

Dansk oversættelse

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MISSOURI

EASTERN DIVISION

ECONOMIC SOLUTIONS, INC.,)
)
sagsøger,)
)
mod)
)
INTERNET CORPORATION FOR ASSIGNED) Nr. 4:00CV1785-DJS
NAMES AND NUMBERS,)
)
sagsøgte.)

ERKLÆRING AFGIVET AF LOUIS TOUTON

1. Jeg er vicepræsident, sekretær og leder af den juridiske funktion i Internet Corporation for Assigned Names and Numbers ("ICANN"), sagsøgte i denne sag. Jeg har personligt kendskab til de heri anførte forhold og er kompetent til at vidne med hensyn til disse forhold. Jeg afgiver denne erklæring i forbindelse med ICANN's modstand mod sagsøgers begæring om et midlertidigt forbud.

Domstolskompetence

2. ICANN er en nonprofitorganisation, der er organiseret i henhold til lovgivningen i staten Californien. Dens hjemsted (og eneste domicil) er i Marina del Rey, som er beliggende i Los Angeles County, Californien. ICANN er den enhed, der arbejder sammen med den amerikanske regering om at privatisere visse tekniske administrationsfunktioner i forbindelse med internettets domænenavnesystem, som i øjeblikket udføres af det amerikanske handelsministerium eller dets underleverandører. Baggrunden for privatiseringen af internettet kan findes i en publikation fra handelsministeriet af 5. juni 1998 med titlen Management of Internet Names and Addresses (Administration af internetnavne og -adresser og er tilgængelig på 63 Fed. Reg. 31741 (1998)). Et af ICANN's mål er at skabe et forum, hvor internetsamfundet kan diskutere emner vedrørende internettets tekniske administration, og at fremme konsensus i samfundet vedrørende disse emner.

3. ICANN har ingen aktiver i staten Missouri. ICANN forsøger ikke at hverve kunder i Missouri. ICANN sælger ingen varer eller tjenesteydelser i Missouri. ICANN har ingen bankkonto i Missouri. Jeg er faktisk ikke vidende om, at nogen med tilknytning til ICANN nogensinde har været i Missouri i forbindelse med ICANN's virksomhed. Ingen fra ICANN har personligt mødt nogen af sagsøgers repræsentanter, det være sig i Missouri eller andetsteds.

4. ICANN vedligeholder et websted på adressen <http://www.icann.org>. Dette websted drives fra en enkelt webserver, der fysisk er placeret i Marina del Rey i Californien. Webstedet indeholder en mængde oplysninger om ICANN, om de mennesker, der arbejder for ICANN, og om de projekter, ICANN har påtaget sig i forbindelse med internettet. Webstedet indeholder også "links" til andre oplysninger, der vedrører ICANN's aktiviteter. ICANN udbyder intet til salg på sit websted; ICANN sælger faktisk ingenting.

5. En af funktionerne på ICANN's websted er et offentligt kommentarforum, hvor internetbrugerne kan lægge kommentarer om de emner i forbindelse med teknisk administration, der vedrører dem. (Der er faktisk startet og standset fora vedrørende forskellige emner, efterhånden som emnerne er blevet relevante i samfundet). Et offentligt kommentarforum er i alt væsentligt et bulletin board, hvor man kan lægge "postings" (meddelelser), og andre kan svare på disse "postings". ICANN fungerer som "vært" for [for a], idet ICANN leverer en computer med internetforbindelse, som opsamler kommentarerne og viser dem på ICANN's websted. Denne computer (ICANN's webserver) er rent fysisk placeret i Marina del Rey i Californien. ICANN meddeler fra tid til anden hele internet-samfundet, at man nu, såfremt man ønsker det, kan sende kommentarer til ICANN vedrørende organisationens aktuelle og påtænkte aktiviteter. Disse kommentarer udlægges automatisk, så de kan ses elektronisk.

Baggrunden for ICANN og organisationens "bemyndigelse"

6. ICANN blev stiftet 30. september 1998. I november 1998 underskrev ICANN et aftalememorandum ("MOU") med det amerikanske handelsministerium, hvoraf en nøjagtig og korrekt kopi² er vedhæftet denne erklæring som bilag A, og det kan også ses på ICANN's websted på adressen <http://www.icann.org/general/icann-mou-25nov98.htm>. Formålet med MOU'et var at nedfælde³ ICANN's rolle i privatiseringen af den tekniske administration af internettet. I MOU'et aftalte parterne, at de "sammen vil designe, udvikle og afprøve de mekanismer, metoder og procedurer, der skal være på plads, og de skridt, der er nødvendige for at overdrage ansvaret for administrationen af DNS-funktionerne [domænenavnesystem-funktionerne], der nu udføres af eller på vegne af den amerikanske regering, til en privat nonprofitorganisation." I § V, litra B, stk. 7 i MOU'et påtog handelsministeriet sig specifikt ansvaret for "generelt tilsyn med de aktiviteter, der gennemføres i medfør af denne aftale."

7. MOU'et bestemmer specifikt i § V, litra B, stk. 8, at handelsministeriet beholder tilsynspligten for den tekniske administration af domænenavnesystemet, indtil der er indgået yderligere aftaler om, at den private sektor kan påtage sig denne administration. Handelsministeriet har i dag stadig myndigheden over den tekniske administration af domænenavnesystemet. ICANN kan ikke og har ingen juridisk bemyndigelse til at implementere nye topniveaudomæner; denne bemyndigelse ligger hos handelsministeriet som forklaret nedenfor.

8. I adskillige år blev visse aspekter af den amerikanske regerings administration af visse teknologiske aspekter i forbindelse med internettet støttet af IANA, som dengang var en funktion på University of Southern California, som havde en kontrakt med den amerikanske regering om at assistere i administrationen af internettet (og dets forgænger). 2. februar 2000 forelagde ICANN den amerikanske regering et forslag om at udføre IANA-funktionen. En nøjagtig og korrekt kopi af dette forslag kan ses på ICANN's websted på adressen <http://www.icann.org/general/iana-proposal-02feb00.htm>. 9. februar 2000 indgik den amerikanske regering og ICANN en kontrakt om udførelsen af IANA-funktionen. En nøjagtig og korrekt kopi af denne kontrakt er vedhæftet denne erklæring som

¹ Note fra translatøren: Den engelske tekst giver ikke mening på dette sted, idet ordene "for a" hænger ikke sammen med resten af teksten. Der kunne evt. stå "disse" på dansk.

² Note fra translatøren: "True and correct copy" kunne også oversættes med "bekræftet genpart", men jeg kan ikke ud af det foreliggende materiale se, om der er tale om en sådan, hvorfor jeg har valgt oversættelsen "nøjagtig og korrekt kopi". Dette gælder i øvrigt alle forekomster af dette udtryk i nærværende dokument.

³ Note fra translatøren: "Memorialize" betyder egentlig "minde om", men det er åbenlyst forkert her. Teksten fortolkes som, at der skal laves en skriftlig optegnelse af ICANN's rolle i privatiseringen af internettet.

bilag B ("IANA-kontrakten"). En kopi af IANA-kontrakten kan også ses på ICANN's websted på adressen <http://www.icann.org/general/iana-contract-09feb00.htm>.

9. IANA-kontrakten indeholder udtrykkelige udsagn, der er relevante for sagsøgers påstande i denne sag. To paragraffer er især vigtige for forståelsen af den aktuelle tildeling af bemyndigelse til at etablere nye topniveaudomæner ("TLD'er") eller til at ændre uddelegeringen af eksisterende TLD'er. Rent teknisk er uddelegeringen af TLD'er etableret ved poster i "rodzonen". § 12.3 bestemmer, at ICANN (kaldes i IANA-kontrakten leverandøren) skal udføre følgende IANA-funktioner:

"Administrative funktioner vedrørende rodadministration. Denne funktion omfatter facilitering og koordinering af domænenavnesystemets rodzone. Her indgår modtagelse af anmodninger om og foretagelse af rutineopdateringer af ccTLD-kontakt- og navneserveroplysninger. Der indgår også modtagelse af uddelegerings- og redelegeringsanmodninger, undersøgelse af omstændighederne vedrørende disse anmodninger og rapportering vedrørende anmodningerne. I funktionen indgår ikke autorisering af ændringer, tilføjelser eller sletninger i rodzonefilen eller tilknyttede oplysninger; der udgør uddelegering eller redelegering af topniveaudomæner. Tildelingen af købsordren ændrer ikke rodsystemsforpligtelserne, som er defineret i tillæg 11 i samarbejdsaftalen."

