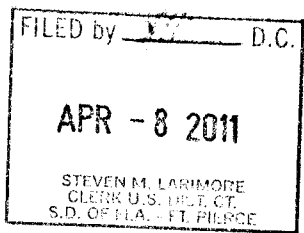


**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 11-14052-CIV-MARTINEZ/LYNCH

JOHN ZUCCARINI,)
)
Plaintiff,)
)
v.)
)
NETWORK SOLUTIONS, LLC,)
a Delaware Limited Liability Company;)
NAMEJET, LLC,)
a Delaware Limited Liability Company;)
INTERNET CORPORATION)
FOR ASSIGNED NAMES)
AND NUMBERS, INC.)
a California non-profit Corporation;)
)
Defendants.)
_____)



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

Plaintiff, John Zuccarini ("Zuccarini") hereby moves the Court to not dismiss the claims against Internet Corporation for Assigned Names and Numbers, Inc. ("ICANN"), under Rule 12(b)(2), 12(b)(3) and 12(b)(6) that the United States District Court for the Southern District does not have personal jurisdiction, is an improper venue or that the Complaint does not state a cognizable claim.

In support of his Response, Zuccarini submits the following memorandum of law.

MEMORANDUM OF LAW

INTRODUCTION

Plaintiff Zuccarini will demonstrate, while Defendant ICANN alleges they conduct no

business in the state of Florida, ICANN documents and other supporting documents show otherwise. ICANN has entered into contracts it maintains with the domain name registrar, Moniker Online Services, LLC whom ICANN has accredited and whose business is located in Florida. ICANN has also just recently entered into a contract with ICM Registry, LLC, ("ICM"), a company who will maintain the newly created .xxx registry and whose business is located in Florida. Documents indicate ICANN has been in negotiations with ICM since at least the year 2000 concerning the creation of the .xxx registry. ICANN also has recently participated in a publicly held news conference in Miami, Florida in which they discuss, along with others the state of the domain name industry. It is believed ICANN also engaged in privately held business meetings in Florida in conjunction with this news conference.

Zuccarini files this action in Florida as Federal law allows for good cause as venue is proper in this judicial district pursuant to 28 U.S.C. §1391, as all Defendants conduct business in the State of Florida.

Zuccarini also files this action in Florida as ICANN accredits domain name registrars in maintains contracts with, such as Network Solutions to perform their business and legal obligations in a responsible manner. If ICANN has the power to accredit and take action against any registrar who does not correctly perform their duties as required by their contractual agreement with ICANN, how can ICANN maintain they have no fault or responsibility when reckless and negligent actions by a registrar as alleged against Network Solutions, whom has a notable and well publicized history in their lack of due diligence, cause harm to someone.

ARGUMENT

I. ZUCCARINI'S AMENDED COMPLAINT AGAINST ICANN SHOULD NOT BE DISMISSED UNDER RULE 12(b)(2) FOR LACK OF PERSONAL JURISDICTION.

A. Zuccarini Has Established ICANN Does Business in Florida and is Subject to Jurisdiction Under Florida's Long-Arm Statute, Section 48.193(1)(a).

Despite ICANN's contention it does not do business in Florida and maintains no contracts in Florida with other entities, ICANN's own documents indicate otherwise. All of the relationships detailed in this response show Florida Courts maintain jurisdiction over ICANN under Florida Statute Section 48.193(1)(a).

Florida Statute Section 48.193(1)(a) - Operating a Business, states: *(1) Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits himself or herself and, if he or she is a natural person, his or her personal representative to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following acts:*

(a) Operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state.

ICANN maintains on its website at [icann.org](http://www.icann.org) a list of domain name registrars that ICANN has accredited and with whom ICANN has signed a 2009 Registrar Accreditation Agreement. This document titled "Descriptions and Contact Information for ICANN-Accredited Registrars" is located at <http://www.icann.org/en/registrars/accreditation-qualified-list.html> on the ICANN website. Information on this document has been updated on March 24, 2011.

This document contains a list of domain name registrars who conduct business with ICANN. For any registrar with whom ICANN has signed a 2009 Registrar Accreditation Agreement, the ICANN 2009 RAA logo is placed beside the name of that registrar. This ICANN

2009 RAA logo is placed beside the name of the domain name registrar, Moniker Online Services, LLC (“Moniker”). Page 1 of this document and the page showing ICANN's accreditation of Moniker is provided as *Exhibit A*.

Moniker's place of business and mailing address as stated on the Moniker website at, <http://www.moniker.com/contact.jsp> is, Moniker Online Services, LLC, 20 SW 27th Ave., Suite 201, Pompano Beach, FL 33069. *Exhibit B*.

This information provided by ICANN on their website shows ICANN conducts business in Florida through contracts it has entered into and business contacts it maintains with Moniker.

