

1 CATHCART COLLINS & KNEAFSEY LLP
2 PATRICK A. CATHCART (SBN 65413)
3 JOSEPH P. COLLINS (SBN 163442)
4 SEAN M. KNEAFSEY (SBN 180863)
5 IMANI GANDY (SBN 223084)
6 JAMES R. CONOLLY (SBN 235243)
7 444 S. Flower Street, 42nd Floor
8 Los Angeles, California 90071
9 Phone: (213) 225-6600
10 Fax: (213) 225-6601

11 Attorneys for Plaintiff World Association
12 of Domain Name Developers, Inc.

13 UNITED STATES DISTRICT COURT
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
15 SAN JOSE DIVISION

16 WORLD ASSOCIATION OF DOMAIN
17 NAME DEVELOPERS, INC.,

18 Plaintiffs,

19 vs.

20 VERISIGN, INC. a Delaware
21 corporation; INTERNET
22 CORPORATION FOR ASSIGNED
23 NAMES AND NUMBERS, a California
24 corporation,

25 Defendants.

Case No. _____

**COMPLAINT FOR INJUNCTIVE
RELIEF**

- 26 **(1) Conspiracy in Violation of
Section 1 of the Sherman Act;**
- 27 **(2) Illegal Maintenance of
Monopoly in Violation of
Section 2 of the Sherman Act;**
- 28 **(3) Attempted Illegal
Maintenance of Monopoly in
Violation of Section 2 of the
Sherman Act;**
- (4) Conspiracy to Monopolize in
Violation of Section 2 of the
Sherman Act;**
- (5) Unlawful Restraint of Trade
in Violation of the Cartwright
Act;**
- (6) Unlawful and Unfair Business
Practices in Violation of
California Business &
Professions Code Section
17200;**
- (7) Unfair Business Practices
Inconsistent with Status of
Non-Profit Public Benefit
Corporation in Violation of
California Business and
Professions Code Section
17200**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Plaintiffs allege as follows:

I. INTRODUCTION

1. As more fully and factually alleged in this Complaint, the Defendants, VeriSign, Inc., (“VeriSign”), a registry of internet domain names, and the Internet Corporation for Assigned Names and Numbers (“ICANN”), a non-profit, public benefit corporation are entering into an agreement, known as the 2005 Registry Agreement. Plaintiff brings this action to enjoin VeriSign and ICANN, from entering into this unlawful contract to fix prices and monopolize the “.com” and “.net” domain name markets. The unlawful agreement gives VeriSign a permanent monopoly over the registration of all “.com” and “.net” domain names thereby excluding all competition. VeriSign now intends to use its monopoly power to increase the price of all “.com” and “.net” domain name registrations far above what the competitive market would otherwise bear.

2. The VeriSign/ICANN contract violates both federal and state antitrust and unfair competition laws and should be enjoined.

II. JURISDICTION, VENUE, AND COMMERCE

3. This Court has subject matter jurisdiction over this action under 15 U.S.C. §§ 1 and 2 and 28 U.S.C. §§ 1331, 1337. This Court has jurisdiction over the state antitrust law and unfair business practices claims alleged herein under 28 U.S.C. §§ 1367.

4. Venue is proper in this Court pursuant to 28 U.S.C. 1391 (b) and (c) and 15 U.S.C. § 22 because Defendant VeriSign resides in the Northern District of California.

5. Plaintiffs have standing to bring this suit under Section 16 of the Clayton Act, codified at 15 U.S.C. § 26 based on the threatened conduct that will cause loss or damage to Plaintiffs.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III. THE PARTIES

6. Plaintiff is the World Association of Domain Name Developers, Inc. (“WADND”), an association of domain name registrants. WADND is a corporation duly organized and existing under the laws of the State of Florida, with its principal office and place of business in Pembroke Pines, Florida. WADND is an association of domain name registrants. WADND’s purpose is to coordinate efforts among domain name registrants in order “to use the Internet more efficiently and effectively and to develop true economic relationships with emphasis on domain name ownership and business returns on investments therein, and develop standards of practice and ethics for domainers and commercial website owners to follow and increase the public perception of the professionalism of the industry.”

7. Defendant VeriSign is a corporation, duly organized and existing under the laws of the State of Delaware, with its principal office and place of business located in Mountain View, California. Since 1992, VeriSign or its predecessor, Network Solutions, Inc. (“NSI”) has acted as the exclusive registry for, *inter alia*, the “.com” and “.net” top-level domains.

8. Defendant ICANN is a nonprofit public benefit corporation, organized and existing under the laws of the State of California, with its principal office and place of business located in Marina Del Rey, California. ICANN was established in 1998 for the purpose of managing the Domain Name System, pursuant to a Memorandum of Understanding (“MoU”) into which ICANN entered with the Department of Commerce. ICANN’s stated mission is to coordinate the global Internet’s systems of unique indentifiers at the highest level and to ensure the secure operation and stability of these systems through coordination of domain name registration systems.

1 **IV. FACTS**

2 **A. THE INTERNET DOMAIN NAME SYSTEM**

3 9. The Internet is a network of interconnected computers and computer
4 networks. Every computer connected directly to the Internet has a unique address.
5 These addresses, which are known as Internet Protocol (“IP”) numbers, are
6 necessary for computers to “communicate” with each other over the Internet. An
7 example of an IP number might be: 12.34.567.89.

