ 16 & 18-20. ICANN is not licensed to do business in Oregon, does not have a registered agent for service of process in Oregon, and has no phone numbers or mailing addresses in Oregon. *Id.* at ¶¶ 17 & 21-22. ICANN does not collect fees directly from domain name registrants, such as Plaintiff, and has no contracts with Plaintiff in Oregon. *Id.* at ¶¶ 5 & 7. Finally, ICANN’s websites, which are operated from web servers physically located in

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<sup>3</sup> The remaining provisions of ORCP 4 A are inapplicable to ICANN because ICANN is not a natural person or an Oregon corporation, and it has not expressly consented to jurisdiction in Oregon courts.

Southern California and Virginia, do not offer anything for sale to residents of Oregon or anyone anywhere in the world. *Id.* at ¶ 3-4. And the possibility that Oregon residents may access ICANN's passive informational website (where that website does not advertise, solicit, or offer anything for sale) does not satisfy the rigorous "approximating physical presence" test for general jurisdiction. *Bancroft & Masters, Inc. v. Augusta Nat'l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000) (factors relevant to general jurisdiction inquiry under the "approximate physical presence" test include "whether the defendant makes sales, solicits or engages in business in the state, serves the state's markets, designates an agent for service of process, holds a license, or is incorporated there) (*overruled in part on other grounds by Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme*, 433 F.3d 1199 (9th Cir. 2006) (en banc)). Nor is it sufficient that ICANN accredits Registrars that *themselves* provide services to Oregon residents. *Purdue Research Found. v. Sanofi-Synthelabo, S.A.*, 338 F.3d 773, 778-79 (7th Cir. 2003) (rejecting general jurisdiction premised on a "stream of commerce" theory – i.e., that a defendant has contacts with third parties who then do business in the forum state); *Alpine View Co. Ltd. v. Atlas Copco AB*, 205 F.3d 208, 216 (5th Cir. 2000) ("We have specifically rejected a party's reliance on the stream-of-commerce theory to support asserting general jurisdiction over a nonresident defendant.").

ICANN thus has none of the contacts with Oregon that may trigger general jurisdiction in that State. *State ex rel. Circus Circus Reno, Inc.*, 317 Or. at 154 (no general personal jurisdiction over a defendant who was not registered to do business in Oregon, paid no business tax in Oregon, and had no bank accounts, offices, real estate, employees, or exclusive agents in Oregon). General personal jurisdiction over ICANN is therefore lacking in Oregon.



**B. ICANN Is Not Subject To Specific Jurisdiction In Oregon.**

Oregon's long-arm statute, found in subsections B through K of Rule 4 of the Oregon Rules of Civil Procedure, "enumerate[s] specific bases for the exercise of personal jurisdiction over out-of-state defendants." *Boehm & Co. v. Env't Concepts*, 125 Or. App. 249, 252 (1993) (citations omitted); ORCP 4 B-K. Plaintiff's Complaint fails to invoke any of these provisions.<sup>4</sup> What is more, ICANN has not undertaken any of the activities enumerated in the long-arm statute. At most, the activities alleged in Plaintiff's Complaint may (but do not) implicate only three provisions of statute. These three arguably relevant provisions may subject a nonresident defendant to Oregon jurisdiction if: (1) the defendant's local act or omission injured plaintiff (ORCP 4 C); (2) the defendant's act or omission outside of Oregon injured plaintiff, but only if, at the time of the injury, the defendant also solicited or provided services within Oregon (ORCP 4 D(1)); or (3) in an action which arises out of a promise, made anywhere to the plaintiff or for the plaintiff's benefit, by the defendant to perform services within the state. ORCP 4 E(1).

**1. ICANN Has Not Injured Plaintiff By An Act Or Omission Occurring Within Oregon.**

ORCP 4 C allows for personal jurisdiction if the injury arises "out of an act or omission within this state by the defendant." ORCP 4 C; *Marvel v. Pennington GMC, Inc.*, 98 Or. App. 612, 616 (1989) (While the injury need not occur in this state, "it must arise from 'an act or omission [committed] within' Oregon."); *see also North Pac. Ins. Co. v. Switzler*, 143 Or. App.

<sup>4</sup> In her Complaint, Plaintiff refers to four inapposite cases in support of her personal jurisdiction argument. Each addresses only specific personal jurisdiction and none are even remotely on point. *See Zippo Mfg. Co. v. Zippo DOT Com*, 952 F. Supp. 1119 (W.D. Pa. 1997) (personal jurisdiction established under Pennsylvania's long-arm statute because defendant ran a news website that had over 3,000 Pennsylvania subscribers and entered into contracts with seven internet access providers in Pennsylvania); *Thompson v. Handa-Lopez, Inc.*, 998 F. Supp. 738, 743 (W.D. Tex. 1998) (personal jurisdiction established where defendant directed advertisements to Texas residents and entered into contracts with Texas residents to play online gambling games; and stating that "a passive website that solely makes information available to interested parties is not grounds for the exercise of personal jurisdiction"); *Keeton v. Hustler Magazine*, 465 U.S. 770, 104 S. Ct. 1473, 79 L. Ed. 2d 790 (1984) (regular monthly sales of thousands of magazines to residents of forum state was sufficient to confer personal jurisdiction); *Calder v. Jones*, 465 U.S. 783, 104 S. Ct. 1482, 79 L. Ed. 2d 804 (1984) (weekly sale of 600,000 copies of defendant's magazine was sufficient to confer personal jurisdiction). But, as established herein, ICANN has not entered into any contracts in Oregon and does not sell any products to Oregon's residents. Atallah Decl. at ¶¶ 10, 14 & 15.