In July of 2000, ICANN requested proposals to deal with certain critical issues related to the sponsorship of new top-level domains (TLDs). ICM Registry, LLC (“ICM”) a company with a mailing address in Palm Beach Gardens, Florida, in response to this request initiated contacts with ICANN and submitted a proposal to ICANN in hopes of acquiring the rights to establish and operate the domain name registry for the top level domain name extensions of .XXX for adult entertainment and .KIDS for material geared to Internet users aged 12 and under. Zuccarini has provided the first five pages of this lengthy proposal as maintained on the ICANN website at, http://www.icann.org/en/tlds/kids3/HTML/Annex_1.html The first five pages of the described proposal is provided as *Exhibit C*.

On March 30, 2011, ICANN entered into a contractual agreement with ICM that would designate ICM as the “Registry Operator” of the .XXX Top-Level Domain Registry. Within the “Sponsored TLD Registry Agreement” the ICM business address is stated as, ICM Registry, LLC, PO Box 30129, Palm Beach Gardens, Florida 33420. The first page of this agreement along with page 19 and 20 which state the address of ICM are provided as *Exhibit D*.

This information also shows ICANN conducts business in Florida through contracts and

business contacts it has entered into and maintains with ICM.

On February 3, 2011 in Miami, Florida, ICANN held a news conference along with the Number Resources Organization (NRO), the Internet Architecture Board (IAB) and the Internet Society to announce among other things that the pool of first generation Internet addresses has been completely allocated and a new pool of Ipv6 Internet addresses would be made available. Announcement of this news conference is contained in a news release on the ICANN web site at, <http://www.icann.org/en/news/releases/release-03feb11-en.pdf> *Exhibit E*.

It is Zuccarini's belief that in conjunction with the February 3, 2011 news conference in Florida, that ICANN also most likely engaged in privately held business meetings before and or after with the other participants of the news conference and others who maintain business relationships with ICANN.

Plaintiff Zuccarini believes all of the above cited circumstances firmly establish that ICANN conducts business in Florida and would subject ICANN to jurisdiction in the Florida Courts under Florida Statute Section 48.193(1)(a).

II. ZUCCARINI'S AMENDED COMPLAINT AGAINST ICANN SHOULD NOT BE DISMISSED UNDER RULE 12(b)(3) FOR IMPORPER VENUE.

As Zuccarini has established in the above Section I. that ICANN does business in the State of Florida, venue in the Southern District of Florida is therefore proper. The injury to Zuccarini has taken place in Florida and 28 U.S.C. §1391 allows venue in Florida as Zuccarini and all the Defendants are from different states.

III. ZUCCARINI'S AMENDED COMPLAINT AGAINST ICANN SHOULD NOT BE DISMISSED UNDER RULE 12(b)(6) FOR FAILURE TO STATE A CLAIM AGAINST ICANN.

As ICANN has been empowered to accredit domain name registrars, to give them the right to exist and function, is there no examination and review by ICANN of a proposed

registrar's capabilities to perform it's business and legal obligations? Is there no periodic review of a registrar's capabilities to perform those responsibilities with due diligence, especially as in this case when registrar such Network Solutions, LLC ("Network Solutions"), has shown a lack of due diligence in performing it's legal and business activities in the past?

If not and Zuccarini believes there isn't, then this lack of oversight by ICANN of Network Solutions is negligent in itself, as it would apply to the issues of this action.

In a real life circumstance this would mean, ICANN asking the proposed registrar, who are the people that will represent you and what are their qualifications to make decisions that are critical to the legal and business activities that are required of a proposed registrar. In addition to what policies a proposed registrar has in place to assure any actions taken are legally sound and correct.

Zuccarini believes there is no such of review and inquiry by ICANN of a proposed or current registrar's legal and business expertise. That there is no review of that expertise, even after a breach of conduct has taken place by a specific registrar, such as did occur with Network Solutions, LLC ("Network Solutions") in their notable improper transfer of the domain name sex.com from it's original owner Gary Kremen to Stephen Cohen based upon based upon a forged letter from Stephen Cohen to Network Solutions, *Kremen v. Cohen*, 337 F.3d 1024 (9th Cir. 2003).

It would seem after an incident such as this which gained worldwide attention, it would have been a plausible and responsible action for ICANN to have in place at least some type periodic review of any registrars capabilities to perform it's business and legal duties in a responsible manner. If not a periodic review of every registrar, at least a review of a registrar such as Network Solutions who clearly did not perform it's duty of due diligence before

approving the transfer of the domain name sex.com from Gary Kremen to Stephen Cohen.

The real fact of the matter is, that little has changed over the last ten years in the conduct of Network Solutions from allowing the improper transfer of sex.com, till the circumstances of this case.

Although not part of this Complaint, the improper transfer of the domain name freemovies.org from the registration held by Zuccarini at Network Solutions to the California receiver in, *Office Depot, Inc. v. Zuccarini, Civil Action No. 06-80356 SI, N.D. Cal.*, shows that Network Solutions continues to perform it's legal duties in a manner that lacks any of the due diligence that should be expected and required in the fiduciary responsibilities that Network Solutions has to individuals such as Zuccarini who register domain names with Network Solutions.

It is that same lack of due diligence exhibited by Network Solutions in the improper transfer of freemovies.org, that has been applied by Network Solutions to it's failure to place on legal hold the domain names it transferred from Zuccarini's registration to that of the California receiver.

