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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11

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

14 Plaintiffs,

15 v.

16 INTERNET CORPORATION FOR
ASSIGNED NAMES AND
17 NUMBERS,

18 Defendant.
19

Case No. CV03-5045 JFW (MANx)

**DEFENDANT'S PRELIMINARY
OPPOSITION TO PLAINTIFFS'
MOTION FOR TEMPORARY
RESTRAINING ORDER,
PRELIMINARY INJUNCTION, AND
EXPEDITED DISCOVERY**

Hon. John F. Walter
Courtroom 16

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1 **I. INTRODUCTION**

2 Defendant Internet Corporation for Assigned Names and Numbers
3 ("ICANN") hereby opposes Plaintiffs' request for *any* emergency relief, including
4 any temporary restraining order or expedited discovery.

5 Plaintiffs' Complaint is based on a fundamental misunderstanding of its
6 contract rights under the Accreditation Agreement that it attaches to its Complaint
7 as Exhibit 1. That misunderstanding infects Plaintiffs' claims and causes them to be
8 utterly without merit. And to compound the misunderstanding (or perhaps in
9 recognition of it), Plaintiffs' Complaint and motion for emergency relief attempts to
10 confuse the Court so as to make it appear that Plaintiffs are entitled to relief simply
11 because they might lose money if the Wait Listing Service ("WLS") is
12 implemented.

13 But the Court need not reach any resolution of whether Plaintiffs have
14 demonstrated a likelihood of success on the merits because there is a much easier
15 basis for the Court to deny Plaintiffs' requests for emergency relief: *there is no*
16 *emergency*. Plaintiffs fail to explain to the Court all of the steps that must occur
17 before the WLS could be implemented so as to injure Plaintiffs in any way. First,
18 the company that would be operating the WLS, VeriSign, Inc. ("VeriSign"), has to
19 reach an agreement with ICANN to amend the registry agreement between
20 VeriSign and ICANN. Second, although Plaintiffs imply that ICANN has "free
21 reign" to do whatever it wishes with respect to the Domain Name System ("DNS"),
22 any agreement between ICANN and VeriSign has to be approved by the United
23 States Department of Commerce, which remains in charge of the DNS and which
24 has to approve all amendments to any registry agreement proposed by ICANN.
25 Finally, if the agreement has been approved by the Department of Commerce,
26 VeriSign then needs to successfully implement the WLS, which Plaintiffs say
27 would not occur before October 11, 2003. At bottom, this is a classic case of a
28 plaintiff rushing to the courthouse—albeit after delaying for almost two years—to

1 claim injury before any harm, irreparable or otherwise, has become sufficiently
2 imminent and immediate as to require injunctive relief. On this basis alone, as well
3 as others discussed herein, Plaintiffs' application for injunctive relief should be
4 denied.

5 **II. FACTUAL BACKGROUND**

6 ICANN is a not-for-profit corporation that was organized under California
7 law in 1998. ICANN is responsible for administering certain aspects of the
8 Internet's domain name system. Declaration of Daniel E. Halloran ("Halloran
9 Decl.") ¶ 2.) Among its various activities, ICANN accredits companies known as
10 "registrars" that make Internet "domain names," such as "icann.org" or
11 "cacd.uscourts.gov," available to consumers. (*Id.*) ICANN enters into Registrar
12 Accreditation Agreements with these registrars. Registrars, in turn, contract with
13 individuals and organizations that wish to register domain names. (*Id.*)