8 10. Because IP numbers can be cumbersome and difficult for Internet users
9 to remember or to use, the IP number system has been overlaid with a more “user-
10 friendly” system of domain names: the Internet domain name system (“DNS”). The
11 DNS associates a unique alphanumeric character string—or domain name—with a
12 specific IP number.

13 **B. DOMAIN NAME SYSTEM HIERARCHY**

14 11. The DNS defines a hierarchical name space divided into zones, each of
15 which has authority over the zones below it. The top zone is divided into top-level
16 domains, or “TLDs.” Each TLD is divided into second level domains or “SLDs”
17 Second level domains can be further divided into third-level domains, and so on.

18 12. For example, in the web address <www.uscourts.com>, “uscourts” is
19 the SLD while “.com” is the TLD.

20 13. A set of “root servers” provides a list of the registries responsible for
21 maintaining each TLD. Each registry’s name server provides references to the name
22 servers associated with each domain name within that TLD, which in turn provide
23 the IP address associated with the domain name.

24 14. There are currently two different types of TLDs: seventeen generic
25 TLDs (“gTLDs”): “.aero,” “.biz” “.com,” “.coop,” “.info,” “.jobs,” “.mobi,”
26 “.museum,” “.name,” “.net,” “.org,” “.pro,” “.travel,” “.gov,” “.edu,” “.mil,” and
27 “.int” approximately 240 two-letter country code TLDs (“ccTLDs”), such as “.us,”
28 “.uk,” “.jp,” and “.kr.”

1 15. Because domain names are essentially “addresses” that allow
2 computers connected to the Internet to communicate with each other, each domain
3 name must be unique, even if it differs from another domain name by only one
4 character (*e.g.*, “uscourts.com” is different from “uscourt.com” or “us-courts.com”).
5 A given domain name, therefore, can be registered to only one entity.

6 **C. REGISTRIES, REGISTRARS, AND REGISTRANTS**

7 16. VeriSign acts as the “registry” for domain names registered in the .com
8 and .net gTLDs in accordance with a written agreement with ICANN. As the
9 “registry” for the .com and .net gTLDs, VeriSign maintains the definitive database
10 that associates registered domain names in these gTLDs with the corresponding IP
11 numbers of their respective domain name servers. The domain name servers, in
12 turn, direct Internet queries to resources such as websites and e-mail systems. This
13 database is known as a “zone file.” Oftentimes, the registry is referred to as a
14 “registry operator” and the zone file is referred to as the “registry.”

15 17. A domain name is created by an individual or organization that
16 registers the domain name and thereby includes it in the zone file. The individual or
17 organization that registers a specific domain name is a “registrant.”

18 18. Registrants do not have direct access to the VeriSign registry and do
19 not interact directly with the registry in connection with domain name registrations.
20 Instead, prospective registrants must register domain names through any one of over
21 130 private companies located in the United States and throughout the world that act
22 as domain name “registrars” for the second-level domain names in the .com and .net
23 gTLD.

24 19. Internet users typically interact with the DNS through their Internet
25 Service Providers (“ISP”). Specifically, when a user requests a Web site associated
26 with a domain name, the user’s computer looks in its local cache for the IP address
27 associated with that domain name. If the IP address is not found locally, the
28 computer will query the ISP’s name server. If the ISP’s name server does not have

1 the address for the domain name requested, it will query the appropriate registry's
2 name server (*i.e.*, its zone file), from which it will obtain the name and IP address of
3 the name server associated with the domain name requested. It will then query the
4 name server associated with the domain name, and pass the IP address back to the
5 user's computer.

6 **D. HISTORY OF gTLD DOMAIN NAME ADMINISTRATION**

7 20. Today's Internet has its origin in a network called the ARPAnet which
8 was launched by the Department of Defense ("DOD") in 1969. ARPAnet was later
9 linked to other networks established by various government agencies, universities,
10 and research facilities. In 1990, NSFnet, the network developed by the National
11 Science Foundation's superseded ARPAnet.

12 21. In 1992, Congress passed the Scientific and Advanced-Technology Act
13 of 1992, 42 U.S.C. § 1862(g), which allowed commercial activity on NSFnet and
14 permitted NSFnet to interconnect with commercial networks.

15 22. In 1993, NSF signed a cooperative agreement with Network Solutions
16 ("NSI") under which NSI became the exclusive registrar for second-level domains
17 in .com, .net, .org, and .edu, as well as the exclusive registry operator for each of
18 those top-level domains. The NSF initially underwrote NSI's domain registration
19 services, thereby allowing Internet users to register domain names free of charge.
20 However, on or about September 13, 1995, NSF and NSI entered into Amendment 4
21 of the cooperative agreement, which permitted NSI to charge Internet users \$100 for
22 a two-year registration of a second-level domain in the .com, .net, and .org domains.
23 Thirty percent of the registration fees were to be paid into an NSF Infrastructure
24 fund. In April 1998, the portion of the fee allocated to the Infrastructure fund was
25 held to constitute an unconstitutional tax, and the effective rate for domain
26 registrations dropped to \$35 per year.