Can ICANN or Network Solutions explain why in every other circumstance when a domain name registrar is made known of domain name being the subject of litigation, such as bankruptcy or a Uniform Domain-Name Dispute-Resolution hearing (UDRP), that the registrar will place a legal hold on that domain name. Yet in this case while Network Solutions was completely aware that the domain names transferred to the California receiver were done so solely for the purpose of being placed in receivership, that nothing was done to protect them from an accidental or fraudulent transfer.

As ICANN was fully aware of the well publicized fraudulent transfer of the domain

name sex.com, a transfer that was possible only through the lack of due diligence by Network Solutions in not more closely examining the circumstances of that transfer, what steps has ICANN taken since that incident to assure the transfer of any a domain name and the particular circumstances of any transfer by Network Solutions are legally sound and proper. Zuccarini knows of none and asks ICANN to tell the Court if it has or has not taken any actions that would make would make it more likely that Network Solutions would apply the due diligence necessary to the transfer of any domain name it makes.

What is the purpose of ICANN in accrediting a registrar and continuing to accredit a registrar if ICANN takes no action to correct the behavior of a registrar when it's actions harm an individual who has placed their trust in a certain domain name registrar?

Zuccarini believes it is this lack of oversight which ICANN has demonstrated, as much as Network Solutions lack of due diligence that is the cause of the fourteen domain names of this case not being recognized as part of ongoing litigation in the California District Court and being placed on a legal hold that would have easily prevented the domain names and their value from being lost to Zuccarini and the other third parties.

How can ICANN accept the duty to administer the domain name system and accredit domain name registrars, but at the same time claim they have no responsibility in how a domain name registrar functions. That is the absurdity of ICANN's claim.

ICANN appears though to have accepted some responsibility in the class action suit filed by Chris McElroy ("McElroy") against both ICANN and Network Solutions in the United States District Court for the Northern District of California in, *McElroy v. Network Solutions LLC, et. al, Case No. CV 08-01247 PSG (VBKx)*.

In this class action suit McElroy contended that Network Solutions engaged in what is

known as front-running in the domain name industry. That is when an individual would go to the Network Solutions web site and search for the availability of a certain domain name to register, and upon the completion of that search it was alleged that Network Solutions would immediately register the just searched for domain name for itself, and offer to sell the domain name at an inflated price to the consumer who had searched for the domain names availability.

Among other things McElroy alleged: *“This action arises from the fraudulent and deceptive business practices that Network Solutions employs to effectively trap consumers into paying its grossly inflated domain name registration fees. Unbeknownst to consumers, Network Solutions immediately registers for itself any domain name that consumers provide to Network Solutions in order to determine whether the domain name is available. Network Solutions never informs consumers that it has registered the domain name for itself; instead, Network Solutions tells consumers that their domain name is "available" and offers to register the domain. It is only at this point - after it has secretly registered the domain for itself - that Network Solutions finally reveals what it will charge.*

Consumers cannot register their domain name through any of Network Solutions' less expensive competitors because their chosen domain is unavailable through any other service - which (unbeknownst to the consumer) is now held exclusively by Network Solutions - who is now offering to sell the domain name to anyone willing to pay its grossly inflated registration fee. Consumers, therefore, are held hostage: they can either pay what Network Solutions demands or risk that someone else will and steal their domain name.

It is through the above practices, that Network Solutions is able to continue charging a substantially higher price for the registration of domain names than its competitors.”

McElroy also claimed in the suit that ICANN's status as a defendant was justified due to

its “acquiescence, tacit approval and participation” in allowing domain registrars such as Network Solutions to register names without having to pay a fee to ICANN.

McElroy alleged, “*Network Solutions is able to perpetuate this course of misconduct only through the acquiescence, tacit approval and participation of ICANN. The agreement between ICANN and the domain name registrars includes provisions for an Add Grace Period (AGP). The AGP allows a domain name registrar to avoid paying a registration fee for domain names canceled within five days of registration.*

By using the AGP, Network Solutions is able to register, risk free, the domain names searched on its website, thereby forcing consumers to register the domain names through Network Solutions.

ICANN was, and is, aware of Network Solutions' actions and continued to permit Network Solutions fraudulent abuse of the AGP for its own gain and to the detriment of consumers.”

On June 18, 2008 ICANN and Network Solutions both agreed to enter into settlement negotiations with McElroy and others, and on March 10, 2009 a settlement was reached by all parties to the case.

As a result of this suit ICANN has put in place a new rule which it claims has effectively ended the practice of front-running. In addition Network Solutions agreed to pay a certain amount to McElroy and the other class action plaintiffs.

The circumstances of Zuccarini's claims and those of McElroy against ICANN and Network Solutions are similar. Both Zuccarini and McElroy are parties who have no contract with either ICANN or Network Solutions, but have been injured by the actions of Network Solutions and the lack of action of ICANN.

In McElroy's case, ICANN knew of Network Solutions practice of front running hurt consumers such as McElroy, but did nothing to stop those practices.

