

Justification for a Registry-based Wait Listing Service

January 28, 2002

This paper was prepared by VeriSign Global Registry Services (VGRS), the registry for .com, .net and .org second-level Internet domain names. It is designed to be a supplement to the revised proposal for the VGRS Wait Listing Service (WLS) proposal issued for comment on January 28, 2002. The WLS proposal was originally submitted by VGRS to the ICANN Domain Name Supporting Organization (DNSO) Registrars Constituency in response to a request from that constituency received in November 2001.

The purpose of the paper is four-fold:

1. To provide a brief overview of the VGRS proposed WLS for .com and .net second-level domain names.
2. To provide members of the Internet community a high level overview of the current situation with regard to registering previously registered .com, .net and .org second-level domain names
3. To highlight what VGRS sees as the advantages of the WLS
4. To provide responses to some of the concerns raised with respect to a Registry-based Wait Listing Service.

1. Overview of the proposed WLS

WLS is a service whereby potential registrants (referred to as “subscriber(s)” in the proposal), through their selected, participating registrar, may purchase a subscription tied to a currently registered .com or .net domain name. The WLS subscription would allow a subscriber to be the first in line to register a deleting domain name. A *deleting name* is a domain name whose registration expires and which again becomes available for registration.

Subscriptions would be available only through ICANN-accredited registrars, who would perform all subscription transactions directly with VGRS. All current processes would remain unchanged, with one exception: A domain name secured through a WLS subscription would be registered to the WLS subscriber if and when the current domain name registration is deleted through normal operational procedures.

The VGRS proposal recommends a 12-month trial period for the WLS after which an evaluation would determine whether to continue the service. For additional details about the WLS, refer to the revised proposal.

2. Overview of current processes for registering deleted names

In the current gTLD registry environment, if a consumer would like to obtain a domain name that is already registered, there are several options including but not limited to:

- i) **Waiting and then competing with speculator and registrar technology** - end-users_waiting until the domain name is deleted from the applicable

registry's database and then trying to register it through any ICANN-accredited registrar for the applicable top-level domain. Deletions can happen in several ways, including: a) an explicit deletion by the current registrant through his/her registrar before or after the registration period expires; b) an explicit deletion by the registrar before or after the registration period expires because of violations of the registration agreement by the registrant; c) an explicit deletion by the registrar because a registrant failed to renew its registration. Nothing, of course, guarantees that the consumer will be the first to register the deleted name. Indeed, given the robotic attacks by speculators who routinely register many names within moments of their deletion, the chance that a consumer will be "first come, first served" is the exception rather than the normal rule.

- ii) **Negotiating with the current registrant** – end-users contacting the current registrant and offering to purchase the registration. If this is successful, the current registrant has to work with its registrar to change the registrant information and other applicable registration information.
- iii) **Initiating dispute proceedings** – end-users initiating an ICANN Uniform Dispute Resolution Policy (UDRP) complaint and/or a court proceeding. If the UDRP or court action is successful, the registrar involved would transfer the registration to the new registrant.
- iv) **Scouring auction sites** – end-users checking to see if the name is offered on one of several domain name auction sites and, if it is, following the applicable procedures of the auction site to bid on the name. If the bid is successful, the current registrant would have to work with its registrar to change the registrant information and other applicable registration information as in i) above.
- v) **Subscribing to SnapNames back-orders** – end-users purchasing a SnapBack™ for the name. (Amazonshopping.com and AmericanExpress.net were recovered by their respective owners using this SnapBack™ service.) SnapBacks are offered by SnapNames, Inc. through various ICANN accredited registrars who have opted to participate in this offering. SnapNames then works through registrars to compete for the registration of the name, if and when the name is deleted from the registry database.
- vi) **Using a registrar that specializes in registering newly deleted names** – end-users identifying a registrar or a registrar reseller who specializes in registering newly deleted names. There are a variety of companies who are involved in providing variations of this service.
- vii) **Negotiating with speculators** – end-users identifying a domain name speculator who has successfully registered the desired name and agreeing to the speculator's terms for obtaining the registration of the name.

If the WLS is implemented, the predicted impact on the above options would be as follows:

- i) **Waiting and then competing with speculator and registrar technology** – There is no impact if there is not an active wait listing subscription for a name. If there is an active wait listing subscription for a name, the name would not be available for registration after deletion.