10. § 12.5 i IANA-kontrakten anfører "begrænsninger i udførelsen": "I udførelsen af administrative funktioner vedrørende rodadministration indgår ikke autorisering af ændringer, tilføjelser eller sletninger i rodzonefilen eller tilknyttede oplysninger, der udgør uddelegering eller redelegering af topniveaudomæner. Tildelingen af købsordren ændrer ikke rodsystemsforpligtelserne, som er defineret i tillæg 11 i samarbejdsaftalen."

11. Den "rodzonefil", der nævnes i ovenstående paragraffer, vedligeholdes af Network Solutions, Inc. ("NSI") i Virginia i henhold til en samarbejdsaftale mellem NSI og handelsministeriet. Tillæg 11 til den nævnte samarbejdsaftale, som trådte i kraft 7. oktober 1998, bestemmer specifikt, at NSI "skal anmode om skriftlige instrukser fra en⁴ dertil bemyndiget embedsmand fra den amerikanske regering [USG - United States Government], før denne foretager eller afviser ændringer, tilføjelser eller sletninger i rodzonefilen." En nøjagtig og korrekt kopi af tillæg 11, som stadig er gældende i dag, er vedhæftet denne erklæring som bilag C og kan også findes på internettet på adressen <http://www.networksolutions.com/legal/internic/cooperative-agreement/amendment11.html>.

12. Et af ICANN's formål er at forsøge at fremme konkurrencen og valgfrihed for forbrugerne med hensyn til administrationen af domænenavnesystemet, hvilket er et af de principper, der er anført i § II, litra C i MOU'et. Med hensyn til dette accepterede ICANN fra september 2000 og til og med 2. oktober 2000 ansøgninger fra virksomheder, der var interesseret i at støtte eller drive nye TLD'er. ICANN modtog syvogfyrre sådanne ansøgninger. Det er ICANN's hensigt, at disse ansøgninger straks skal diskuteres med forskellige dele af internet-samfundet på et offentligt forum med personligt fremmøde, som skal afholdes 15. november 2000. Ud fra de offentlige input, der modtages på dette forum og andetsteds, og evaluering af ansøgningerne, skal bestyrelsen behandle ansøgningerne på det årlige bestyrelsesmøde, der er planlagt til at finde sted 16. november 2000. Under mødet 16. november kan bestyrelsen vedtage at anbefale, at der indledes forhandlinger med en eller flere TLD-ansøgere. Bestyrelsen har ikke fastsat noget minimums- eller maksimumsantal af ansøgninger, der godkendes til at gå videre til næste trin. ICANN har derefter til hensigt at indlede forhandlinger med de "godkendte" ansøgere med det formål at fastslå, om man kan nå frem

⁴ Note fra translatøren: Ordet "and" burde efter translatørens mening helt klart have været "an" og er oversat som sådan.

til kontrakter, der efter ICANN's bedømmelse vil fremme de mål og principper, som ICANN i MOU'et har forpligtet sig til. Såfremt nogle af ansøgerne går videre til dette trin, vil ICANN derefter anbefale handelsministeriet, at man giver bemyndigelse til etableringen af disse nye TLD'er, og især meddele NSI, at disse nye TLD'er skal tilføjes i rodzonefilen, således at computere med internetforbindelse kan genkende disse nye adresser og præcist route oplysninger til og fra disse nye adresser.

13. Kort sagt har ICANN ingen juridisk bemyndigelse til at bemyndige etableringen af nye TLD'er eller til at ændre uddelegeringen af disse TLD'er. ICANN håber, at handelsministeriet vil efterkomme ICANN's anbefalinger vedrørende nye TLD'er, men den juridiske bemyndigelse til at tage beslutningen ligger hos handelsministeriet.

14. Derfor skal mindst tre hændelser indtræffe, før et nyt TLD (f.eks. ".biz") vil være tilgængeligt på internettet. Først skal ICANN udvælge ansøgningen til forhandlinger. Dernæst skal forhandlingerne mellem ICANN og ansøgeren vedrørende de vilkår, hvorunder TLD'et skal gøres tilgængeligt på internettet, ende med et positivt resultat, og der er på ingen måde sikkerhed for et positivt resultat, da det involverer komplekse aftaler. For det tredje skal det amerikanske handelsministerium godkende ICANN's anbefaling og meddele NSI, at de skal foretage de relevante tilføjelser i rodzonefilen.

15. På sit møde i juli 2000 udtalte ICANN offentligt, at der ikke føjes nogen nye TLD'er til internettet i resten af år 2000. Såfremt ICANN anbefaler, at der tilføjes nye TLD'er, og handelsministeriet er enig i anbefalingen, er det ICANN's hensigt, at de anbefalede TLD'er først skal træde i kraft på et tidspunkt i første halvår af 2001.

Nationale TLD'er og ".bz"

16. Ud over de såkaldte "generiske" TLD'er som ".com", ".net" og ".gov" er der også adskillige "nationale" (country code) TLD'er, som almindeligvis betegnes ccTLD'er. Eksempler på ccTLD'er er ".us" for USA, ".uk" for Storbritannien og ".bz" for Belize. Disse ccTLD'er anvendes generelt til internetadresser, der er specifikke for et land, baseret på en kode på to bogstaver, der forekommer på en liste, der er udarbejdet af den internationale standardiseringsorganisation (ISO). Nationale TLD'er administreres af udpegede ccTLD-administratorer, der fungerer som forvaltere, der udfører en tjeneste på vegne af internetsamfundet, både globalt og i det land eller territorium, der betegnes med den pågældende landekode.

17. Et resume af ICANN's praksis med hensyn til ccTLD'er findes i en publikation, som ICANN udgav i maj 1999, der generelt betegnes "ICP-1". En nøjagtig og korrekt kopi af ICP-1 er vedhæftet min erklæring som bilag D og kan også findes på ICANN's websted på adressen <http://www.icann.org/icp/icp-1.htm>. Den sidste paragraf i ICP-1 bekræfter omfanget af ICANN's bemyndigelse: "Den primære rodzonefil er i øjeblikket placeret på A-rodserveren, som drives af Network Solutions, Inc. (NSI), i henhold til en samarbejdsaftale med den amerikanske regering. Ændringer i rodzonefilen foretages af NSI i henhold til procedurerne i tillæg 11 i denne samarbejdsaftale."

18. Hver ccTLD har en teknisk kontakt og en administrativ kontakt (i nogle få tilfælde er det den samme person). I henhold til ICP-1 og andre aspekter af eksisterende politikker og procedurer kan ICANN give og giver anbefalinger til handelsministeriet vedrørende udskiftning af disse kontaktpersoner. Som bemærket ovenfor bestemmer IANA-kontrakten, at ICANN ikke er bemyndiget til at redelegere topniveaudomæner. ICP-1 siger yderligere: "TLD-administratorens ansvar. TLD-administratorerne er forvaltere af det uddelegerede domæne og har pligt til at

tjene samfundet. Den designerede administrator er forvalter af TLD'et for både landet, i tilfælde af ccTLD'er, og det globale internetsamfund. Bekymringer over "rettigheder" over og "ejerskab" af domæner er utilstedelige. Det er passende at bekymre sig om "ansvar" og "tjeneste" over for samfundet.

19. ICANN's anbefalinger vedrørende den mulige udskiftning af administratoren af et ccTLD er baseret på en række faktorer, der skal sikre internettets pålidelige funktionalitet. Selvom disse faktorer er ønsket fra regeringen i det pågældende land, "ejer" ingen regering sit ccTLD og kan ikke beordre ICANN eller handelsministeriet til at tage skridt med hensyn til et ccTLD. I henhold til den gældende politik "ejes" ccTLD'erne faktisk slet ikke på nogen måde; de stilles til rådighed til gavn for hele internetsamfundet.