223, 235 (1996) (specific personal jurisdiction “is based on a relationship between the state and the subject matter of the particular litigation”) (quotation omitted). Given that ICANN lacks any presence in Oregon, Atallah Decl. at ¶¶16-23, Plaintiff must allege some facts to show that ICANN committed an act or omission within Oregon, which caused injury to Plaintiff. *Sutherland*, 131 Or. App. at 29 (rejecting the proposition under ORCP 4 C that personal jurisdiction extends to an out-of-state defendant where there is no evidence that the defendant contacted plaintiff in an effort to cause the alleged injury). This, Plaintiff has not done.

Plaintiff claims that she was injured by ICANN’s alleged failure to “perform due diligence” of its Registrars. *See, e.g.*, Compl. at ¶¶ 41-42. Even assuming Plaintiff’s allegations are true (which they are not), they do not establish that ICANN took any action or made any omission *within* Oregon. To the contrary, ICANN’s Registrar Accreditation Agreements are entered into in California and ICANN’s performance of its contracts with Registrars occurs in California, regardless of where the Registrar resides. Atallah Decl. at ¶ 6; <http://www.icann.org/registrars/ra-agreement-17may01.htm>. Thus, any alleged failure by ICANN to “perform due diligence” of its Registrars would, if true, take place in California, not Oregon. Personal jurisdiction over ICANN is therefore not conferred under ORCP 4 C. *Sutherland v. Brennan*, 131 Or. App. 25, 29 (1994) (affirming dismissal of defendant for lack of personal jurisdiction where defendant’s failure to relinquish funds held in California to an Oregon plaintiff constituted acts in California and not Oregon under ORCP 4 C).

**2. ICANN Has Not Injured Plaintiff By Any Act Or Omission Outside Oregon, While At The Same Time Carrying On Solicitation or Service Activities In Oregon.**

Subsection 4 D(1) allows a court to exercise personal jurisdiction over an out-of-state defendant where plaintiff’s injury arises out of an act or omission occurring outside Oregon, “*provided in addition* that at the time of the injury,” the defendant carried on “solicitation or

service activities” within Oregon. ORCP 4 D(1) (emphasis added); see *Columbia Boat Sales, Inc. v. Island Packet Yachts*, 105 Or. App. 85, 88 (1990) (defining “service” in ORCP 4 D to mean “the performance of any of the business functions auxiliary to production or distribution.”). This subsection is inapplicable to Plaintiff’s Complaint and does not confer jurisdiction over ICANN.

First, ICANN does not produce, manufacture or distribute any goods or services anywhere in the world, let alone in Oregon. Atallah Decl. at ¶ 3. Plaintiff therefore cannot satisfy ORCP 4 D(1)’s requirement that ICANN carried on “service activities” in Oregon at the time of the injury. *Columbia Boat Sales, Inc.*, 105 Or. App. at 88. Second, ICANN does not solicit any business in Oregon. Atallah Decl. at ¶ 23. Indeed, ICANN does not engage in commercial business anywhere. *Id.* at ¶ 3. Personal jurisdiction over ICANN is therefore not conferred under ORCP 4 D.

**3. This Action Does Not Arise Out Of Any Promise By ICANN To Perform Services Within Oregon.**

Subsection 4 E(1) allows a court to exercise personal jurisdiction in an action which arises out of a defendant’s promise to the plaintiff or to a third party for the plaintiff’s benefit, to perform services within Oregon. ORCP 4 E(1). But jurisdiction over ICANN is not conferred under this subsection either.

As explained above, ICANN does not conduct any business in Oregon and has not entered into any contract with Plaintiff, or anyone else in the State.<sup>5</sup> Atallah Decl. at ¶¶ 7 & 22. Moreover, ICANN does not engage in commercial business. *Id.* at ¶ 3. There is thus no support for the notion that ICANN promised to perform services within Oregon for the benefit of Plaintiff.

<sup>5</sup> While ICANN may have Registrar Accreditation Agreements with companies resident in Oregon, as explained above, those contracts were entered into in California and ICANN’s performance under those contracts occurs in California.