- ii) **Negotiating with the current registrant** – no impact
- iii) **Initiating dispute proceedings** – no impact
- iv) **Scouring auction sites** – no impact
- v) **Subscribing to SnapNames back-orders** – The WLS would improve upon the current registrar-based SnapBack offering. Instead of relying on SnapNames' estimated 70%+ success in competing with speculators' and registrars' attempts to register just-deleted names [options i), vi) and vii) above], a customer with an active WLS subscription would be 100% guaranteed to have the domain name registered if it is deleted in the registration database. (Note: VGRS has licensed SnapNames' technology in case the WLS service is implemented.)
- vi) **Using a registrar that specializes in registering newly deleted names** – Businesses that specialize in registering newly deleted names for speculators could participate in the WLS offering while also offering their current services, although it seems reasonable to expect that the number of names deleted (i.e., those without WLS subscriptions) would decline.
- vii) **Negotiating with speculators** – Speculators would be free to subscribe to the WLS service, although presumably at a higher cost (and therefore at a reduced frequency) as compared to today. They would also still be able to pursue the registration of deleted domain names just as they do now, though the number of names not wait-listed would probably be less than it is currently.

3. Advantages of the proposed WLS

The proposed WLS embodies the following critical principles:

- **All end-users** (registrant or potential registrant) are provided equal opportunity to register a name that may potentially be deleted in a way that:
 - Is simple and clear
 - Provides 100% certainty if the name is deleted (Note: the only way this level of certainty can be provided is for the service to be offered at the registry level.)
 - Allows mainstream would-be registrants equal access to deleting names without losing opportunity to speculators who have sophisticated systems or relationships that allow them superior access.
 - Is more open and transparent than today's informal system in its risks, benefits, and access to the system.
- Registrars are given equal opportunity at an equal wholesale price to participate in the WLS offering while at the same time having the option of not participating. Registrars that do not currently benefit from the large number of deleting names because they do not primarily service speculators can, by implementing the WLS offering, begin to participate in the secondary market and its rewards for the first time.
- The WLS is proposed as a 12-month trial to allow for:
 - Thorough evaluation of the service before making it a permanent offering
 - The opportunity to gather empirical evidence with regard to:

- Demand in the marketplace for such an offering (a demand that has already been demonstrated for several years)
- Market price tolerance for the WLS
- The ability of registrars to differentiate WLS service offerings
- Internet policy concerns
- To specifically allow for refinements to the offering if it is determined to be a valuable service to the community.

Following are what VGRS believes are advantages to key members of the Internet community as related to the proposed WLS offering:

- Advantages for consumers:
 - For those consumers wishing to obtain an already registered domain name, the WLS provides:
 - A simple, fair, low-cost and easy to understand procedure for acquiring deleting names, in contrast to the multitude of options available today that have varying degrees of complexity and price and that in practical terms are often not options reasonably available for mainstream users
 - A 100% chance of registering a name if it is deleted, with the attendant business certainty of being able to know whether one can or should not go forward with business plans relying upon a domain name's acquisition
 - An alternative to dealing with speculators in the deleted name market.
 - A process whereby WLS subscriptions are processed on a first-come, first served basis.
 - For current registrants, the WLS provides:
 - Assurance that a domain name registration would not be affected in any way. A registrant will still remain the registrant of a domain name indefinitely so long as it continues to meet the contractual requirements of its chosen registrar.
 - Confidence that their domain name registration services would not be affected in any way.
 - The option of further protecting a name against inadvertent or negligent expiration through wait listing (Note: such protection could probably be obtained more economically by simply extending the registration period.)
 - Complete freedom to continue to make names available in the secondary market, as is possible today (e.g., auctions, person-to-person transactions, etc.).
- Advantages for registrars and registrar resellers:
 - The ability to offer increased certainty to customers interested in registering currently registered names.

- The ability to offer consumers a new service alternative in the secondary market for domain names.
 - The option to offer added value to the WLS and thereby differentiate their WLS offerings from competitors.
 - The opportunity to create a new, additional revenue stream: first the subscription fee, second the registration fee.
- Advantages for gTLD registries
 - Ability to offer registrars a service that would help impart greater confidence to customers interested in securing names through the secondary market.
 - Reduction in resources necessary to support transactions made by registrars trying to register recently deleted domain names (Note: In a recent 17-day period, VGRS estimated that nearly 1.5 billion “transactions” (i.e., adds, modifies, checks, queries, etc.) occurred in its systems in efforts by registrars to register just-deleted names. *That resulted in only 3,156 registrations, meaning that on average 465,399 transactions were made for every added domain name.*)
 - The opportunity to create a new revenue stream
 - Advantages for intellectual property owners
 - Provides a low cost alternative to the current UDRP or other dispute mechanisms for IP owners who simply elect to wait out a current domain name registration (Note: This could be likely in the event that the current registrant is not actively using the name for commercial or other activities.)
 - Maintains the integrity of the UDRP process.