27 23. On July 1, 1997, the Clinton administration issued a report on
28 electronic commerce, "*A Framework for Global Electronic Commerce.*" The report

1 supported private efforts to address Internet governance and made the Department
2 of Commerce (“DOC”) the lead agency on this initiative. Accompanying the report
3 was a presidential directive that called on the DOC to “support efforts to make the
4 governance of the domain name system private and competitive and to create a
5 contractually based self-regulatory regime that deals with potential conflicts
6 between domain name usage and trademark laws on a global basis.” To carry out
7 this mission, the DOC first issued a Request for Comment on DNS administration,
8 and then on February 20, 1998, it published “*Proposal to Improve Technical*
9 *Management of Internet Names and Addresses*” (commonly referred to as the
10 “Green Paper”).

11 24. After receiving more than 650 comments, the DOC ended the proposed
12 rulemaking and instead published on June 10, 1998, a policy statement also known
13 as the “White Paper.” The White Paper, reflecting the views of the overwhelming
14 majority of comments, called upon the private sector to create a new, not-for-profit
15 corporation to assume responsibility, over time, for the management of certain
16 aspects of the DNS. The White Paper identified four specific functions to be
17 performed by this new corporation: (i) To set policy for and direct the allocation of
18 Internet Protocol number blocks; (ii) To develop overall policy guidance and control
19 of top-level domains and the Internet root server system; (iii) To develop policies
20 for the addition, allocation, and management of gTLDs, and the establishment of
21 domain name registries and domain name registrars and the terms, including
22 licensing terms, applicable to new and existing gTLDs and registries under which
23 registries, registrars, and gTLDs are permitted to operate; and (iv) To coordinate
24 maintenance and dissemination of the protocol parameters for Internet addressing.
25 The White Paper also articulated the fundamental policies that would guide United
26 States participation in the transfer of DNS management responsibility to the private
27 sector: stability; competition; private, bottom-up coordination; and representation.

28

1 25. The White Paper listed a number of tasks to be undertaken on a priority
2 basis, including, in particular, the creation and organization of a new, not-for-profit
3 corporation (“NewCo”) to manage the DNS and the rapid introduction of
4 competition in the provision of domain name registration services. The Department
5 of Commerce committed to enter into an agreement with NSI by which NSI would
6 agree to take specific actions, including commitments as to pricing and equal access,
7 designed to permit the development of competition in domain name registration.

8 26. In fulfillment of the commitment expressed in the White Paper, on
9 October 7, 1998, the DOC and NSI entered Amendment 11 to the Cooperative
10 Agreement. In Amendment 11, NSI agreed to recognize NewCo “when recognized
11 by the [DOC] in accordance with the provisions of the Statement of Policy.” NSI
12 further committed to enter into a contract with NewCo, and acknowledged “that
13 NewCo will have the authority, consistent with the provisions of the Statement of
14 Policy and the agreement between the [DOC] and NewCo, to carry out NewCo’s
15 Responsibilities.” Under Amendment 11, “NewCo’s Responsibilities” specifically
16 include the establishment and implementation of DNS policy and the terms,
17 including licensing terms, applicable to new and existing gTLDs and registries
18 under which registries, registrars and gTLDs are permitted to operate.” Amendment
19 11 also provided for the development, deployment, and licensing by NSI (under a
20 license agreement to be approved by the Department of Commerce) of a mechanism
21 to allow multiple registrars to submit registrations for the gTLDs for which NSI
22 acted as the registry (the “Shared Registration System,” or “SRS”).

23 **E. THE DEVELOPMENT OF ICANN**

24 27. In September 1998, Defendant Internet Corporation for Assigned
25 Names and Numbers was formed. ICANN is a non-profit public benefit corporation
26 organized without members pursuant to California Corporation Code § 5110 et. seq.
27 According to its by-laws, the board of directors of ICANN controls it.

28

1 28. In October, 1998, ICANN transmitted to the Department of Commerce
2 a copy of its articles of incorporation, and proposed by-laws. In November 1998,
3 the DOC entered into a Memorandum of Understanding (“MOU”) with ICANN that
4 recognized ICANN as the new, not-for-profit corporation for DNS management and
5 specifically contemplated ultimate transition of management responsibility to
6 ICANN. The MOU expressly identified the promotion of competition in the DNS
7 as one of its central principles.

8 29. In the MOU, ICANN expressly agreed to abide by principles of
9 stability, competition, private, bottom-up coordination, and representation:

10 C. The Principles:

11 The parties will abide by the following principles:

12 1. Stability

13 This Agreement promotes the stability of the Internet and
14 allows the Parties to plan for a deliberate move from the
15 existing structure to a private-sector structure without
16 disruption to the functioning of the DNS. The Agreement
17 calls for the design, development, and testing of a new
18 management system that will not harm current functional
19 operations.

20 2. Competition

21 This Agreement promotes the management of the DNS in
22 a manner that will permit market mechanisms to support
23 competition and consumer choice in the technical
24 management of the DNS. This competition will lower
25 costs, promote, innovation and enhance user choice and
26 satisfaction.

27 3. Private, Bottom-Up Coordination

28 This Agreement is intended to result in the design,
development, and testing of a private coordinating process
that is flexible and able to move rapidly enough to meet
the changing needs of the Internet and of Internet users.
This Agreement is intended to foster the development of a
private sector management system that, as far as possible,
reflects a system of bottom-up management.

 4. Representation.

 This Agreement promotes the technical management of
the DNS in a manner that reflects the global and functional
diversity of Internet users and their needs. This

1 Agreement is intended to promote the design,
2 development, and testing of mechanisms to solicit public
3 input, both domestic and international, into a private-
4 sector decision making process. These mechanisms will
promote the flexibility needed to adapt to changes in the
composition of the Internet user community and their
needs.

