

International Centre for Dispute Resolution

CASE NO. 01-14-0001-5004

Between

DOT REGISTRY, LLC,
Claimant

v.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS,
Respondent

**WITNESS STATEMENT OF
THE HONORABLE ELAINE F. MARSHALL
ON BEHALF OF THE NATIONAL ASSOCIATION OF SECRETARIES OF STATE**

I, Elaine F. Marshall, of Raleigh, NC, hereby make the following statement:

1. I am the President of the National Association of Secretaries of State ("NASS") and the Secretary of State of North Carolina. I make this statement in my official capacity as the President of NASS and based on my personal knowledge of NASS' interest in the New gTLD Program of the Internet Corporation for Assigned Names and Numbers ("ICANN") and the applications made by Dot Registry, LLC ("Dot Registry") to ICANN for the right to operate the registries for the new generic top-level domains ("gTLDs") ".INC," ".LLC" and ".LLP."

I. PROFESSIONAL BACKGROUND

2. I am an attorney admitted to practice in all courts in North Carolina (state and federal) and before the United States Supreme Court. I was in the private practice of law in North Carolina from 1981 until 1997, when I was first elected Secretary of State of North Carolina. I

have been reelected Secretary of State four times since 1997. I was also elected to and served in the North Carolina Senate between 1993 and 1994.

3. I have been a member of NASS since I first took office in 1997 and I have served two terms as the organization's Secretary, two terms as Executive Board Vice President, and numerous terms as Chairman for both the Business Services Committee and the Securities Committee. Recently, I was selected by my colleagues to serve as President of NASS.

4. As a past Chairman and current member of the NASS Business Services Committee, I have participated in NASS' efforts to improve business filing processes, prevent business identity theft, and strengthen cybersecurity. In 2009, I was honored to represent NASS before the U.S. Senate Homeland Security and Governmental Affairs Committee on the topic of collecting beneficial ownership information from corporations and limited liability companies in state filings, an issue of importance to the Secretaries of State, whose offices handle the registration of business entities. Transactions include filings of incorporation, partnerships (including limited partnerships), articles of merger/consolidation, and articles of dissolution. I testified in opposition to proposed federal legislation that would have preempted state laws on business entity formation and filings and would have required the states to collect, verify, maintain and update entity beneficial ownership information for registered corporations and limited liability companies, which is not something Secretaries of State currently do. Our opposition was based in part on our concern that the proposed federal legislation would transform company registries into a federal enforcement tool to fight money laundering at a high cost to legitimate registered businesses and state agencies.

5. I have also represented NASS as an observer to the Uniform Law Commission on several uniform law drafting committees related to business organization and regulation, including the

Law Enforcement Access to Entity Information Act, the Revised Law on Notarial Acts and the Uniform Commercial Code Article 9 Revised Act.

II. ROLE OF NASS AND THE SECRETARIES OF STATE

6. NASS was founded in 1904 and is the nation's oldest nonpartisan professional organization for public officials. NASS is a not-for-profit corporation whose members include the Secretaries of State and Lieutenant Governors, or other state officials who perform duties similar to those of a Secretary of State, from the 50 states, the District of Columbia and the territories of the United States. The mission of NASS is to serve as a conduit of information to improve state leadership programs and to educate members through shared practices on the performance and effectiveness of state government, to create new partnerships within state government and to establish ties with other national organizations to strengthen citizen participation in the process of public decision making.

7. NASS is governed by an 11-member Executive Board, which is comprised of voting members of NASS and led by its President. NASS operates through its Executive Board and designated committees established pursuant to its Constitution, including the Business Services Committee. NASS may adopt official positions on matters of interest to its members through the formal resolution process set forth in its Bylaws.

8. The NASS Business Services Committee serves as a forum for the Secretaries to share practices among the states and to learn about programs and initiatives with a national scope regarding corporate registrations, electronic business filings, Uniform Commercial Code filings and other related services. More than 40 of our member Secretaries of State are responsible for the business registries in their state. Although individual state laws in the U.S. determine the specific functions and authority for each of the Secretaries of State, the overwhelming majority of the offices of the state Secretaries serve as the filing hub for business registrations. New

businesses utilize these offices to register and apply for a new entity name, file their formation papers and annual/biannual reports, and request Certificates of Good Standing. Most states also require businesses to file change notices with the Secretary of State, including amended articles of incorporation, listings of new officers, and mergers and acquisitions.

9. The NASS Business Services Committee has organized task forces that take on more in-depth projects, like the Business Identity Theft Task Force. That task force met in Atlanta in October 2011 to hear from experts and other states on their programs for addressing and combating business identity theft. A white paper was developed from that meeting and released in January 2012. Because of the work of this task force, many states have implemented notification programs to inform registered businesses when changes are made in the state's registration records. Whenever a record is changed, the registered business is notified to ensure the change was valid. Many states also now have information on their websites about business identity theft and available resources.

