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11 of Domain Name Developers, Inc.

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

15 WORLD ASSOCIATION OF DOMAIN
16 NAME DEVELOPERS, INC., a Florida
17 corporation

18 Plaintiff,

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. **05 04828**

**COMPLAINT FOR INJUNCTIVE
RELIEF**

- (1) Violation of Section 1 of the Sherman Act;
- (2) Illegal Maintenance of Monopoly in Violation of Section 2 of the Sherman Act;
- (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

DEMAND FOR JURY TRIAL

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

RS

1
2 Plaintiffs allege on information and belief as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this action to enjoin VeriSign, Inc., a Registry of the
5 “.com” and “.net” internet domain names, and the Internet Corporation for Assigned
6 Names and Numbers (“ICANN”), the non-profit corporation that controls virtually
7 all internet domain names, from entering into an unlawful agreement to fix prices
8 and monopolize the “.com” and “.net” domain name markets. The unlawful
9 agreement gives VeriSign a permanent monopoly over the all “.com” and “.net”
10 domain name registrations, a monopoly for related services that it does not currently
11 enjoy, and permits VeriSign to permanently and indefinitely increase prices above
12 that natural rate of inflation and what a fair market would otherwise bear.

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

15 **II. JURISDICTION AND VENUE**

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

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

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

26 **III. INTRADISTRICT ASSIGNMENT**

27 6. Venue is proper in the San Jose Division of the Northern District
28 because VeriSign resides in the County of Santa Clara, which is in the San Jose

1 Division. In addition, a substantial portion of the actions alleged herein arose in the
2 County of Santa Clara, California.

3 **IV. THE PARTIES**

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

14 8. Defendant VeriSign, Inc. (“VeriSign”) is a corporation, duly organized
15 and existing under the laws of the State of Delaware, with its principal office and
16 place of business located in Mountain View, California. Since 1992, VeriSign or its
17 predecessor, Network Solutions, Inc. (“NSI”) has acted as the exclusive Registry
18 for, the “.com” and “.net” top-level domains or “TLDs”.

19 9. Defendant ICANN is a nonprofit public benefit corporation, organized
20 and existing under the laws of the State of California, with its principal office and
21 place of business located in Marina Del Rey, California. ICANN was established in
22 1998 for the purpose of managing the Domain Name System, pursuant to a
23 Memorandum of Understanding (“MoU”) into which ICANN entered with the
24 Department of Commerce. ICANN’s stated mission is to coordinate the global
25 Internet’s systems of unique identifiers at the highest level and to ensure the secure
26 operation and stability of these systems through coordination of domain name
27 registration systems.

28

1 **V. INTERSTATE COMMERCE**

2 10. The .com and .net domain names are used in significant amounts of
3 trade and commerce which is transacted across state lines. The actions of VeriSign
4 and ICANN alleged herein will affect price and competition in these markets.
5 Therefore, the 2005 Registry Agreements, and actions leading to their creation will
6 affect interstate commerce.

7 **VI. FACTS**

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

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

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

19 **B. DOMAIN NAME SYSTEM HIERARCHY**

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

24 14. For example, in the web address <www.uscourts.com>, “uscourts” is
25 the SLD while “.com” is the TLD.

26 15. A set of “root servers” provides a list of the registries responsible for
27 maintaining each TLD. Each Registry’s name server provides references to the
28

1 name servers associated with each domain name within that TLD, which in turn
2 provide the IP address associated with the domain name.

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

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

13 C. REGISTRIES, REGISTRARS, AND REGISTRANTS

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

22 19. A domain name is created by an individual or organization that
23 registers the domain name and thereby includes it in the zone file. The individual or
24 organization that registers a specific domain name is a “Registrant.”

25 20. Registrants do not have direct access to the VeriSign Registry and do
26 not interact directly with the Registry in connection with domain name registrations.
27 Instead, prospective Registrants must register domain names through any one of
28 over 130 private companies located in the United States and throughout the world

1 that act as domain name “Registrars” for the second-level domain names in the .com
2 and .net gTLD.

3 21. Internet users typically interact with the DNS through their Internet
4 Service Providers (“ISP”). Specifically, when a user requests a Web site associated
5 with a domain name, the user’s computer searches its local cache for the IP address
6 associated with that domain name. If the IP address is not found locally, the
7 computer will query the ISP’s name server. If the ISP’s name server does not have
8 the address for the domain name requested, it will query the appropriate Registry’s
9 name server (*i.e.*, its zone file), from which it will obtain the name and IP address of
10 the name server associated with the domain name requested. It will then query the
11 name server associated with the domain name, and pass the IP address back to the
12 user’s computer.

