

**IN THE MATTER OF  
AN INDEPENDENT REVIEW PROCESS  
BEFORE THE  
INTERNATIONAL CENTRE FOR  
DISPUTE RESOLUTION**

ICM REGISTRY, LLC	)	
	)	
Claimant	)	
	)	
v.	)	ICDR Case No. 50 117 T 00224 08
	)	
INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS	)	
	)	
Respondent	)	
	)	

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**WITNESS STATEMENT OF STUART LAWLEY**

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**I. Personal and Professional Background**

1. My full name is Stuart John Lawley. I am the Chairman and President of ICM Registry, LLC (“ICM”), which was formed to serve as the registry operator for the .XXX top-level domain (“TLD”). I am an entrepreneur and an experienced chairman and chief executive, having been involved in a number of successful businesses in the United Kingdom and the United States relating to technology and the Internet. I graduated from Imperial College, part of the University of London, England in 1985 with a BSc in Engineering. I am a citizen of the United Kingdom, and I currently reside in Palm Beach, Florida.

## **A. Previous Business Ventures**

2. My career has largely consisted of founding new businesses when I see an opportunity created by new technology. I like to start businesses from the ground up and be out in front of trends, breaking new ground, rather than playing catch-up with more established entities. My first such endeavour was a company called Eurofax, Ltd, which sold fax machines to small and medium sized businesses in England. Shortly after leaving university at the age of 23, somebody showed me a fax machine and I immediately recognized the potential—I knew every business would need to own one. I left my sales position, moved back from London to the West Midlands, and borrowed GBP 4,000 from my parents to start Eurofax. I served as the CEO of Eurofax from its inception in 1986 until its sale in 1997. During that time, the company grew from a single-person, local company to a large regional business: the company's revenue growth was consistent at a compound annual rate of over 40%, and by 1997 it employed approximately 70 people. Eurofax was so successful that I was able to identify and acquire, for cash, many other office equipment companies which were struggling, merging them with Eurofax to further grow the business.

3. Although Eurofax was not the largest business of its type, it was one of the best run and most profitable, by percentage, in the United Kingdom. For this reason, the Alto Group approached me in late 1996 about purchasing Eurofax. The Alto Group bought Eurofax in March of 1997 as part of a GBP 6.7 million transaction, and, because of my expertise and experience, I was made the CEO of Alto Group. I took part of my consideration for the Eurofax sale in the form of Alto Group shares. Alto Group, like Eurofax, was an office equipment company, but was national in scope. During my 18 month tenure as CEO of Alto Group, I helped the company double in size to over 250 employees, and the company's shares increased in value

from GBP 1 to GBP 5.50 per share. Whilst at Alto Group, I travelled to the United States to investigate expanding the business into the United States market. I did not think that the United States market was growing, and, since the United Kingdom market was generally a bit behind the United States market, I believed that the United Kingdom market for reprographic equipment had likely peaked or would soon peak.

4. During the time I spent in the United States in 1998, I realised how much the Internet was booming and decided to return to the United Kingdom and pursue a new challenge in the business-to-business (“B2B”) Internet space. I resigned my position with Alto Group and sold my shares at a profit of approximately GBP 1.5 million.

5. In early 1999, I founded Oneview.net, which has been, to date, my most successful business venture. Oneview.net was a B2B Internet service provider that encompassed web design and hosting and was dedicated to helping small businesses develop a presence on the Internet by offering one-on-one advice and services, including custom-tailored web pages ranging from simple designs to full blown, multimedia sites with secure e-commerce capabilities. At the time, small businesses were a very underserved section of the market for Internet services, frequently ignored by larger companies like IBM. When I founded Oneview.net, research showed that only 5 to 10 percent of small businesses in the United Kingdom had a website, let alone a domain name, despite the fact that web presence was, in my opinion, crucial for growing and expanding a company. Internet presence is a cost-mitigation exercise; small investments can very quickly create large returns. I saw an opportunity to help these businesses grow while profiting at the same time. Through founding and operating Oneview.net, I became even more aware of both the benefits and the pitfalls of the Internet, and of the importance of registering for a name and developing a “brand” on the Internet.