In Zuccarini's case, ICANN knew for a number of years Network Solutions history in it's the lack of due diligence in their transferring of domain names and the circumstances surrounding them, but had done nothing to take any steps which would have corrected that lack of due diligence.

As Florida negligence law recognizes foreseeability as duty, it is ICANN's lack of action in this case in not reviewing the policies of Network Solutions handling of business and legal matters, especially in the area of transferring domain names from one party to another, such as in this case that show ICANN should have been able to foresee the possibility of future actions by Network Solutions would cause harm to someone.

In *Kaisner v. Kolb*, 543 So. 2d 732 (Fla. 1989), Justice Barkett, found liability where a police officer told a motorist not to approach the police car after a traffic stop. The motorist then positioned himself between the police car and his truck, and the police car was subsequently struck by a third vehicle and driven into the motorist. The allegation was that the police had “breached a duty of care by failing to use proper police procedure in the stop.” The court found sufficient “custody,” control or “detention” by the police to give rise to a common law duty of care and then found that “the decision as to where a motorist will be ordered to stand” did not involve “the type of discretion that needs to be insulated from suit.”

In *Kaisner v. Kolb*, it is the court’s first express adoption of the notion that “[w]here a defendant’s conduct creates a foreseeable zone of risk, the law generally will recognize a duty placed upon defendant either to lessen the risk or see that sufficient precautions are taken to protect others from the harm that the risk poses.” By holding that the duty element of negligence

is satisfied where the defendant's conduct creates a "foreseeable zone of risk."

The lack of any action by ICANN to review the policies of Network Solutions and their handling of matters related to the transfer of domain names from one party to another are comparable to the circumstances in *Kaisner v. Kolb*.

In *City of Pinellas Park v. Brown*, 604 So. 2d 1222 (Fla. 1992), Justices Shaw and Barkett joined with Justice Kogan in an opinion concluding that police participating in a vehicle pursuit owed a duty to third-party motorists injured in a collision with the fleeing criminal because participating in a "high speed chase involving a large number of vehicles on a public thoroughfare is likely to result in injury to a foreseeable victim."

Zuccarini's status and as a third party in it's claim of negligence against ICANN is comparable to the claims of the third-party motorists injured in, *City of Pinellas Park v. Brown*.


In *Henderson v. Bowden*, 737 So. 2d 532 (Fla. 1999), the court found that sheriff's deputies owed a duty to passengers of a vehicle deputies stopped for DUI where they "placed the passengers in danger" by directing an allegedly intoxicated passenger to drive to a nearby convenience store and call his parents. The passenger allowed to drive was not in police custody and by calling his parents, vehicle impoundment would be avoided. After going to the convenience store, he proceeded to drive off and subsequently had an accident, killing two other rear seat passengers. Despite those facts, the court had no difficulty finding a duty under its simple "foreseeable zone of risk" analysis.

All of the above cited cases show that there need not be a contract or a defined specified duty to an injured party for that party to file a claim of negligence against those whose lack of reasonable behavior could have prevented the injury from occurring.

IV. CONCLUSION

For the foregoing reasons, Zuccarini respectfully requests that this Court not dismiss this action against ICANN and find jurisdiction and venue valid for the Southern District of Florida.

Respectfully submitted, this 8th day of April, 2011.

By: 

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Stuart, FL 34997
(772) 631-3887
raveclub@comcast.net

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response to Internet Corporation for Assigned Names and Numbers, Inc.'s Motion to Dismiss was served by first class mail, postage prepaid, on April 8th, 2011, on all counsel or parties of record on the service list and by email to the respective addresses.


John Zuccarini

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Exhibit A

**Descriptions and Contact Information for ICANN
Accredited Registrars**



Descriptions and Contact Information for ICANN-Accredited Registrars

(updated Thursday, 24-March-2011)

[Note: The following descriptions are reprinted as provided by each registrar]

The 2009 RAA ICANN logo indicates that the registrar has signed the 2009 Registrar Accreditation Agreement (RAA), which is the contract that governs the registrar relationship with ICANN. The 2009

RAA provides enhanced protections for registrants and an increased level of accountability for registrars. Prospective registrants may want to take this fact into account when selecting a registrar for their gTLD name(s). The 2009 RAA ICANN logo is not an indication of how long the registrar has been ICANN accredited. You can view this contract at <http://www.icann.org/en/registrars/ra-agreement-21may09-en.htm>.

! #1 Host Australia, Inc. (United States)

<http://www.1hostaustralia.com>



Steve Yeich Tel. +1 213 408 0080 ext. 1461
Email: registry-operations@snapnames.com

! #1 Host Canada, Inc. (United States)

<http://www.1hostcanada.com>

Moniker Online Services LLC (United States)

<http://www.moniker.com>



When you register domain names with Moniker, you get more than a web address. You get a complete set of business services, including domain privacy, buying and selling domains, escrow, appraisals and monetization – all backed by unsurpassed security and customer service. In addition to registering new domains, you can also transfer domains to a free Moniker Asset Management Account.