5 30. The MOU also obligated ICANN to “act in a non-arbitrary and
6 reasonable manner with respect to design, development, and testing of the DNS
7 Project and any other activity related to the DNS Project,” and to refrain from acting
8 “unjustifiably or arbitrarily to injure particular persons or entities or particular
9 categories of persons or entities.”

10 **F. THE 2001 AND 2005 .COM REGISTRY AGREEMENTS BETWEEN**
11 **ICANN AND VERISIGN**

12 31. On or about November 10, 1999, NSI and ICANN entered into a
13 written Registry Agreement (the “1999 Registry Agreement”) with respect to NSI’s
14 operation of the registry for the .com and .net gTLDs.

15 32. On or about May 25, 2001, VeriSign, which succeeded to the registry
16 business of NSI, entered into a new written .com Registry Agreement (the “2001
17 Registry Agreement”) with ICANN. The 2001 Registry Agreement superseded the
18 1999 Registry Agreement with NSI. Subject to certain extension rights provided for
19 therein, the 2001 Registry Agreement was to expire on November 10, 2007.
20 VeriSign and ICANN now propose to enter into a new agreement—the 2005
21 Registry Agreement (“2005 Registry Agreement”).

22 33. In accordance with the 2001 Registry Agreement, VeriSign undertook
23 to operate the .com and .net gTLD registry and to pay certain registry-level fees to
24 ICANN. VeriSign is the sole registry for the .com and .net gTLDs and therefore
25 maintains a monopoly over the .com and .net gTLDs.

26 34. Under the 2001 Registry Agreement, VeriSign is required to provide
27 “Registry Services” to ICANN-accredited registrars in a manner meeting the
28

1 performance and functional specifications attached to the agreement. “Registry
2 Services” generally are defined in the agreement as follows:

3 “Registry Services” means services provided as an integral
4 part of the Registry TLD, including all subdomains. These
5 services include receipt of data concerning registrations of
6 domain names and name servers from registrars, provision
7 to registrars of status information relating to the Registry
8 TLD zone servers, dissemination of contact and other
information concerning domain name and name server
registrations in the Registry TLD, and such other services
required by ICANN through the establishment of
Consensus Policies as set forth in Definition 1 of this
Agreement.

9 35. The 2001 Registry Agreement defines “Consensus Policies” as
10 consisting of those specifications and policies established on the basis of a
11 consensus among Internet stakeholders represented in the ICANN process, as
12 demonstrated by compliance with specific, detailed procedures prescribed in the
13 agreement.

14 36. The 2001 Registry Agreement sets forth “General Obligations of
15 Registry Operator [VeriSign].” VeriSign generally is obligated to comply with
16 Consensus Policies if, among other requirements, they are properly adopted by
17 ICANN and consistent with ICANN’s other contractual obligations, and (A) they
18 “do not unreasonably restrain competition”; and (B) relate to “(1) issues for which
19 uniform or coordinated resolution is reasonably necessary to facilitate
20 interoperability, technical reliability, and/or stable operation of the Internet or DNS,
21 (2) registry policies reasonably necessary to implement Consensus Policies relating
22 to registrars, or (3) resolution of disputes regarding the registration of domain names
23 (as opposed to the use of such domain name).”

24 37. The 2001 Registry Agreement further sets forth the following “General
25 Obligations of ICANN.” “With respect to all matters that impact the rights,
26 obligations, or role of Registry Operator,” the agreement explicitly provides that
27 ICANN shall, among other obligations: (i) “exercise its responsibilities in an open
28

1 and transparent manner,” (ii) “not unreasonably restrain competition and, to the
2 extent feasible, promote and encourage robust competition....”

3 38. As to ICANN, the 2005 Registry Agreement sets forth “Covenants of
4 ICANN” which, unlike the 2001 Registry Agreement, makes no mention of an
5 obligation to promote robust competition or to not unreasonably restrain
6 competition.

7 39. As to VeriSign, the 2005 Registry Agreements does not set forth any
8 “Covenants” or “General Obligations” of VeriSign whatsoever and makes no
9 mention of an obligation to promote robust competition or to not unreasonably
10 restrain competition.

11 **G. ANTICOMPETITIVE CONDUCT**

12 40. Under the 2001 Registry Agreement, VeriSign and ICANN fixed the
13 maximum price for .com and .net domain name registration at \$6 per registration.
14 Also under the 2001 Registry Agreement, ICANN granted to VeriSign a monopoly
15 over the .com and .net domain name registration market, but purported to promote
16 competition and to not unreasonably restrain trade.

17 41. The 2005 Registry Agreement fundamentally changes ICANN’s
18 oversight relationship with VeriSign. The 2005 Registry Agreement fixes the
19 maximum price for .com and .net domain name registration at \$6 through December
20 31, 2006 and thereafter allows VeriSign to raise the price of .com and .net
21 registration 7% annually going forward. In the 2005 Registry Agreement, neither
22 ICANN nor VeriSign even purport to promote robust competition or to not
23 unreasonably restrain competition.