6. Oneview.net grew from four employees to over 440 in its first 15 months. Within 10 months of the founding, I took Oneview.net public, listing it on the Alternative Investment Market of the London Stock Exchange (a market similar to the NASDAQ in the United States) through an Initial Public Offering. Our placement price was GBP 0.86 per share, but by the end of the first day of trading, shares had risen in price to about GBP 1.43, putting the value of the company at GBP 31.7 million. Oneview.net was considered to be one of the most successful Internet companies in the United Kingdom.

7. After the IPO, the share price continued to climb, and peaked at GBP 7.70. During that time we received a few offers to sell the business. As I had previously started and built successful “bricks and mortar” businesses, I began to consider selling the business and starting something new, particularly considering the extremely high price at which Internet stocks were trading at that time. I suspected Internet companies were generally overvalued—thus I expected a downturn in the market in the near future. Although I was confident that Oneview.net had a solid business structure, as it had real, long term contracted revenue streams from business customers, it was too difficult to predict how the downturn I expected would affect the market and the company, so it seemed like a reasonable time to exit. Additionally, my long-term plan was to move to the United States, where I hoped there would be more business opportunities, and so I was eager to move on to something new (although, given my expertise, I wanted to remain involved in the Internet and/or technology sectors). Another important consideration was that my only son was born in 1999, and I wanted to take some time off to spend with him. When I sold Oneview.net in March of 2000, the company’s market capitalization was USD 204 million, or approximately GBP 136 million, and it had no debt. As a

50.1% shareholder, my share of these proceeds was valued at just over USD 100 million at the time.

8. To be clear: I am not, and never have been, involved in the adult-entertainment industry. I have never been a provider of adult content, nor will I ever be a provider of such content, regardless of the outcome of the .XXX proposal. My role, and the role of ICM, in the .XXX sTLD will be limited to the administration of the sponsored Top Level Domain (“sTLD”). To that end, I have engaged in significant outreach to the adult-entertainment industry, as well as stakeholders in the child protection and free speech advocacy communities, to ensure that the proposed .XXX sTLD would suit the needs of the sponsored community and other affected stakeholders, and have garnered substantial support from these communities as a result.

#### **B. Investigating ICANN’s New TLD Round**

9. I moved to the United States in late 2001. My first business involvement in the United States was with Definitive Electronics, a cutting edge, award-winning home technology company. I still serve as the Chairman of Definitive Electronics, and revenue has grown over 600% under my stewardship. However, this position was never my passion, and I was constantly looking for new opportunities. In 2002, I happened, by chance, to meet an individual who was then serving as the Chair of ICANN’s Generic Names Supporting Organization (and who was later, in June 2003, made a full Board Director of ICANN). We were discussing the Internet and technology when he mentioned that ICANN had long been planning a new round of applications for TLDs. I was aware, through my experience of securing domain names for our customers at Oneview.net, that the first opportunity to become a registrar had passed, so I was not interested in entering the market late to compete with already established companies operating in the

existing domains. The new TLD round, however, offered the possibility to get in on the ground floor of something new, and I was intrigued. Additionally, I knew of the importance of developing an online “brand” from my Oneview.net days, and so was fascinated by the opportunity presented by new TLDs. A carefully thought-out TLD could offer significant branding advantages by clearly conveying information about the likely nature or content of the websites registered to the domain.

10. I began doing my own research about ICANN’s only previous round of TLD proposals in the year 2000, reading the materials posted on the ICANN website and reviewing the applications submitted. I found ICM Registry’s 2000 application for the .XXX TLD particularly interesting. Even without much knowledge of the market, I knew that a TLD targeted at the adult-entertainment industry would be extremely successful. On further investigation of the adult-entertainment industry I was truly astonished by how large the industry is. In fact, with further research, I learned that the adult-entertainment industry had been one of the main drivers of technological developments, including broadband and high-speed Internet services.<sup>1</sup> Despite the huge potential business opportunity, I was initially wary of being involved in an industry that is often perceived as unsavoury, even though my intention was to work with only reputable providers, and I would not be involved in creating or providing content.