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

14 22. Today’s Internet has its origin in a network called the ARPAnet which
15 was launched by the Department of Defense (“DOD”) in 1969. ARPAnet was later
16 linked to other networks established by various government agencies, universities,
17 and research facilities. In 1990, NSFnet, the network developed by the National
18 Science Foundation’s superseded ARPAnet.

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

22 24. In 1993, NSF signed a cooperative agreement with Network Solutions
23 (“NSI”) under which NSI became the exclusive registrar for second-level domains
24 in .com, .net, .org, and .edu, as well as the exclusive Registry operator for each of
25 those top-level domains. The NSF initially underwrote NSI’s domain registration
26 services, thereby allowing Internet users to register domain names free of charge.
27 However, on or about September 13, 1995, NSF and NSI entered into Amendment 4
28 of the cooperative agreement, which permitted NSI to charge Internet users \$100 for

1 a two-year registration of a second-level domain in the .com, .net, and .org domains.
2 Thirty percent of the registration fees were to be paid into an NSF Infrastructure
3 fund. In April 1998, the portion of the fee allocated to the Infrastructure fund was
4 held to constitute an unconstitutional tax, and the effective rate for domain
5 registrations dropped to \$35 per year.

6 25. On July 1, 1997, the Clinton administration issued a report on
7 electronic commerce, "*A Framework for Global Electronic Commerce.*" The report
8 supported private efforts to address Internet governance and made the Department
9 of Commerce ("DOC") the lead agency on this initiative. Accompanying the report
10 was a presidential directive that called on the DOC to "support efforts to make the
11 governance of the domain name system private and competitive and to create a
12 contractually based self-regulatory regime that deals with potential conflicts
13 between domain name usage and trademark laws on a global basis." To carry out
14 this mission, the DOC first issued a Request for Comment on DNS administration,
15 and then on February 20, 1998, it published "*Proposal to Improve Technical
16 Management of Internet Names and Addresses*" (commonly referred to as the
17 "Green Paper").

18 26. After receiving more than 650 comments, the DOC ended the proposed
19 rulemaking and instead published on June 10, 1998, a policy statement also known
20 as the "White Paper." The White Paper, reflecting the views of the overwhelming
21 majority of comments, called upon the private sector to create a new, not-for-profit
22 corporation to assume responsibility, over time, for the management of certain
23 aspects of the DNS. The White Paper identified four specific functions to be
24 performed by this new corporation: (i) To set policy for and direct the allocation of
25 Internet Protocol number blocks; (ii) To develop overall policy guidance and control
26 of top-level domains and the Internet root server system; (iii) To develop policies
27 for the addition, allocation, and management of gTLDs, and the establishment of
28 domain name registries and domain name registrars and the terms, including

1 licensing terms, applicable to new and existing gTLDs and registries under which
2 registries, registrars, and gTLDs are permitted to operate; and (iv) To coordinate
3 maintenance and dissemination of the protocol parameters for Internet addressing.
4 The White Paper also articulated the fundamental policies that would guide United
5 States participation in the transfer of DNS management responsibility to the private
6 sector: stability; competition; private, bottom-up coordination; and representation.

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

14 28. In fulfillment of the commitment expressed in the White Paper, on
15 October 7, 1998, the DOC and NSI entered Amendment 11 to the Cooperative
16 Agreement. In Amendment 11, NSI agreed to recognize NewCo “when recognized
17 by the [DOC] in accordance with the provisions of the Statement of Policy.” NSI
18 further committed to enter into a contract with NewCo, and acknowledged “that
19 NewCo will have the authority, consistent with the provisions of the Statement of
20 Policy and the agreement between the [DOC] and NewCo, to carry out NewCo’s
21 Responsibilities.” Under Amendment 11, “NewCo’s Responsibilities” specifically
22 include the establishment and implementation of DNS policy and the terms,
23 including licensing terms, applicable to new and existing gTLDs and registries
24 under which registries, registrars and gTLDs are permitted to operate.” Amendment
25 11 also provided for the development, deployment, and licensing by NSI (under a
26 license agreement to be approved by the Department of Commerce) of a mechanism
27 to allow multiple registrars to submit registrations for the gTLDs for which NSI
28 acted as the Registry (the “Shared Registration System,” or “SRS”).

1 E. THE DEVELOPMENT OF ICANN

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

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

13 31. In the MOU, ICANN expressly agreed to abide by principles of
14 stability, competition, private, bottom-up coordination, and representation:

15 C. The Principles:

16 The parties will abide by the following principles:

17 1. Stability

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

25 2. Competition

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

3. Private, Bottom-Up Coordination

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

1 the changing needs of the Internet and of Internet users.
2 This Agreement is intended to foster the development of a
3 private sector management system that, as far as possible,
4 reflects a system of bottom-up management.