Plaintiff suggests that she is a third-party beneficiary to one or more of ICANN's Registrar Accreditation Agreements. Plaintiff, however, does not identify any specific Agreement that she purports to benefit from. *See, e.g.*, Compl. at ¶¶ 28-30. Nor could she. As noted in the preamble of the blank Registrar Accreditation Agreement attached to Plaintiff's Complaint as Exhibit A, the only parties to the agreement are ICANN and the Registrar. Ex. A to Compl. Moreover, section 5.10 of the agreement specifically states "[t]his 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." *Id.* Plaintiff therefore cannot be considered a third-party beneficiary to any Registrar Accreditation Agreement ICANN maintains with its Registrars.

Plaintiff also alleges that she is a third-party beneficiary to ICANN's Statement of Registrar Accreditation Policy. *See, e.g.*, Compl. at ¶¶ 28-30 & Ex. B to Compl. (attaching ICANN's Statement of Registrar Accreditation Policy). However, ICANN's policy statement is not a contract at all; it is merely a statement of ICANN's policies as they relate to registrar accreditation. There is no basis for asserting that the Statement of Registrar Accreditation Policy, which is publicly posted on ICANN's website, somehow extends contractual benefits to Plaintiff and the general public. *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 415 (9th Cir. 1997) (holding there was no specific personal jurisdiction in the forum state over a defendant who had a passive website and who had "no contacts with [the forum state] other than maintaining a home page that is accessible to [those the forum state], and everyone else, over the Internet."). Plaintiff is not a party or even a third-party beneficiary to ICANN's Registrar Accreditation Agreements or ICANN's Statement of Registrar Accreditation Policy. Accordingly, ORCP 4 E does not confer personal jurisdiction over ICANN in Oregon.

In sum, Plaintiff has not alleged a single fact sufficient to satisfy Oregon's long-arm statute. Indeed, Plaintiff has not identified which subsection of Oregon's long-arm statute allegedly confers jurisdiction over ICANN, and, in fact, no subsection does. This Court should therefore dismiss Plaintiff's entire Complaint against ICANN for want of personal jurisdiction under Oregon's long-arm statute.

**C. Due Process Does Not Support Personal Jurisdiction Over ICANN in Oregon.**

ORCP 4 L provides for personal jurisdiction "notwithstanding a failure to satisfy the requirements of sections B through K of this rule, in any action where prosecution of the action against the defendant in this state is not inconsistent with the Constitution of this state or the Constitution of the United States." ORCP 4 L. The intent of ORCP 4 L is to equate the limits of personal jurisdiction under ORCP 4 with the limits of due process. *See State ex rel. Jones v. Crookham*, 296 Or. 735, 738 (1984); *see also State ex rel. Circus, Circus Reno, Inc.*, 317 Or. at 156.

Jurisdiction under ORCP 4 L exists where: (1) the defendant has purposefully availed itself of the privilege of conducting activities in Oregon; (2) the plaintiff's claims arise out of defendant's forum-related activities; and (3) the exercise of jurisdiction is reasonable. *Pac. Cornetta, Inc. v. Jung*, 218 F.R.D. 250, 254 (D. Or. 2003); *Wong v. Wong*, 134 Or. App. 13, 16-17 (1995). That is, ICANN must "in a substantively related way, have purposefully availed [itself] of conducting business in Oregon." *Bachman v. Med. Eng'g Corp.*, 81 Or. App. 85, 89 (1986); *State ex rel. La Manufacture Francaise Des Pneumatiques Michelin v. Wells*, 294 Or. At. 301-02 (there must be "some fact of the case itself other than the mere residence of the plaintiff which makes Oregon an appropriate forum"). Plaintiff has not satisfied, and cannot satisfy, these requirements.

**1. ICANN Does Not Have Minimum Contacts With Oregon.**

In a due process analysis, to establish minimum contacts, “the defendant [must have] ‘purposefully directed’ its activities at residents of the forum state.” *Wong*, 134 Or. App. at 16-17 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 472 (1985)). Purposeful direction “consists of evidence of the defendant’s actions outside the forum state that are directed at the forum, such as the distribution in the forum state of goods originating elsewhere.” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 803 (9th Cir. 2004).

ICANN did not purposefully direct any activities at Oregon residents. As established above, ICANN has no employees, assets, bank accounts, real property, personal property, offices, or other facilities in Oregon. Atallah Decl. at ¶¶ 16 & 18-20. ICANN is not licensed to do business in Oregon, does not have a registered agent for service of process in Oregon, and has no phone numbers or mailing addresses in Oregon. *Id.* at ¶¶ 17 & 21-22. Finally, ICANN’s website does not offer anything for sale to Oregon residents or anyone else. *Id.* at ¶ 4.<sup>6</sup> ICANN thus has none of the contacts with Oregon that would satisfy due process. *White v. Mac Air Corp.*, 147 Or. App. 714 (1997) (defendant did not regularly transact business in Oregon and thus did not “purposefully direct” its activities at Oregon residents).