4. Responses to criticism to the proposed WLS

Discussion of the concepts that led to this proposal began in September 2001 at ICANN’s meetings in Montevideo, Uruguay, in an open meeting among registrars, registries and other interested parties. Those discussions continued on a list set up by the ICANN DNSO Registrars Constituency (the “ICANN-Delete” list), and finally resulted in a request for this proposal by that constituency. As noted at the beginning of this paper, VeriSign presented the original WLS proposal to the Registrars Constituency on December 30, 2001. Discussion of the proposal has occurred on and off since that time.

A variety of arguments have been made in opposition to the proposed WLS. The intent of this section of the paper is to provide brief VGRS responses to some of the criticism. First, responses are provided to the formal feedback received from the Registrars Constituency on January 18, 2002. Then responses to other arguments are provided.

4.1 Comments regarding Registrars Constituency Response to Initial WLS Proposal

a. “The proposed wholesale price for the service is too high.”

VGRS initially proposed a WLS cost to registrars of \$40 per annual subscription with the following objectives in mind:

- To allow significant room for registrar margins and still result in retail prices that the market would bear – current retail prices are increasing, and are in the \$69 range at present.
- To discourage abusive speculation that we believe is encouraged by too low a price point (Note: VGRS believes that the concern for the mainstream customer is best addressed by not setting the price so low that there would be, more frequently, a wider margin or gap, for speculators, between a name’s WLS price and its fair market value.)
- To recover VGRS’ investment and ongoing license costs in the WLS even if the volume of subscriptions is lower than anticipated and if the service is discontinued after a one-year trial.

Because feedback received from some registrars disagreed with our assessment in this regard, we carefully reevaluated our pricing model to attempt to address registrars’ concerns while at the same time continuing positively toward the above three objectives. The adjustments made are detailed in the revised proposal.

Additional comments with regard to price are included in Section 4.2 below.

b. “There could be conflicts of interest between VGRS and the VeriSign Registrar.”

VGRS understands the source of this concern but we would like to call attention to the requirements in the ICANN registry agreements found in Section 23 for .com and Section 3.5 for .net and .org along with Appendices H and I of all three agreements. We have diligently fulfilled the equivalent access and organizational conflicts of interest requirements contained therein and are fully committed to continue to do so. Representatives from our VGRS compliance office would be pleased to provide registrars any information they like about our compliance program. Moreover, we openly invite registrars to present any evidence of cases where VGRS is believed to have treated the VeriSign Registrar any differently from other registrars with regard to the WLS or any of our .com, .net and .org registry services. Any such evidence received will be appropriately investigated and appropriate action will be taken.

In addition to the existing safeguards that prevent favoritism toward any registrar and to ensure equivalent access for all registrars, VeriSign is also currently in the process of taking one more step to further ensure separation of VeriSign Registry and Registrar functions. This will involve additional organizational changes and it is anticipated that further details of these changes will be announced in the next few weeks.

c. “There will be incentive and award for speculators.”

This is one area for which VGRS confesses lack of understanding so it is difficult to respond. We do agree with the statements made by some registrars that the WLS will not eliminate speculation. At the same time, as we said in the initial WLS proposal a higher price for wait list subscriptions will result in a decrease in speculator activity that is dependent upon low-cost acquisitions. There is no empirical evidence supporting the speculative conjecture that a higher price point for the WLS will disproportionately encourage speculation. To the contrary, we believe that the closer to fair market price a subscription is sold, the less likely it is that a speculator would purchase a subscription in hopes of profiting from the spread between the WLS price and the market price. We accept that there is disagreement on this point and suggest that the most effective way to evaluate the relationship is to collect and interpret empirical data during the 12-month trial period.

VGRS definitely believes that the current methods for handling deleted names provide incentive and awards for speculators. As noted by a registrar in the WLS discussions that have occurred during the last several weeks, it costs registrars virtually nothing to repeatedly send transactions to VGRS systems. When a name is successfully registered in this way, the registrar only has to pay \$6 for a one-year registration. The WLS as proposed would increase this cost significantly and therefore has the potential of decreasing speculator activity. It is not clear how the WLS could increase speculator activity.

d. “Solving the Problem of the Rush to Register Deleted Names”

VGRS is in full agreement with registrars that the WLS does not solve this operational problem. We believe that the WLS could have an incidental benefit on this problem but we recognize that the WLS is not a solution for the deleted names issue. In Chuck Gomes’ analysis posted to the ICANN-delete list in the fall of 2001, he specifically stated that VGRS would be willing to consider implementing the WLS along with other steps to deal with the deleted names problems. One of the possible “other steps” suggested by registrars on that list was to make the “batch pool” a permanent solution and to charge for access to that pool. We are not prepared to commit to making the “batch pool” a permanent fixture but we are willing to continue making it available free of charge as it is today until it is improved and more cost effective measures can be implemented.