24 42. Under the 2005 Registry Agreement, VeriSign is required to provide
25 “Registry Services” to ICANN-accredited registrars in a manner meeting the
26 performance and functional specifications attached to the agreement. “Registry
27 Services” generally are defined in the agreement in the same manner as they were
28

1 described in the 2001 Registry Agreement, paragraph 32 above, except that new
2 services are added:

3 43. Registry services are, for purposes of this Agreement, defined as the
4 following:

5 (b) other products or services that the Registry Operator is
6 required to provide because of the establishment of a
7 Consensus Policy...; (c) any other products or services
8 that only a registry operator is capable of providing by
9 reason of its designation as the registry operator...

10 44. The 2005 Registry Agreement further sets forth a “Process for
11 Consideration of Proposed Registry Services” whereby ICANN makes a preliminary
12 determination as to whether a Registry Service “(i) could raise significant Security
13 or Stability issues; or (ii) could raise significant competition issues.” If ICANN
14 determines that the proposed Registry Service raises significant competition issues,
15 then it must refer the issue “to the appropriate governmental competition authority.”
16 If ICANN finds that no competition concerns exist, VeriSign is permitted to provide
17 the new Registry Service.

18 45. The new “Registry Services” includes Site Finder and a waiting list
19 service known as CLS. Site Finder is a service which provides to Internet users a
20 list of alternative web addresses in the event that the address a particular user enters
21 is not valid. The list consists of a number of addresses with similar spellings.
22 Additionally, Site Finder is intended to provide the user with a search engine and a
23 list of addresses which Site Finder determines to be contextually similar to the
24 misspelled or incorrectly entered address.

25 46. The CLS is a means for VeriSign to sell expired domain names.
26 Internet users interested in securing a domain name which has already been
27 registered to another registrant can place their name on the CLS service. In the
28 event that the desired domain name registration expires, VeriSign notifies the user
on the wait list. The new registrant then has the opportunity to pay VeriSign to

1 register the domain in the registrant's name. This service permits VeriSign to
2 control and monopolize the market for expired domain names.

3 47. The 2005 Registry Agreement provides for the automatic renewal of
4 the agreement, *inter alia*, as follows:

5 Renewal. This Agreement shall be renewed upon the
6 expiration of the term set forth in Section 4.1 above and
7 each later term, unless the following has occurred : (i)
8 following notice of breach to Registry Operator in
9 accordance with Section 6.1 and failure to cure such
10 breach within the time period prescribed in Section 6.1, an
11 arbitrator or court has determined that Registry Operator
12 has been in fundamental and material breach of Registry
13 Operator's obligations set forth in Sections 3.1(a), (b), (d)
14 or (e); Section 5.2 or Section 7.3 and (ii) following the
15 final decision of such arbitrator or court, Registry Operator
16 has failed to comply within ten days with the decision of
17 the arbitrator or court, or within such other time period as
18 may be prescribed by the arbitrator or court.

19 Upon renewal, in the event that the terms of this
20 Agreement are not similar to the terms generally in effect
21 in the Registry Agreements of the 5 largest gTLDs
22 (determined by the number of domain name registrations
23 under management at the time of renewal), renewal shall
24 be upon terms reasonably necessary to render the terms of
25 this Agreement similar to such terms in the Registry
26 Agreements for those other gTLDs. The preceding
27 sentence, however, shall not apply to the terms of this
28 Agreement regarding the price of Registry
Services... Upon renewal, Registry-Level Transaction Fees
may be reasonably modified so long as any increase in
such fees shall not exceed the average of the percentage
increase in Registry-Level Transaction Fees for the 5
largest gTLDs (determined as for the 5 largest gTLDs
(determined as above), during the prior three-year period.

48. The proposed 2005 Registry Agreement contravenes competition, the
primary purpose for which ICANN was formed, and affirms and grants in perpetuity
VeriSign's monopoly over the .com and .net domain name registration market.

49. The 2005 Registry Agreement harms Plaintiffs because it prevents
competitors from entering the .com and .net domain name registration market and
allows VeriSign to raise the price for domain name registration, forcing consumers
to pay a domain name registration price that far exceeds the rate of inflation.

1 **H. THE RELEVANT MARKET**

2 50. The relevant market for antitrust analysis in this case is restricted to the
3 “.com” and “.net” TLDs. These TLDs are the ones used by commercial businesses
4 in the United States. Although over 250 TLDs exist, they are not equally accessible
5 to businesses based in the United States. All country-code TLDs are operated and
6 managed outside of the United States, and are therefore not subject to U.S. antitrust
7 laws and statutes. Registration with ccTLDs requires a registrant to leave the
8 borders and protection of the United States. Therefore, these ccTLDs cannot be
9 counted as part of the relevant market for determining antitrust violations.

10 51. Many of the generic TLDs are restricted either in use or in meaning.
11 Specifically, gTLDs such as “.edu,” “.mil,” “.gov,” “.aero,” and “.coop” are
12 reserved for specific types of institutions and are not available to businesses or
13 private persons. Many gTLDs carry inherent meanings which cause confusion
14 registrants would want to avoid. The gTLD “.org” carries the connotation of a non-
15 profit organization, and similarly “.travel” connotes a travel-related registrant. As a
16 result, “.com” and “.net” have become more than just the most used TLD, they have
17 become the definitive TLDs for all commercial and private registrants within the
18 United States who seek to avoid confusion with other types of associations.

19 52. The relevant geographic scope of the .com and .net markets is the entire
20 world.