Monte Cahn Tel: +1-954-984-8445

Email: info@moniker.com

MOOZOOY MEDIA INC. (Canada)

<http://www.moozooymedia.com>

Ernest Moore Tel: 8007607142

Email: domains@moozooymedia.com

Exhibit B

**Moniker Website Page Stating Moniker's Business Address
as being in Pompano Beach, Florida**

SUPPORT WHOIS CART

[Home](#) [Find Domains](#) [Domain Auctions](#) [Domain Brokerage](#) [Domain Products](#) [News & Resources](#) [My Account](#)

Contact

Moniker

Mailing Address

Moniker Online Services, LLC
20 SW 27th Ave.
Suite 201
Pompano Beach, FL 33069

Contact Online

Customer support: <http://support.oversee.net>
Sales: sales@moniker.com
Comments: Provide Moniker feedback
Media inquiries:
mcole@oversee.net
cforti@oversee.net
Other marketing information: mvantiborg@oversee.net

Phone

Toll-free in the U.S. and Canada: 1-800-688-6311
Outside the U.S. and Canada: 1-954-861-3500
Fax: 1-954-969-9155

Web Address

www.moniker.com

SnapNames

Mailing Address

SnapNames.com, Inc.
1800 SW 1st Ave
Suite 300
Portland, OR, 97201

Contact Online

Customer support: <http://support.oversee.net>
Comments: Provide SnapNames feedback
Media inquiries:
mcole@oversee.net
cforti@oversee.net
Other marketing information: mvantiborg@oversee.net

Phone

Office Phone: 1-503-219-9990
Toll-free in the U.S. and Canada: 1-866-690-6279
Outside the U.S. and Canada: 1-503-241-8547
Fax: 1-503-274-9749

Web Address

www.snapnames.com

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Exhibit C

ICM Registry, LLC Year 2000 Proposal to ICANN

ANNEX 1: ICM REGISTRY BUSINESS PLAN

Business Opportunity

In July 2000, the Internet Corporation for Assigned Names and Numbers (ICANN), a global, non-profit organisation designed to build consensus and oversee administrative functions for the Internet name-and-address system, requested proposals to deal with certain critical issues through the sponsorship of new top-level domains (TLDs).

In its call for proposals, ICANN made it clear that it is seeking innovative solutions from potential registry operators, looking for both the conceptual and practical business frameworks to resolve these issues, which arise from the actual and predicted exponential growth rates in Internet usage . These issues include:

- The system's current address regime, the domain name system (DNS), is running out of space just as demand for Internet addresses is predicted to double. Website names are currently registered after it is determined they are unique; however, the limited number of (TLDs makes it increasingly difficult for new Websites to find appropriate or accurate addresses;
- The DNS as it now operates has created a class of "cybersquatters", those who register and hoard prime demand names and addresses in the hope of selling them for exorbitant charges;
- Trademark and intellectual-property rights are inadequately protected in the regime of the Internet;

Growing numbers of parents and interest groups are concerned about the easy access children have to harmful or inappropriate content. Internet Content Management Registry (ICM Registry) has developed a proposal that fully meets the tender requirements of ICANN, while providing the blueprint for a stable, sustainable and profitable business. Incorporated in the state of Delaware and with its business headquarters in Toronto, Canada, ICM Registry is proposing the creation of two TLDs-.XXX for adult entertainment and .KIDS for material geared to Internet users aged 12 and under-both managed through a revolutionary registry model developed by the company. The model is applicable for the development and management of any TLD, though the two embedded in the ICM Registry proposal specifically and effectively address some key public policy concerns raised by ICANN.

ICM Registry's proposal is built on a coalition of partnerships with existing registry operators, other providers of Internet support services and investors. Pending ICANN approval, ICM Registry is in a position to launch the proposed TLDs in accordance with its registry model. Revenues will be generated in a fast-growing market on a sustainable basis from the registration process and the provision of related services. Details of the business case supporting ICM Registry's proposal are contained in the discussion of operations following and in the financial projections attached.

CORPORATE VISION

ICM Registry will become a premier registration-application service provider, and develop enhanced value-added services.

ICM Registry's vision is to develop benchmark services and products that improve the quality of the Internet.

ICM Registry's mission is to work co-operatively with strategic partners to create winning solutions for Internet-oriented businesses.

ICM Registry's strategy is to collaborate with acknowledged leaders in Internet technologies and service providers to expand Internet capacity in an orderly manner through new charter TLDs.

The firm's initial focus is to launch a reliable registry system in two new TLDs-.XXX and .KIDS-to provide "proof of concept" of its model of registration, trademark protection and auction services.

Details of the ICM Registry Concept

The ICM Registry model envisions the creation of TLDs, supported by a new registration and support procedure. This procedure also deals with the broader issues of fair access, protection of existing trademark and intellectual property rights, and transparency in the acquisition of Internet addresses. ICM Registry has coined a term for this model: Registstructure.