14 VeriSign is an Internet registry. A registry operates like a phone book,
15 keeping a comprehensive listing of all registered domain names. A registrar, on the
16 other hand, is responsible for selling and trading these domain names and
17 coordinating those operations with registries. Beginning in 2001, VeriSign
18 proposed to offer the WLS at the registry level. (*Id.* ¶ 3.) The WLS would operate
19 by permitting accredited registrars, acting on behalf of customers, to place
20 reservations for currently registered domain names in the .com and .net top-level
21 domains. (*Id.*) Only one reservation would be accepted for each registered domain
22 name. (*Id.*) Each reservation would be for a one-year period. (*Id.*) Registrations
23 for names would be accepted on a first-come/first-served basis, with the
24 opportunity for renewal. (*Id.*) VeriSign would charge the registrar a fee, which
25 would be set at \$24.00 for a one-year reservation. (*Id.*) The registrar's fee to the
26 customer would be established by the registrar, not VeriSign. (*Id.*) In the event
27 that a registered domain name is not renewed and is thus deleted from the registry,
28 VeriSign would check to determine whether a reservation for the name is in effect

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

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

9 Presently, several registrars are providing their own forms of wait listing
10 services at the registrar level. (*Id.* ¶ 5) In essence, under all of these services, the
11 registrars watch for a desired name to be deleted and immediately seek to register it.
12 (*Id.*) A consumer who wants to register this name may enter what is akin to a
13 lottery by signing up and paying for a registrar to try to win the newly-deleted
14 domain name. (*Id.*) If the consumer wants to be certain that it will be awarded a
15 particular domain name if it is deleted from the registry, the consumer must sign up
16 with and pay *each and every* registrar currently offering a "wait list" type of
17 service. (*Id.*) Under the WLS, the consumer would simply have to sign up with
18 one registrar to be placed on the waiting list. (*Id.*)

19 Plaintiffs request a temporary restraining order and a preliminary injunction
20 based on their claim that adoption of the WLS proposal violates ICANN's
21 contractual obligations under and processes established by the Accreditation
22 Agreement. However, by authorizing VeriSign to offer a WLS, ICANN would
23 *remove* impediments to competition, not create them. (*Id.* ¶ 6.) It may (or may not)
24 be true, as Plaintiffs argue, that their services will not be able to compete effectively
25 in the marketplace because consumers will instead purchase the WLS offering,
26 which provides consumers greater security that their subscription for a domain
27 name will be fulfilled. (*Id.*) It may (or may not) also be true that consumers will
28 prefer the WLS to Plaintiffs' services because the WLS will be offered through as

1 many as 160 competing registrars, while Plaintiffs' services are available only from
2 them directly. (*Id.*) But the fact that Plaintiffs may lose money does not mean they
3 have a claim against ICANN, much less a claim that supports emergency relief.

4 **III. ARGUMENT**

5 It is a "fundamental principle that an injunction is an equitable remedy that
6 does not issue as of course." *Miller For And On Behalf Of N.L.R.B. v. California*
7 *Pacific Medical Center*, 991 F.2d 536, 539 (9th Cir. 1993) (quoting *Amoco Prod.*
8 *Co. v. Village of Gambell*, 480 U.S. 531, 542 (1987)). The basis for injunctive
9 relief has always been irreparable injury and the inadequacy of legal remedies.
10 *Stanley v. University of So. Calif.*, 13 F.3d 1313, 1320 (9th Cir. 1994) (quoting
11 *Beacon Theaters, Inc. v. Westover*, 359 U.S. 500, 506-07 (1959)). In the Ninth
12 Circuit, a plaintiff must show either: i) probable success on the merits *and* possible
13 irreparable injury *or* ii) sufficiently serious questions going to the merits *and* the
14 balance of hardships tips sharply toward the party requesting preliminary relief.
15 *Stuhlberg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839-40
16 (9th Cir. 2001).¹

17 In their motion for temporary restraining order and preliminary injunction
18 ("Motion"), Plaintiffs argue that implementation of the WLS threatens irreparable
19