21 53. VeriSign is the sole registry for these domains. As a result, any
22 arrangements VeriSign enters into to control competition in the expired domain
23 name market or in the site finder market, or to fix prices, constitute an unjustifiable
24 use of monopoly power.

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

V. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

ALL PLAINTIFFS AGAINST VERISIGN AND ICANN

(Conspiracy to Restrain Trade in Violation of Section 1 of the Sherman Act)

54. Plaintiffs incorporate by reference all of the allegations of this Complaint as though fully set forth herein.

55. The 2005 Registry Agreement between ICANN and VeriSign affirms VeriSign’s monopoly in the .com and .net domain name registration market. The 2005 Registry Agreement provides for the automatic renewal of the agreement and thereby precludes competitors from ever entering the .com and .net domain name registration market for no legitimate business purpose.

56. The 2005 Registry Agreement between ICANN and VeriSign allows VeriSign to exploit its monopoly power to raise prices 7% annually going forward, a rate that far exceeds the natural rate of inflation.

57. The acts alleged above of Defendants ICANN and VeriSign and their co-conspirators, by and through their officers, directors, employees, agents, and other representatives, have unreasonably restrained and restricted competition in the market for .com and .net domain name registrations, and have deprived consumers of the benefits of free and open competition in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and threaten to continue to restrain such competition in that market in the future unless enjoined by the Court.

58. The specific wrongful acts of ICANN and VeriSign above have not been expressly or impliedly authorized or directed by the DOC or any other agency of the United States Government, nor have these specific acts been the subject of active supervision by any agency of the United States Government.

59. ICANN’s grant of a monopoly to VeriSign in perpetuity achieves no legitimate efficiency benefits to counterbalance its demonstrated anticompetitive effects.

1 Sherman Act, 15 U.S.C. § 2 as alleged above. Plaintiffs have no adequate remedy at
2 law.

3 **THIRD CLAIM FOR RELIEF**
4 **ALL PLAINTIFFS AGAINST VERISIGN**
5 **(Attempted Illegal Maintenance of Monopoly in Violation of Section 2 of the**
6 **Sherman Act)**

7 67. Plaintiffs incorporate by reference all of the allegations of this
8 Complaint as though fully set forth herein.

9 68. In violation of Section 2 of the Sherman Act, 15 U.S.C. § 2, Verisign
10 has knowingly, intentionally and with specific intent to do so, attempted to
11 monopolize the .com and .net domain name registration market.

12 69. By way of the 2005 Registry Agreement, Verisign will obtain from
13 ICANN an exclusive monopoly in the .com and .net domain name registration
14 market. The 2005 Registry Agreement provides for the automatic renewal of the
15 agreement and thereby precludes competitors from ever entering the .com and .net
16 domain name registration market indefinitely for no legitimate business purpose.

17 70. By way of the 2005 Registry Agreement, Verisign is permitted to
18 exploit its monopoly power to raise prices 7% annually going forward, a rate that far
19 exceeds the natural rate of inflation, thus forcing consumers to pay a domain name
20 registration price that far exceeds the rate of inflation.

21 71. Verisign has effectuated its attempt to monopolize the domain name
22 registration market by the means and the overt acts set forth above.

23 72. Verisign intends by its actions to:

- 24 a. control the price of .com and .net domain name registration;
25 b. eliminate, reduce, limit and foreclose actual and potential
26 competition in the .com and .net domain name registration market;
27 c. exclude and foreclose other persons from participating in or
28 entering said market; and

1 d. injure and eliminate competition in said market.

2 73. As a result of the conduct alleged herein, Verisign controls 100% of the
3 .com and .net market. This control coupled with the ability of Verisign to charge \$6
4 plus 7% annually going forward for .com and .net domain name registration results
5 in a dangerous likelihood that Verisign will monopolize the .com and .net domain
6 name registration market.

7 74. Plaintiffs are entitled to a preliminary and permanent injunction
8 restraining ICANN and Verisign from continuing to violate Section 2 of the
9 Sherman Act, 15 U.S.C. § 2 as alleged above. Plaintiffs have no adequate remedy at
10 law.

11 **FOURTH CLAIM FOR RELIEF**

12 **ALL PLAINTIFFS AGAINST ICANN AND VERISIGN**

13 **(Conspiracy to Monopolize in Violation of Section 2 of the Sherman Act)**

14 75. Plaintiffs incorporate by reference all of the allegations of this
15 Complaint as though fully set forth herein.

16 76. In violation of Section 2 of the Sherman Act, 15 U.S.C. § 2, Verisign
17 and ICANN have knowingly, intentionally and with specific intent to do so,
18 conspired to monopolize the .com and .net domain name registration market.

19 77. By way of the 2005 Registry Agreement, Verisign seeks to obtain from
20 ICANN an exclusive monopoly in the .com and .net domain name registration
21 market. The 2005 Registry Agreement provides for the automatic renewal of the
22 agreement and thereby precludes competitors from ever entering the .com and .net
23 domain name registration market for no legitimate business purpose.

24 78. By way of the 2005 Registry Agreement, ICANN has permitted
25 Verisign to exploit its monopoly power to raise prices 7% annually going forward, a
26 rate that far exceeds the natural rate of inflation, thus forcing consumers to pay a
27 domain name registration price that far exceeds the rate of inflation.

28

1 to charge \$6 for any .com and .net registration. This \$6 is what VeriSign charges
2 registrars who then resell these .com and .net domain names to the public. The 2005
3 Registry Agreement permits VeriSign to increase its fees 7% annually going
4 forward.