20. I de senere år har nogle få ccTLD-administratorer forsøgt at kommercialisere de ccTLD'er, de driver, for at få dem til at ligne "generiske" TLD'er som f.eks. ".com" eller ".net". Ifølge sagsøger er regeringen i Belize interesseret i en sådan kommercialisering. Ifølge sagsøgers dokumenter har regeringen i Belize underskrevet en kontrakt med sagsøger, i henhold til hvilken sagsøger vil forsøge at markedsføre ccTLD'et ".bz" over for virksomheder i hele verden, hvilket tilsyneladende ville resultere i betalinger til landet Belize.

21. Tidligere i år anmodede sagsøger om, at ICANN skulle anerkende sagsøger som den administrative og tekniske kontakt for ".bz". Der er flere problemer med sagsøgers anmodning. For det første, selvom de synspunkter, regeringen for det berørte territorium måtte have, tages alvorligt i betragtning, når redelegering overvejes, har ICANN ikke modtaget nogen officiel meddelelse fra regeringen i Belize om, at denne støtter denne redelegering, det vil være farligt for ICANN at foretage sig noget alene baseret på udsagn fra en enhed, der hævder at have indgået i et kontraktligt forhold med et land, selvom kontrakten tilsyneladende er gyldig. I dette tilfælde modtog ICANN på trods af anmodning gennem lang tid ikke den påståede kontrakt, før sagsøger vedhæftede den til sine indlæg til støtte for begåringen om et midlertidigt forbud. Men selv med kontrakten har ICANN ikke noget grundlag for at bekræfte dens ægthed, eller om regeringen i Belize står bag kontrakten.

22. For det andet er ICANN orienteret om og mener, at der faktisk er en tvist med hensyn til, om kontrakten er legitim. ICANN har modtaget meddelelser fra de nuværende administrative og tekniske kontaktpersoner for ".bz"-TLD'et, der sår tvivl om sagsøgers påstande. Sagsøgers dokumenter angiver faktisk, at sagsøger har anmodet om, at de nuværende kontaktpersoner for ".bz"-ccTLD'et meddeler ICANN, at de trækker sig, men ICANN har ikke modtaget meddelelse fra dem herom.

23. For det tredje har ICANN modtaget oplysninger, der tyder på, at regeringen i Belize faktisk ikke anerkender eksistensen og retskraftigheden af sagsøgers påstande, og for det fjerde skal ICANN, selvom ICANN havde modtaget meddelelse fra de nuværende kontaktpersoner for ".bz"-TLD'et om, at de trækker sig, og det formelt udtrykte ønske⁵ fra regeringen i Belize, overveje en række faktorer, før ICANN kan give nogen anbefaling til handelsministeriet. ICANN overvejer blandt andet effekten af en sådan overførsel på internettets stabilitet, de(n) påtænkte erhverver(e)s synlige evne til at administrere ccTLD'et, om kontaktpersonerne vil være fair og rimelige over for alle grupper, der anmoder om navne, og om den påtænkte overdragelse vil være til gavn for internetsamfundet som helhed. Som anført ovenfor "ejer" intet land en ccTLD eller har ret til at beordre ICANN eller handelsministeriet til at ændre den måde, hvorpå et ccTLD drives.

⁵ Note fra translatøren: Her står "wished" i teksten, men det fortolkes som en åbenbar slåfejl, og at der i stedet skulle have stået "wish".

Dansk oversættelse

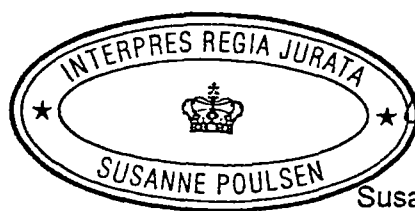
Jeg erklærer under edsansvar i henhold til lovgivningen i De Forenede Stater, at det foranstående er sandt og korrekt.

Denne erklæring er underskrevet 11. november 2000 i Marina del Rey, Californien.

/u/ Louis Touton _____
Louis Touton

Undertegnede translator, Susanne Poulsen, bekræfter herved, at ovenstående oversættelse er en fuldstændig og nøjagtig gengivelse af vedhæftede dokument, United States District Court, Declaration of Louis Touton (5 sider), i det engelske sprog.

Valby, den 13. februar 2002



A handwritten signature in black ink, appearing to read "Susanne Poulsen".

Susanne Poulsen
Statsautoriseret translator og tolk

6

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ECONOMIC SOLUTIONS, INC.,)
)
Plaintiff,)
)
v.)
)
INTERNET CORPORATION FOR ASSIGNED) No. 4:00CV1785-DJS
NAMES AND NUMBERS,)
)
Defendants.)

DECLARATION OF LOUIS TOUTON

1. I am the vice-president, secretary and general counsel of the Internet Corporation for Assigned Names and Numbers ("ICANN"), the defendant in this acti have personal knowledge of the matters set forth herein and am competent to test those matters. I make this declaration in connection with ICANN's opposition to plaintiff's application for temporary restraining order.

Jurisdictional Issues

2. ICANN is a not-for-profit corporation organized under the laws of the St California. Its principal (and only) place of business is in Marina del Rey, whi in Los Angeles County, California. ICANN is the entity that is working with the United States Department of Commerce to privatize certain the technical-manageme functions related to the Internet's domain name system, which presently are perf by the United States Department of Commerce or its contractors. Background on th privatization of the Internet is available in a publication by the Department of Commerce on June 5, 1998 entitled Management of Internet Names and Addresses and available at 63 Fed. Reg. 31741 (1998). One of ICANN's goals is to provide a for for the Internet community to discuss issues regarding the Internet's technical management and to promote consensus within the community regarding those issues.

3. ICANN has no assets in the State of Missouri. It does not solicit any business in Missouri. It does not sell any goods or services in Missouri. It doe not have a bank account in Missouri. In fact, I am unaware that anybody associat with ICANN has ever been to Missouri in connection with ICANN's business. Nobody ICANN has met personally with any of the plaintiff's representatives, in Missour elsewhere.

4. ICANN maintains a website that is located at <http://www.icann.org/>. That website is operated from a single web server physically located in Marina del Re California. The website contains 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 website also contains "links" to other informa that is related to ICANN's activities. ICANN does not offer anything for sale on website; in fact, ICANN does not sell anything.

5. One of the features of ICANN's website is a public comment forum facilit where users of the Internet can post comments about technical-management issues concern to them. (Actually, forums on various topics are started and stopped as .ssues arise within the community.) A public comment forum is essentially a bull board where people can make "postings" and other people can respond to these "postings." ICANN serves as the "host" of these for a in the sense that ICANN provides a computer connected to the Internet that collects the comments and dis hem on the ICANN website. This computer (ICANN's web server) is physically loca n Marina del Rey, California. ICANN from time-to-time notifies the entire Inter omunity that people may, if they wish, send comments to ICANN concerning its c nd proposed activities. Those comments are automatically posted so that they ma iewed electronically.

Background on ICANN and its "Authority"

6. ICANN was incorporated on September 30, 1998. In November 1998, ICANN signed a memorandum of understanding ("MOU") with the United States Department of Commerce, a true and correct copy of which is attached to this declaration as Exhibit A and also available on ICANN's website at

<http://www.icann.org/general/icann-mou-25nov98.htm>. The purpose of the MOU was to memorialize ICANN's role in the privatization of the technical management of the Internet. In the MOU, the parties agreed to "jointly design, develop and test the mechanisms, methods, and procedures that should be in place and the steps necessary for the transition of management responsibility for DNS [domain name system] functions now performed by, or on behalf of, the U.S. Government to a private-sector not-for-profit entity." Under Section VB7 of the MOU, the Department of Commerce specifically assumed responsibility for "general oversight of activities conducted pursuant to the Agreement."

7. The MOU specifically provides in Section VB8 that the Department of Commerce will maintain oversight responsibility of the technical management of the domain name system until such time as further agreements are arranged for the private sector to undertake that management. The Department of Commerce continues today to have authority over the technical management of the domain name system. ICANN cannot, and has no legal authority to, implement new top level domain names; that authority currently resides in the Department of Commerce, as explained further below.