20 ¹ While Plaintiffs cite the correct standard for issuance of a temporary
21 restraining order, interestingly, most of those cases *denied* a temporary restraining
22 order or preliminary injunction for some of the same reasons this Court should deny
23 this request. *See, e.g., Oakland Tribune, Inc. v. Chronicle Publishing Co.*, 762 F.2d
24 1374, 1376 (9th Cir. 1985) (court affirmed denial of preliminary injunction,
25 explaining that "under any formulation of the test, plaintiff must demonstrate that
26 there exists a significant threat of irreparable injury"); *Sports Form, Inc. v. United*
27 *Press International, Inc.*, 686 F.2d 750 (9th Cir. 1982) (court affirmed the district
28 court's denial of a motion for preliminary injunction); *Arcamuzi v. Continental*
Airlines, Inc., 819 F.2d 935 (9th Cir. 1987) (court reversed denial of preliminary
injunction motion and without expressing any opinion as to whether an injunction
should issue in the action, instructed the lower court to examine whether plaintiff
could show at least a fair chance of succeeding on the merits).

1 harm to Plaintiffs and the public and that Plaintiffs will succeed on the merits of
2 their breach of contract action. Plaintiffs are wrong.

3 The evidence shows—as Plaintiffs actually allege in their Complaint and
4 admit in their Motion—that any threatened injury from implementation of the WLS
5 is *not* immediate and is *not* imminent, as required by the Ninth Circuit. Plaintiffs'
6 claim of irreparable injury is further suspect in that Plaintiffs delayed in bringing
7 this action for almost two years. Further, it is *not* likely that Plaintiffs will succeed
8 on their breach of contract action because they completely mischaracterize
9 ICANN's contractual obligations. Finally, the public interest would suffer by the
10 issuance of a temporary restraining order, particularly if the Court ultimately rules
11 in favor of ICANN on the merits. For these reasons, Plaintiffs' Motion must be
12 denied.

13 **A. Plaintiffs Have Not Demonstrated An Immediate Threat Of**
14 **Irreparable Harm As Required For The Issuance Of A Temporary**
15 **Restraining Order.**

16 A party seeking to enjoin a future injury "must *demonstrate* immediate
17 threatened injury as a prerequisite to preliminary injunctive relief." *Caribbean*
18 *Marine Services Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (emphasis in
19 original); *Los Angeles Memorial Coliseum Commission v. National Football*
20 *League*, 634 F.2d 1197, 1201 (9th Cir. 1980) ("*L.A. Coliseum*"). "Establishing a
21 risk of irreparable harm in the indefinite future is not enough. The harm must be
22 shown to be imminent." *Burbank-Glendale-Pasadena Airport Authority v. City of*
23 *Burbank*, 1996 U.S. Dist. LEXIS 11646, *12 (C.D. Cal. 1996). "Subjective
24 apprehensions and unsupported predictions of revenue loss are not sufficient to
25 satisfy a plaintiff's burden of demonstrating an immediate threat of irreparable
26 harm." *Caribbean Marine Services Co.*, 844 F.2d at 675-76. This requirement that
27 Plaintiffs' demonstrate immediate threatened injury is even more important when
28

1 the court is asked to take the extreme action of granting a temporary restraining
2 order, not just a preliminary injunction.

3 This immediacy requirement was paramount in *L.A. Coliseum*, wherein the
4 Los Angeles Coliseum Commission sought a preliminary injunction barring the
5 National Football League from using its veto power to prevent the Oakland Raiders
6 from moving to Los Angeles. *See L.A. Coliseum*, 634 F.2d at 1198. The Ninth
7 Circuit ruled that the plaintiffs had not demonstrated any immediate threatened
8 harm and that an injunction was improper because the Raiders' move to Los
9 Angeles was still in the negotiation stage and there was no evidence that the League
10 was in fact going to use its threatened veto. *See id.* at 1201.

11 The Central District came to a similar conclusion in *Burbank*, in which the
12 City sought an order enjoining the Airport Authority from purchasing land it
13 intended to use as part of its expansion plan, which—the City alleged—would
14 inflict a number of harms on the City. *See Burbank*, 1996 U.S. Dist. LEXIS 11646
15 at *3-*6, *14. The Court, however, found that any harm arising from the expansion
16 plan was not immediate because the land purchase was not imminent in that
17 negotiations had been ongoing for months and had not resulted in an agreement.
18 *See id.* at *13-*16. The Court therefore denied the City's request for injunctive
19 relief. *See id.* at *16-*17.