5 85. In the event that ICANN approves the 2005 Registry Agreement,
6 without which VeriSign cannot increase its fees, Defendants and their co-
7 conspirators, by and through their officers, directors, employees, agents, and other
8 representatives, will have entered into a continuing contract, combination, or
9 conspiracy to unreasonably restrain trade and commerce in violation of the
10 Cartwright Act, California Business and Professions Code Section 16700, *et seq.*

11 86. Defendants are conspiring to artificially fix and maintain the market
12 price of domain name registration as alleged in this complaint in violation of
13 California Business and Professions Code Section 16700, *et seq.*

14 87. The contract, combination, or conspiracy consists of a continuing
15 agreement, understanding, and concert of action among Defendants and their co-
16 conspirators, the substantial terms of which are to fix, raise, maintain, and stabilize
17 the prices of, and/or allocate the market for domain name registration.

18 88. For purposes of formulating and effectuating their contract,
19 combination or conspiracy, VeriSign and ICANN have agreed to fix the price of
20 .com and .net domain name registry at \$6 plus 7% per year going forward. VeriSign
21 controls 100% of the .com and .net domain name registration market.

22 89. Plaintiffs are entitled to a preliminary and permanent injunction
23 restraining ICANN and VeriSign from continuing to violate the Cartwright Act,
24 California Business & Professions code, sections 16700, *et seq.* as alleged above.
25 Plaintiffs have no adequate remedy at law.

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SIXTH CLAIM FOR RELIEF
ALL PLAINTIFFS AGAINST VERISIGN AND ICANN
(Unlawful and Unfair Business Practices in Violation of California Business
and Professions Code Section 17200, et seq.)

90. Plaintiffs incorporate by reference all of the allegations of this Complaint as though fully set forth herein.

91. California Business & Professions Code section 17200, et seq. declares unfair competition unlawful and defines unfair competition as, *inter alia*, “any unlawful, unfair or fraudulent business act or practice....”

92. Defendants have engaged in unlawful business practices in violation of the Sherman Act, 15 U.S.C. § 1 et seq. and in violation of the Cartwright Act, California Business & Professions Code § 16700 et seq. These statutory violations alleged above of Defendants ICANN and VeriSign constitute unfair competition that will continue unless enjoined by the Court.

93. Defendants, by their efforts at contract, combination or conspiracy, are also engaged in unfair business practices including an agreement to fix, raise, maintain and stabilize the prices of, and/or allocate the market for domain name registration.

94. For purposes of formulating and effectuating their contract, combination or conspiracy, VeriSign and ICANN have agreed to fix the price of .com and .net domain name registry at \$6 plus 7% per year going forward. VeriSign controls 100% of the .com and .net domain name registration market.

95. As a direct result of the unlawful and unfair business practices of ICANN and VeriSign, Plaintiffs will be forced to pay more for domain name registration than they would have paid in the absence of ICANN and VeriSign’s price fixing.

96. Plaintiffs are entitled to a preliminary and permanent injunction restraining ICANN and VeriSign from continuing to violate the Unfair Trade

1 Practices Act, California Business & Professions Code, sections 17200, *et seq.* as
2 alleged above. Plaintiffs have no adequate remedy at law.

3 **SEVENTH CLAIM FOR RELIEF**

4 **ALL PLAINTIFFS AGAINST ICANN**

5 **(Unfair Business Practices Inconsistent with Status of Non-Profit Public Benefit**
6 **Corporation in Violation of California Business and Professions Code Section**
7 **17200, *et seq.*)**

8 97. Plaintiffs incorporate by reference all of the allegations of this
9 Complaint as though fully set forth herein.

10 98. California Business & Professions Code § 17200, *et seq.* declares
11 unfair competition unlawful and defines unfair competition as, *inter alia*, “any
12 unlawful, unfair or fraudulent business act or practice....”

13 99. The 2005 Registry Agreement permits VeriSign to increase its fees 7%
14 per year going forward. ICANN’s approval of the proposed 2005 Registry
15 Agreement, without which VeriSign cannot increase its fees, will be an unfair and
16 fraudulent act. ICANN has a duty to impose appropriate limits on VeriSign’s ability
17 to exploit its monopoly position to the detriment of consumers.

18 100. As a California non-profit public benefit corporation, ICANN is
19 obligated to operate consistent with its bylaws for a public or charitable purpose.
20 California Corporations Code § 5111. ICANN has identified as its corporate
21 mission “to pursue the charitable and public purposes of lessening the burden of
22 government and promoting the global public interest in the operational stability of
23 the Internet....”

24 101. In its public statements, ICANN has stated that it exists “to carry out
25 the Internet’s central coordination functions for the public good,” as part of a
26 “public trust” established by the White Paper and resulting privatization process.

27 102. By reason of the acts alleged above, including the unlawful and unfair
28 business practices, ICANN has failed to comply with its “public trust.” By its

1 efforts and agreement to fix, raise, maintain and stabilize the prices of, and/or
2 allocate the market for domain name registration, ICANN has chosen to pursue its
3 own revenue, and to protect the interests of VeriSign at the expense of Plaintiffs,
4 other domain name registrants and the broader public.