8. For several years, some aspects of the U.S. Government's administration of certain technical issues associated with the Internet were supported by the IANA, which was then a function of the University of Southern California, which had a contract with the U.S. Government to assist in the administration of the Internet (and its predecessor). On February 2, 2000, ICANN presented a proposal to the U.S. Government to perform the IANA function. A true and correct copy of this proposal is available at ICANN's website at <http://www.icann.org/general/iana-proposal-02feb00.htm>. On February 9, 2000, the U.S. Government and ICANN entered into a contract for the performance of the IANA function. A true and correct copy of that contract is attached to this declaration as Exhibit B (the "IANA Contract"). A copy of the IANA Contract also is available on ICANN's website at <http://www.icann.org/general/iana-contract-09feb00.htm>.

9. The IANA Contract contains express language that is relevant to the plaintiff's claims in this litigation. Two sections are of particular importance: the understanding of the current allocation of authority to establish new top-level domains ("TLDs") or to revise the delegation of existing TLDs. As a technical matter, the delegation of TLDs is established by entries in the "root zone." Section 12.1 provides that ICANN (referred to in the IANA contract as the contractor) shall perform the following IANA functions:

Administrative functions associated with root management. This function involves facilitation and coordination of the root zone of the domain name system. It includes receiving requests for and making routing updates of ccTLD contact and nameserver information. It also includes receiving delegation and redelegation requests, investigating the circumstances pertinent to those requests, and reporting on those requests. This function, however, does not include authorizing modifications, additions, or deletions to the root zone file or associated information that constitute delegation or redelegation of top-level domains. The purchase order award will not alter root system responsibilities defined in Amendment 11 of the Cooperative Agreement."

10. Section 12.5 of the IANA Contract sets forth "performance exclusions": "The performance of administrative functions associated with root management does not include authorizing modification, additions, or deletions to the root zone file or associated information that constitute delegation or redelegation of top-level domains. The purchase order award will not alter root system responsibilities as defined in Amendment 11 of the Cooperative Agreement."

11. The "root zone file" referenced in the previous paragraphs is maintained by Network Solutions, Inc. ("NSI") in Virginia pursuant to a cooperative agreement between NSI and the Department of Commerce. Amendment 11 to that cooperative

agreement, which was effective October 7, 1998, specifically provides that NSI " request written directions from and authorized USG [United States Government] of before making or rejecting any modification, additions or deletions to the root file." A true and correct copy of Amendment 11, which remains in force today, is attached to this declaration as Exhibit C and may also be found on the Internet <http://www.networksolutions.com/legal/internic/cooperative-agreement/amendment11>

12. One of ICANN's purposes is to try to promote competition and consumer choice the management of the domain name system, which is one of the principles set for Section IIC of the MOU. In this regard, beginning in September 2000 and ending on October 2, 2000, ICANN accepted applications from companies interested in sponsoring or operating new TLDs. ICANN received forty-seven such applications. ICANN presently contemplates that those applications will be discussed by various segments of the Internet community at a in-person public forum to be held November 15, 2000. Based on the public input received in that forum and by other means, as well as evaluating the applications, the Board is scheduled to consider the applications at the annual Board meeting scheduled to occur on November 16, 2000. During the November 16 meeting, the Board may vote to recommend that negotiations commence with one or more TLD applicants. The Board has not established any minimum or maximum number of applications that will be approved to proceed to this next step. ICANN then contemplates that it would enter into negotiations with the "approved" applicant for the purpose of determining whether contracts could be reached that, in ICANN's judgment, would promote the objectives and principles that ICANN pledged in the MOU to undertake. If some of the applicants proceed to this stage, ICANN would then recommend to the Department of Commerce that it authorize the issuance of these TLDs and, in particular, instruct NSI to add these new TLDs to the root zone file so that computers connected to the Internet would recognize these new addresses and accurately route information to and from these new addresses.

13. In sum, ICANN has no legal authority presently to authorize the issuance of TLDs or to change the delegation of those TLDs. ICANN hopes that the Department of Commerce will act on ICANN's recommendations on new TLDs, but the legal authority to make the decision rests with the Department of Commerce.

14. Thus, there are at least three events that must happen before a new TLD (such as ".biz") would be available on the Internet. First, ICANN would have to select the applicant for negotiations. Second, there would have to be successful negotiations between ICANN and the applicant concerning the terms pursuant to which the TLD would be made available on the Internet, such successful negotiations being in no way assured because they involve complex agreements. Third, the United States Department of Commerce would have to approve ICANN's recommendation and instruct NSI to make appropriate additions to the root zone file.

15. At its meeting in July 2000, ICANN stated publicly that no new TLDs would be added to the Internet during the remainder of the year 2000. In the event ICANN recommends the addition of new TLDs and the Department of Commerce agrees with that recommendation, ICANN contemplates that the recommended TLDs would become effective sometime during the first six months of the year 2001.

Country Code TLDs and ".bz"

16. In addition to so-called "generic" TLDs such as ".com," ".net," and ".gov," there are also numerous "country code" TLDs, which are commonly referred to as ccTLDs. Examples of ccTLDs are ".us" for the United States, ".uk" for the United Kingdom, ".bz" for Belize. These ccTLDs are generally used for Internet addresses that are specific to a country based on two-letter codes that appear on a list prepared by the International Organization for Standardization (ISO). Country code TLDs are administered by appointed ccTLD managers, who act as trustees performing a service on behalf of the Internet community, both globally and in the country or territory designated by the country code.

17. A summary of ICANN's practices with respect to ccTLDs is found in a release ICANN published May 1999, which is generally referred to as "ICP-1." A true and correct copy of ICP-1 is attached to my declaration as Exhibit D and is also available on ICANN's website at <http://www.icann.org/icp/icp-1.htm>. The last paragraph of ICP-1 reaffirms the extent of ICANN's authority: "The primary root zone file is currently located in the A root server, which is operated by Network Solutions, Inc. (NSI) under a cooperative agreement with the U.S. Government. Changes to the root zone are made by NSI according to procedures established under Amendment 11 of that

cooperative agreement."

18. Each ccTLD has a technical contact and an administrative contact (in a few c they are the same person). Pursuant to ICP-1 and other aspects of existing polic and procedures, ICANN can and does make recommendations to the Department of Com in regard to replacement of those contacts. As noted above, the IANA Contract provides that ICANN is not authorized to redelegate top-level domains. ICP-1 fur states: "TLD Manager responsibility. THD managers are trustees for the delegated domain, and have a duty to serve the community. The designated manager is the tr of the TLD for both the nation, in the case of ccTLDs, and the global Internet community. Concerns about Orights' and Oownership' of domains are inappropriate. is appropriate, however, to be concerned about the Oresponsibilities' and Oservi the community."

19. ICANN's recommendations regarding the possible replacement of the managers o ccTLD are based on a number of factors that are designed to ensure the sound ope of the Internet. Although one of those factors is the wishes of the government o country involved, no foreign government "owns" its ccTLD or can order ICANN or t Department of Commerce to take any actions with respect to a ccTLD. Indeed, unde current policy ccTLDs are not "owned" in any sense; they are made available to t benefit the entire Internet community.

20. Over the past few years, a few ccTLD managers have attempted to commercializ ccTLDs they operate in order to make them appear to be similar to "generic" TLDs ".com" or ".net." According to the plaintiff, the government of Belize is interested in such commercialization. According to the plaintiff's papers, the government of Belize has signed a contract with the plaintiff pursuant to which plaintiff will attempt to market the ".bz" ccTLD to businesses throughout the wo which apparently would result in payments to the Country of Belize.

21. Earlier this year, the plaintiff requested that ICANN recognize plaintiff as administrative and technical contact for ".bz." There are several problems with plaintiff's request. First, although the views of the government of an affected territory are taken into account very seriously in considering re delegation issu ICANN has received no official word from the government of Belize that it suppor this reassignment it would be dangerous for ICANN to take any action based only statements of some entity that claims to have entered into a contractual relatio with a country, even if the contract appeared to be valid. IN this instance, des a longstanding request, ICANN did not even receive the alleged contract until th plaintiff attached it to its pleadings in support of the application for tempora restraining order. But even with the contract, ICANN has not basis to confirm it authenticity or whether the government of Belize stands behind the contract.