20 Various other courts have held that injunctive relief is improper when the
21 alleged future injury is contingent on the occurrence of uncertain future events. *See*
22 *Caribbean Marine Services Co.*, 844 F.2d at 675-76 (reversing the district court's
23 grant of a preliminary injunction because "[m]ultiple contingencies must occur
24 before [the plaintiffs'] injuries would ripen into concrete harms"); *Nelsen v. King*
25 *County*, 895 F.2d 1248, 1254 (9th Cir. 1990) (affirming the denial of injunctive
26 relief where the plaintiffs' "complaints for injunctive relief consist only of a set of
27 highly speculative contingencies"); *Midgett v. Tri-County Metropolitan*
28 *Transportation District of Oregon*, 254 F.3d 846, 850-51 (9th Cir. 2001) (affirming

1 the district court's denial of a permanent injunction where the record did "not
2 support a finding that Plaintiff faces and immediate threat of irreparable harm");
3 *Skelly v. Dockweiler*, 75 F. Supp. 11, 17 (S.D. Cal. 1947) (dismissing the plaintiff's
4 complaint to enjoin a company from causing the stock of another corporation to be
5 voted in favor of a merger at a stockholder's meeting because and damage resulting
6 therefrom "is not immediate, but remote and flowing from contingencies which
7 have not arisen and may never arise.").²

8 Plaintiffs have alleged that injury from the WLS is based on a number of
9 non-imminent contingencies, and—like the plaintiffs in *L.A. Coliseum* and
10 *Burbank*—Plaintiffs have failed to **demonstrate** an immediate threatened injury as
11 required by the Ninth Circuit. Further, ICANN's evidence establishes that Plaintiffs
12 cannot demonstrate an immediate threat of irreparable harm.

13 Plaintiffs' Complaint specifically alleges that ICANN and VeriSign are still
14 negotiating the WLS proposal and that these negotiations have not produced an
15 agreement to implement the WLS. (Complaint at ¶ 42.) Assuming that these
16 negotiations will result in an agreement, Plaintiffs then allege that implementation
17 of the WLS is not scheduled to occur until October 11, 2003. (*Id.*) Further, in their
18 Motion, "Plaintiffs seek to restrain ICANN from **conducting negotiations toward**
19 **the establishment of a proposal** known as WLS. . . ." (Memorandum at 2.)
20 (emphasis added). This particular request for relief proves that no immediate threat
21 of irreparable harm exists.³

22 ² Plaintiffs' analysis of *Pignotti* is misleading and irrelevant. (Memorandum
23 at 5-6.) *Pignotti v. Sheet Metal Workers' Inter'l Ass'n*, 343 F. Supp. 236 (D. Neb.
24 1972), 477 F.2d 825 (8th Cir. 1973). The court held that actions by the head of an
25 international union violated the federal statutory rights of members and, therefore,
26 granted an injunction. The federal statutory framework at issue specifically
provided for the issuance of an injunction where violation of members' equal rights

27 ³ In addition, Plaintiffs' injury allegations may not even be sufficient to
28 confer standing to bring this lawsuit. "Standing is a necessary element of federal-
court jurisdiction." *City of South Lake Tahoe v. California Tahoe Regional*

1 ICANN's evidence also shows that Plaintiffs face no immediate threat of
2 irreparable harm. VeriSign and ICANN have not, in fact, reached an agreement to
3 amend their registry agreement to include the WLS. (Memorandum at 2, 4;
4 Halloran Decl. ¶ 14.) The parties, just like those in *L.A. Coliseum* and *Burbank*, are
5 still in negotiations. (Halloran Decl. ¶ 14.) If VeriSign and ICANN do reach an
6 agreement to amend their Registry Agreement to include the WLS, that agreement
7 then has to be approved by the United States Department of Commerce. (*Id.*) If the
8 Department of Commerce approves the agreement between VeriSign and ICANN,
9 VeriSign then has to undertake the significant task of successfully implementing
10 the WLS. (*Id.*) Quite simply, any injury Plaintiffs may suffer from the successful
11 implementation of the WLS "is not immediate, but remote and flowing from
12 contingencies which have not arisen and may never arise." *Skelly*, 75 F. Supp. at
13 17.