4. Representation.

5 This Agreement promotes the technical management of
6 the DNS in a manner that reflects the global and functional
7 diversity of Internet users and their needs. This
8 Agreement is intended to promote the design,
9 development, and testing of mechanisms to solicit public
10 input, both domestic and international, into a private-
11 sector decision making process. These mechanisms will
12 promote the flexibility needed to adapt to changes in the
13 composition of the Internet user community and their
14 needs.

10 32. The MOU also obligated ICANN to “act in a non-arbitrary and
11 reasonable manner with respect to design, development, and testing of the DNS
12 Project and any other activity related to the DNS Project,” and to refrain from acting
13 “unjustifiably or arbitrarily to injure particular persons or entities or particular
14 categories of persons or entities.”

15 33. Within the mandate contained in the MOU, ICANN has had and
16 continues to have very broad discretion over how it fulfills its obligations under the
17 MOU. The DOC no longer has any control over the workings of ICANN, nor does
18 it actively influence ICANN’s decision-making procedures. The DOC has
19 recognized that ICANN is subject to federal anti-trust laws.

20 **F. THE 2001 REGISTRY AGREEMENTS**

21 34. On or about November 10, 1999, NSI and ICANN entered into a
22 written Registry Agreement (the “1999 Registry Agreement”) with respect to NSI’s
23 operation of the Registry for the .com and .net gTLDs.

24 35. On or about May 25, 2001, VeriSign, which succeeded to the Registry
25 business of NSI, entered into a new written .com Registry Agreement and .net
26 Registry Agreement with ICANN (the “2001 Registry Agreements”). The 2001
27 Registry Agreements superseded the 1999 Registry Agreement with NSI. Subject to
28 certain extension rights provided for therein, the 2001 .com Registry Agreement was

1 to expire on November 10, 2007. The .net Registry Agreement expired on June 30,
2 2005. VeriSign and ICANN now propose to enter into new agreements—the 2005
3 .com Registry Agreement and 2005 .net Registry Agreement (“2005 Registry
4 Agreements”). Copies of the 2001 and 2005 .com Registry Agreements and the
5 2005 .net Registry Agreements, without exhibits due to their length, are attached
6 hereto as exhibits 1, 2, and 3 respectively.

7 36. In accordance with the 2001 Registry Agreements, VeriSign undertook
8 to operate the .com and .net gTLD Registry and to pay certain Registry-level fees to
9 ICANN. VeriSign is the sole Registry for the .com and .net gTLDs and therefore
10 maintains a monopoly over the .com and .net gTLDs.

11 37. Under the 2001 .com Registry Agreement, VeriSign is required to
12 provide “Registry Services” to ICANN-accredited registrars in a manner meeting
13 the performance and functional specifications attached to the agreement. “Registry
14 Services” generally are defined in the agreement as follows:

15 “Registry Services” means services provided as an integral
16 part of the Registry TLD, including all subdomains. These
17 services include receipt of data concerning registrations of
18 domain names and name servers from registrars, provision
19 to registrars of status information relating to the Registry
20 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.

21 Exh. 1, section I.9.

22 38. The 2001 .com Registry Agreement defines “Consensus Policies” as
23 consisting of those specifications and policies established on the basis of a
24 consensus among Internet stakeholders represented in the ICANN process, as
25 demonstrated by compliance with specific, detailed procedures prescribed in the
26 agreement. Exh. 1, section I.1.

27 39. The 2001 Registry Agreements set forth “General Obligations of
28 Registry Operator [VeriSign].” VeriSign generally is obligated to comply with

1 Consensus Policies if, among other requirements, they are properly adopted by
2 ICANN and consistent with ICANN's other contractual obligations, and (A) they
3 "do not unreasonably restrain competition"; and (B) relate to "(1) issues for which
4 uniform or coordinated resolution is reasonably necessary to facilitate
5 interoperability, technical reliability, and/or stable operation of the Internet or DNS,
6 (2) Registry policies reasonably necessary to implement Consensus Policies relating
7 to registrars, or (3) resolution of disputes regarding the registration of domain names
8 (as opposed to the use of such domain name)." Exh. 1, section II.3.