**2. Plaintiff’s Claims Do Not Arise Out Of ICANN Activities In Oregon.**

To satisfy due process, a plaintiff must also demonstrate that the litigation “arises out of or relates to” the defendant’s activities directed at the residents of the forum state. *Wong*, 134

<sup>6</sup> Plaintiff alleges that personal jurisdiction exists over ICANN because “every Oregon government office, Oregon business, Oregon non-profit or Oregon citizen with a website ultimately bought their domain name . . . from ICANN.” Compl. at ¶ 6. This severely misstates and mischaracterizes ICANN’s function. As affirmed by the Declaration of Akram Atallah, ICANN is a California non-profit public benefit corporation with its principal place of business in Marina del Rey, California. ICANN does *not* sell domain names or engage in any commercial business – indeed, it does not sell anything, but rather administers the Internet’s domain name system on behalf of the Internet community, pursuant to a series of agreements with the U.S. Department of Commerce. Atallah Decl. at ¶¶ 2, 3 & 5. It is ICANN’s Registrars (not ICANN) that allocate the right to use a certain domain name to consumers. ICANN does not directly contract with any consumer, and has never contracted with Plaintiff. *Id.* at ¶¶ 3, 5 & 7. As such, Plaintiff fails to allege “at least one contact with the forum state which is substantively relevant to the cause of action.” *State ex rel. La Manufacture Francaise Des Pneumatiques Michelin v. Wells*, 294 Or. 296, 302 (1984).

Or. App. at 16-17 (citing *Burger King Corp.*, 471 U.S. at 462, 105 S. Ct. 2174). As established above, ICANN has not directed any activities to any resident of Oregon. Plaintiff's claims therefore do not and cannot arise out of ICANN activities in Oregon.

**3. Exercising Jurisdiction Over ICANN Would Be Unreasonable.**

Even if Plaintiff could establish minimum contacts, which she cannot, jurisdiction must be reasonable in light of traditional notions of "fair play and substantial justice." *State ex rel. Circus, Circus Reno Inc.*, 317 Or. at 159. To determine whether jurisdiction is reasonable, a court may evaluate the following factors: (1) the burden on the defendant; (2) the plaintiff's interest in obtaining convenient and effective relief; (3) the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and (4) the shared interests of the several states in further fundamental and substantive social policies. *Id.*

In the instant case, Plaintiff's interest in obtaining convenient and effective relief does not outweigh the burden that ICANN, a California non-profit public benefit corporation, would suffer if forced to come to Oregon to defend against Plaintiff's unmeritorious claims. Moreover, adjudicating this controversy in Oregon will not further the interstate judicial system's interest in obtaining an efficient resolution of controversies nor the shared interests of the several states in furthering fundamental and substantive social policies. Plaintiff's allegations with respect to ICANN relate to Registrar Accreditation Agreements that ICANN maintains with third party Registrars (not Plaintiff) and ICANN's Statement of Registrar Accreditation Policy, neither of which were entered into in Oregon or require performance of any obligations by ICANN in Oregon. Oregon has no compelling interest in hearing this case. Oregon jurisdiction would therefore be unreasonable under the circumstances. *Showalter v. Edwards & Assoc., Inc.*, 112 Or. App. 472, 478-79 (1992) (holding that it was not reasonable to extend personal jurisdiction to

a defendant that did not have the requisite “minimum contacts” with Oregon and affirming the dismissal of the claims against the defendant).

In sum, ICANN has no meaningful contacts with Oregon and the exercise of jurisdiction over ICANN in Oregon is therefore unreasonable. As such, Plaintiff’s Complaint against ICANN must be dismissed for want of personal jurisdiction.

**III. PLAINTIFF’S COMPLAINT AGAINST ICANN SHOULD BE DISMISSED UNDER RULE 12(B)(3) FOR IMPROPER VENUE.**

Plaintiff’s Complaint against ICANN should be dismissed on the additional, independent ground that venue is improper in both Florida and Oregon, under Rule 12(b)(3) of the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 12(b)(3); 28 U.S.C. § 1406(a). Like jurisdiction, Plaintiff bears the burden of establishing that her claims are brought in the proper judicial district. *See Burger King Corp. v. Thomas*, 755 F. Supp. 1026, 1028 (S.D. Fla. 1991). Plaintiff cannot meet this burden.

As explained above, ICANN does not conduct any business in Florida or Oregon and has not entered into any contract with Plaintiff, much less any contract in the State of Florida or Oregon. Other than Plaintiff’s residence, this case has nothing to do Oregon. Likewise, other than defendant Steinberger’s bankruptcy proceeding in Florida, this case has nothing to do with the State of Florida. Plaintiff’s Complaint should therefore be dismissed for lack of venue under Rule 12(b)(3) of the Federal Rules of Civil Procedure.

**IV. PLAINTIFF’S COMPLAINT SHOULD BE DISMISSED UNDER RULE 12(B)(6) FOR FAILURE TO STATE A CLAIM AGAINST ICANN.**

Under Rule 12(b)(6) of the Federal Rules of Civil Procedure, a court should dismiss a complaint when the plaintiff can prove no set of facts that would entitle it relief. *See Linder v. Portocarrero*, 963 F.2d 332, 334 (11th Cir. 1992). As established below, Plaintiff’s Complaint fails to allege facts sufficient to state a claim against ICANN for violations of the Americans



with Disabilities Act (“ADA”), the Freedom of Information Act (“FOIA”), or Oregon’s Uniform Commercial Code.