11. As I continued reviewing the 2000 application process, however, I began to see the potential true value to all impacted stakeholders in the idea of a carefully thought-out and

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<sup>1</sup> See, e.g., Arlidge, John, “The dirty secret that drives new technology: it's porn,” The Observer, 3 March 2002, available at <http://www.guardian.co.uk/technology/2002/mar/03/internetnews.observerfocus> (“As one senior industry figure put it: ‘For years it has been a dirty secret that one of the key drivers of new consumer technology is sex, pornography.’”) (attached as Lawley Exh. 1).

well-implemented .XXX domain. As a father, I was, and still am, very aware of the need to protect children from adult content. In 2000, ICM Registry had applied for both the .KIDS and .XXX TLDs. I could see that the .KIDS concept would never succeed (in fact, the .KIDS.US domain created later has failed abysmally)—because a “walled garden” space for children will never be popular enough to prevent most children from exploring the rest of the Internet. Operated correctly, however, as a *sponsored* TLD, a concept such as .XXX could be part of the solution, by making it easier for users or parents who wished to avoid the content in the .XXX domain to do so, without interfering with—and even benefiting—users who wish to view such content. In fact, I learned that there was significant support among the general public when they were asked for their opinion on the utility of an adult content domain. Thus, when I created a short list of applications from the 2000 round that I thought had the potential to succeed in a possible future round, .XXX was at the top. I tracked down and introduced myself to Jason Hendeles, who was the founder and head of ICM, some time in early 2003. ICM was basically “in hibernation” when I met Mr. Hendeles, and had been so, effectively, since 2001, but he was interested in my ideas, reputation, and business acumen, and we began to think in earnest about formulating and implementing an .XXX sTLD.

## **II. The Benefits of .XXX and the Importance of Sponsorship**

12. As previously mentioned, one of the reasons that I first became interested in the idea of an .XXX sTLD was that it struck me as a possible “win-win” solution, benefiting both the online adult-entertainment industry and the other impacted stakeholders in the broader Internet community, including child protection advocates, free speech advocates, and consumers of online adult-entertainment. As ICM later noted in its 2004 application for .XXX, “as with many industries, some of the online adult-entertainment community have engaged in illegal

and/or questionable business practices, such as unlawful redialers, credit-card fraud, breaches of consumer privacy, email spoofing, [and] SPAM.”<sup>2</sup> Responsible online adult-entertainment providers have never managed to organise themselves to self-regulate against these practices, or to provide a reliable method for distinguishing responsible providers. An .XXX *sponsored* TLD would provide one mechanism for such self-regulation. For example, the community would be able to organise, through the sponsoring organisation, to create best practices and policies that every website registered in the sTLD would agree to follow.

13. Additionally, a voluntary sTLD would be a form of self-regulation. Efficient and effective self-regulation would, in my view, help avoid the imposition of more onerous, top-down, governmental regulations. In an sTLD environment, responsible providers would be involved in the policy-making process, which would help ensure that the policies created are more carefully crafted to address the needs of the community. Moreover, aside from the total prohibition of child pornography, the policies would not be a restriction on content, and participation in the domain would be completely voluntary. Thus, this form of self-regulation would not interfere with the free speech rights of anyone in the sponsored community.

14. An .XXX sTLD would also help responsible providers comply with existing laws and regulations. For instance, the United States requires that the domain names used for websites with adult content to be not misleading. An address string ending with “.XXX” would be one way of ensuring the domain name was not misleading, as it clearly indicates the type of content that the user can expect to find, and the policies developed for the domain would include

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<sup>2</sup> ICM Registry, Inc., New sTLD RFP Application, 16 Mar. 2004, p.8 (“ICM Application”) (attached as Lawley Confidential Exh. A). **CONFIDENTIAL**

policies on electronic meta tag labelling. Even so, I never envisioned that the policies for the domain would relate to the laws or regulations of any particular jurisdiction, or that the domain would bear any unique responsibility for enforcing particular laws or regulations of any specific jurisdiction.