9 40. In an effort avoid federal antitrust violations by VeriSign, the 2001
10 .com Registry Agreement further sets forth the following "General Obligations of
11 ICANN." "With respect to all matters that impact the rights, obligations, or role of
12 Registry Operator," the agreement explicitly provides that ICANN shall, among
13 other obligations: (i) "exercise its responsibilities in an open and transparent
14 manner," (ii) "not unreasonably restrain competition and, to the extent feasible,
15 promote and encourage robust competition...." As discussed below, these goals
16 were abandoned in the 2005 Registry Agreements. Exh. 1, section II.4.

17 **G. ANTICOMPETITIVE CONDUCT AND THE 2005 REGISTRY**
18 **AGREEMENTS**

19 41. Unrestrained by any competition, ICANN and VeriSign have now
20 abandoned their commitments to avoid unreasonable restraints of trade and promote
21 fair competition in the "Covenants" or "General Obligations" to this effect.

22 42. Moreover, VeriSign is now using its monopoly power to raise prices
23 above their natural level and permit VeriSign to leverage their power into other
24 markets. The antitrust and unfair competition laws were enacted to prohibit this
25 very conduct.

26 **1. The 2005 .com Registry Agreement**

27 43. The 2005 .com Registry Agreement affects prices by not only
28 redrafting the previous provisions for maximum price, but also redefining which

1 terms are included in the maximum price. In the 2005 .com Registry Agreement
2 VeriSign and ICANN effectively fix the price for .com domain name registration at
3 \$6 through December 31, 2006, and further conspire to permit VeriSign to
4 permanently and indefinitely raise the price of .com and .net registration 7%
5 annually. This price exceeds the historical rate of inflation and is greater than what
6 a fair market would otherwise bear.¹

7 44. Furthermore, the 2005 .com Registry agreement specifically excludes
8 the “registry-level transaction fee” from the definition of the maximum price.
9 Therefore, the actual price is not simply \$6.00, plus the ICANN sanctioned 7%
10 annual increase, but these two terms plus the registry-level transaction fee. Exh. 2,
11 section 7.3(g). This fee is an annually increasing amount. Under the terms of the
12 2005 .com Registry Agreement, the increase in the registry-level transaction fee is
13 an automatic process. The Agreement makes no provision for registrars and Internet
14 stakeholders to provide any input into the process. *Id.*

15 45. In addition to price fixing, the 2005 .com Registry Agreement permits
16 VeriSign to leverage VeriSign’s monopoly into new services by changing the
17 definition of “Registry Services.”

18 46. Registry services are, for purposes of this new Agreement, defined as
19 the following:

(b) other products or services that the Registry Operator is
required to provide because of the establishment of a

¹ In the 2005 .net Registry Agreement, entered into on June 29, 2005, ICANN and
VeriSign agree to set the price for new and renewed domain name registrations at
\$4.25. The Agreement then goes on to say that, effective January 1, 2007, the
“controls on [VeriSign’s] pricing set forth in this Agreement shall be eliminated....”
Exh. 3, section 7.3. Virtually the only restriction the Agreement places on pricing is
that all registrars be equally subject to the price VeriSign sets and treated equally
under any incentive programs VeriSign offers. The unfettered ability to raise prices
indefinitely demonstrates the collusive manipulation and control which ICANN and
VeriSign are perpetrating. Only with certain monopolistic control over the market
could the two defendants create such an agreement.

1 Consensus Policy...; (c) any other products or services
2 that only a Registry operator is capable of providing by
reason of its designation as the Registry operator...

3 Exh. 2, section 3.1(d)(iii.)

4 47. The 2005 Registry Agreement further sets forth a “Process for
5 Consideration of Proposed Registry Services” whereby ICANN makes a preliminary
6 determination as to whether a Registry Service “(i) could raise significant Security
7 or Stability issues; or (ii) could raise significant competition issues.” If ICANN
8 determines that the proposed Registry Service raises significant competition issues,
9 then it must refer the issue “to the appropriate governmental competition authority.”
10 If ICANN finds that no competition concerns exist, VeriSign is permitted to provide
11 the new Registry Service. Exh. 2, section 3.1(d)(iv.)

12 48. Upon information and belief of Plaintiff, the new “Registry Services”
13 includes Site Finder and a waiting list service known as the Central Listing Service
14 (“CLS”). Site Finder is a service which provides to Internet users a list of
15 alternative web addresses in the event that the address a particular user enters is not
16 valid. The list consists of a number of addresses with similar spellings.
17 Additionally, Site Finder is intended to provide the user with a search engine and a
18 list of addresses which Site Finder determines to be contextually similar to the
19 misspelled or incorrectly entered address.