4.2 Comments regarding other arguments made against the WLS proposal

Numerous comments have been made regarding the proposed WLS wholesale price to registrars, some of them based on the supposed simplicity of constructing a “parallel registry” such as the WLS. Over the past five to six years, there has been no shortage of people who put forth their opinions regarding how cheaply they could provide a particular Internet service. The same thing is happening with regard to the

WLS. But none espousing their own cost theories on the WLS have any factual data about what is involved in developing and implementing a system that could be integrated into VGRS operations, and it is highly unlikely that they have factored in the strict quality control processes and the demanding reliability and availability standards that VGRS requires of its registry services operations. VGRS provides registry services that are unmatched anywhere in the world on a scale unmatched anywhere in the world and the WLS will be positioned side-by-side with already existing systems and services at that same level of quality. It is our belief that there are too many commercial enterprises around the world that depend on the critical services we provide to not offer the best that is possible. Does that mean it costs us more to implement the WLS than if we let others do it? Probably.

When first considering the WLS service, VGRS weighed developing the system in-house versus licensing the technology. For time-to-market and resource availability reasons, VGRS decided to license some of the technology that would be needed at the registry and to facilitate registrars' efforts in implementing the service for their customers. VGRS selected SnapNames' technology because it offered the most tested technology available. Could VGRS have procured a license for a lesser price from other providers? Perhaps, but it is unlikely it would have met our high standards. SnapNames pioneered Parallel Registry™ technology and have the widest experience in the industry with that technology.

The WLS, using Parallel Registry™ technology, is a full-scale registry platform that is equivalent in many ways to an operational registry. Consistent with VeriSign's long-standing technical reputation and service, and SnapNames' newer versions of the same, the new WLS registry platform is also world-class. The hardware is very similar in specifications and performance, and all systems must go through a rigorous quality assurance to verify that the WLS will perform as well as the core registry. VGRS required that WLS technology be identical to its own core systems technology with respect to security, scalability, support of diverse features and functionality, customer support and administrative interfaces, and software development kits supporting a broad range of registrars. The WLS provides a completely separate EPP-based API for registrar-registry communication. The WLS must be able to scale across thousands of connections and across many machines without performance or reliability problems (all transactions through the system require complex two-phase commits).

There have been several requests for VGRS to release its cost information. That information is VeriSign's proprietary financial data. It would be inappropriate to disclose such information based on common business practices, based on the fact that it involves competitive information, and based on the fact that it involves information that is proprietary to our suppliers and partners.

Another misunderstanding is that the WLS would be a "monopoly" service. VGRS has no ability to "control" WLS prices to consumers, in the antitrust sense of being immune

from competitive pressure. Moreover, with other gTLDs and ccTLDs now pervasive in the marketplace, neither .com and .net registrations, nor a WLS subscription, are a necessity. And there are alternative services that both registrars and consumers may use instead of the WLS.

Some have criticized VGRS for trying to expand its services as the registry for .com and .net. Under its registry agreements with ICANN, VGRS is the exclusive registry for all .com and .net Internet second-level domain names and it provides these services under the contractual relationships outlined in those agreements. The WLS is being offered at the registry level because a centralized WLS offers more value and efficiency for consumers. The fact is that offering the WLS at the registry-level is the only way to maximize consumer value for such a service.

Some have suggested it is “unethical” to offer “chances” at a name that is already registered by someone else. To have a guaranteed option on some thing is to have something of real value. There are numerous analogous examples, from the securities industry to options on screenplays. The purchaser gets value by having the best, next, and exclusive right to a good or service, as well as by foreclosing others’ right to that good or service. This value is worth something to the purchaser. Given all the relevant facts, the purchaser is free to decide how much it is worth and to act accordingly.

A few wondered if trademark owners would be negatively impacted by the WLS. It should first be pointed out that the risk of failing to renew in case a name that was wait listed would be the same as it is today. Registrants with either superior and preferential access (the status quo) or a WLS subscription would get the name after its expiration—trademark owners would undergo the cost and inconvenience in getting it back. As before, the best defense is through careful custodianship of the name, either by renewing or pre-paying.

The WLS would, however, offer trademark owners one form of protection they currently do not have: today, domain names that are in dispute are often allowed to expire, with the trademark owner then being forced to try to register it again, failing more often than not, and starting all over with the dispute process against another registrant. A WLS subscription on the disputed name may be used as a safety net in such circumstances, just as many litigants, courts, and even the U.S. Marshall’s Service utilize SnapNames’ SnapBack™ for the same purpose.

We suggest to all concerned that the consumers’ interest, not those of the speculators or those with a business model based upon superior technological access, should come first. If registrars want a larger income stream from a legitimate service provided in a high quality manner, we suggest that a one-year test of the WLS should be allowed.