**A. Plaintiff Fails To State A Claim Against ICANN Under The ADA.**

Plaintiff purports to allege damages against ICANN for violating the ADA. Compl. at ¶155-169. Specifically, Plaintiff alleges that ICANN violated the ADA by refusing to require that Defendant Internet.bs provide telephone support for Plaintiff. Compl. at ¶ 165. Plaintiff’s ADA claim fails because ICANN is not subject to the ADA with respect to Plaintiff and the statute does not allow for damages.

The ADA prevents employers, public entities, private entities who operate places of “public accommodation” affecting commerce (such as hotels, theatres and restaurants), and telecommunications companies from discriminating against persons with disabilities. Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12111 (Title I applies to employers), 12131 (Title II applies to public entities), 12181 (Title III applies to private entities affecting commerce) (2000); Communications Act, 47 U.S.C. § 225 (Title IV applies to telecommunications companies) (1934). But the ADA does not apply to ICANN here. ICANN does not employ Plaintiff. ICANN is not a public entity providing state or local government services. ICANN is not a telecommunications company. And ICANN does not operate a place of public accommodation whose operations affect commerce.<sup>7</sup> Plaintiff’s ADA claim is further deficient because she seeks an award of damages under the statute. Compl. at ¶ 169. The ADA, however, allows private parties to seek only injunctive relief. *See* 42 U.S.C. § 2000a-3; *see also*

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<sup>7</sup> To be clear, ICANN’s websites are not places of “public accommodation” that would render ICANN subject to the ADA. In fact, courts have repeatedly held that websites like ICANN’s are not places of public accommodation under the ADA. *See, e.g., Access Now, Inc. v. Southwest Airlines*, 227 F. Supp. 2d 1312, 1320-21 (S.D. Fla. 2002) (granting a motion to dismiss where ADA claims were based on access to an internet site); *Nat’l Fed’n of the Blind v. Target Corp.*, 452 F. Supp. 2d 946, 954 (9th Cir. 2006) (holding an ADA claim based on access to an internet site can only be maintained where there is a “nexus between a challenged service and an actual, physical place of public accommodation”).

42 U.S.C. § 12188 (stating monetary relief is only available to the Attorney General in enforcement actions).

ICANN is not subject to the ADA as it relates to Plaintiff and Plaintiff improperly seeks damages under the Act. Plaintiff's claims against ICANN under the ADA must therefore be dismissed with prejudice.

**B. Plaintiff Fails To State A Claim Against ICANN Under FOIA.**

Plaintiff's claim against ICANN under FOIA, Compl. at ¶¶ 170-174, must also be dismissed because the statute only applies to federal agencies and federal agency records. 5 U.S.C. § 551 (defining "agency" as used in 5 U.S.C. § 552 as an "authority of the Government of the United States"); *United States DOJ v. Julian*, 486 U.S. 1, 8 (1988) (under the FOIA, only "[a] federal agency must disclose agency records . . ."). Plaintiff does not allege that ICANN is a federal agency. Nor could she. ICANN is a private non-profit public benefit corporation. Plaintiff's claim against ICANN under FOIA must therefore also be dismissed with prejudice.

**C. Plaintiff Fails To State A Claim Against ICANN For Violation Of Oregon's Uniform Commercial Code for Sales.**

Plaintiff alleges that she and ICANN "entered into legally binding contracts with each other regulated by [Oregon's Uniform Commercial Code]." Compl. at ¶ 24. Specifically, Plaintiff alleges that ICANN breached its contractual obligations owed under Oregon Revised Statutes ("ORS") 72.8010, *et seq. Id.*

As an initial matter, ICANN has never entered into any contractual relationship with Plaintiff. And Plaintiff's suggestion that she is a third-party beneficiary to one or more of ICANN's Registrar Accreditation Agreements is baseless. As demonstrated above, only ICANN and the Registrar are parties to such an agreement and section 5.10 of the agreement specifically

states “[t]his 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.”

In addition, Oregon’s Uniform Commercial Code regulates only those contracts that “relat[e] to the present or future sale of goods.” ORS 72.1060. And Section 72.8010, *et seq.*, upon which Plaintiff relies, only relates to the sale of consumer goods, where a consumer good is defined as “a new motor vehicle, new manufactured dwelling, new modular home, new machine, new appliance or new like product used or bought for use primarily for personal family or household purposes.” ORS 72.8010.<sup>8</sup> The Complaint definitively lacks any allegations establishing that ICANN manufactures, distributes, sells or otherwise deals with any consumer goods “used or bought for use primarily for personal family or household purposes.” ORS 72.8010.<sup>9</sup>

As Plaintiff’s purported “contracts” with ICANN are not contracts at all, Plaintiff’s claims under Oregon’s Uniform Commercial Code should be dismissed with prejudice.