20 49. The CLS is a means for VeriSign to sell expired domain names.
21 Internet users interested in securing a domain name which has already been
22 registered to another Registrant can place their name on the CLS service. Under the
23 current system, VeriSign automatically renews any expired domain name for forty-
24 five days and allows the Registrar for that name to confirm that the name should be
25 deleted from the registry with that time frame. If the Registrar confirms that the
26 name is to be deleted, the name enters a grace period during which time the
27 Registrant may renew its registration of the name. If that grace period expires, the
28 domain name is added to a list of names pending deletion, and the Registrars are

1 notified of its impending deletion. The Registrars can then use their own back order
2 services to register the expiring domain to one of their Registrants.

3 50. Upon information and belief, under the terms of the new CLS, the list
4 of names pending deletion and the notification to Registrars will no longer be
5 disbursed. VeriSign will instead send notification only to those Registrars who have
6 signed a CLS agreement, and an auction will be held for the expired domain name.
7 If there are no bids on the expired name, it is released by VeriSign and available for
8 purchase as would be any unused domain name. A successful bid, however, is paid
9 in part to the Registrar who released the expired domain name and in part to
10 VeriSign, thereby allowing them to profit off this market. This service permits
11 VeriSign to control and monopolize expired “.com” and “.net” domain names.

12 51. The 2005 .com Registry Agreement provides for the automatic renewal
13 of the agreement, *inter alia*, as follows:

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

28 Upon renewal, in the event that the terms of this
Agreement are not similar to the terms generally in effect
in the Registry Agreements of the 5 largest gTLDs
(determined by the number of domain name registrations
under management at the time of renewal), renewal shall
be upon terms reasonably necessary to render the terms of
this Agreement similar to such terms in the Registry
Agreements for those other gTLDs. The preceding
sentence, however, shall not apply to the terms of this
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

1 (determined as above), during the prior three-year period.

2 Exh. 2, section 4.2.

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

7 53. The 2005 Registry Agreement harms Plaintiffs because it prevents
8 competitors from entering the .com and .net domain name registration market and
9 allows VeriSign to permanently fix and raise the price for domain name registration,
10 forcing consumers to pay a domain name registration price that exceeds the
11 historical rate of inflation.

12 **2. The 2005 .net Registry Agreement**

13 54. The 2005 .net Registry Agreement has already been approved by the
14 ICANN Board of Directors.

15 55. Per the terms of the 2005 .net Registry Agreement, it expires six years
16 from the date it became effective. Like 2005 .com Registry Agreement, the 2005
17 .net Registry Agreement contains essentially the same automatic renewal provisions,
18 thereby giving it indefinite duration.

19 56. The issue of price fixing in the 2005 .net Registry Agreement is even
20 more glaring than in the 2005 .com Registry Agreement because as of January 1,
21 2007, ICANN will not place any restraints on the amount VeriSign can charge
22 Registrants for .net registrations. Exh. 3, section 7.3. Furthermore, the 2005 .net
23 Registry Agreement provides for the same revision of Registry Services as the 2005
24 .com Registry Agreement. These provisions will allow for the same increase in
25 VeriSign's monopoly control in the .net market as they will in the .com market.

26 **H. THE RELEVANT MARKET**

27 57. The relevant market for antitrust analysis in this case are the ".com"
28 and ".net" TLDs which represent the majority of all commercial businesses in the

1 United States. Although over 250 TLDs exist, they are not equally accessible to
2 businesses based in the United States. All country-code TLDs are operated and
3 managed outside of the United States, and are therefore not subject to U.S. antitrust
4 laws and statutes. Registration with ccTLDs requires a Registrant to leave the
5 borders and protection of the United States. Therefore, these ccTLDs cannot be
6 counted as part of the relevant market for determining antitrust violations.

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

16 59. The relevant geographic scope of the .com and .net markets is the entire
17 world.
18 60. VeriSign is the sole Registry for these domains. As a result, any
19 arrangements VeriSign enters into to control competition in the expired domain
20 name market or in the site finder market, or to fix prices, constitute an unjustifiable
21 use of monopoly power.

22
23 **VII. CLAIMS FOR RELIEF**
24 **FIRST CLAIM FOR RELIEF AGAINST VERISIGN AND ICANN**
25 **(Violation of Section 1 of the Sherman Act)**

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

28 62. The 2005 .com Registry Agreements between ICANN and VeriSign
constitutes an unlawful price fixing agreement in that it permanently fixes the price

1 of .com domain registrations and permanently fixes an indefinite price increase of
2 7% annually. There is no legitimate business purpose for the price or the increase or
3 the permanency of both. The price and the annual increase exceed the natural rate
4 of inflation and the price that a free and fair market would otherwise bear. The price
5 and the increase achieve no legitimate efficiency benefits to counterbalance its
6 demonstrated anticompetitive effects.

