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ASSIGNED NAMES AND NUMBERS

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CENTRAL DISTRICT COURT
LOS ANGELES

FILED

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

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

Plaintiffs,

v.

INTERNET CORPORATION FOR
ASSIGNED NAMES AND
NUMBERS,

Defendant.

Case No. CV03-5045 JFW (MANx)

DEFENDANT'S ANSWER

1 Defendant Internet Corporation for Assigned Names and Numbers
2 ("ICANN"), in response to the complaint filed by plaintiffs Dotster, Inc., Go Daddy
3 Software, Inc., and eNom, Inc. (collectively "Plaintiffs"), hereby answers Plaintiffs'
4 complaint as follows:

5 1. ICANN is without knowledge or information sufficient to answer the
6 allegations of paragraph 1 of the complaint and on that basis denies each and every
7 allegation of paragraph 1.

8 2. ICANN admits the allegations of paragraph 2, except ICANN denies
9 that Plaintiffs' contract with ICANN "forms the basis of this litigation."

10 3. ICANN is without knowledge or information sufficient to answer the
11 allegations of paragraph 3 of the complaint and on that basis denies each and every
12 allegation of paragraph 3 of the complaint.

13 4. ICANN is without knowledge or information sufficient to answer the
14 allegations of paragraph 4 of the complaint and on that basis denies each and every
15 allegation of paragraph 4 of the complaint.

16 5. ICANN is without knowledge or information sufficient to answer the
17 allegations of paragraph 5 of the complaint and on that basis denies each and every
18 allegation of paragraph 5 of the complaint.

19 6. ICANN admits that it is a California non-profit corporation with its
20 principal place of business in Marina Del Rey, California. ICANN denies the
21 remaining allegations of paragraph 6 of the complaint.

22 7. ICANN denies the allegations of paragraph 7 of the complaint.

23 8. ICANN denies the allegations of paragraph 8 of the complaint.

24 9. ICANN denies the allegations of paragraph 9 of the complaint.

25 10. ICANN denies the allegations of paragraph 10 of the complaint.

26 11. ICANN denies the allegations of paragraph 11 of the complaint and
27 refers Plaintiffs to the Memorandum of Understanding between ICANN and the
28 United States Department of Commerce, which speaks for itself.

1 12. ICANN denies the allegations of paragraph 12 of the complaint, except
2 ICANN admits that it has entered into certain registry agreements, including an
3 agreement with VeriSign.

4 13. ICANN denies the allegations of paragraph 13 of the complaint, except
5 ICANN admits that it has entered into a Registrar Accreditation Agreement
6 <http://www.icann.org/registrars/ra-agreement-17may01.htm> with each of the
7 Plaintiffs.

8 14. ICANN denies the allegations of paragraph 14 of the complaint.

9 15. ICANN denies the allegations of paragraph 15 of the complaint, except
10 ICANN admits that it has entered into a Registrar Accreditation Agreement
11 <http://www.icann.org/registrars/ra-agreement-17may01.htm> with each of the
12 Plaintiffs.

13 16. ICANN states that the terms of the Accreditation Agreements with
14 Plaintiffs speak for themselves. On that basis, ICANN denies the allegations of
15 paragraph 16 of the complaint.

16 17. ICANN states that the terms of the Accreditation Agreements with
17 Plaintiffs speak for themselves. On that basis, ICANN denies the allegations of
18 paragraph 17 of the complaint.

19 18. ICANN states that the terms of the Accreditation Agreements with
20 Plaintiffs speak for themselves. On that basis, ICANN denies the allegations of
21 paragraph 18 of the complaint.

22 19. ICANN states that the terms of the Accreditation Agreements with
23 Plaintiffs speak for themselves. On that basis, ICANN denies the allegations of
24 paragraph 19 of the complaint.

25 20. ICANN states that the terms of the Accreditation Agreements with
26 Plaintiffs speak for themselves. On that basis, ICANN denies the allegations of
27 paragraph 20 of the complaint.

28

1 21. ICANN denies the allegations of paragraph 21 of the complaint, except
2 ICANN admits that domains may be registered for differing lengths of time.

3 22. ICANN denies the allegations of paragraph 22 of the complaint.

4 23. ICANN denies the allegations of paragraph 23 of the complaint, except
5 ICANN admits that the redemption grace period has a duration of thirty days.

6 24. ICANN is without knowledge or information sufficient to answer the
7 allegations of paragraph 24 of the complaint and on that basis denies each and
8 every allegation of paragraph 24.

9 25. ICANN is without knowledge or information sufficient to answer the
10 allegations of paragraph 25 of the complaint and on that basis denies each and
11 every allegation of paragraph 25.

12 26. ICANN is without knowledge or information sufficient to answer the
13 allegations of paragraph 26 of the complaint and on that basis denies each and
14 every allegation of paragraph 26.