Registstructure includes:

- The establishment of Policy Advisory Boards. These independent policy boards will represent an appropriate range of community interests among users, content providers and public-interest groups. The Boards' role is to develop policies and, where required, guidelines to steer registration on the new TLDs.
- The use of registrars to accept applications and verify the availability of Website names. This reflects current practice.
- The creation of a comprehensive system to protect trademark and other intellectual-property rights. This system is based on the creation of a new "sunrise" provision, which allows existing trademark holders to pre-register to protect their interests in the new TLD. Cross checking for such interests will be an integral part of the registration procedure.
- A system in which requests for an address on the new TLD will be made public, and will be subject to challenge. To ensure transparency and fair access, all applications for addresses will be posted to enable protest or competition by other parties.
- The creation of an "auction" process in cases where competing interests seek a specific Internet address. This process will be run by the registry operator according to rules and a time frame that are transparent and fair to all parties.
- The use of the Uniform Dispute Resolution Process (UDRP) sanctioned by ICANN for any conflicts resulting from the registration process.
- The introduction of a "watch" system to further protect the interests of existing

trademark holders. Any applicant whose name selections may impact an existing trademark holder, will be notified so that all parties may resolve the conflict.

- The protection of information filed through the registration process by a vigilant data-watch service.
- The introduction of a mechanism to facilitate self-rating of Internet content. Currently, each TLD maintains a WHOIS data base containing information on addresses within that domain and other registrant information. Under the ICM Registry proposal, new registrants in the new TLDs would , on a voluntary basis, provide additional categorisation of their content for inclusion in the WHOIS data base. This would be made available to users, assisting those who seek access to such content, while enabling the filtering of that same material by those who do not want it.
- The enhancement of trademark protection world-wide. The ICM Registry concept can be extended to enable registrars to check applications against the information in all of the WHOIS data bases of the more than 130 existing TLDs.

The ICM Registry model is based on the premise that if the Internet is to meet user need in the provision of Website addresses, new TLDs must be created. However, the ICM Registry model also recognizes the need for registry operators and registrars to implement systems, which work proactively to balance the rights of new applicants, existing domain name holders, and other trademark and intellectual property holders.

ICM Registry proposes to use its model in two areas that present distinct but related public-policy issues on Internet use: adult-oriented sites, and sites appropriate for children 12 and under. These subject areas have been at the center of debate, characterized by deeply held and conflicting opinions. These subject areas raise significant public policy issues of privacy, freedom of expression, access, choice and parental control. These interests are not easily balanced, and have been the source of significant political pressure and lobbying by various interest groups.

ICM Registry believes that its model presents the best opportunity to successfully balance these interests, while preserving the Internet as the key medium not just for consumer choice but for the free exchange of ideas. For this reason, the ICM Registry proposal centers on the creation of two new TLDs:

- .XXX for adult entertainment;
- .KIDS for Internet use by children 12 and under.

Advantages and Benefits of the ICM Registry Solution

ICM Registry proposes to operate two restricted high-level domain registry systems.

In operating .XXX, adult-oriented content will be provided with a clearly identifiable "home" for those who wish to access this content, By the same token, that content can be easily filtered or screened by parents. A separate TLD clearly enables choice by adult users, while making all Internet users aware of the nature of a site's content simply by its address. Providing access without censorship while protecting the rights of those who do not wish to be exposed to such content helps resolve the criticism various interest groups have directed

at the Internet's current structure and processes.

While .XXX as a TLD is a means of dealing with the issue of protecting children, there is in addition a growing need for a TLD that represents a welcoming home for child-appropriate content. For this reason, .KIDS provides a means of making the Internet a safe environment for children's entertainment and education.

The difference and value of ICM Registry's proposal for both .XXX and .KIDS is found in its use of Policy Advisory Boards. In both instances, these Boards have a role to play in establishing norms, ensuring that processes are followed, and maintaining appropriate values. In doing so, they represent a community of interest with respect to specific types of content. Rather than imposing an undesirable and unwanted arbiter or censor on the registry operator, the groups themselves will regulate the Websites since they are the most directly involved and interested in the content. The use of Public Advisory Boards in both instances avoids the imposition of a policing role on the Internet, while recognizing the need for a framework that balances competing public interest.

The creation of these Boards, together with the ICM Registry proposal to add new information on the categorization of content to the WHOIS data base, will enable potential users to clearly understand the nature of what they are about to access. This is particularly effective in enhancing parental choice and control of their children's use of the material on the proposed .KIDS TLD. ICM Registry's proposal is to provide parents with the assurance that there is a welcoming and safe place on the Internet for their children. While it is ICM Registry's intention to run both TLDs on a commercial basis, given the nature of .KIDS and the public policy interests which lead to its creation fees and charges related to .KIDS would be provided on a discounted basis. The ICM Registry processes respond to the issues being addressed by the Commission on the Child On-Line Child Protection Act (COPA) of the U.S. Congress. At the request of Congress, that Commission is examining:

- the need for a common resource for parents to use to help protect minors;
- provision of a means for filtering services;
- provision of systems to rate content;
- the establishment of a domain name which enables the identification of material harmful to minors;
- use of existing or the creation of new methods to screen content and reduce access by minors to adult-oriented material.