22. Second, ICANN is informed and believes that there is, in fact, a dispute as whether the contract is legitimate. ICANN has received communications from the present administrative and technical contacts of the ".bz" TLD that cast doubt o plaintiff's assertions. Indeed, plaintiff's papers indicate that plaintiff has requested that the current contacts of the ".bz" ccTLD submit resignations to IC but ICANN has not received any such resignations.

23. Third, ICANN has received information that suggests that the Government of B does not in fact recognize the existence and enforceability of the plaintiff's assertions, Fourth, even if ICANN received the resignations of the currecnt cont of the ".bz" TLD and the formally expressed wished of the government of Belize, would have to consider a number of factors before making any recommendation to t Department of Commerce. Among other things, ICANN considers the effect of such a transfer would have on the stability of the Internet, the apparent ability of th proposed transferee(s) to administer the ccTLD, whether the contacts would be equitable and fair to all groups that request names, and whether the proposed tr would benefit the Internet community as a whole. As stated above, no country "ow ccTLD or has the rights to order ICANN or the Department of Commerce to change t manner in which a ccTLD is operated.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

This declaration was signed on November 11, 2000 at Marina del Rey, California.

/s/ Louis Touton_____

Louis Touton

Digital Marketing Support ApS
Generatorvej 8 B, Stuen
2730 Herlev

Att.: Anani Voulé

Dato: 3. juni 2003
Deres ref.:
Vores ref.: 43 HER/jrp

Jeg skal hermed besvare selskabets enslydende breve af 20. maj 2003 til foreningerne HTS-I og HORESTA.

I brevet meddeler selskabet, at det påtænker at udtage stævning mod de 2 foreninger med krav om betaling af en ikke nærmere dokumenteret erstatningskrav på ca. kr. 110 millioner.

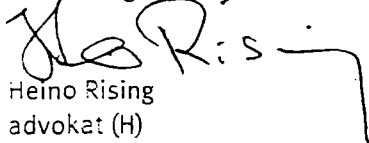
Erstatningsansvaret skulle ifølge brevet kunne begrundes i foreningernes medlemskab af foreningen Dansk Internet Forum (DIFO) og påståede skadegørende handlinger DIFO skulle have foretaget over for selskabet i relation til domænenavnet co.dk.

Jeg konstaterer, at selskabets domænenavn co.dk endnu ikke er inddraget af DIFO og at der verserer retssag om, hvorvidt DIFO er berettiget til at inddrage selskabets domænenavn.

Indtil den mellem selskabet og DIFO verserende retssag endelig er afgjort, er der intet faktisk eller retsligt grundlag for selskabets påståede erstatningskrav mod DIFO.

Allerede af denne grund og da foreningerne intet ansvar har eller hæfter for DIFOs forvaltning af .dk domænet, skal jeg hermed afvise selskabets krav.

Med venlig hilsen


Heino Rising
advokat (H)

IT-Brancheforeningen

Børsen,
DK-1217 København K
Telefon: 70 13 12 00
Giro: 7 57 80 59
Telefax: 33 91 18 38
e-mail: itb@itb.dk
Homepage: www.itb.dk
cvr-nr. 12391641

København, 3. juni 2003

Digital Marketing Support ApS
Generatorvej 8 B, Stuen
2730 Herlev
Att.: Anani Voulé

Jeg skal hermed besvare selskabets brev af 20. maj 2003 til IT-Brancheforeningen.

I brevet meddeler selskabet, at det påtænker at udtage stævning mod foreningen med krav om betaling af en ikke nærmere dokumenteret erstatningskrav på ca. kr. 110 millioner.

Erstatningsansvaret skulle ifølge brevet kunne begrundes i foreningens medlemskab af foreningen Dansk Internet Forum (DIFO) og påståede skadegørende handlinger DIFO skulle have foretaget over for selskabet i relation til domænenavnet co.dk.

Jeg konstaterer, at selskabets domænenavn co.dk endnu ikke er inddraget af DIFO og at der verserer retssag om, hvorvidt DIFO er berettiget til at inddrage selskabets domænenavn.

Indtil den mellem selskabet og DIFO verserende retssag endelig er afgjort, er der intet faktisk eller retligt grundlag for selskabets påståede erstatningskrav mod DIFO.

Allerede af denne grund og da foreningen intet ansvar har eller hæfter for DIFOs forvaltning af .dk domænet, skal jeg hermed afvise selskabets krav.

Med venlig hilsen



→ Jane Eis Larsen
vicedirektør

IT-Brancheforeningen

3. juni 2003

Digital Marketing Support ApS
Generatorvej 8 B, stuen
2730 Herlev
Att.: Anani Voulé

Vedrørende DIFO/DK Hostmaster

Digital Marketing Support ApS har ved henvendelse af 20. maj 2003 bebudet, at selskabet agter at udtage stævning mod Dansk Handel & Service med krav om betaling af et ikke nærmere dokumenteret erstatningskrav på ca. kr. 110 millioner.

Erstatningskravet skulle være begrundet i Dansk Handel & Service medlemskab af foreningen Dansk Internet Forum (DIFO) og påståede skadegørende handlinger. DIFO skulle have foretaget over for selskabet i relation til domænenavnet co.dk.

Jeg konstaterer, at selskabets domænenavn co.dk endnu ikke er inddraget af DIFO og der verserer retssag om, hvorvidt DIFO er berettiget til at inddrage selskabets domænenavn.

Dansk Handel & Service har intet ansvar for og hæfter ikke for DIFO's forvaltning af .dk domænet, hvorfor selskabets krav afvises.

Jeg skal i øvrigt henvise til advokat Mads Berendt, Lind & Cadovius advokataktieselskab, der varetager DIFO's interesser i sagen.

Med venlig hilsen
Dansk Handel & Service

Charlotte Biil
Erhvervspolitisk chef, advokat

Cc: Advokat Mads Berendt, Lind & Cadovius
Forretningsfører Per Kølle, DIFO

Fiolstræde 17 ■ Postboks 2188 ■ DK-1017 København K
Telefon: 77 41 77 41 ■ Telefax: 77 41 77 42 ■ Email: fbr@fbr.dk

FORBRUGER
RÅDET



Udgiver af
Tænk+Test

Anette Høyrup
Dok. 16008/sd

Digital Marketing Support ApS
Generatorvej 8 B, stuen
2730 Herlev

Att.: Anani Voulé

3. juni 2003

Vedr. sagsanlæg

Forbrugerrådet har modtaget Deres brev af 20. maj 2003, hvori det meddeles, at Digital Marketing Support ApS påtænker at udtage stævning mod Forbrugerrådet med krav om betaling af et ikke nærmere dokumenteret erstatningskrav på ca. kr. 110 millioner.

Erstatningsansvaret skulle ifølge brevet kunne begrundes i Forbrugerrådets medlemsskab af foreningen Dansk Internet Forum (DIFO) og påståede skadegørende handlinger DIFO skulle have foretaget overfor selskabet i relation til domænenavnet co.dk.

Det er konstateret, at selskabets domænenavn co.dk endnu ikke er inddraget af DIFO, og at der verserer en retssag om, hvorvidt DIFO er berettiget til at inddrage selskabets domænenavn. Indtil denne verserende retssag endelig er afgjort, er der intet faktisk eller retsligt grundlag for selskabets påståede erstatningskrav mod DIFO.

Af denne grund og da Forbrugerrådet intet ansvar har eller hæfter for DIFOs forvaltning af .dk domænet, afvises selskabets krav hermed.

Med venlig hilsen

Rasmus Kjeldahl

Direktør

Kansas • com

BILAG 18

Posted on Mon, Jul. 28, 2003

Web Registry May Be Liable for 'Sex.com'

RACHEL KONRAD
Associated Press

SAN JOSE, Calif. - Comparing Internet domain names to property such as homes and cars, a federal appellate court ruled Friday that Web registry Network Solutions Inc. could be liable for damages after a convicted forger purloined ownership of sex.com from an e-commerce entrepreneur.