7 63. Similarly, under the 2005 .net Registry Agreement, ICANN have
8 agreed that VeriSign will fix prices for .net registrations. There is no legitimate
9 business purpose for the unrestrained allowance of price increase or its permanency.

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

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

21 66. Plaintiffs have been injured in its business and property and are
22 threatened with continued injury to its business and property, as a result of the anti-
23 competitive conduct of ICANN, VeriSign, and co-conspirators as alleged above.

24 67. Plaintiffs are entitled to a preliminary and permanent injunction
25 restraining ICANN and VeriSign from continuing to violate Section 1 of the
26 Sherman Act, 15 U.S.C. § 1 as alleged above.

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1 **SECOND CLAIM FOR RELIEF AGAINST VERISIGN**
2 **(Illegal Maintenance of Monopoly in Violation of Section 2 of the Sherman Act)**

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

5 69. By way of the 2005 Registry Agreements, VeriSign has willfully,
6 unlawfully and permanently obtained an exclusive monopoly in the .com and .net
7 domain name registration market though the acts set forth above. The 2005 Registry
8 Agreement provides for the automatic renewal of the agreement and thereby
9 precludes competitors from ever entering the .com and .net domain name
10 registration market for no legitimate business purpose.

11 70. By way of the 2005 Registry Agreements, VeriSign is permitted to
12 exploit its monopoly power to fix the price of domain name registrations and to
13 permanently and indefinitely an annual 7% a price increase for .com registrations.
14 ICANN has also removed all price controls from VeriSign's ability to raise prices
15 for all .net registrations.

16 71. By way of the 2005 Registry Agreements, VeriSign has leveraged its
17 monopoly power into control over the CLS and SiteFinder services.

18 72. Plaintiffs are entitled to a preliminary and permanent injunction
19 restraining ICANN and VeriSign from continuing to violate Section 2 of the
20 Sherman Act, 15 U.S.C. § 2 as alleged above. Plaintiffs have no adequate remedy at
21 law.

22 **THIRD CLAIM FOR RELIEF AGAINST VERISIGN**
23 **(Attempted Illegal Maintenance of Monopoly in Violation of Section 2 of the**
24 **Sherman Act)**

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

27 74. In violation of Section 2 of the Sherman Act, 15 U.S.C. § 2, VeriSign
28 has knowingly, intentionally and with specific intent to do so, attempted to

1 unlawfully and permanently monopolize the .com and .net domain name registration
2 market, by way of the acts set forth above.

3 75. By way of the 2005 Registry Agreements, VeriSign will obtain from
4 ICANN a permanent and exclusive monopoly in the .com and .net domain name
5 registration market. The 2005 Registry Agreements provide for the automatic
6 renewal of these agreements and thereby preclude competitors from ever entering
7 the .com and .net domain name registration market indefinitely for no legitimate
8 business purpose.

9 76. By way of the 2005 Registry Agreements, VeriSign is permitted to
10 exploit its monopoly power to permanently and indefinitely raise prices 7% annually
11 for .com registrations and to raise prices without constraint for .net registrations.

12 77. VeriSign intends by its actions to:

- 13 a. control the price of .com and .net domain name registration;
- 14 b. eliminate, reduce, limit and foreclose actual and potential
15 competition in the .com and .net domain name registration market;
- 16 c. exclude and foreclose other persons from participating in or
17 entering said market; and
- 18 d. injure and eliminate competition in said market
- 19 e. leverage its monopoly power into control over the CLS and
20 SiteFinder services.

21 78. There is a dangerous likelihood that VeriSign will succeed in its
22 attempt to monopolize the .com and .net domain name registration market.

23 79. Plaintiffs are entitled to a preliminary and permanent injunction
24 restraining ICANN and VeriSign from continuing to violate Section 2 of the
25 Sherman Act, 15 U.S.C. § 2 as alleged above.

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1 **FOURTH CLAIM FOR RELIEF AGAINST ICANN AND VERISIGN**
2 **(Conspiracy to Monopolize in Violation of Section 2 of the Sherman Act)**

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

5 81. In violation of Section 2 of the Sherman Act, 15 U.S.C. § 2, VeriSign
6 and ICANN have knowingly, intentionally and with specific intent to do so,
7 conspired to monopolize the .com and .net domain name registration market through
8 the acts set forth above.

9 82. By way of the 2005 Registry Agreements, VeriSign seeks to obtain
10 from ICANN an exclusive and permanent monopoly in the .com and .net domain
11 name registration market. The 2005 Registry Agreements provide for the automatic
12 renewal of the agreements and thereby preclude competitors from ever entering the
13 .com and .net domain name registration market for no legitimate business purpose.