The concept of a specialized domain for adult material equipped with the proposed mechanisms for registration provides an opportunity for the adult-oriented industry to establish its own response to the concerns at the heart of COPA. At the same time, these same mechanisms address the concerns of such groups as the Center for Democracy in Technology, which argue that the Internet should be a medium of free expression and continue to provide adult services to those who want them.

ICM Registry intends to provide the registry service for both .XXX and .KIDS through the Internet's two leading domain name registry-service providers: dotTV Corporation and Verisign Global Registry Services. Primary registry application functions will be performed by dotTV. Verisign will provide a supporting role for all registration functions, ensuring the registry is reliable and stable.

ICM Registry and its partners will offer superior quality and reliable services based on their track records, expertise and experience. In particular, ICM Registry's proposal is predicated on:

- verifiable service-level agreements to protect customers from liability and service interruption;
- providing registrars with a fast, ultra-reliable service to meet registrant expectations;
- back up and escrow services to safeguard data and information;
- an advanced registration software system to facilitate integration of registration services.

ICM Registry will also offer:

- a complete suite of value added services to meet the specialized and different needs of registrars, registrants, and trademark holders;
- optimal security, firewall, anti-virus and intrusion detection;
- strategically located service nodes worldwide.

ICM Registry will be established as a single point of accountability for all aspects of its domain name service. ICM Registry has developed a model for a registry process which addresses the key challenges facing the Internet, and which meets ICANN's criteria for innovative and sustainable service deliver.

Exhibit D

**ICANN Sponsored TLD Registry Agreement with
ICM Registry, LLC**

SPONSORED TLD REGISTRY AGREEMENT

This SPONSORED TLD REGISTRY AGREEMENT (this "Agreement") is entered into as of 30 March 2011 by and between Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation ("ICANN"), and ICM Registry LLC, a Delaware limited liability company ("Registry Operator").

ARTICLE I INTRODUCTION

Section 1.1 Effective Date. The Effective Date for purposes of this Agreement shall be the date on which the TLD (as defined below) is delegated within the Authoritative Root-Server System (as defined below) to nameservers designated by Registry Operator. ICANN shall promptly notify Registry Operator in writing of such delegation.

Section 1.2 Top-Level Domain. The Top-Level Domain to which this Agreement applies is .xxx (the "TLD").

Section 1.3 Designation as Registry Operator. Upon the Effective Date, until the Expiration Date as defined in Section 4.1 hereof, ICANN hereby designates Registry Operator as the sole registry operator for the sponsored TLD. ICANN hereby delegates to Registry Operator the authority to develop policies for the sponsored TLD consistent with the requirements of Section 3.1(g) of this Agreement and Appendix S.

ARTICLE II REPRESENTATIONS AND WARRANTIES

Section 2.1 Registry Operator's Representations and Warranties.

(a) Organization; Due Authorization and Execution. Registry Operator is a limited liability company, duly organized, validly existing and in good standing under the laws of Delaware, and Registry Operator has all requisite power and authority to enter into this Agreement. All corporate approvals and actions necessary for the entrance by Registry Operator into this Agreement have been obtained and this Agreement has been duly and validly executed and delivered by Registry Operator.

(b) Statements made During Application Process. The factual statements contained in Registry Operator's application for the TLD, or made by Registry Operator in negotiating this Agreement, were true and correct in all material respects at the time the application was submitted to ICANN and are true and correct in all material respects as of the date of this Agreement as set forth above.

subcontracted entity become party to the data escrow agreement mandated by Section 3.1(c)(i) hereof.

Section 8.6 Amendments and Waivers. No amendment, supplement, or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both parties. No waiver of any provision of this Agreement shall be binding unless evidenced by a writing signed by the party waiving compliance with such provision. No waiver of any of the provisions of this Agreement or failure to enforce any of the provisions hereof shall be deemed or shall constitute a waiver of any other provision hereof, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided.

Section 8.7 No Third-Party Beneficiaries. This Agreement shall not be construed to create any obligation by either ICANN or Registry Operator to any non-party to this Agreement, including any registrar or registered name holder.

Section 8.8 Notices, Designations, and Specifications. All notices to be given under or in relation to this Agreement shall be given either (i) in writing at the address of the appropriate party as set forth below or (ii) via facsimile or electronic mail as provided below, unless that party has given a notice of change of postal or email address, or facsimile number, as provided in this agreement. Any change in the contact information for notice below shall be given by the party within 30 days of such change. Any notice required by this Agreement shall be deemed to have been properly given (i) if in paper form, when delivered in person or via courier service with confirmation of receipt or (ii) if via facsimile or by electronic mail, upon confirmation of receipt by the recipient's facsimile machine or email server, provided that such notice via facsimile or electronic mail shall be followed by a copy sent by regular postal mail service within two (2) business days. Whenever this Agreement shall specify a URL address for certain information, Registry Operator shall be deemed to have been given notice of any such information when electronically posted at the designated URL. In the event other means of notice shall become practically achievable, such as notice via a secure website, the parties shall work together to implement such notice means under this Agreement.