15 27. ICANN is without knowledge or information sufficient to answer the
16 allegations of paragraph 27 of the complaint and on that basis denies each and
17 every allegation of paragraph 27.

18 28. ICANN is without knowledge or information sufficient to answer the
19 allegations of paragraph 28 of the complaint and on that basis denies each and
20 every allegation of paragraph 28.

21 29. ICANN is without knowledge or information sufficient to answer the
22 allegations of paragraph 29 of the complaint and on that basis denies each and
23 every allegation of paragraph 29, except ICANN admits that the maximum price for
24 a one-year initial or renewal registration of a domain name in .COM or .NET is
25 currently US\$6.

26 30. ICANN denies the allegations of paragraph 30 of the complaint, except
27 ICANN admits that VeriSign has proposed to offer a new service referred to as
28 WLS.

1 31. ICANN denies the allegations of paragraph 31 of the complaint and
2 states that the terms of the WLS have not been finalized.

3 32. ICANN denies the allegations of paragraph 32 of the complaint and
4 states that the terms of the WLS have not been finalized.

5 33. ICANN is without knowledge or information sufficient to answer the
6 allegations of paragraph 33 of the complaint and on that basis denies each and
7 every allegation of paragraph 33.

8 34. ICANN denies the allegations of paragraph 34 of the complaint.

9 35. ICANN denies the allegations of paragraph 35 of the complaint, except
10 ICANN admits that some opposition was expressed when WLS was proposed by
11 VeriSign.

12 36. ICANN denies the allegations of paragraph 36 of the complaint and
13 states that the report of the Task Force speaks for itself.

14 37. ICANN denies the allegations of paragraph 37 of the complaint and
15 states that the report of the Task Force speaks for itself.

16 38. ICANN denies the allegations of paragraph 38 of the complaint and
17 states that the resolution of the ICANN Board speaks for itself.

18 39. ICANN admits that Plaintiff Dotster's attorney sent a letter to ICANN
19 on or about September 9, 2002, a letter including in its subject the words "Request
20 for review under the Independent Review Policy," and states that the letter speaks
21 for itself. ICANN denies the remaining allegations of paragraph 39 of the
22 complaint.

23 40. ICANN admits that Plaintiff Dotster submitted a reconsideration
24 request to ICANN on or about September 12, 2002, and states that the
25 reconsideration request speaks for itself. ICANN denies the remaining allegations
26 of paragraph 40 of the complaint.

27 41. ICANN admits that the Reconsideration Committee of its Board did
28 issue a recommendation on Dotster's request on or about May 20, 2003, and states

1 that the recommendation speaks for itself. ICANN denies the remaining allegations
2 of paragraph 41 of the complaint.

3 42. ICANN admits that it adopted resolution 03.78 adopting the
4 recommendation of the Reconsideration Committee on June 2, 2003 regarding
5 Dotster's May 20, 2003 request, and that the resolution speaks for itself. ICANN
6 denies the remaining allegations of paragraph 42 of the complaint.

7 43. ICANN admits that ICANN's liability to a Registrar for a breach of an
8 Accreditation Agreement is limited to the amounts paid to ICANN as accreditation
9 fees. ICANN states further that the terms of the Accreditation Agreements with
10 Plaintiffs speak for themselves. ICANN denies the remaining allegations of
11 paragraph 43 of the complaint.

12 44. ICANN denies the allegations of paragraph 44 of the complaint.

13 45. ICANN denies the allegations of paragraph 45 of the complaint.

14 46. ICANN is without knowledge or information sufficient to answer the
15 allegations of paragraph 46 of the complaint and on that basis denies each and
16 every allegation of paragraph 46 of the complaint.

17 47. ICANN realleges and incorporates by reference its answers to
18 paragraphs 1 through 46 above.

19 48. ICANN states that the terms of the Accreditation Agreements with
20 Plaintiffs speak for themselves. On that basis, ICANN denies the allegations of
21 paragraph 48 of the complaint.

22 49. ICANN denies the allegations of paragraph 49 of the complaint.

23 50. ICANN denies the allegations of paragraph 50 of the complaint.

24 51. ICANN states that its May 20, 2003 Recommendation speaks for itself
25 and denies the remaining allegations of paragraph 51 of the complaint.

26 52. ICANN states that the terms of the Accreditation Agreements with
27 Plaintiffs speak for themselves and denies the remaining allegations of
28 paragraph 52 of the complaint.

1 53. ICANN admits that it is in negotiations with VeriSign concerning
2 WLS and denies the remaining allegations of paragraph 53 of the complaint.

3 54. ICANN states that the terms of the Accreditation Agreements with
4 Plaintiffs speak for themselves and denies the remaining allegations of
5 paragraph 54 of the complaint.

6 55. ICANN denies the allegations of paragraph 55 of the complaint.