14 **B. Plaintiffs' Delay In Bringing This Action Confirms That Plaintiffs**
15 **Have Not Demonstrated A Threat Of Irreparable Harm As**
16 **Required For The Issuance Of A Temporary Restraining Order.**

17 Plaintiffs first learned of the WLS almost two years ago. (Comp. at ¶ 30 ("In
18 late 2001, VeriSign proposed a change to Defendant's policies called Wait Listing
19 Service or WLS."); *see also* Memorandum at 3.) ICANN and VeriSign began
20 negotiating amendment of their Registry Agreement to include the WLS eleven
21 months ago. (Comp. at ¶ 38 (On August 23, 2002, Defendant's Board . . . adopted
22 a resolution authorizing Defendant's President and General Counsel to negotiate
23

24 (continued...)

25 *Planning Agency*, 625 F.2d 231, 233 (9th Cir. 1980). At a constitutional minimum,
26 plaintiffs in federal courts "must allege some threatened or actual injury resulting
27 from the putatively illegal action before a federal court may assume jurisdiction.
28 *Linda R. S. v. Richard D.*, 410 U.S. 614, 617 (1973). Any alleged, threatened
injury must, however, be "imminent." *Lujan v. Defenders of Wildlife*, 504 U.S.
555, 560 (1992).

1 with VeriSign for the establishment of WLS."); *see also* Memorandum at 4)
2 Almost two months ago, ICANN denied Plaintiffs' request to reconsider ICANN's
3 decision to negotiate the WLS with VeriSign, and shortly thereafter the Board
4 adopted that recommendation denying reconsideration. (Comp. at ¶¶ 40-41; *see*
5 *also* Memorandum at 4.) In short, Plaintiffs have had a number of opportunities to
6 bring this action, but have sat on their hands. Plaintiffs should not be permitted to
7 create an emergency because of their own delays.

8 Delay is relevant in determining whether a TRO should issue because it
9 "[i]mplies a lack of urgency and irreparable harm." *Oakland Tribune, Inc. v.*
10 *Chronicle Pub. Co.*, 762 F.2d 1374, 1377 (9th Cir. 1985) (finding that the district
11 court's finding of no irreparable harm was supported by the plaintiff's long delay in
12 bringing its action). A district court "may legitimately think it suspicious that the
13 party who asks to preserve the status quo through interim relief has allowed the
14 status quo to change through unexplained delay." *Kobell v. Suburban Lines, Inc.*,
15 731 F.2d 1076, 1092 n.27 (3rd Cir. 1984) (a three month delay in bringing an action
16 was relevant evidence that interim injunctive relief is not truly necessary).

17 **C. Plaintiffs Have Failed To Demonstrate Probable Success On The**
18 **Merits.**

19 Plaintiffs assert that ICANN's authorization of the offering of the WLS
20 contravenes the procedural requirements for adopting a Consensus Policy, as
21 required in the Accreditation Agreement. (Memorandum at 2.) Plaintiffs'
22 understanding of the Registrar Accreditation Agreement, however, is simply wrong.