## V. CONCLUSION

Plaintiff’s Complaint is deficient on a number of grounds. Principally, however, Plaintiff has sued the wrong defendant in the wrong court—ICANN has no meaningful or relevant contacts with Florida or Oregon and there is no link between ICANN and Plaintiff’s alleged injuries. For these reasons, and given the futility of Plaintiff’s substantive causes of action against ICANN, Plaintiff’s entire Complaint should be dismissed with respect to ICANN.

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<sup>8</sup> Plaintiff further alleges that ICANN’s breach of Oregon’s Uniform Commercial Code entitles Plaintiff to damages under (1) § 72.6090 (right to adequate assurance of performance); (2) § 72.7140 (buyer’s damages for breach in regard to accepted goods); (3) § 72.7150 (buyer’s incidental and consequential damages); and (4) § 72.7160 (buyer’s right to specific performance or replevin). See Compl. at ¶¶ 44, 47, 89. None of these code sections are applicable to ICANN, which neither sells or receives consumer goods.

<sup>9</sup> Nor is ICANN’s “Statement of Registrar Accreditation Policy” a contract within the meaning of Oregon’s Uniform Commercial Code (or otherwise). This policy statement sets forth the process and qualifications needed to apply to become a Registrar; it is not a “contract” or “agreement” under Oregon’s Uniform Commercial Code. The document does not “relat[e] to the present or future sale of goods.” ORS 72.1060.

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 motion 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  
Florida Bar No. 182923  
mruiz@kasowitz.com

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Declaration of Akram Atallah has been provided by regular U.S. Mail or the Court's CM/ECF system on the 20 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  
Florida Bar No. 182923  
mruiz@kasowitz.com



2011  
Cop, for ICANN

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

REC'D APR 06 2011

Plaintiff:	)	Case No. <b>C11-1899CV</b>
Denise Subramaniam	)	
	)	PLAINTIFF'S COMPLAINT
v.	)	BREACH OF CONTRACT
Defendants:	)	SPECIFIC PERFORMANCE
ICANN,	)	\$ 5,887,500
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 ICANN; 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.) bengalurbusinesses.com
- (e.) bangaloreresidency.com
- (f.) bestsaasprovider.com
- (g.) billsizemore.com
- (h.) ddln-construction-consulting.com
- (i.) expertdbsolutions.com
- (j.) help4chemicalsensitivty.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; expertdbsolutions.com; help4chemicalsensitivty.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; bengalurbusinesses.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 4Domains 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 ~~3/31~~, 2011

/s/ Don S

Plaintiff's Name

2850 SW Cedar Hills Blvd. #351

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

ICANN Registrar Accreditation Agreement | 17 May 2004 - Windows Internet Explorer

http://www.icann.org/en/registrars/ra-agreement-21may09-en.htm mary jane butters

File Edit View Favorites Tools Help

Enter-Edt Articles Suggested Sites Free Hotmail Get More Add-ons

Acc... putt... Los... cPan... ICA... Options

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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 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.

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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 identity 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 reasonably 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 Registry 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 Registry 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 3.3.1.9, 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.

