

**EXHIBIT J**

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**October 27, 2000**

**BY FACSIMILE**

**The Honorable Barbara S. Jones  
United States District Court  
Southern District of New York  
United States Courthouse  
Foley Square  
New York, New York 10007**

**Re: Register.com, Inc. v. Verio Inc., 00 Civ. 5747 (BSJ)**

**Dear Judge Jones:**

**As counsel to Register.com, Inc. ("register.com"), we have the following observations about Verio Inc.'s letter of October 26, 2000:**

- A. Verio Has No Basis Upon Which to Seek a Modification of the Consent TRO**

**As the Court may recall, this lawsuit was commenced on August 3, 2000 with the filing of a Complaint and an application for a preliminary injunction. In a scheduling conference call with the Court on Friday, August 4, 2000, in order to avert an immediate hearing on plaintiff's application for a preliminary injunction, Verio, Inc. ("Verio") proposed that the parties enter into to a consent TRO.**

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Verio argued that a postponement was warranted so that it could conduct limited discovery, and suggested that the Court delay a hearing on register.com's motion until late September. Verio also insisted that as a condition to the entry of the consent TRO, register.com agree to a "gag order" prohibiting register.com from making public comments about the lawsuit.

Register.com reluctantly agreed with Verio's request for a deferment, and the hearing was scheduled for September 15, 2000. Shortly thereafter, the consent TRO was entered.

Having received the benefits of the consent TRO, Verio now seeks to cast it aside because it has outlived its usefulness to Verio. In this connection, we point out to the Court that at the time the consent TRO was entered, Verio was trying to consummate a transaction whereby NTT Communications Corporation ("NTT") would acquire all outstanding shares of Verio's common stock for a total value of approximately \$5.5 billion. That transaction was completed on August 31, 2000. Thus, the consent TRO gave Verio the benefit of seeing that transaction come to fruition without public comment on its actions, or an adverse ruling from this Court.

Given Verio's initial request that a hearing on register.com's motion be deferred until late September, it is surprising that Verio now claims that it was under the "impression" that Project Hen House would only "be disrupted for a short time,"

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or that the four weeks that have passed since register.com's motion has been fully briefed constitutes an "unexpected length of time" in light of the of the complexity of the matters before the Court. Indeed, as your Honor may recall, it was Verio that insisted that it be permitted to make a supplemental filing to the Court after the Submission of Amicus Curiae Internet Corporation for Assigned Names and Numbers was received, and it was Verio that requested it be provided with at least one week to make such a submission.

B. Verio's Assertion That it has  
Been "Fair at Every Turn"

While Verio has every right to argue its positions, Verio's assertion that it has been "fair at every turn in the dispute resolution process" is unsubstantiated. Given, for example, the particulars of Project Hen House, as well as its pre-litigation conduct with respect to register.com, Verio certainly has no basis upon which to characterize its actions as "fair," let alone justify the accompanying implication that either register.com or the Court have somehow acted unfairly.

C. Verio's Claim of "Unfair Advantage"

Verio asserts that the consent TRO has allowed its competitors to "gain an unintended and unfair advantage," namely, that they are "free to market their services (including, in Register.com's case, domain name registration renewals) to

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the very same leads that Verio is precluded from reaching." This assertion is without merit.

As an introductory matter, to the extent that Verio is seeking to resurrect its "everyone else is doing it" defense, register.com invites the Court's attention to the fact that, despite delaying the hearing on register.com's motion for a month so that it could seek evidence that third parties are using port 43 to access register.com's WHOIS data for the purpose of telemarketing, spamming, or junk mailing register.com's customers, Verio failed to provide an iota of proof in support of this proposition.

Register.com also invites the Court's attention to the fact that the consent TRO only applies to Verio's actions *vis a vis* register.com. Accordingly, Verio is free to continue to use software robots to misappropriate the WHOIS data of other registrars, and to use that data to flood other registrars' customers with unsolicited e-mail, direct mail and telephone calls.

Verio's implication that register.com is engaging in Project Hen House-like conduct is unfounded. As your Honor may recall from the record and from the comments made by register.com's General Counsel during the closing portion of the oral argument on register.com's pending motion, register.com is

committed to protecting the privacy of its customers, and does not wish to join in a "race to the bottom."

D. Verio's Request for a Bulk WHOIS License

Apparently realizing that it might not be able to continue to use software robots to misappropriate register.com's WHOIS data in the future, on September 28, 2000, Verio requested a bulk WHOIS license from register.com. Even though the bulk licensing of register.com's WHOIS data to Verio is not a issue before the Court, Verio nevertheless submitted a copy of its September 28<sup>th</sup> letter as an attachment to its comments on the amicus curiae submission of the Internet Corporation for Assigned Names and Numbers.

Register.com responded to Verio's request on September 29, 2000, and on October 9, 2000, Verio tendered a draft bulk WHOIS license to register.com. As noted in Verio's October 26<sup>th</sup> letter, copies of the parties' correspondence have been forwarded to the Court.

Since receiving Verio's October 9<sup>th</sup> letter, register.com has been carefully reviewing its bulk WHOIS license policies. Verio, which failed to address many of the concerns raised in register.com's September 29<sup>th</sup> letter in the draft bulk WHOIS license agreement tendered on October 9<sup>th</sup>, apparently believes that register.com is proceeding in a dilatory fashion. Verio is incorrect.

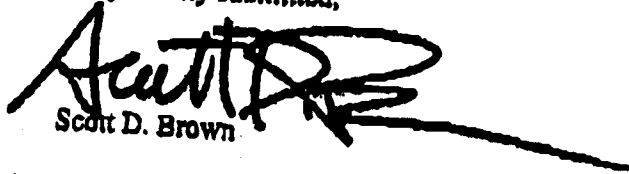
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As Verio is well aware, it has asserted rights to use register.com's WHOIS data in ways that register.com contends are unlawful. (See Kenneth A. Plevan's letter of September 29, 2000). Rather than end up in a protracted negotiations with Verio over issues that, given the past history between the parties would likely end in a stalemate, register.com believes the appropriate course of action is to await guidance from this Court's pending decision, which will undoubtedly address most, if not all, of the parties' respective concerns.

\* \* \*

For the foregoing reasons, register.com respectfully submits that Verio has no basis upon which to seek a modification to the consent TRO.

Respectfully submitted,

  
Scott D. Brown

cc: James E. Hough, Esq. (by facsimile)