5 103. ICANN's conduct is a violation of its own bylaws and public charter,
6 and amounts to an abandonment of the statutory requirement that it pursue a public
7 or charitable purpose. This misconduct constitutes a separate unfair business
8 practice, as a result of which Plaintiffs will be forced to pay more for domain name
9 registration than they would have paid if ICANN had continued to operate within its
10 stated corporate purpose.

11 104. Plaintiffs are entitled to a preliminary and permanent injunction
12 restraining ICANN from continuing to violate the Unfair Trade Practices Act,
13 California Business & Professions Code, sections 17200, *et seq.* as alleged above.
14 Plaintiffs have no adequate remedy at law.

15 **VI. PRAYER FOR RELIEF**

16 WHEREFORE Plaintiff prays for entry of judgment against Defendants as
17 follows:

18 A. On the first claim for relief, against ICANN and VeriSign:

19 1. For entry of a final and binding judicial declaration determining
20 that Defendants' 2005 Registry Agreement, and the terms contained therein,
21 violate Section 1 of the Sherman Act, 15 U.S.C. §1.

22 2. For entry of a preliminary and permanent injunction prohibiting
23 Defendants, their officers, directors, employees, agents and other acting in
24 concert, or in association with them, from directly or indirectly continuing to
25 violate Section 1 of the Sherman Act, 15 U.S.C. § 1, through collective action
26 in restraining competition.

27 3. For its reasonable attorney's fees, as provided by Section 4 of the
28 Clayton Act, 15 U.S.C. § 15.

- 1 B. On the second claim for relief, against VeriSign:
- 2 1. For entry of a final and binding judicial declaration determining
- 3 that Defendants' 2005 Registry Agreement, and the terms contained therein,
- 4 violate Section 2 of the Sherman Act, 15 U.S.C. §2.
- 5 2. For entry of a preliminary and permanent injunction prohibiting
- 6 VeriSign, its officers, directors, employees, agents and other acting in concert,
- 7 or in association with them, from directly or indirectly continuing to violate
- 8 Section 2 of the Sherman Act, 15 U.S.C. § 2, by exploiting VeriSign's
- 9 position in the market and maintaining an illegal monopoly.
- 10 3. For its reasonable attorney's fees, as provided by Section 4 of the
- 11 Clayton Act, 15 U.S.C. § 15.
- 12 C. On the third claim for relief, against VeriSign:
- 13 1. For entry of a preliminary and permanent injunction prohibiting
- 14 VeriSign, its officers, directors, employees, agents and other acting in concert,
- 15 or in association with them, from directly or indirectly continuing to attempt
- 16 to violate Section 2 of the Sherman Act, 15 U.S.C. § 2, by exploiting
- 17 VeriSign's position in the market and maintaining an illegal monopoly.
- 18 2. For its reasonable attorney's fees, as provided by Section 4 of the
- 19 Clayton Act, 15 U.S.C. § 15.
- 20 D. On the fourth claim for relief, against VeriSign:
- 21 3. For entry of a preliminary and permanent injunction prohibiting
- 22 VeriSign, its officers, directors, employees, agents and other acting in concert,
- 23 or in association with them, from directly or indirectly continuing to attempt
- 24 to violate Section 2 of the Sherman Act, 15 U.S.C. § 2, by exploiting
- 25 VeriSign's position in the market and maintaining an illegal monopoly.
- 26 4. For its reasonable attorney's fees, as provided by Section 4 of the
- 27 Clayton Act, 15 U.S.C. § 15.
- 28

- 1 E. On the fifth claim for relief, against ICANN and VeriSign:
- 2 1. For entry of a final and binding judicial declaration determining
- 3 that Defendants' 2005 Registry Agreement, and the terms contained therein,
- 4 violate the Cartwright Act.
- 5 2. For entry of a preliminary and permanent injunction prohibiting
- 6 Defendants, their officers, directors, employees, agents and other acting in
- 7 concert, or in association with them, from directly or indirectly continuing to
- 8 violate the Cartwright Act, through collective action in restraining
- 9 competition.
- 10 F. On the sixth claim for relief, against ICANN and VeriSign:
- 11 1. For entry of a final and binding judicial declaration determining
- 12 that Defendants' 2005 Registry Agreement constitute unfair and unlawful
- 13 business practices.
- 14 2. For entry of a preliminary and permanent injunction prohibiting
- 15 Defendants, their officers, directors, employees, agents and other acting in
- 16 concert, or in association with them, from directly or indirectly continuing to
- 17 violate the California Business & Professions Code Section 17200, *et seq.*,
- 18 through collective action in restraining competition.
- 19 G. On the seventh claim for relief, against ICANN:
- 20 1. For entry of a final and binding judicial declaration determining
- 21 that ICANN has failed to follow its by-laws in violation of California
- 22 Business & Professions Code Section 17200, *et seq.*
- 23 2. For entry of a preliminary and permanent injunction prohibiting
- 24 ICANN, its officers, directors, employees, agents and other acting in concert,
- 25 or in association with them, from directly or indirectly continuing to violate
- 26 the California Business & Professions Code Section 17200, *et seq.*, through
- 27 collective action in restraining competition.
- 28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

H. On all claims for relief:

1. For costs of suit incurred herein.
2. For such further relief as is just and proper.

DATED: November ____, 2005

CATHCART COLLINS & KNEAFSEY LLP

By _____
Patrick A. Cathcart

Attorneys for Plaintiff World Association
of Domain Name Developers