15. I believed (and continue to believe) that the .XXX sTLD would be a significant step toward the goal of protecting children from adult content, and would facilitate the efforts of anyone who wished to identify, filter, or avoid adult content. Thus, the presence of “.XXX” in a web address would serve a dual role: both indicating to users that the website contained adult content, thereby allowing users to choose to avoid it, and also indicating to potential adult-entertainment consumers that the websites could be trusted to avoid questionable business practices.

16. Given the option to utilize websites that clearly indicate in the address string that they comply with the best practices and policies of an .XXX sTLD, in my view, many consumers of online adult content would choose such websites over non-labelled ones. This would make the TLD attractive to providers, because it would give them a competitive advantage in attracting and retaining customers. The best practices policies, instead of being an undesirable restriction on the content of adult websites, would be a benefit. Thus, while it is unlikely that adult content will ever disappear from other domains, an .XXX sTLD would result in content that would otherwise be posted elsewhere being posted on .XXX—where it would be clearly labelled and identified, therefore allowing Internet users and parents to select or avoid adult content.

17. As I considered all of these benefits, I became increasingly determined to apply for the .XXX sTLD. I saw this as a real opportunity in technology, not just to profit from a new

business venture, but to do some good. After successfully growing a series of local, regional, and then national businesses, I was excited by the possibility of something with an international, even global scope, especially something as worthwhile as the .XXX sTLD.

18. For all of these reasons, in applying for the .XXX sTLD, it was extremely important to me that .XXX be a *sponsored* TLD. All of the benefits I envisioned to the sponsored community and the broader Internet community were wholly dependent upon the existence of a sponsoring organisation to develop and implement best practices for the registrants. An adult-content *general* TLD, although probably more lucrative in terms of the extra registrations that an unrestricted space would attract, would, in my opinion, provide negligible benefit for the online adult-entertainment industry and the wider Internet community as a whole.

### **III. Preparation**

#### **A. Gathering the ICM “Team”**

19. I became Chairman and CEO of ICM in mid 2003. Before that time, Jason Hendeles was the head of ICM. Jason, a Canadian citizen, was the founder and President of ATECH Company Inc., one of the first privately owned and operated domain-name registrars to be licensed by ICANN. He was a long-standing participant in the development of the Internet infrastructure. When I became involved in ICM, Jason took the position of Vice President. It was very important to me that we submit the best application we possibly could, and part of that process was, in my opinion, making ICM itself a strong, solid, stable, and well-run organisation. To accomplish this, I went out and recruited additional people to join ICM.

20. Stuart Duncan, a fellow native of the United Kingdom, was made the Chief Operating Officer of ICM. I had known Mr. Duncan for many years. I first met him through Eurofax. He was head of an office equipment leasing company that was a subsidiary of General Electric. I liked and trusted Stuart, and so brought him on as Chief Operating Officer at Oneview.net, where he recruited over 400 people and opened 10 new offices for the company in 15 months. When we worked together, at Oneview.net and later at ICM, I viewed myself as the “ideas man,” and Stuart as the one who was able to execute our plans.

21. Len Bayles, who had been at ICM with Mr. Hendeles, was made the Chief Technology Officer. Len had previously been Chief Technology Officer and Vice President at SnapNames.com in Portland, Oregon, and had served as a consultant to Afilias Ltd. during the .ORG transition. Len later became a member of ICANN’s Registry Services Technical Evaluation Panel, which was formed to provide advice and recommendations regarding the effect of proposed new registry services on the security and stability of the Internet. Len is generally regarded as a “top techie.”

22. In addition to the internal make-up of ICM, it was important to me that we have outside support to aid us in our application and, later, in our operations. In fact, I was not willing to go forward in the process unless we were able to obtain solid advice and supporters, namely, J. Beckwith (“Becky”) Burr (a partner at the law firm WilmerHale LLP), Robert Corn-Revere (a partner at the law firm Davis, Wright, Tremaine LLP), and individuals like Parry Aftab (an executive at WiredSafety) and Stephen Balkam (an executive at the Internet Content Rating Association).