III. NASS' INTEREST IN .INC, .LLC and .LLP

10. NASS began tracking the status of the ICANN New gTLD Program in January 2012, when our members learned that there were companies interested in applying to ICANN for the right to serve as registry operators for the Internet extensions .INC, .LLC and .LLP. We were concerned that allowing use of these strings as TLDs would cause consumer confusion and lead to potential fraud and identity theft by registrants posing as legitimate businesses. NASS held numerous conference calls to solicit input from our Business Services Committee and Executive Board and we agreed that if ICANN was going to delegate these extensions, then we wanted to ensure that safeguards were employed to protect against consumer confusion, fraud and business identity theft. We believed it would be important for a registry operator to work with the Secretary of State or equivalent authority of each state responsible for business entity formation

and filings to ensure that a domain name registered for one of these corporate identifier TLDs matches an entity legally registered within the United States.

11. In March 2012, we wrote to ICANN to express our concern over the use of .INC, .LLC, .LLP and .CORP as TLDs. In that letter, NASS requested on behalf of its members that if ICANN moved forward with delegating these corporate identifier extensions to private registry operators, it only do so with restrictions in place to protect legitimate businesses and consumers. We explained that our members believed that these extensions should only be purchased and used by entities that are legally and appropriately registered with the Secretaries of State or equivalent state agency. We also explained that the extensions .INC, .LLC, .LLP are all recognized under state law as a means of identifying various types of business entities in the U.S. and underscored the importance of ensuring that website domain names have some “amount of fidelity” to a business entity’s legal registration with the state. Each of these designations has separate and distinct filing requirements, as well as federal and state tax and liability implications. In addition to the NASS letter, a number of Secretaries of State wrote to ICANN directly, outlining their specific concerns.

12. ICANN responded to NASS’ letter with an outline of four grounds for formally objecting to applications for TLDs and an explanation of how the ICANN Governmental Advisory Committee (“GAC”) provides a forum for governments to provide advice and voice concerns to ICANN regarding names that might be objectionable or sensitive. Although we did not believe any of the formal grounds for objection were appropriate for NASS to assert, we determined that it was feasible for us, based on our staffing and resource levels, to raise our concerns with the GAC. In July 2012, NASS sent a letter to the GAC explaining our concerns about unrestricted issuance of the corporate identifiers as new gTLDs. In the spring of 2013, the GAC issued

advice to ICANN that appeared to address NASS' concerns, stating that corporate identifier strings may require additional targeted safeguards to address specific risks. Unfortunately, months passed and ICANN did not implement the GAC's advice regarding corporate identifiers and new gTLDs.

13. On July 21, 2013, NASS passed a "Resolution of Recommendation" to ICANN regarding the need for enforceable safeguards for corporate identifier new gTLDs and to reiterate our support for the GAC's advice to ICANN. To ensure that the leadership of ICANN was aware of NASS' concerns, NASS Executive Director Leslie Reynolds emailed the members of ICANN's Board of Directors on July 26, 2013. In her email, she set forth NASS' concerns, described the resolution NASS passed and provided links to the text of the resolution as well as links to NASS' correspondence with ICANN and the GAC to date. I understand that ICANN staff responded the same day to confirm receipt of the email and, on July 29, 2013, Cherine Chalaby, chair of the New gTLD Program Committee, replied on behalf of the committee to confirm receipt of the email. To my knowledge, NASS has never received a substantive response from ICANN to the concerns we raised in the Resolution of Recommendation.

IV. NASS' SUPPORT OF THE COMMUNITY APPLICATION APPROACH TO OPERATING .INC, .LLC and .LLP

14. As I and other members of NASS learned more about ICANN's New gTLD Program, it became clear to us that delegating .INC, .LLC and .LLP to a community-based applicant, who would be bound by the registration policies and commitments set forth in its application, would be the most effective and realistically enforceable means of ensuring that these corporate identifier extensions would be adequately protected. Only one applicant, Dot Registry, submitted community-based applications to ICANN for .INC, .LLC and .LLP. As such, we understand that Dot Registry is also the only applicant that has made binding and enforceable

commitments to restrict registration of these TLDs to U.S. businesses that are legally registered under state law. To our knowledge, Dot Registry is also the only applicant that reached out to Secretaries of State to understand how the business registration process works in the U.S. We are encouraged by the company's diligence in trying to understand the diverse nature of the business registration process in each state and identifying strategies to work with each one.

15. For these reasons, we still believe that the community application process is the best way to protect U.S. businesses and consumers alike from fraud and confusion.

I affirm that the foregoing is true and correct to the best of my knowledge.

A handwritten signature in cursive script, reading "Elaine F. Marshall", is written over a horizontal line.

Elaine F. Marshall

April 17, 2015

Raleigh, NC