If to ICANN, addressed to:

Internet Corporation for Assigned Names and Numbers
4676 Admiralty Way, Suite 330
Marina Del Rey, California 90292
Telephone: 1/310/823-9358
Facsimile: 1/310/823-8649
Attention: President and CEO
With a Required Copy to: General Counsel
Email: As specified from time to time.

If to Registry Operator, addressed to:

ICM Registry LLC
PO Box 30129
Palm Beach Gardens, Florida 33420
Attention: Stuart Lawley, CEO
Telephone: As specified from time to time
Facsimile: As specified from time to time
Email: stuart@icmregistry.com

With a Required Copy to:

J. Beckwith Burr
Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Avenue NW
Washington, DC 20016

Telephone: 1/202/663-6000
Facsimiles: 1/202/663-6363
Email: beckwith.burr@wilmerhale.com

Section 8.9 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the parties hereto agree that the court making such determination shall have the power to limit the term or provision, to delete specific words or phrases or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the parties hereto agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the extent possible, the purposes of such invalid or unenforceable term.

Section 8.10 Language. Notices, designations, determinations, and specifications made under this Agreement shall be in the English language.

Section 8.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 8.12 Entire Agreement. This Agreement (including its Appendices, which form a part of it) constitutes the entire agreement of the parties hereto pertaining to the operation of the TLD and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject. In the

Exhibit E

**ICANN News Release Summarizing the February 3, 2011
News Conference in Miami, Florida**



The Internet Corporation for Assigned Names and Numbers

NEWS RELEASE

Brussels ♦ Sydney ♦ Washington ♦ Los Angeles

FOR IMMEDIATE RELEASE
February 3, 2011

Available Pool of Unallocated IPv4 Internet Addresses Now Completely Emptied

The Future Rests with IPv6

A critical point in the history of the Internet was reached today with the allocation of the last remaining IPv4 (Internet Protocol version 4) Internet addresses from a central pool. It means the future expansion of the Internet is now dependant on the successful global deployment of the next generation of Internet protocol, called IPv6.

The announcement was made by four international non-profit groups, which collaboratively work to coordinate the world's Internet addressing system and its technical standards.

At a news conference in Miami, Florida, the Internet Corporation for Assigned Names and Numbers (ICANN) joined the Number Resources Organization (NRO), the Internet Architecture Board (IAB) and the Internet Society in announcing that the pool of first generation Internet addresses has now been completely emptied.

The final allocation of Internet addresses was administered by the Internet Assigned Numbers Authority (IANA), which is a function of ICANN.

"This is a major turning point in the on-going development of the Internet," said Rod Beckstrom, ICANN's President and Chief Executive Officer. "No one was caught off guard by this. The Internet technical community has been planning for IPv4 depletion for some time. But it means the adoption of IPv6 is now of paramount importance, since it will allow the Internet to continue its amazing growth and foster the global innovation we've all come to expect."

The new Internet protocol, IPv6, will open up a pool of Internet addresses that is a billion-trillion times larger than the total pool of IPv4 addresses (about 4.3 billion), which means the number of IPv6 addresses is virtually inexhaustible for the foreseeable future.

Two "blocks" of the dwindling number of IPv4 addresses, about 33 million of them, were allocated earlier this week to the Regional Internet Registry (RIR) for the Asia Pacific region. When that happened, it meant the pool of IPv4 addresses had been depleted to a point where a global policy was triggered to immediately allocate the remaining small pool of addresses equally among the five global Regional Internet Registries.

The RIRs are independent, not-for-profit organizations that provide technical coordination for the infrastructure of the Internet.

Those last five blocks of IPv4 addresses were allocated to the five RIRs during a ceremony this morning in Miami during a meeting of the Regional Internet Registries.

The allocation of the final IPv4 addresses is analogous to the last crates of a product leaving a manufacturing warehouse and going to the regional stores or distributions centers, where they can still be distributed to the public. Once they are gone, the supply is exhausted. In this case, the RIRs will distribute the last IPv4 addresses to Internet Service Providers, universities, governments, telecommunications companies and other enterprises.

"It's only a matter of time before the RIRs and Internet Service Providers (ISPs) must start denying requests for IPv4 address space," said Raúl Echeberría, Chairman of the Number Resource Organization, the umbrella organization of the five RIRs. "Deploying IPv6 is now a requirement, not an option."

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To read more about IPv6 go here: <http://www.atlarge.icann.org/issues/atlarge-briefs/ipv6-ganda-en.htm>

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About ICANN: *ICANN's mission is to ensure a stable, secure and unified global Internet. To reach another person on the Internet you have to type an address into your computer - a name or a number. That address has to be unique so computers know where to find each other. ICANN coordinates these unique identifiers across the world. Without that coordination we wouldn't have one global Internet. ICANN was formed in 1998. It is a not-for-profit public-benefit corporation with participants from all over the world dedicated to keeping the Internet secure, stable and interoperable. It promotes competition and develops policy on the Internet's unique identifiers. ICANN doesn't control content on the Internet. It cannot stop spam and it doesn't deal with access to the Internet. But through its coordination role of the Internet's naming system, it does have an important impact on the expansion and evolution of the Internet. For more information please visit: www.icann.org.*