14 83. By way of the 2005 Registry Agreements, ICANN has permitted
15 VeriSign to exploit its monopoly power to permanently and indefinitely raise prices
16 7% annually going forward for .com registrations and to raise prices without
17 constraint for .net registrations.

18 84. VeriSign and ICANN have effectuated their attempts to allow VeriSign
19 to monopolize the domain name registration market by the means and the overt acts
20 set forth above.

21 85. VeriSign and it co-conspirator, ICANN, intended by their actions to:

- 22 a. control the price of .com and .net domain name registration;
- 23 b. eliminate, reduce, limit and foreclose actual and potential
24 competition in the .com and .net domain name registration markets;
- 25 c. exclude and foreclose other persons from participating in or
26 entering said market; and
- 27 d. allow VeriSign to obtain exclusive and permanent control over
28 the CLS and SiteFinder services.

1 e. injure and eliminate competition in said market.

2 86. There is a dangerous likelihood that VeriSign will monopolize the .com
3 and .net domain name registration market.

4 87. Plaintiffs are entitled to a preliminary and permanent injunction
5 restraining ICANN and VeriSign from continuing to violate Section 2 of the
6 Sherman Act, 15 U.S.C. § 2 as alleged above.

7 **FIFTH CLAIM FOR RELIEF AGAINST ICANN AND VERISIGN**
8 **(Unlawful Restraint of Trade in Violation of Cartwright Act, California**
9 **Business & Professions Code, Sections 16700, *et seq.*)**

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

12 89. In violation of California Business & Professions Code section 16720,
13 Defendants VeriSign and ICANN and their co-conspirators, by and through their
14 officers, directors, employees, agents, and other representatives, have unreasonably
15 restrained and restricted competition in the market for .com and .net domain name
16 registrations, and have deprived consumers of the benefits of free and open
17 competition, and threaten to continue to restrain such competition in that market in
18 the future unless enjoined by the Court.

19 90. VeriSign and its co-conspirator, ICANN, intended by, among other
20 things, their actions to:

21 a. control the price of .com and .net domain name registration;

22 b. eliminate, reduce, limit and foreclose actual and potential
23 competition in the .com and .net domain name registration markets;

24 c. exclude and foreclose other persons from participating in or
25 entering said market; and

26 d. allow VeriSign to obtain exclusive and permanent control over
27 the CLS and SiteFinder services.

28 e. injure and eliminate competition in said market.

1 91. Under the 2001 Registry Agreements, ICANN granted VeriSign a
2 monopoly over the .com and .net franchise to VeriSign through November 10, 2007.
3 One of the provisions of the 2005 .com Registry Agreement is that VeriSign is
4 permitted to charge \$6 for any .com and .net registration. This \$6 is what VeriSign
5 charges registrars who then resell these .com and .net domain names to the public.
6 The 2005 Registry Agreement permits VeriSign to increase its fees 7% annually
7 going forward.

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

14 93. Defendants have already entered into the 2005 .net Registry
15 Agreement, which allows VeriSign greater ability to monopolize the .net market
16 through its added Registry Services, and through its ability to raise prices for .net
17 registrations without restraint.

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

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

25 96. For purposes of formulating and effectuating their contract,
26 combination or conspiracy, VeriSign and ICANN have agreed to fix the price of
27 .com domain name Registry at \$6 plus 7% per year going forward, and allow
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1 unfettered ability to control prices in the .net domain name registration market.
2 VeriSign controls 100% of the .com and .net domain name registration market.

3 97. Plaintiffs are entitled to a preliminary and permanent injunction
4 restraining ICANN and VeriSign from continuing to violate the Cartwright Act,
5 California Business & Professions code, sections 16700, *et seq.* as alleged above.
6 Plaintiffs have no adequate remedy at law.

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

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

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

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

20 101. Defendants, through the acts set forth above have are also engaged in
21 unfair business practices by, among other things, entering into an agreement to fix,
22 raise, maintain and stabilize the prices of, and/or allocate the market for domain
23 name registration, monopolize the .com and .net markets

24 102. As a direct result of the unlawful and unfair business practices of
25 ICANN and VeriSign, Plaintiffs will be forced to pay more for domain name
26 registration than they would have paid in the absence of ICANN and VeriSign’s
27 price fixing.
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1 103. Plaintiffs are entitled to a preliminary and permanent injunction
2 restraining ICANN and VeriSign from continuing to violate the Unfair Trade
3 Practices Act, California Business & Professions Code, sections 17200, *et seq.* as
4 alleged above.