23 Plaintiffs are correct that the Board's decision to revise VeriSign's Registry
24 Agreement to allow it to offer the WLS through accredited registrars was not made
25 according to the procedures stated in subsection 4.3.1 of the registrar accreditation
26 agreement for the creation of "consensus policies" as defined there. (Halloran Decl.
27 at ¶ 10.) But nothing in the registrar accreditation agreement requires ICANN to
28 make all of its decisions according to the "consensus policy" mechanism defined in

1 that agreement. Instead, the contractual role of the "consensus policies" under the
2 registrar accreditation agreement is to provide a means to require registrars to
3 implement certain types of policies developed through the ICANN process. (*Id.*)
4 Under subsection 4.1 of the registrar accreditation agreement, registrars agree to
5 comply with new or revised policies developed during the term of the agreement,
6 provided they are established according to a consensus process described in
7 subsection 4.3 and on topics prescribed in subsection 4.1.2. (*Id.*)

8 ICANN is only able to impose new obligations on all registrars by following
9 the process set forth in section 4.3.1 of the Accreditation Agreement. Section 4.3.1
10 of the Accreditation Agreement requires "policies" to be implemented only by
11 following specific procedures set forth in that section. Although not defined in
12 section 4.3.1, section 4.3.5 of the accreditation agreement makes clear what
13 qualifies as a policy: Those two policies, are true "big picture" policies that all
14 registrars must follow: (1) the Uniform Domain Name Dispute Resolution Policy;
15 and (2) the Whois Data Reminder Policy.⁴ By contrast, other actions that do not
16 affect all registrars are not "policies" under Section 4.3.1, therefore, they are treated
17 in different ways. The WLS is an example of one such action. The WLS was
18 effected by an amendment to the VeriSign registry agreement. Registrars can
19 choose to be involved in the WLS but do not have to be, so treating the WLS
20 decision as an amendment to VeriSign's agreement was entirely appropriate as it
21 did not qualify as a "policy" under the Accreditation Agreement. To be clear, the

22
23 ⁴ The Uniform Domain Name Dispute Resolution Policy sets forth the terms
24 and conditions that must be followed by all domain-name holders, or registrants, in
25 connection with a dispute between it and any party other than the registrar over the
26 registration and use of an Internet domain name. The Whois Data Reminder Policy
27 is an annual requirement that all registrars present to registrants the current Whois
28 information for their domain name (contact names, addresses, etc.), and reminds the
registrant that provision of false Whois information can be grounds for cancellation
of their domain name registration. Registrants must then review their Whois data,
and make any corrections.

1 WLS does not involve changes to Plaintiffs obligations nor does it impose *any*
2 obligations on any registrars. A registrar is free to participate in WLS or not—just
3 as a registrar is free to participate in a current form of wait listing service or not.
4 Indeed, while some registrars do offer a current form of wait listing service, most
5 do not. This is yet another reason why the changes made to the agreement between
6 ICANN and VeriSign does not qualify as a "policy" change.

7 Just because the consensus policy procedures were not followed in this
8 situation does not mean that the issues were not carefully considered by ICANN.
9 The ICANN Board considered this issue over a long period of time, analyzed the
10 effect on competition of authorizing VeriSign to offer the new service, authorized
11 its President and General Counsel to conduct negotiations on behalf of ICANN
12 toward appropriate revisions to the .com and .net registry agreements between
13 ICANN and VeriSign with a number of conditions and still has not concluded and
14 still has not concluded an agreement with VeriSign. (*Id.* ¶ 8.) In adopting its the
15 resolution, the Board recited that it was "mindful that ICANN should act in a way
16 that promotes consumer choice and innovative services while ensuring that registry
17 operations are conducted in a manner that does not harm the legitimate interests of
18 consumers or others." (*Id.*) In short, the substance of Plaintiffs' competition
19 arguments *were* thoroughly considered by the Board. (*Id.*)

20 Accordingly, Plaintiffs are not likely to succeed on this merits of their action.
21 Plaintiffs' claim for a Temporary restraining order should be denied.