If Web site names are property, the court contended, domain name registries should be responsible for safeguarding them - no different from a valet who guarantees a client's car won't get stolen from a parking lot.

The 9th U.S. Circuit Court of Appeals Judge Alex Kozinski said courts should treat domain names, despite their virtual nature, exactly as they treat "a plot of land." Kozinski returned the case to the U.S. District Court in San Jose to be tried again.

Plaintiff Gary Kremen praised the ruling, the latest step in a lawsuit he filed in 1998 against NSI and Stephen Michael Cohen, who has served several prison stints for bank fraud and forgery.

"This was major victory, no doubt about it," Kremen said.

In 2001, a judge ordered Cohen to pay Kremen \$65 million in damages - roughly the sum Cohen made by building a Sex.com-centered porn empire. Kremen also won the rights to Sex.com, which he has expanded to Fetish.sex.com, Stars.sex.com and dozens of other porn sites. But shortly after the verdict, Cohen fled to Europe. He could not be reached for comment Friday.

Kremen is now commuting to his San Francisco office while living in the San Diego-area home Cohen surrendered to him - the only payment Kremen has received. Kremen wants NSI to pay the remainder of the damages.

Representatives from NSI, the Mountain View subsidiary of Herndon, Va.-based VeriSign Inc., said Friday they would not comment on ongoing litigation. The case will likely be retried within a year.

Kremen, founder of Online Classifieds, requested and received from NSI the rights to Sex.com in 1994. In 1995, Cohen sent NSI a letter from a fictional administrator at Online Classifieds, saying the company had fired Kremen and no longer wanted Sex.com.

NSI complied without confirming details with Kremen, then gave the name to the next person to request it - Cohen. Cohen built Sex.com into a multimillion dollar business within a few months.

The judge and plaintiff questioned why NSI would switch the domain name registry without so much as a phone call to Kremen. They also questioned why NSI administrators weren't suspicious of Cohen's letter, which requested that NSI not send e-mail to anyone at Kremen's company because it didn't have Internet access - despite being named Online Classifieds.

"Cohen is obviously the guilty party here, and the one who should in all fairness pay for his theft," Kozinski wrote on behalf of all three judges hearing the case. "But he's skipped the country, and his money is stashed in some offshore bank account. ... It would not be unfair to hold Network Solutions responsible and force it to try to recoup its losses by chasing down Cohen."

Digital rights advocates praised the ruling. San Francisco-based Electronic Frontier Foundation submitted a brief to promote the idea that domain names should be considered property - and NSI,

Register.com and other registries should be responsible for safeguarding that property.

"Registrars are part of the fundamental architecture of the Internet, and they need to be held responsible for the mistakes they make," EFF attorney Jason M. Schultz said Friday. "The Internet is a great engine of democracy and free speech, and this decision means that people have something like a warranty when things go wrong."

The case is Gary Kremen v. Stephen Michael Cohen, No. 01-15899.

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<http://www.kansas.com>



Delfi
TECHNOLOGIES



28. jul. 2003, kl. 15:23

Verisign kan sagsøges af sex.com-ejer

En amerikansk dommer lægger vejen åben for, at sikkerhedsselskabet Verisign, storaktionær i danske Eurotrust, kan sagsøges for at have givet et af verdens mest attraktive domæner, sex.com, til en svindler.

Af : Magnus Bredsdorff

Det kan komme til at koste den amerikanske IT-sikkerhedskoncern Verisign hundredvis af millioner af kroner, at en amerikansk appeldomstol har sagt god for sagsanlæg mod selskabet.

Tidligere retsinstanser har ellers afvist, at Gary Kremen, der oprindelige ejer af internetdomænet sex.com, kunne lægge sag an mod Verisign.

Gary Kremen registrerede et af verdens mest attraktive domænenavne tilbage i 1994. Året efter snød svindleren Stephen Cohen både ham og Network Solutions, som administrerer top level-domænerne, blandt andet .com.

Stephen Cohen, der lige var løsladt fra fængslet, forfalskede ifølge nyhedstjenesten Cnet en anmodning i Gary Kremens navn om at overføre domænet til sig selv. Network Solutions tjekkede ikke, om anmodningen var gyldig, men overførte domænet til svindleren.

Scorede kvart milliard

Ifølge Gary Kremens advokat lykkedes det Stephen Cohen at score godt en kvart milliard kroner på domænet.

Pengene stak han i lommen og flyttede til udlandet, og så kan den oprindelige ejer ikke bruge det til så meget, at en amerikansk domstol har dømt Stephen Cohen til at betale 430 millioner kroner i erstatning. Han har udlovet en dusør på 330.000 kroner på svindleren, men det har ikke ført til noget.

I stedet ønsker Gary Kremen at gå efter Verisign, som for to år siden købte 18 procent af aktierne i danske Eurotrust. Verisign købte i 2000 Network Solutions for aktier, der dengang havde en værdi af 158 milliarder kroner.

Efter amerikansk ret ville Gary Kremen også kunne sagsøge Verisign, hvis svindlen havde drejet sig om hans faste ejendom eller værdipapirer, og dommeren ser ingen forskel på, at der er tale om et domæne på internet.

Ifølge Cnet ventes Verisign at appellere beslutningen.

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Delfi
TECHNOLOGIES



22. apr. 2004, kl. 14:20

Verisign: 100 mio. i sex.com-erstatning

It-sikkerhedsfirmaet Verisign har indvilget i at betale registranten af verdens måske mest attraktive porno-domæne, sex.com, knap 100 millioner kroner. Sex.com blev franarret manden, uden at Verisigns datterselskab, Network Solutions, reagerede.

Af : Dan Jensen

En mere end seks år gammel sag om en af internettets mest attraktive adresser, sex.com, er nået til sin afslutning med et forlig til angiveligt knap 100 millioner kroner.

Beløbet skal den amerikanske it-sikkerhedskoncern Verisign betale til Gary Kremen, der i 1994 registrerede det attraktive domænenavn.

Kort tid efter hustlede svindleren Stephen Cohen imidlertid ejerskabet til domænenavnet fra ham ved med forfalskede underskrifter at bilde Network Solutions, der blandt andet administrerer domænet .com, ind, at Gary Kremens ville overføre domænet til ham.

Network Solutions, som Verisign købte i 2000 for 158 milliarder kroner, tjekkede ikke, om anmodningen var gyldig, men overførte uden videre domænet til Stephen Cohen.

Gary Kremen fik dog med rettens hjælp domænet tilbage i 2000, hvor Stephen Cohen var flyttet til Mexico langt væk fra lovens lange arm. Han blev siden dømt til at betale en millionerstatning til Gary Kremen, som dog ikke har set skyggen af pengene.

Gary Kremen var ikke tilfreds og har siden fortsat sin retssag mod Verisign for uretmæssigt at have taget sex.com ud af hans hænder.

Denne sag slutter nu med forliget. Parterne ønsker ikke at oplyse det præcise beløb, som dog ifølge flere medier ligger et sted mellem 90 og 100 millioner kroner.

Verisign har tidligere bedyret, at domænenavne ikke bliver ejet af de personer, som registrerer dem.

Verisign købte tidligere i år den del af danske Eurotrust, der arbejder med digitale signaturer, for omkring 52 millioner kroner. Tidligere har Verisign også købt Eurotrusts domæneforretning.

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Registrar Accreditation: Overview

The Shared Registration System ("SRS") is a domain name registration system for competitive registrars in the .com, .net, and .org top-level domains. The SRS was created in the spring of 1999 through the initiative of the United States Department of Commerce under an amendment to its cooperative agreement with Network Solutions, Inc. Under this domain name registration system, competing ICANN-accredited registrars register domain names utilizing one shared, central registry operated and maintained by NSI.

Although there is no limit on the number of registrars that may register names using the SRS, stability of the Internet and continuity for consumers is protected by the requirement that every business desiring to become a registrar in the .com, .net, and .org top-level domains must first become accredited for this purpose by ICANN.