7 56. ICANN admits that Plaintiffs are seeking a declaration of the Court as
8 alleged in paragraph 56 of the complaint, but denies that Plaintiffs are entitled to
9 any relief and denies the remaining allegations of paragraph 56 of the complaint.

10 57. ICANN denies the allegations of paragraph 57 of the complaint.

11 58. ICANN realleges and incorporates by reference its answers to
12 paragraphs 1 through 57 above.

13 59. ICANN states that the terms of the Accreditation Agreements with
14 Plaintiffs speak for themselves and denies the remaining allegations of
15 paragraph 59 of the complaint.

16 60. ICANN denies the allegations of paragraph 60 of the complaint.

17 61. ICANN denies the allegations of paragraph 61 of the complaint.

18 62. ICANN states that the terms of the Accreditation Agreements with
19 Plaintiffs speak for themselves and denies the remaining allegations of
20 paragraph 62 of the complaint.

21 63. ICANN is without knowledge or information sufficient to answer the
22 allegations of paragraph 63 of the complaint and on that basis denies each and
23 every allegation of paragraph 63.

24 64. ICANN denies the allegations of paragraph 64 of the complaint.

25 65. ICANN denies the allegations of paragraph 65 of the complaint and
26 states that the terms of WLS have not yet been finalized or approved.

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1 **THIRD SEPARATE AND ADDITIONAL DEFENSE**

2 **(Failure to Join a Necessary Party)**

3 78. As to all causes of action contained in the complaint, ICANN is
4 informed and believes and on that basis alleges that, pursuant to Rule 12(b)(7) of
5 the Federal Rules of Civil Procedure, Plaintiffs' claims are barred, in whole or in
6 part, because Plaintiffs have failed to join a necessary or indispensable party under
7 Rule 19 of the Federal Rules of Civil Procedure.

8 **FOURTH SEPARATE AND ADDITIONAL DEFENSE**

9 **(Failure to Mitigate)**

10 79. Plaintiffs have failed to mitigate any of their alleged damages.

11 **FIFTH SEPARATE AND ADDITIONAL DEFENSE**

12 **(Damages Limited by Contract)**

13 80. ICANN's obligation to pay damages to Plaintiffs, if any, is limited by
14 the terms of the Accreditation Agreement that ICANN has with each of the
15 Plaintiffs.

16
17 WHEREFORE, ICANN prays:

- 18 1. For a judgment of dismissal in ICANN's favor on all causes of action
19 in the complaint;
20 2. For a declaration that ICANN has not breached the Accreditation
21 Agreements with Plaintiffs;
22 3. For such other and further relief as the Court deems just and proper.

23 Dated: August 6, 2003

JONES DAY

24
25 By: /EE

Jeffrey A. LeVee

26
27 Attorneys for Defendant INTERNET
28 CORPORATION FOR ASSIGNED
 NAMES AND NUMBERS

1 **PROOF OF SERVICE**

2 I, Lynne Trotti, declare:

3 I am a citizen of the United States and employed in Los Angeles County,
4 California. I am over the age of eighteen years and not a party to the within-entitled
5 action. My business address is 555 West Fifth Street, Suite 4600, Los Angeles,
6 California 90013-1025. On August 6, 2003, I caused to be served a copy of the
7 within document(s):

8 **DEFENDANT'S ANSWER**

- 9 by transmitting via facsimile the document(s) listed above to the fax
10 number(s) set forth below on this date before 5:00 p.m.
- 11 by placing the document(s) listed above in a sealed envelope with
12 postage thereon fully prepaid, in the United States mail at Los Angeles,
13 California addressed as set forth below.
- 14 by placing the document(s) listed above in a sealed Federal Express
15 envelope and affixing a pre-paid air bill, and causing the envelope to
16 be delivered to a Federal Express agent for delivery.
- 17 by personally delivering the document(s) listed above to the person(s)
18 at the address(es) set forth below.

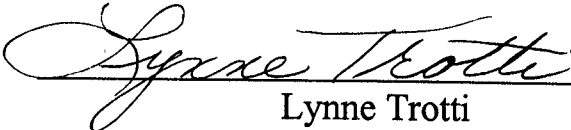
18 Kathleen O. Peterson
19 PRESTON, GATES & ELLIS LLP
20 1900 Main Street, Suite 600
Irvine, California 92614
Phone: (949) 253-0900

21 I am readily familiar with the firm's practice of collection and processing
22 correspondence for mailing. Under that practice it would be deposited with the
23 U.S. Postal Service on that same day with postage thereon fully prepaid in the
24 ordinary course of business. I am aware that on motion of the party served, service
25 is presumed invalid if postal cancellation date or postage meter date is more than
26 one day after date of deposit for mailing in affidavit.

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I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on August 6, 2003, at Los Angeles, California.


Lynne Trotti