5 **SEVENTH CLAIM FOR RELIEF AGAINST ICANN**
6 **(Unfair Business Practices Inconsistent with Status of Non-Profit Public Benefit**
7 **Corporation in Violation of California Business and Professions Code Section**
8 **17200, *et seq.*)**

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

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

14 106. The 2005 .com Registry Agreement permits VeriSign to increase its
15 fees 7% per year going forward. ICANN’s approval of the proposed .com 2005
16 Registry Agreement, without which VeriSign cannot increase its fees, will be an
17 unfair, unlawful act. ICANN’s agreement to allow VeriSign unrestrained control
18 over prices for .net domain name registrations, in the 2005 .net Registry Agreement
19 constitutes an unfair, unlawful act. ICANN has a duty to impose appropriate limits
20 on VeriSign’s ability to exploit its monopoly position to the detriment of consumers.

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

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1 violate Section 1 of the Sherman Act, 15 U.S.C. § 1, through collective action
2 in restraining competition.

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

5 B. On the second claim for relief, against VeriSign:

6 1. For entry of a final and binding judicial declaration determining
7 that Defendants' 2005 Registry Agreements, and the terms contained therein,
8 violate Section 2 of the Sherman Act, 15 U.S.C. §2.

9 2. For entry of a preliminary and permanent injunction prohibiting
10 VeriSign, its officers, directors, employees, agents and other acting in concert,
11 or in association with them, from directly or indirectly continuing to violate
12 Section 2 of the Sherman Act, 15 U.S.C. § 2, by exploiting VeriSign's
13 position in the market and maintaining an illegal monopoly.

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

16 C. On the third claim for relief, against VeriSign:

17 1. For entry of a preliminary and permanent injunction prohibiting
18 VeriSign, its officers, directors, employees, agents and other acting in concert,
19 or in association with them, from directly or indirectly continuing to attempt
20 to violate Section 2 of the Sherman Act, 15 U.S.C. § 2, by exploiting
21 VeriSign's position in the market and maintaining an illegal monopoly.

22 2. For its reasonable attorney's fees, as provided by Section 4 of the
23 Clayton Act, 15 U.S.C. § 15.

24 D. On the fourth claim for relief, against VeriSign:

25 3. For entry of a preliminary and permanent injunction prohibiting
26 VeriSign, its officers, directors, employees, agents and other acting in concert,
27 or in association with them, from directly or indirectly continuing to attempt
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1 to violate Section 2 of the Sherman Act, 15 U.S.C. § 2, by exploiting
2 VeriSign's position in the market and maintaining an illegal monopoly.

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

5 E. On the fifth claim for relief, against ICANN and VeriSign:

6 1. For entry of a final and binding judicial declaration determining
7 that Defendants' 2005 Registry Agreement, and the terms contained therein,
8 violate the Cartwright Act.

9 2. For entry of a preliminary and permanent injunction prohibiting
10 Defendants, their officers, directors, employees, agents and other acting in
11 concert, or in association with them, from directly or indirectly continuing to
12 violate the Cartwright Act, through collective action in restraining
13 competition.

14 F. On the sixth claim for relief, against ICANN and VeriSign:

15 1. For entry of a final and binding judicial declaration determining
16 that Defendants' 2005 Registry Agreement constitute unfair and unlawful
17 business practices.

18 2. For entry of a preliminary and permanent injunction prohibiting
19 Defendants, their officers, directors, employees, agents and other acting in
20 concert, or in association with them, from directly or indirectly continuing to
21 violate the California Business & Professions Code Section 17200, *et seq.*,
22 through collective action in restraining competition.

23 G. On the seventh claim for relief, against ICANN:

24 1. For entry of a final and binding judicial declaration determining
25 that ICANN has failed to follow its by-laws in violation of California
26 Business & Professions Code Section 17200, *et seq.*

27 2. For entry of a preliminary and permanent injunction prohibiting
28 ICANN, its officers, directors, employees, agents and other acting in concert,

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or in association with them, from directly or indirectly continuing to violate the California Business & Professions Code Section 17200, *et seq.*, through collective action in restraining competition.

- H. On all claims for relief:
1. For costs of suit incurred herein.
 2. For attorneys fees as allowed by law.
 3. For such further relief as is just and proper.

DATED: November 28, 2005 CATHCART COLLINS & KNEAFSEY LLP

By 
Patrick A. Cathcart

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

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable pursuant to Federal Rule of Civil Procedure 38.

DATED: November 28, 2005

CATHCART COLLINS & KNEAFSEY LLP

By 
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Attorneys for Plaintiff World Association
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