If you are interested in becoming an ICANN-accredited registrar for the .com, .net, and .org top-level domains, please visit [How to Become an ICANN-Accredited Registrar](#) for detailed information on the process, documents, qualifications, and financial considerations involved.

This file last modified 05-Dec-2003

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Registrar Accreditation: History of the SRS

This is a general history of the SRS. For more specific information, including links to the many documents concerning this topic, please visit [Background Documents](#) for more detailed historical information and [Documents You Must Submit and Review](#) for current documents used in the accreditation process.

In October of 1998, the United States Department of Commerce ("DoC") and Network Solutions, Inc. ("NSI") amended their cooperative agreement, under which NSI had been the sole registrar and registry administrator for the .com, .net, and .org top-level domains. This [Amendment 11](#) required the establishment of a Shared Registration System in which an unlimited number of registrars would compete for domain name registration business utilizing one shared registry (for which NSI would continue to act as registry administrator).

In November of 1998, the DoC identified ICANN, a newly-formed, private, non-profit corporation as the entity that would oversee the transition to competition under the SRS. Part of ICANN's responsibilities included establishing and implementing a procedure for registrar accreditation that would ensure a transition to a competitive domain name registration system providing continued Internet stability and domain-name durability.

On March 4, 1999, the ICANN Board of Directors adopted a [Statement of Registrar Accreditation Policy](#), which grew out of the publicly posted [Draft Guidelines for Registrar Accreditation](#) and the comments received on the Draft Guidelines. The ICANN Board directed ICANN's Interim President and CEO to implement a program for registrar accreditation for the .com, .net, and .org top-level domains consistent with the Statement of Registrar Accreditation Policy.

Between March 11 and April 8, 1999, ICANN accepted applications from entities seeking accreditation to participate as one of the five domain name registrars in the SRS Testbed Program described in Amendment 11 to the DoC's cooperative agreement with NSI. Although originally scheduled to end on June 26, 1999, the Testbed Program was extended several times until its actual end date of November 30, 1999.

Since April 8, 1999, ICANN has continued to accept applications for registrar accreditation for the post-testbed period of the SRS, and has accredited over 160 businesses, in addition to the original five Testbed Program participants. For a list of all ICANN-accredited registrars, please visit <http://www.icann.org/registrars/accredited-list.html>.

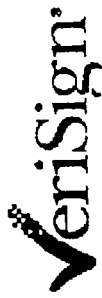
On 17 May 2001, ICANN posted the current version of the [Registrar Accreditation Agreement](#), which is now in effect for all accredited registrars.

ICANN is currently accepting applications for registrar accreditation on a rolling basis. There is no limit on the number of companies that can become accredited registrars and there is no deadline for ICANN registrar accreditation applications.

For additional information, including details about how to become an accredited registrar, please review the [Registrar Accreditation: Overview](#).

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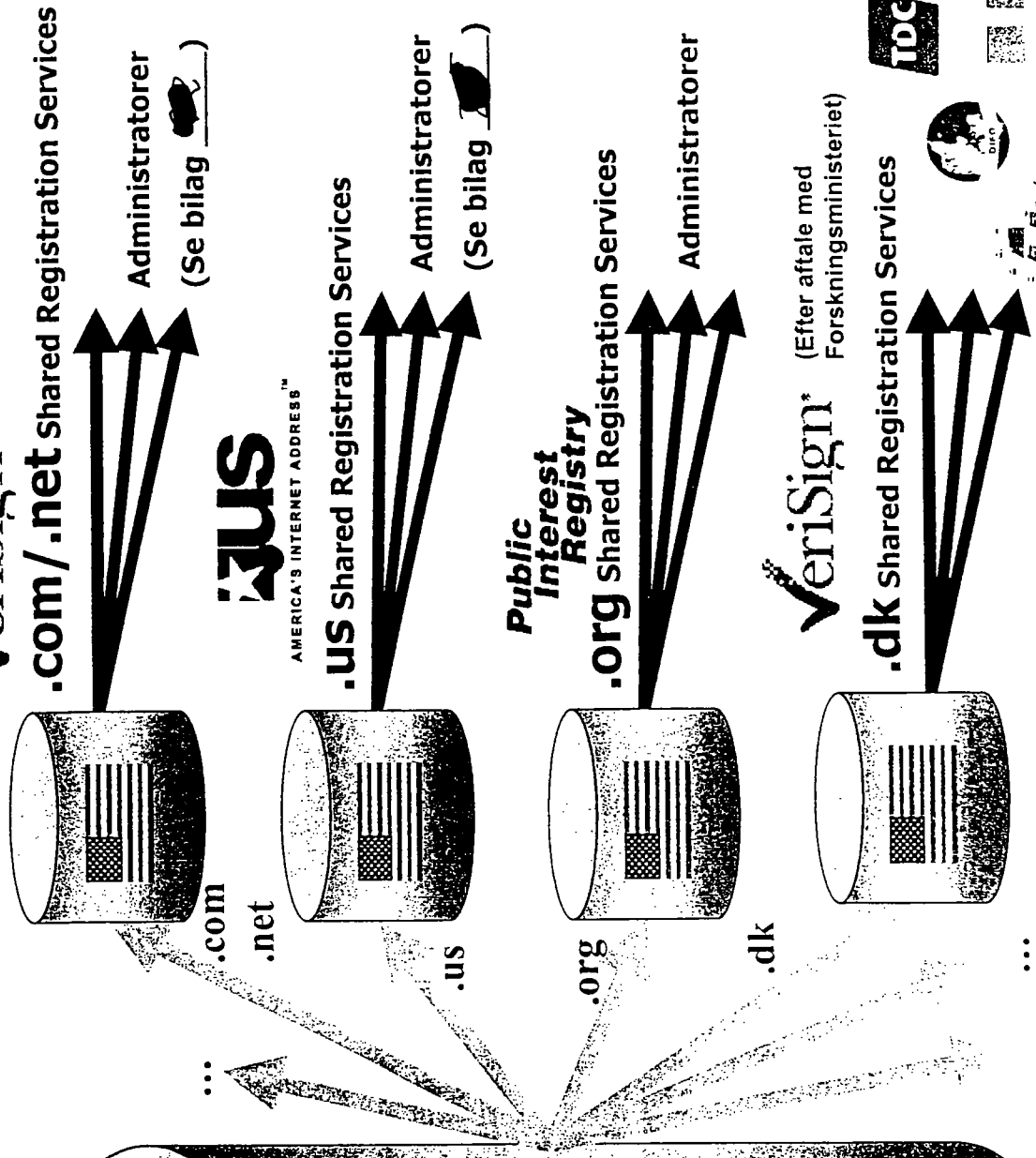
Global Registry Services

Samtlige domæne-
navne i verden



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Digital Marketing Support ApS

Shared Registration System.



Special Award Conditions
NCR-9218742
Amendment No. 11

Parties: Department of Commerce (USG), Network Solutions, Inc. (NSI)

Effective Date: October 7, 1998

Purpose: This agreement facilitates the stable evolution of the Internet domain name system (DNS) in accordance with the provisions of the Statement of Policy on DNS administration, "Management of Internet Names and Addresses," 63 *Fed. Reg.* 31741 (1998) (hereinafter "Statement of Policy" or "White Paper") by: (1) providing for recognition by NSI of NewCo when recognized by the USG in accordance with the provisions of the Statement of Policy; (2) amending the Cooperative Agreement No. NCR-9218742; (3) authorizing NSI's continued operation of the primary root server during the transition; and (4) providing for the development, deployment and licensing by NSI of a mechanism that allows multiple registrars to accept registrations for the generic top level domains (gTLDs) for which NSI acts as a registry.

Term and Transition: This agreement extends the Cooperative Agreement through September 30, 2000; provided, however, that as the USG transitions DNS responsibilities to NewCo, corresponding obligations under the Cooperative Agreement as amended will be terminated and, as appropriate, covered in a contract between NSI and NewCo.

General Definition of NewCo: For purposes of this agreement, NewCo is the not-for-profit corporation described in the Statement of Policy and recognized by the USG in accordance with the provisions of the Statement of Policy for so long as the USG continues its recognition of NewCo.