22 **D. The Public Interest Would Be Impaired By The Issuance Of A**
23 **Temporary Restraining Order.**

24 Because the injunction Plaintiffs seek would affect the public, this Court
25 must examine whether the public interest would be advanced or impaired by the
26 issuance of the requested injunction. *See Caribbean Marine Services Co.*, 844 F.2d
27 at 674; *L.A. Coliseum*, 634 F.2d at 1200. There is no doubt that the public interest
28 will be impaired if a temporary restraining order issues in this case.

1 Plaintiffs claim that "ICANN's actions in implementing WLS demonstrate a
2 disregard for its responsibility to the public and to the Internet community."
3 (Memorandum at 9.) Nothing could be further from the truth. As already
4 explained, the current system of acquiring a newly-deleted domain name leaves a
5 great deal to chance. (Complaint ¶ 21-34.) A potential registrant generally must
6 pay a registrar to try to obtain the requested domain name when it is deleted and
7 becomes available, even before the registrar is awarded that domain name. The
8 registrar competes with many other registrars to obtain the requested domain name,
9 decreasing the likelihood that the potential registrant will obtain a desired domain
10 name unless (s)he pays every registrar who offers this type of wait listing service.
11 By contrast, the WLS proposed by VeriSign means that a potential registrant
12 hoping to gain a newly-deleted .com or .net domain name need only sign up with
13 (and pay) *one* registrar, who in turn adds that requested domain name to VeriSign's
14 WLS. Only one request will be permitted per domain name. Thus, if the domain
15 name is deleted, that request will be granted. Furthermore, the costs to the potential
16 registrant would be in the hands of the registrar: the WLS does not contemplate the
17 fee arrangement between registrars and end users, only a flat fee between VeriSign
18 and the registrar listing requests on the WLS. This simpler, fairer, more equitable
19 system is clearly beneficial—not harmful—to the public.

20 The only members of the "public" who might be injured are Plaintiffs.
21 Plaintiffs' current business model is, essentially, selling an opportunity for a
22 potential registrant to get in line. Plaintiffs are upset because this business model
23 might have to change, but this does not mean the present system should remain
24 unchanged or is in the best interests of consumers.

25 Indeed, none of these registrars, including Plaintiffs, will be forced out of
26 business because of the WLS. Registrars will still be an essential link in the
27 WLS—potential registrants must apply to registrars to get their request for a
28 domain name on the WLS. All the WLS does is simplify the system of acquiring

1 deleted domain names and make the goal of obtaining a newly-deleted domain
2 name less expensive and more certain for potential registrants. Thus, as a result of
3 the WLS, neither the public nor the Internet community will be harmed: consumers
4 will gain something tangible and the registrars can still sell expired domain name
5 rights.

6 **E. Expedited Discovery Is Wholly Inappropriate In This Case.**

7 Because Plaintiffs' request for emergency relief is deficient, their request for
8 expedited discovery is similarly deficient. There is no need for expedited discovery
9 in this matter given the fact that there is no need for emergency relief. Accordingly,
10 Plaintiffs' request for expedited discovery should be denied.

11 **F. If A Temporary Restraining Order Issues, Plaintiffs Should Be**
12 **Required To Post A Significant Security Bond.**

13 "No restraining order or preliminary injunction shall issue except upon the
14 giving of security by the applicant, in such sum as the court deems proper." Fed. R.
15 Civ. P. 65(c). The issuance of an order restraining ICANN will cause a significant
16 disruption in ICANN's operations and contractual relations. But it is extremely
17 difficult to quantify the cost of such a disruption at this time. And no amount of
18 bond would compensate for the harm to the public for halting the process of the
19 proposed WLS. If an order restraining ICANN issues, Plaintiffs should therefore
20 be required to post a significant bond to cover this cost when ICANN ultimately
21 prevails on the merits of this action.

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IV. CONCLUSION

There is simply no immediate threat of irreparable harm here. Instead, the only harm would be to the public interest if ICANN is enjoined. Plaintiffs' motion for temporary restraining order and preliminary injunction should be denied along with Plaintiffs' unnecessary request for expedited discovery.

Dated: July 17, 2003

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