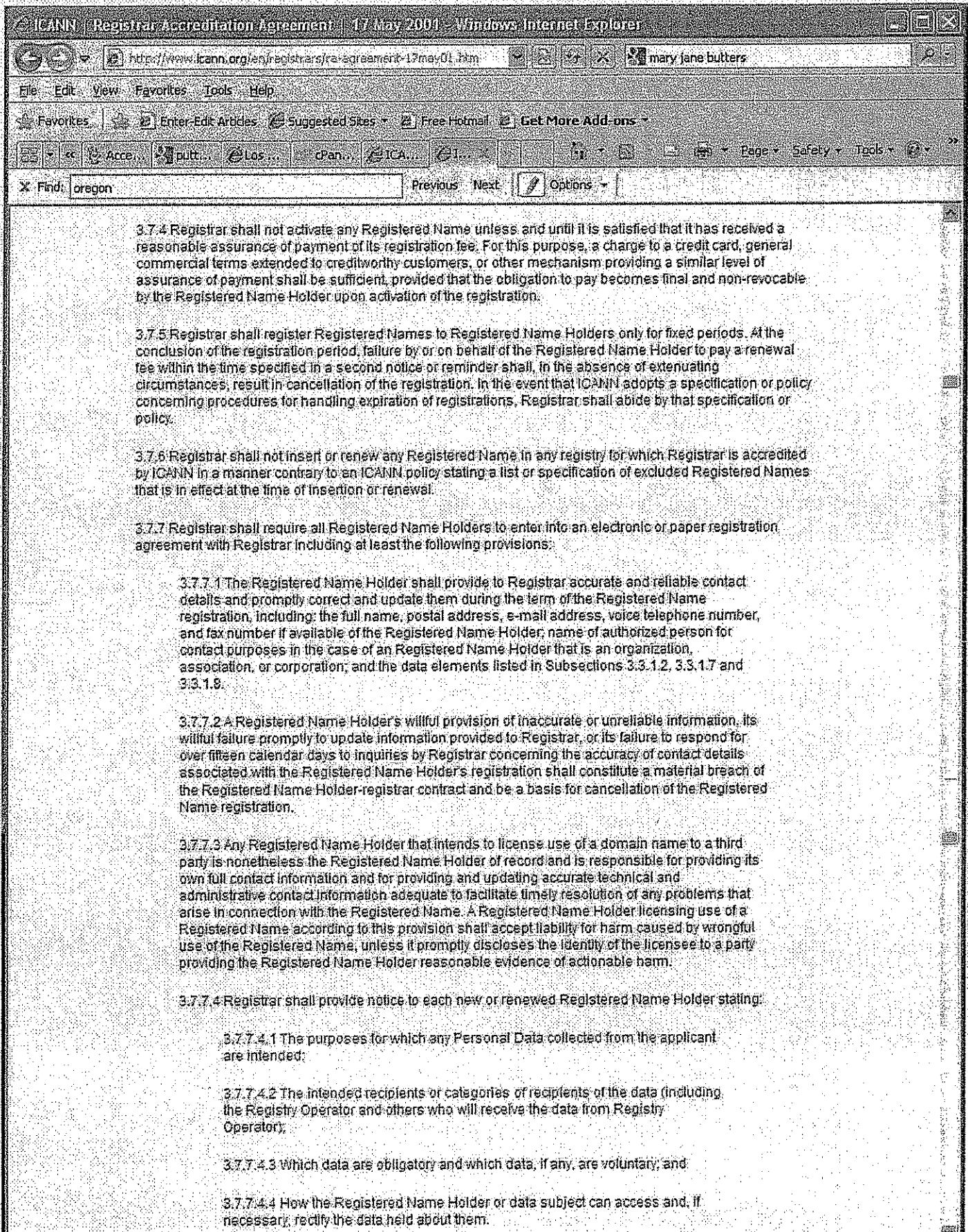
3.4.3 During the Term of this Agreement and for three years thereafter, Registrar shall make these records available for inspection and copying by ICANN upon reasonable notice. ICANN shall not disclose the content of such records except as expressly permitted by an ICANN specification or policy.

**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 3.2.1.5 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.



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](http://www.icann.org/general/consensus-policies.htm)).

**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.

**4.1.2.1** 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 Registrar's 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 provided, however, that 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 5.6 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.

4.3.4 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](http://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.

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 4.3. 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 or provided in the AAA rules. The parties shall bear their own 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.

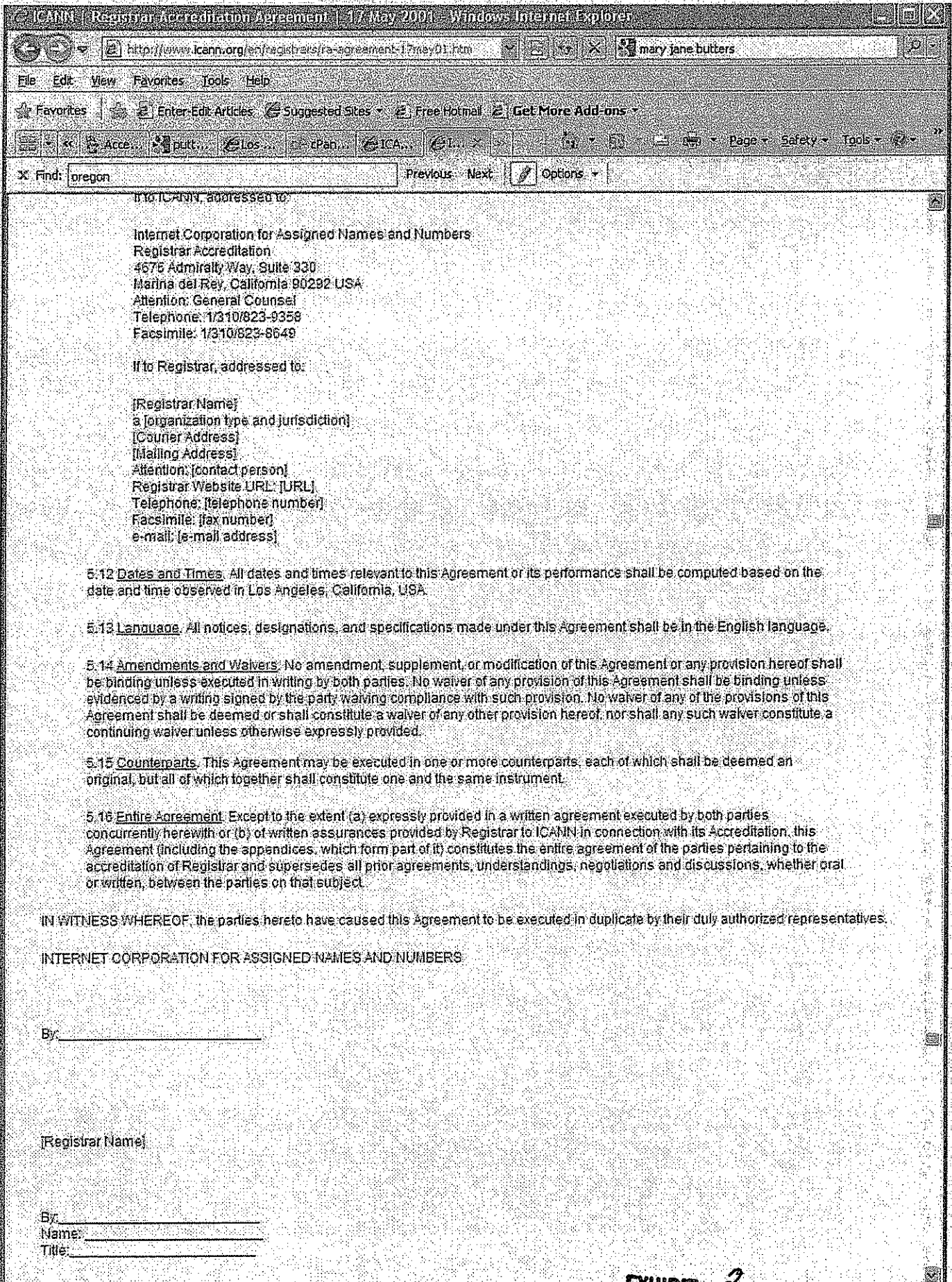
**5.8 Handling by ICANN of Registrar-Supplied Data.** Before receiving any Personal Data from Registrar, ICANN shall specify to Registrar in writing the purposes for and conditions under which ICANN intends to use the Personal Data. ICANN may from time to time provide Registrar with a revised specification 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:



If to ICANN, addressed to:

Internet Corporation for Assigned Names and Numbers  
Registrar Accreditation  
4676 Admiralty Way, Suite 330  
Marina del Rey, California 90292 USA  
Attention: General Counsel  
Telephone: 1/310/823-9358  
Facsimile: 1/310/823-8649

If to Registrar, addressed to:

[Registrar Name]  
[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 2  
Page 47 of 62

## EXHIBIT B

Statement of Registrar Accreditation Policy  
Statement of Minimum Qualifications for Accreditation

([http://www.icann.org/en/registrars/policy\\_statement.html#IIA](http://www.icann.org/en/registrars/policy_statement.html#IIA))

14 pages minus cover sheet

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

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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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### 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, demonstrate that they are meeting the requirements of 1(a)-(f) 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 regulatory 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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**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 registry administrator.



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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 i 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 i 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 i 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-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 i 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 j 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:

- The purposes for which any data collected from the applicant about any identified or identifiable natural person ("Personal Data") are intended;
- The intended recipients or categories of recipients of the data (including the registry administrator and others who will receive the data from the registry);
- Which data are obligatory and which data, if any, are voluntary; and
- 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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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.A.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 registry(ies) 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.

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.

ICANN Affirmation of Responsibilities for ICANN's Private Sector Management

Approved by the ICANN Board of Directors  
25 September 2009

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."

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



ICANN's Information on Responsibilities for ICANN's Private Sector Management Under Internet Explorer

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**Affirmation of Responsibilities for ICANN's Private Sector Management**

Approved by the ICANN Board of Directors  
25 September 2008

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 as 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.



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.*

**ORDER STAYING ADVERSARY PROCEEDING AS TO DEFENDANT  
INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, INC.**

(Document No. 14)

KRM

Defendant Internet Corporation for Assigned Names and Numbers, Inc.'s ("ICANN")

Motion for Stay of Adversary Proceeding as Against Defendant ICANN came on for hearing before the Court on Tuesday, June 21, 2007. The Court, having considered the briefing submitted in support thereof and there being no opposition, and just cause shown therefor,

**IT IS HEREBY ORDERED** as follows:

1. All further proceedings with respect to the claims asserted against ICANN in the adversary proceeding captioned *Subramaniam v. Steinberger*, Adv. Proc. 8:11-AP-00418-KRM, including any determination of any motions and any discovery or other pretrial obligations affecting the claims asserted against ICANN, are hereby stayed pending the District


EXHIBIT 3  
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Court for the Middle District of Florida's ruling on ICANN's Motion for Withdrawal of Reference (the "Withdrawal Motion").

2. Although briefing on ICANN's Motion to Dismiss has closed, this Court will refrain from hearing or determining any of the issues presented in the Motion to Dismiss pending the outcome of the Withdrawal Motion.

3. Nothing in this Order shall be construed as affecting any rights or defenses ICANN may have with respect to the jurisdiction of this Court to determine the claims against ICANN.

**DONE and ORDERED** in the Chambers at Tampa, Florida, on June 24, 2011



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K. Rodney May  
UNITED STATES BANKRUPTCY JUDGE

**COPIES FURNISHED TO:**

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