Competition

Shared Registry: In order to create an environment conducive to the development of robust competition among domain name registrars, NSI will, either directly or by contract, develop a protocol and associated software supporting a system that permits multiple registrars to provide registration services within the gTLDs for which NSI now acts as a registry (Shared Registration System).

Development of the Shared Registration System shall reflect the following agreed upon time line, which assumes that the USG does not request changes in the specifications:

1. By November 1, 1998, NSI shall provide functional and interface specifications for the Shared Registration System and a milestone schedule for its development and implementation.
2. By December 1, 1998, NSI shall create a focused input technical advisory group consisting of not more than 10 individuals designated by NewCo to comment on the design of and participate in testing of the Shared Registration System.
3. By March 31, 1999, NSI will establish a test bed supporting actual registrations in .com, .net and .org by 5 registrars accredited by NewCo (Accredited Registrars). (Phase 1)

4. By June 1, 1999, the Shared Registration System will be deployed by NSI and available to support multiple licensed Accredited Registrars offering registration services within the gTLDs for which NSI now acts as a registry. (Phase 2)
5. By October 1, 1999, NSI will have completed reengineering of NSI's registry/registrar interface and back end systems so as to assure that NSI, acting as registry, shall give all licensed Accredited Registrars (including NSI acting as registrar) equivalent access ("equal access") to registry services through the Shared Registration System. (Phase 3)
The functional and interface specifications of the Shared Registration System shall describe a protocol and associated software able to: (1) provide security and authentication protocols and procedures for requests from registrars; and (2) permit second level domain name holders to change registrars within the same registry without changing domain names.

NSI agrees to license the Shared Registration System protocol, associated documentation, and reference implementation to Accredited Registrars, on reasonable terms and conditions approved by the USG, such approval not to be unreasonably withheld, that are designed to promote the development of robust competition for the provisions of registrar services.

Enhanced
Searchable
Database:

Not later than November 1, 1998, NSI shall provide the USG with a written description of its proposed enhancements to the existing WhoIs database(s).

Within 60 days after the publication by the World Intellectual Property Organization (WIPO) of recommended characteristics of an enhanced searchable database containing domain name registration data, NSI will provide a report to the USG regarding how and under what conditions such a database might be designed and implemented in the gTLDs for which NSI now acts as the registry.

Pricing:

Commencing upon the Phase 1 deployment of the Shared Registration System, and for the term of this agreement, NSI's prices for registry services through the Shared Registration System in the gTLDs for which NSI now acts as the registry, will be no more than a dollar amount per registration/year to be specified in a further amendment reflecting NSI's costs and a reasonable return on its investment. This price cap will be adjusted via an amendment to the Cooperative Agreement to reflect demonstrated changed costs of NSI arising from newly enacted legislation, NewCo fees, inflation, regulations, standards, costs of new litigation (including settlements and judgments) in excess of NSI's operating plan or changes in the operation of the registry, or to fund specific additional activities in the event such activities are reflected in an amendment to the Cooperative Agreement.

Existing NSI
Customers:

Commencing upon the Phase 1 deployment of the Shared Registration System, and for a period of 18 months thereafter, NSI shall permit any customer with whom it has a contract pursuant to which NSI provides registration services that is either facially or effectively exclusive as to registration services, to terminate the registration provisions of such contract (following payment of all amounts due up through the time of such termination) and obtain registration services from other registrars; provided, however, that NSI may enter into agreements pursuant to which NSI's counterparty agrees not to utilize proprietary intellectual property or confidential proprietary information provided by NSI to

the counterparty pursuant to their agreement.

New Contracts: Commencing on the effective date of this agreement, and for a period of 18 months after the Phase 1 deployment of the Shared Registration System, NSI will not enter into an agreement with any other party that limits in any way that party's ability to serve as a registrar or to operate a registry; provided, however, that (1) NSI may enter into agreements pursuant to which NSI's counterparty agrees not to utilize proprietary intellectual property or confidential proprietary information provided by NSI to the counterparty pursuant to their agreement; and (2) the mere provision by NSI, on a nonexclusive basis, of registration services to a party shall not be deemed to limit that party's ability to serve as a registrar or operate a registry.

Separation of Registry/Registrar Services: Following the Phase 1 deployment of the Shared Registration System, NSI shall make a certification to the USG every six months designed to demonstrate by means of objective criteria, which shall be agreed upon between USG and NSI, that NSI is providing all licensed Accredited Registrars with equal access to its registry services. NSI also will by February 1, 1999, employ appropriate safeguards, approved by the USG, to ensure that revenues and assets of the registry are not utilized to financially advantage NSI's registrar activities to the detriment of other registrars.

Data, Know How, Technical Assistance, etc.

Software and Data: Not later than 30 days after the date of this agreement, NSI shall submit to the USG an electronic copy of all software and data generated under the Cooperative Agreement through September 30, 1998.

Not later than 60 days after the date of this agreement, NSI shall submit to the USG all existing documentation for such software and data generated through September 30, 1998.

The USG will take appropriate measures, including the development and execution of confidentiality agreements acceptable to NSI, to protect the confidentiality of such data, software and documentation so delivered. To the extent any such software, data or documentation need to be made available to any agent, contractor or project partner of the USG, the USG will promptly so notify NSI and will require such agent, contractor or project partner to comply with similar appropriate confidentiality requirements; provided, however, that, except as otherwise expressly provided herein, nothing in this paragraph is intended to alter any intellectual property rights of the USG or NSI established in the Cooperative Agreement.

Assistance to NewCo:

If NewCo has a technical question or a need to access appropriate intellectual property of NSI, and the answer to such question or such access is reasonably necessary for NewCo to carry out its responsibilities as described in the "Coordinated Functions", the "Purpose" and the "Transition" sections of the Statement of Policy (NewCo's Responsibilities), and provided that NewCo shall have agreed to protect the confidentiality and security of any such information under a confidentiality agreement mutually acceptable to NSI and NewCo, NSI shall provide such answer or access and shall not assert any of its intellectual property rights or its desire to protect confidentiality or security as a basis to deny such requests; provided, however, that NSI shall not be required to expend excessive time or resources in answering such questions or fulfilling such requests unless it receives reasonable compensation for such expenditures; and provided further, that, except as otherwise expressly provided herein, nothing in this paragraph is intended to alter any intellectual property rights of the USG or

NSI established in the Cooperative Agreement.

Recognition of NewCo

NewCo: As provided in the Statement of Policy, the USG will effect the transition of its DNS responsibilities through an agreement with NewCo. That agreement will (i) require NewCo to exercise the responsibilities delineated in the Statement of Policy in a transparent, non-arbitrary, and reasonable manner, (ii) prohibit NewCo from acting unjustifiably and arbitrarily to injure particular persons or entities or particular categories of persons or entities, and (iii) require NewCo to subject registrars to consistent requirements designed to promote a stable and robustly competitive DNS, as set forth in the Statement of Policy. Following the finalization of the agreement between the USG and NewCo, NSI will recognize NewCo pursuant to a contract between NSI and NewCo.

NSI acknowledges that NewCo will have the authority, consistent with the provisions of the Statement of Policy and the agreement between the USG and NewCo, to carry out NewCo's Responsibilities.

Nothing in this agreement, apart from NSI's recognition of NewCo pursuant to this section of this agreement, shall limit NSI's rights to operate as a registry or registrar in TLDs other than .com, .net, .org, .edu, or to participate in any other lawful business pursuit.

Miscellaneous

Root Servers: NSI agrees to continue to function as the administrator for the primary root server for the root server system and as a root zone administrator until such time as the USG instructs NSI in writing to transfer either or both of these functions to NewCo or a specified alternate entity.

While NSI continues to operate the primary root server, it shall request written direction from an authorized USG official before making or rejecting any modifications, additions or deletions to the root zone file. Such direction will be provided within ten (10) working days and it may instruct NSI to process any such changes directed by NewCo when submitted to NSI in conformity with written procedures established by NewCo and recognized by the USG.

Modification Of Cooperative Agreement: Except as modified by this Amendment, the terms and conditions of the Cooperative Agreement, as previously amended, remain unchanged.

